



Decree 46:
Implications for the
Insurance Sector

August 2023



The Law on Insurance Business was promulgated on 16 June 2022 (**New Law**) and became effective on 1 January 2023.

On 1 July 2023, the Government of Vietnam finally issued the eagerly awaited Decree No. 46/2023/ND-CP detailing a number of articles of the Law on Insurance Business (**Decree 46**), which took effect on the same day.

We present you this Legal Update, where we discuss the notable changes of Decree 46 as opposed to Decree No. 73/2016/ND-CP dated 1 July 2016, guiding the implementation of the Law on Insurance Business and the Law on amendments to certain articles of the Law on Insurance Business (as amended from time to time) (**Decree 73**).

Information collection for the insurance business database

Decree 46 provides detailed regulations for collecting information for the purpose of setting up the insurance business database (**Insurance Database**). Accordingly, the Insurance Database will include the following five (5) groups of information:

- (i) Information about insurance enterprises, reinsurance enterprises, foreign branches, insurance brokerage enterprises, mutual microinsurance organisations, and foreign representative offices in Vietnam, such as information about the establishment and operation licence; licence for establishment of foreign representative offices in Vietnam, financial situation and operational activities; and information about managers and controllers, etc.;
- (ii) Information about the policyholders, the insureds, and the insured objects, such as the number of the insureds, the number of insurance policies, the number of claims and the total amount of indemnification, etc.;
- (iii) Information about insurance agents, such as reports on training and using insurance agents, etc.;
- (iv) Information about the examination and issuance of insurance certificates, insurance auxiliary certificates and insurance brokerage certificates, such as personal authentication information of individuals who obtain the certificates, names of the certificates, names of training institutions, etc.; and
- (v) Information about management, supervision and administrative sanctions in the insurance sector, such as names of individuals/organisations that have been imposed administrative sanctions, reference numbers of administrative sanction decisions, dates of the decisions, measures and levels of sanctions, etc.

The information in groups (i), (iii), (iv), and (v) to be updated onto the Insurance Database will include information as from 1 January 2024. The information in group (ii) to be updated onto the Insurance Database will include information as from 1 January 2025.

Higher requirements of minimum charter capital and required capital for insurance businesses

Charter capital is one of the key requirements for obtaining an establishment and operation licence (**Establishment Licence**) in the insurance sector. Compared to Decree 73, Decree 46 increases the minimum charter capital required for insurance market participants, as well as the required minimum capital with respect to branches of insurance companies. We set out the differences in the following table.

Types of insurance

		Decree 73 In VND In US\$	Decree 46 In VND In US\$
Life insurance enterprises	Life insurance (except unit-linked insurance, pension insurance) and health insurance	VND600 billion US\$25.6 million	VND750 billion US\$32 million
	Life insurance, health insurance and unit-linked insurance/or pension insurance	VND800 billion US\$34.1 million	VND1,000 billion US\$42.7 million
	Life insurance, health insurance, unit-linked insurance, and pension insurance	VND1,000 billion US\$42.7 million	VND1,300 billion US\$55.5 million
Non-life insurance enterprises	Non-life insurance (except aviation insurance, satellite insurance) and health insurance	VND300 billion US\$12.8 million	VND400 billion US\$17.1 million
	Non-life insurance, health insurance, and aviation insurance or satellite insurance	VND350 billion US\$14.9 million	VND450 billion US\$19.2 million
	Non-life insurance, health insurance, aviation insurance, and satellite insurance	VND400 billion US\$17.1 million	VND500 billion US\$21.3 million
Health insurance enterprises		VND300 billion US\$12.8 million	VND400 billion US\$17.1 million
Reinsurance enterprises	Either (i) non-life reinsurance/retrocession reinsurance, or (ii) non-life and health reinsurance/retrocession reinsurance	VND400 billion US\$17.1 million	VND500 billion US\$21.3 million
	Either (i) life reinsurance/retrocession reinsurance, or (ii) life and health reinsurance/retrocession reinsurance	VND700 billion US\$29.9 million	VND900 billion US\$38.4 million
	Reinsurance, retrocession of all three types of life, non-life and health reinsurance	VND1,100 billion US\$46.9 million	VND1,400 billion US\$59.7 million
Insurance brokerage enterprises	Primary insurance brokerage or reinsurance brokerage	VND4 billion US\$170 thousand	VND5 billion US\$210 thousand
	Primary insurance brokerage and reinsurance brokerage	VND8 billion US\$340 thousand	VND10 billion US\$430 thousand
Branches of foreign non-life insurance enterprises	Non-life insurance and health insurance	VND200 billion US\$8.5 million	VND250 billion US\$10.7 million
	Non-life insurance, health insurance, and aviation insurance or satellite insurance	VND250 billion US\$10.7 million	VND300 billion US\$12.8 million
	Non-life insurance, health insurance, aviation insurance, and satellite insurance	VND300 billion US\$12.8 million	VND400 billion US\$17.1 million
Branches of foreign reinsurance enterprises	Either (i) non-life reinsurance/retrocession reinsurance, or (ii) non-life and health reinsurance/retrocession reinsurance	N/A	VND400 billion US\$17.1 million
	Either (i) life reinsurance/retrocession reinsurance, or (ii) life and health reinsurance/retrocession reinsurance	N/A	VND450 billion US\$19.2 million
	Reinsurance, retrocession of all three types of life, non-life and health reinsurance	N/A	VND700 billion US\$29.9 million

