

## VIETNAM INSURANCE LAW UPDATE

### Introduction

According to the Insurance Supervisory Authority (*ISA*), under the Ministry of Finance (*MOF*), as of 31 March 2015, there were 61 insurance enterprises in Vietnam, including 29 non-life insurance enterprises, one branch of a foreign non-life insurance enterprise, 17 life insurance enterprises, 12 insurance brokers and two re-insurance companies. In 2014, the Ministry of Finance issued licences for BIDV MetLife Limited and a Hanoi branch of Seoul Guarantee Insurance Company.

In 2014, total insurance revenue reached VND54,718 billion which is equal to 114.89% of the insurance revenue in 2013. The table below sets out the key performance indicators of Vietnam's insurance sector in 2014.

	Non-life Insurance (VND billion)	Life Insurance (VND billion)	Total (VND billion)
Revenue	27,391	27,327	54,718
Insurance compensation	10,776	8,976	19,752
Investment from insurance company	28,403	103,276	131,679
Asset value	39,500	114,384	153,884
Equity	17,730	23,163	40,893
Reserve	12,700	81,287	93,987
Insurance brokerage fee	482		

### New Classification of Insurance Companies

On 17 December 2014, the MOF issued Circular 195/2014/TT-BTC, providing guidance on the classification of insurance enterprises (*Circular 195*). Circular 195 took effect as from 1 February 2015.

Circular 195 sets out a new grading scale to classify insurance enterprises in order to regulate and improve the operational effectiveness and financial capacity of insurance enterprises in the market.

**Grading scale for non-life insurance enterprises**

We set out below the three groups of criteria used to assess the solvency, operations reserves and business effectiveness of non-life insurance enterprises and the associated grading scale for each criterion.

- (i) Criteria for assessing operations reserves based on the grading scale, maximum score and deductions (if any) for each criterion. The maximum score for this group of criteria is 300 points, including:
  - Level A: from 200 to 300 points;
  - Level B: under 200 points.
- (ii) Criteria for assessing capital, quality of assets and financial investment based on the grading scale, maximum score and deductions (if any) for each criterion. The maximum score for this group of criteria is 500 points, including:
  - Level A: from 400 to 500 points;
  - Level B: under 400 points.
- (iii) Criteria for assessing business administration and transparency of information based on the grading scale, maximum score and deductions (if any) for each criterion. The maximum score for this group of criteria is 200 points, including:
  - Level A: from 100 to 200 points;
  - Level B: under 100 points.

**Grading scale for life insurance enterprises**

We set out below the three groups of criteria used to assess the solvency and operations reserves of life insurance enterprises and the associated grading scale for each criterion.

- (i) Criteria for assessing insurance operations activities based on the grading scale, maximum score and deductions (if any) for each criterion. The maximum score for this group of criteria is 300 points, including:
  - Level A: from 250 to 300 points;
  - Level B: from 200 to less than 250 points;
  - Level C: from 100 to less than 200 points; and
  - Level D: under 100 points.
- (ii) Criteria for assessing capital, quality of assets and business effectiveness based on the grading scale, maximum score and deductions (if any) for each criterion. The maximum score for this group of criteria is 500, including:
  - Level A: from 450 to 500 points;
  - Level B: from 350 to below 450 points;
  - Level C: from 250 to below 350 points; and
  - Level D: under 250 points.
- (iii) Criteria for assessing the business administration and transparency of information based on the grading scale, maximum score and deductions (if any) for each criterion. The maximum score for this group of criteria is 200, including:
  - Level A: from 150 to 200 points;
  - Level B: from 100 to below 150 points;
  - Level C: from 50 to below 100 points; and
  - Level D: under 50 points.