Decree 46 requires that insurance enterprises, reinsurance enterprises, branches of foreign non-life insurance enterprises, and insurance brokerage enterprises, which were established and operating before 1 July 2023, but do not satisfy the above minimum requirements of charter capital or required capital (as the case may be), shall supplement the capital to meet the new minimum charter capital or required capital (as the case may be) before 1 January 2028.

Ownership structure in insurance and reinsurance joint stock companies

In comparison with the old regulations, the New Law provides stricter conditions for the shareholding structure in insurance and reinsurance joint stock companies. Article 66 of the New Law provides that individual shareholders must not hold more than 10% of the charter capital of insurers and reinsurers. Additionally, insurers and reinsurers must have at least two (2) organisational shareholders, and each of them must hold at least 10% of the charter capital.

Decree 46 provides a transitional period to comply with the New Law. Accordingly, for joint stock companies established before 1 January 2023, the requirements regarding the shareholding structure above will apply from 1 January 2026.

Ultimate beneficiary owners

One of the new documents required for the application of the establishment of insurance enterprises and reinsurance enterprises is a list of ultimate beneficiary owners. The old regulations did not touch the term “ultimate beneficiary owners” (**UBO**). Although this term is quite common in many common law jurisdictions, this term is not widely used under the laws of Vietnam. The term UBO was officially used and defined in Circular No. 22/2009/TT-NHNN of the State Bank of Vietnam dated 17 November 2009. Thereafter, the definition of UBO was amended through the Law on Anti-money Laundering 2012, and subsequently, the Law on Anti-money Laundering 2022. Accordingly, under the Law on Anti-money Laundering 2022, UBO is defined as an individual who ultimately owns one or several asset(s) and controls customer/s conducting transaction(s) relating to such asset(s); or an individual who has control over a legal person or arrangement.

Decree 46 requires that a list of UBO together with his/her information, such as names, date of birth, personal authentication documents, nationality, residential address in Vietnam (if any), and ownership ratio (either directly or indirectly) in the proposed established enterprises, must be included in the application dossier. Any change relating to the UBO upon establishment of insurance companies and reinsurance companies must be notified to the Ministry of Finance (**MOF**) within fifteen (15) calendar days of such change. It appears that the MOF has the intention to regulate and manage the UBO. This requirement might also have an impact upon requirements for economic concentration notifications.

The maximum timeframe for supplementation and amendment of the application file for the Establishment Licence

Similar to the old regulations, Decree 46 provides that the MOF shall grant the Establishment Licence within sixty (60) calendar days upon receipt of a valid application file. For incomplete application files, according to Decree 46, the MOF will have thirty (30) working days from receipt of the application file (instead of twenty-one (21) working days as prescribed in Decree 73) to request any supplementation or amendment. Such supplementation or amendment must be made within six (6) months of the date of request.

Decree 46 also supplements that, in all cases, organisations and individuals will have a maximum of twelve (12) months from the first request of the MOF to supplement and amend the application file. The MOF will be entitled to decline to grant the Establishment Licence if they fail to complete the application file within the above-mentioned timeframe.

New requirement for the transfer of shares or contributed capital

Previously, Decree 73 only required approval for the transfer of shares or contributed capital accounting for 10% or more of the charter capital.

Decree 46 now requires approval from the MOF with respect to any transfer of shares or contributed capital that results in shareholders or members owning either 10% or more of the charter capital, or less than 10% of the charter capital. This requirement implies that the MOF intends to manage the change of shares/capital contribution of all major shareholders and members (who own 10% of the charter capital or more), whether they increase or reduce the ownership ratio to more or less than 10%. This requirement would create more administrative steps for the major shareholders and members.