**Classification of non-life insurance enterprises**

- Group 1: Non-life insurance enterprises which maintain good liquidity and profit from the principal insurance business (other than re-insurance) for two consecutive years. Group 1 is divided into two sub-groups as follows:
- Sub-group 1A: those non-life insurance enterprises with a total score for all criteria of over 700 points and all three groups of criteria used to assess the non-life insurance enterprises are ranked “Level A”. The MOF shall encourage non-life insurance enterprises in Sub-group 1A to expand their scope of business and service coverage.
  - Sub-group 1B: those non-life insurance enterprises with a total score for all criteria of up to 700 points. Non-life insurance enterprises in Sub-group 1B shall be regularly monitored by the MOF to ensure that they satisfy the required margins for each criterion in the points system.
- Group 2: Non-life insurance enterprises which maintain acceptable solvency ratios but fail to post a profit from the principal insurance business for two consecutive years. Group 2 is divided into two sub-groups as follows:
- Sub-group 2A: those non-life insurance enterprises with a total score for all criteria of over 700 points and all three groups of criteria used to assess the non-life insurance enterprises are ranked “Level A”. The MOF will issue warnings to Sub-group 2A non-life insurance enterprises and their investors of their status, requiring them to increase their charter capital, audit their business and check liquidity of assets to restructure the business.
  - Sub-group 2B: those non-life insurance enterprises with a total score for all criteria of up to 700 points. In addition to the actions applicable to Sub-group 2A, the MOF will require non-life insurance enterprises in Sub-group 2B to reduce their scope of business if they fail to earn profits from their principal insurance business after 24 months of implementing their restructuring plan.
- Group 3: Non-life insurance enterprises which fail to maintain minimum solvency levels and criteria applicable to non-life insurance enterprises set out in Appendix 1 of Circular 195. The MOF will strictly monitor and control the business activities of non-life insurance enterprises in this group in accordance with Article 80 of the Law on Insurance Business.
- Group 4: Non-life insurance enterprises which are insolvent and subject to special control by the MOF. The MOF will consider withdrawing the insurance business licenses of non-life insurance enterprises in Group 4.

**Classification of life insurance enterprises**

- Group 1: Life insurance enterprises with good liquidity and profits including:
- Sub-group 1A: those life insurance enterprises with a total score of 850 points for all criteria and all three groups of criteria used to assess life insurance enterprises are ranked “Level A”. The MOF shall encourage life-insurance enterprises in this group to expand the business and scope of the service coverage.

- Sub-group 1B: those life insurance enterprises with a total score for all criteria being 650 to less than 850 points, with two groups of criteria ranked “Level A”, one “Level B” ranking, and no “Level C” or “Level D” rankings.
- The MOF will strictly supervise life insurance enterprises in Group 1B to ensure that they satisfy all requirements.
- Sub-group 1C: those life insurance enterprises with a total score for all criteria being 400 to less than 650 points, with most groups of criteria ranked “Level A” and “Level B”, one group of criteria ranked “Level C”, and no groups of criteria ranked “Level D”. The MOF will issue warnings to life insurance enterprises and their investors in Sub-group 1C and audit such life insurance enterprises in some specific insurance business activities.
- Sub-group 1D: those life insurance enterprises that are not classified in Sub-group 1A, 1B or 1C above. The MOF will strictly supervise and inspect the businesses in Sub-group 1D.
- Group 2: Life insurance enterprises which are at risk of insolvency and required to develop and implement a plan to restore solvency.
- Group 3: Life insurance enterprises which fail to maintain minimum solvency levels and other criteria as required by the MOF in Appendix 1 of Circular 195. Group 3 life insurance enterprises shall be subject to special control by the MOF in accordance with Article 80 of the Law on Insurance Business.
- Group 4: Life insurance enterprises which are insolvent, and subject to special control by the MOF. The MOF will consider withdrawing insurance business licence of life insurance enterprises in Group 4 in accordance with Article 68 of the Law on Insurance Business.

### Foreign Participation in Vietnam’s Insurance Sector

Foreign insurers are allowed to participate in Vietnam’s insurance market on five levels as follows: (i) establishing a wholly-owned subsidiary in Vietnam; (ii) entering into a joint venture with Vietnamese insurers; (iii) acquiring stakes in joint stock insurance companies and capital contribution portions in limited liability companies; (iv) establishing a branch of a foreign insurance company in Vietnam; and (v) providing cross-border insurance services into Vietnam.

Fifteen non-life foreign insurance companies, nine life foreign insurance companies, one foreign re-insurance company and two foreign insurance brokers have established representative offices in Hanoi and Ho Chi Minh City, Vietnam.<sup>1</sup>

Foreign insurers have also entered into joint ventures with Vietnamese insurance companies such as (i) Bao Viet Tokio Marine Insurance Joint Venture Company, a joint venture between Bao Viet and Tokio Marine and Fire Insurance Company; (ii) United Insurance Company of Vietnam between Bao Minh, Mitsui Insurance Company, Sompo Japan Insurance Inc., and LIG Insurance Ltd.; and (iii) Vietcombank Cardiff Life Insurance Ltd. Co. between Vietcombank, BNP Paribas Assurance Company and SeABank.

Foreign insurance companies are also entering the market in Vietnam by acquiring stakes in listed insurance joint stock companies. HSBC Insurance (Asia Pacific) Holding Ltd. won a public bid in 2007 to acquire 10% of the issued charter capital of Bao Viet Holding, and in 2009 they acquired an additional 8%. In December 2012, HSBC sold all its shares in Bao Viet Holding to Sumitomo Life at a price of VND7,098 billion (approximately US\$349 million) in cash. AXA Group has owned an 18% stake in Bao

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<sup>1</sup> [http://isa.mof.gov.vn/portal/page/portal/isa/97113960?pers\\_id=94339232&item\\_id=144294073&p\\_details=1](http://isa.mof.gov.vn/portal/page/portal/isa/97113960?pers_id=94339232&item_id=144294073&p_details=1)

Minh Insurance Joint Stock Corporation since 2007. Swiss Re bought 25% of the issued charter capital in Vietnam Insurance Corp. PetroVietnam Insurance Joint Corporation (**PVI**) issued shares to Oman Investment Fund (Oman) and Talanx Group (Germany) as foreign strategic investors in 2010 and 2011. While PetroVietnam has been permitted to hold up to 35% of the charter capital of PVI, it has proposed to divest 17% of PVI's charter capital by 2015.

In 2014, the Ministry of Finance issued a new licence for branch of Seoul Guarantee Insurance Company.

In 2015, a number of insurance companies announced their plans to call further capital from foreign investors. Not only the large insurance companies (e.g. Bao Viet and PVI) but also the smaller insurance companies such as Petrolimex Insurance Corporation (**PJICO**) and BIDV Insurance Corporation (**BIC**) have obtained approvals from their general meetings of shareholders in 2015 to offer new shares to foreign strategic investors. The main purpose of such private placement plans is to strengthen their financial capabilities in order to reach or maintain their rating evaluated by the ISA.

PetroVietnam Insurance Holdings - the majority shareholder holding 66% of the charter capital of PVI Reinsurance Corporation JSC (**PVI Re**) - is seeking a foreign strategic investor. PVI Re has submitted an application to the MOF for increasing the room for foreign investors to up to 25% of the charter capital (instead of 20%). Bao Viet Group is continuing with a private placement of shares to its foreign strategic investor in accordance with the approval of its general meeting of shareholders in 2014. PJICO is preparing to increase its charter capital from VND700 billion to VND1,000 billion and then issue new shares to a foreign strategic investor under a private placement plan in June 2015. In addition, on 20 April 2015, BIC obtained approval from its general meeting of shareholders to increase its charter capital to VND1,000 billion and offer 35% of its charter capital (41,046,913 shares) to Fairfax Asia Limited, an affiliate of Fairfax Financial Holdings. BIC expects such private placement plan will be completed within Q3 2015. The MOF approved for Post and Telecommunications Insurance Joint Stock Company (**PTI**) to increase its charter capital from VND503 billion to VND803 billion in a private placement of 30 million new shares (equivalent to 37% of PTI's charter capital) to Dongbu Insurance Ltd. (**Dongbu**) at a price of VND1,077 billion on 14 May 2015. To date, most of the non-life insurance companies in Group 1 (e.g. Bao Viet Group, Bao Minh JSC and PVI) have foreign strategic investors.