Higher standards for managerial and operational positions

Since the New Law introduces a new title - head of risk management, Decree 46 sets out new requirements for such title. Decree 46 also sets out stricter requirements with respect to the positions of head of compliance control and head of internal audit. Accordingly, these positions must meet the following standards:

- (i) General conditions set out in Clause 1, Article 81 of the New Law, which include: (i) have the right to manage enterprises in accordance with the Law on Enterprises; and (ii) have not been administratively sanctioned in the field of insurance business, nor disciplined in the form of dismissal due to a violation of internal procedures for three (3) consecutive years before the time of appointment; nor have been prosecuted by a competent agency as prescribed by law at the time of election or appointment (**General Conditions**); and

- (ii) With respect to the position of head of internal audit:
- Have a university degree or higher in insurance. Alternatively, the candidate must have a university degree or higher in economics, finance, banking, business administration, law, accounting, auditing and an insurance certification issued by a lawfully established domestic/foreign insurance training institution. Since this is a new condition for the head of internal audit, this condition will take effect within 1 year from the effective date of Decree 46.
 - Have at least three (3) years working directly in the fields of insurance, finance, banking, accounting, and auditing.
- (iii) With respect to the positions of head of risk management and head of compliance control:
- Head of risk management must have a university degree or higher in risk management and insurance actuary. Alternatively, the candidate must have a university degree or higher in insurance, economics, finance, banking, business administration, law, accounting, auditing and have training certificates in risk management or insurance actuary, issued by lawfully established domestic/foreign training institutions.
 - Head of compliance control must have a university degree or higher in insurance. Otherwise, it is required to have a university degree or higher in economics, finance, banking, business administration, law, accounting, and auditing and have an insurance certification issued by lawfully established domestic/foreign insurance training institutions.
 - Have at least three (3) years working directly in the fields of insurance, finance, and banking.

The conditions described in item (iii) above are entirely new for the positions of head of risk management and head of compliance control, and they will be effective as from 1 July 2024.

Stricter management for insurance agency organisations

In addition to the general requirements outlined in Clause 2, Article 125 of the New Law, credit institutions and foreign branches must meet the following additional conditions:

- A specialised department must be established to carry out insurance agency activities;
- The head of the specialised department must have at least three (3) years of working experience in the fields of finance, banking, and insurance and must have a university degree or higher in the insurance major. Otherwise, they must have a university degree or higher in another major and an insurance certificate as prescribed by the regulations of the MOF;
- Each branch of the credit institution must employ at least three (3) employees who are trained and have obtained insurance agency certificates suitable to the type/s of insurance products offered by such credit institutions. Each transaction office of the credit institution must employ at least one (1) employee who is trained and has obtained an insurance agency certificate suitable to the type/s of insurance products offered by such credit institutions;

- Have an appropriate information technology system, ensuring adequate, accurate and timely provision of information related to insurance contracts distributed through the credit institutions;
- There is a process to inspect and supervise the quality of the performance of insurance agency activities. The quality control and supervision process must (i) ensure that the employees strictly comply with the rules of insurance agents, the authorised contents in the agency contracts, and other relevant laws; (ii) allow insurance enterprises and foreign branches in Vietnam to participate in the inspection and supervision of the quality of agency activities; and (iii) must include handling for violations against employees when performing agency activities;
- Each branch and transaction office must set up a transaction counter (or transaction desk) specifically to carry out insurance agency activities, separate from other transaction areas and professional activities of credit institutions and foreign bank branches.

For insurance agencies being other organisations, they must meet the additional following conditions:

- Must employ at least three (3) employees directly performing insurance agency activities;
- There is a process to supervise compliance with the principles of insurance agency activities.

A transitional period of one (1) year from the effective date of Decree 46 is given to these organisation agencies to comply with the above conditions.

Supply and use of cross-border insurance services

Decree 46 has made significant changes to facilitate the supply and use of cross-border insurance services. Decree 46 provides that users of cross-border insurance services are foreign-invested economic organisations and foreigners working in Vietnam. Previously, Decree 73 limited entities eligible to use cross-border insurance products to enterprises established in Vietnam, which have more than 49% foreign investment, and foreigners working in Vietnam. This indicates that all foreign entities (regardless of foreign ownership ratio) are now entitled to use cross-border insurance products.

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