## Cross-border Insurance Services

Foreign insurance companies and brokers with head offices in countries which are members or parties in an international treaty with Vietnam on cross-border services, are allowed to provide insurance services to foreigners and companies in Vietnam that are 49% or more foreign-owned<sup>2</sup>. Foreign cross-border insurance service providers must satisfy the following conditions:

- possess the necessary licenses and approvals required to provide insurance services in Vietnam which have been issued by the insurance regulators where the foreign insurance companies or brokers have their head offices;
- spent 10 years or more conducting lawful business prior to providing cross-border insurance services into Vietnam;
- have total assets of at least US\$2 billion with respect to foreign insurance companies and US\$100 million with respect to foreign insurance brokers;
- have a rating of "BBB+" or higher by Standard & Poor's or Fitch, "B++" by A.M. Best, or "Baal" by Moody's in the financial year prior to the application date for cross-border insurance services in Vietnam;

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<sup>2</sup> Article 4 of Decree No. 123/2011/ND-CP of the Government, dated 28 December 2011, detailing a number of articles of the Law amending and supplementing a number of articles of the Law on Insurance Business, and amending and supplementing a number of articles of Decree No. 45/2007/ND-CP of the Government (**Decree 45**), dated 27 March 2007, detailing a number of articles of the Law on Insurance Business (**Decree 123**).

- declared a profit for at least three years prior to the application date for cross-border insurance services into Vietnam;
- deposit at least VND100 billion at a licensed bank in Vietnam and a payment guarantee issued by such bank for any indemnification exceeding the deposit;
- have acceptable rules and procedures for indemnification and payments; and
- have purchased insurance for professional liability.

Foreign insurers must provide cross-border insurance services via licensed insurance brokers in Vietnam. Cross-border insurance brokering services can only be rendered in relation to non-life insurance services provided by insurance companies or branches of foreign insurance companies licensed in Vietnam.

### **Licensing an Insurance Company or Branch of a Foreign Insurance Company in Vietnam**

The application dossier for establishment must be made in triplicate (one original and two copies), and include<sup>3</sup> the following documents:

- application form; minutes of resolutions of the founding shareholders/ investors/members on the establishment of the insurance company;
- draft charter of the insurance company or the rules of operation of the foreign branch;
- business plan of the insurance company for the first five years after establishment;
- list of the founding shareholders/members, juridical records, professional degrees, certificates and CVs of the executive members (such as Chairman of the Board of Director, CEO or Director the branches);
- documents in relation to the founding shareholders (including the certificate of the business registration, charter, approvals from the relevant authority to contribute the capital contribution into the insurance companies; power of attorney to the authorised persons/representatives, audited financial statements from the last three years; bank certification on the balance or deposit at the escrow account for the capital contribution by the founding shareholder);
- insurance rules, policy terms, premia, commissions and insurance products (this requirement is not applicable to the licensing of an insurance brokerage enterprise); and
- copies of the lease agreements for the head office and/or branch(es) (if any);
- in the case of a joint venture insurance company, joint venture contracts; the audited annual financial statements of each party in the joint venture for three years prior to the application date; certificate of insurance regulators in the countries where the foreign investors/shareholders/members have their headquarters, certifying that the investors (i) are allowed to establish insurance companies in Vietnam; (ii) have good financial status; (iii) are engaged in insurance business in the principal countries.

The MOF must approve or reject an application dossier for the establishment of an insurance company or branch within 60 days from the receipt of the application.

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<sup>3</sup> Article 7 of Circular No. 124/2012/TT-BTC of the Ministry of Finance, dated 30 July 2012, guiding the implementation of a number of articles of Decree 45 and Decree 123 (**Decree 124**).

## Conditions for Shareholders of Insurance Companies

According to the Amended Law on Insurance 2010, in addition to the requirement of the charter capital (which must not be less than the legal capital<sup>4</sup>), corporate forms, and the insurance management capabilities of the executive team, there is a new requirement that the founding shareholders of an insurance company and insurance broker must have lawful and verifiable financial capabilities and resources in order to contribute to the charter capital of the companies.

In addition, a foreign non-life insurance firm wishing to establish a (i) wholly foreign-owned insurance company<sup>5</sup>; (ii) joint venture insurance company; (iii) foreign branch(es) in Vietnam must also satisfy the following conditions<sup>6</sup>:

- have a head office in a country which is a member or party to an international treaty with Vietnam on the establishment of foreign insurance branches in Vietnam;
- have a minimum of 10 years' experience in non-life insurance in the country where its head office is located;
- have a total asset value of at least US\$2 billion (this requirement is not applicable to insurance brokering businesses);
- be profitable for at least three consecutive years prior to the application date;
- had no material violations to the insurance business regulations in the country where its head office is located for at least three consecutive years prior to the application date;
- has approval to establish a branch in Vietnam from the insurance regulator in the country where its head office is located. It is a requirement that such insurance regulator and Vietnam's MOF must enter into a cooperation agreement to supervise the non-life insurance business of the branch in Vietnam; and
- commit to be responsible for the operation of the branch and the branch director in Vietnam.

While Circular 124 maintains the requirement that the founding shareholders must jointly own at least 50% of the charter capital for three years after the establishment date of an insurance company, it now sets out the conditions for the founding shareholders or members in a new insurance company.

From 1 October 2012, it is required that equity capital be used to contribute to the charter capital in an insurance company. Loans and entrusted capital from other entities are not eligible as capital contributions to an insurance company.

Circular 124 reduces the minimum number of organisational founding shareholders from four to two. However, it requires that organisational founding shareholders in a re-insurance company must be insurers or financial institutions.

In addition, the equity capital of organisational founding shareholders must be greater than:

- the total value of the long-term investment of the organisational founding shareholder and the committed capital contributions in the insurance company;
- 50% of the legal capital applicable to the insurance company; and
- 400% of the committed capital contributions in the insurance company.

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<sup>4</sup> Article 4 of Decree No. 46/2007/ND-CP of the Government, dated 27 March 2007, on the financial regime for insurers and insurance brokers (**Decree 46**). Accordingly, the minimum legal capital of a non-life insurance company is VND300 billion (approximately US\$14,500,000) and of a life insurance is VND600 billion (approximately US\$29,500,000).

<sup>5</sup> Article 6.2 of Decree 45.

<sup>6</sup> Article 9.1 of Decree 123 and Article 4 of Circular No. 125/2012/TT-BTC of the Ministry of Finance, dated 30 July 2012, guiding the financial regime applicable to insurers, reinsurance businesses, insurance brokers and branches of foreign non-life insurers (**Circular 125**).

The organisational founding shareholders wishing to contribute more than 10% of the charter capital in an insurance company must have profits (and no accumulated loss) for three consecutive years prior to the application date. If the organisational founding shareholders are insurers or financial institutions, they shall maintain the acceptable insolvency ratio in accordance with the relevant laws and regulations.

An organisational founding shareholder can own no more than 20% of the charter capital in an insurance joint stock company except in cases where such a shareholder owns the shares in order to<sup>7</sup>:

- recover the solvency of the insurance company, re-insurance company;
- hold the State-owned shares in the insurance company, re-insurance company in accordance with the approved restructuring plans;
- hold the shares of the strategic investor which (i) has a total asset value of more than US\$2 billion; (ii) has profits (and no accumulated loss) for three consecutive years; (iii) conduct business in the financial or insurance sectors for five years or more;
- commit to hold the shares of the insurance company for three years from that date they became a strategic investor; and
- obtain the approval of the MOF.

Each individual founding shareholder can own up to 10% of the charter capital in an insurance company. They must prove their financial capability by bank certifications on their escrowed deposits in such bank within 30 days prior to the application. Circular 125 does not allow an individual to contribute capital into a limited liability insurance company.

## Post Licensing

Within 30 days from the date of the operation licences, an insurance company or branch must complete the necessary procedures to appoint the Chairman of the Board of Directors, CEO or Director of the branch(es) and make a public announcement on the establishment of official operations. Within 12 months, the insurance company and/or branch(es) must complete the following post-licensing procedures<sup>8</sup> as follows:

- pay the fees for the insurance business licences;
- release and convert the escrow amount into charter capital of the insurance companies or branches;
- deposit the operational reserves;
- register the seals, tax code, and operational accounts at the commercial banks licensed in Vietnam;
- submit applications to the MOF for approval for:
  - a plan for operational reserve funds;
  - insurance products, the appointed actuary, plan for separating between owners' funds and contractor's revenue sharing funds (in the case of life insurance); and
  - health insurance products,
- issue internal operations, assessment, compensation, internal control, financial investment management, re-insurance management rules; and
- establish infrastructure, facilities, equipment and computer software in accordance with corporate governance and state management requirements for insurance business activities.

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<sup>7</sup> Article 29 of Circular 125.

<sup>8</sup> Article 12 of Circular 124.

## Changing the Contents of a Business Registration Certificate

Circular 124 provides the procedures required for changing the contents of a business registration certificate for an insurance company or branch. The changes include changing the name, charter capital, opening or closing the branches or representatives, changing the address of the head office, branches or business points, changing the terms and scope of the business, a merger, separation or conversion of the corporate form, transfer of more than 10% of the charter capital, liquidation and insolvency, and changes in the executive officers (Chairman, CEO or Directors of branches)<sup>9</sup>. The ISA has the authority to approve or reject such changes from 7 to 14 business days from receipt of a lawful application dossier in accordance with Circular 194.

## Maintenance of Charter Capital and Deposit

Insurers must always maintain their equity capital at a level greater than their applicable legal capital. Insurers are required to evaluate their equity capital on an annual basis, and should the evaluated equity capital fall below the applicable legal capital, an insurer must call for further capital contributions within six months from the annual financial statement dates in order to fill the gap between the actual charter capital and the legal levels of capital.<sup>10</sup>

According to Article 6 of Decree 46, within 60 days from the date of the insurance business license being issued, an insurance company or branch must deposit a portion of its charter capital equal to 2% of the legal capital (the **Deposit**) into an escrow account to be opened at a licensed bank in Vietnam. The Deposit can be used to indemnify the insurance buyers subject to consent by the ISA when the insurance company or branch fails to remain solvent. However, the insurance company and branch must replace such Deposit within 90 days after use.

## Reserves

Article 6 of Circular 125 requires that all insurance companies, brokerages and foreign branches set aside an operational reserve fund, which is charged against the profits, to cover predetermined insurance liabilities arising from committed insurance policies and contracts.

The establishment and variation of the operational reserve fund among insurance companies and foreign branches must be certified by an appointed actuary and approved by the MOF. The reserve methods in the non-life insurance companies, health insurance companies and foreign branches include: (i) unearned premium methods; (ii) indemnity methods; and (iii) large loss fluctuation methods. Life insurance companies apply the following reserve methods: (i) mathematical methods; (ii) unearned premium methods; (iii) indemnification methods; and (iv) interest sharing methods.<sup>11</sup>

## Solvency

All insurance companies and foreign branches must maintain an acceptable level of solvency which is determined by the difference between the total asset value and outstanding liabilities<sup>12</sup>, and must not be less than the minimum solvency level. According to Article 16 of Decree 46, the minimum solvency level in non-life insurance is the greater of (i) 25% of the total insurance premia and (ii) 12.5% of the insurance premia plus re-insurance premia at the time of determination. The minimum solvency level of a life insurance company is equal to 4% of the reserve fund plus either 0.1% of the sums insured carrying risks in the insurance contracts with terms of five years or less; or 0.3% of the sums insured carrying risks in the longer term contracts.

Should an insurance company fail to maintain solvency and then fail to recover solvency, the MOF may request that the insurance company undertake one or some of the following actions<sup>13</sup>:

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<sup>9</sup> Section 2, Chapter II, Circular 124.

<sup>10</sup> Article 5 of Circular 125.

<sup>11</sup> Section II, Chapter II, Circular 125.

<sup>12</sup> Article 17 of Decree 46.

<sup>13</sup> Article 19 of Decree 46.

- make a cash call or further capital contribution for additional owned capital;
- re-insure, narrow or partly suspend the scope of the insurance business;
- re-organise the executive team;
- transfer the insurance contracts; and
- undertake other restructuring plans.

### **Executive Officers**

Subject to ISA approval<sup>14</sup>, an insurance company can appoint a Chairman of the Board of Directors, Member's Council, Chief Executive Officer or General Director, and Appointed Actuary.

Apart from the above executive officers, an insurance company is responsible to report to the ISA (but shall not be subject to approval by and consent from the ISA) on its appointment of the other executive officers.

The executive officers must have adequate professional and educational qualifications and at least three consecutive years of experience in management positions. In addition, they must have worked in the insurance or financial sectors for a minimum of three years prior to the appointment. For example, the CEO of an insurance company must have a university degree, a recognised training certificate in insurance, and five years of work experience, including three years as a director or senior position in an insurance company.

### **Insurance Products**

As from 1 July 2011, the Amended Law on Insurance expands the list of insurance products covering life, non-life insurance and health insurance<sup>15</sup>. Life insurance includes whole life, endowment, term insurance, mixed insurance, investment linked insurance, and retirement insurance. Non-life insurance covers property insurance, transportation insurance, aviation insurance, automobile insurance, fire and explosion insurance, marine and ship owner's liability insurance, liability insurance, credit and financial risk insurance, business loss insurance, and agriculture insurance. Health insurance is classified as a new type of insurance, covering accident insurance and health care insurance. The Government may permit other types of insurance. The MOF has the authority to set out the official list of insurance products.

While non-life insurance companies and foreign branches can themselves determine non-life insurance products, policy terms and commissions, life insurance and health insurance companies must seek the approval of the MOF on their insurance products prior to the official launching of such products in the market<sup>16</sup>. However, the ISA still has the authority to require that non-life insurance companies suspend and revise certain non-life insurance products, if they fail to maintain solvency.

Insurance companies and foreign branches may sell their insurance products by way of direct sales, agents and brokers, and by auction, in accordance with bidding laws and regulations.

### **Insurance Agents and Commissions**

Insurance agents must be Vietnamese entities or Vietnamese citizens having full civil capacity and must be trained and certified by licensed insurance training organisations. It is required to register quarterly and report the list of insurance agents with the ISA from time to time. Insurance agents, on behalf of and for the benefit of insurance companies, undertake the following: (i) marketing and sales of insurance products; (ii) facilitating the closing of insurance contracts; (iii) collecting insurance premia; (iv) facilitating the evaluation of insurance claims and compensation payments; and (v) other activities in

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<sup>14</sup> Article 22.1 of Circular 124.

<sup>15</sup> Amended Article 7 of the Law on Insurance.

<sup>16</sup> Article 39 of Circular 124.

relation to the implementation and enforcement of insurance contracts<sup>17</sup>. Agent commissions must be subject to the caps set out in Article 41.3 of Circular 124.

### Insurance Brokers and Commissions

Insurance brokers must be licensed by the MOF in accordance with Article 62 to 69 of the Law on Insurance. The scope of work of an insurance broker is provided in the insurance brokering contract entered into between the broker and insurance buyer. The insurance broker provides the insurance buyer with information about insurance products, premia, policy terms, advice on the risks and suitable insurance products, facilitating the conclusion of an insurance contract for the benefit of the insurance buyer. In addition, the insurance broker can be authorised by the insurer without any consideration to collect insurance premia, and pay insurance compensation in relation to insurance contracts which have been facilitated by such insurance broker. The insurer and insurance broker agree on the commissions subject to a cap of 15% of the insurance premia. The commission for reinsurance brokering services should be in accordance with applicable international practices.

### Capital Investment

Insurance companies are allowed to use their equity capital and operational reserve funds (after setting aside 25% of the non-life reserve insurance amount and 5% life reserve insurance for regular indemnifications<sup>18</sup>) and other lawful capital sources to make a capital investment. The borrowed funds and trusted funds cannot be used as financial sources for any capital investment by the insurance companies in securities, real estate and other enterprises. Circular 125 prohibits all insurance companies from making capital investments with shareholders and related persons. In addition, it is required that the capital deposits must be made into financially sound credit institutions rated from time to time by the State Bank of Vietnam. The MOF reserves the authority to evaluate and approve all offshore capital investments to establish or make capital contributions into a foreign insurance company within the limitation of the larger of either (i) the difference between the equity capital and applicable legal capital; or (ii) the minimum solvency margin.

Insurance companies and foreign branches must firstly use their equity capital to invest in fixed assets and operational capital, and then they can invest the remaining equity capital for capital investment in the same manner as capital investment by using reserves arising from operational reserve funds (*idle capital*).

In particular, insurance companies and foreign branches are free to purchase government or corporate bonds which are underwritten by or have deposits from, licensed credit institutions. With respect to capital investment into corporate bonds without underwriting or shares, non-life insurance companies, re-insurance companies, brokers and foreign branches are subject to a 35% limitation on their equity capital and idle capital, while life insurance companies can invest up to 50% of their equity capital and reserves. Furthermore, non-life insurance companies, re-insurance companies, brokers, foreign branches and life insurance companies can only invest up to 20% and 40% respectively of the equity capital and reserves in real estate<sup>19</sup>.

By 1 October 2015, all capital investment which has been made before 1 October 2012, must be restructured and adjusted in compliance with the new requirements of Circular 125, as stated above.

From 1 January 2016, non-life insurance enterprises, health insurance enterprises and branches of foreign insurance enterprises must separate the owner's equity from the premia earned from insurance buyers including:

- accounting separately for revenue and expenses from the insurance business according to each type of insurance operation;

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<sup>17</sup> Article 41.2 of Circular 124.

<sup>18</sup> Article 13 of Decree 46.

<sup>19</sup> Article 13 and 14 of Decree 46.

- accounting separately for the properties invested from the owner's equity and from idle capital from insurance reserves; and
- accounting separately for revenue and expenses related to the properties invested from the owner's equity and from the idle capital from insurance reserves.

The revenue and expenses related directly to the operation of non-life enterprises, health insurance enterprises and branches of foreign insurance enterprises shall be recorded uniformly.

### **Re-insurance**

An insurance company can transfer a portion (but not all) of the liability under an insurance contract to other insurance companies including foreign insurers or re-insurers<sup>20</sup> in accordance with the reinsurance plan approved by the board of directors or members' council of the insurance companies. Foreign insurance assignees assuming 10% or more of the insured liability in each re-insurance contract must have a minimum "BBB+" rating from Standard and Poor's or Fitch, a "B++" rating from A.M Best, "Baa" from Moody's or equivalent in the financial year prior to the re-insurance contract date. With respect to finite reinsurance, an insurance company must inform the MOF about the terms and conditions of the re-insurance contracts.

Insurance companies and reinsurers can only respectively retain the respective maximum insured liability on single risk or loss up to an amount equal to 5% and 10% of the owned capital<sup>21</sup>. Liability in excess of such a cap must be ceded through reinsurance.

### **Transfers of Insurance Contracts**

An insurance company may transfer all of its insurance contracts in relation to one or more insurance products to another insurance company in any of the following circumstances<sup>22</sup>:

- the insurance company fails to remain solvent. In this case, if the insurance company cannot agree on the transfer of the insurance contracts, the MOF may identify another insurance company to assume the rights and obligations under the insurance contracts.
- there is a merger, separation, liquidation or winding-up of the insurance company; or
- the insurance company agrees to transfer the insurance contract.

All transfers of insurance contracts are effective after 60 days from the approval by the MOF. Within 15 days from the approval date, the insurance company must disclose the transfer plan in five consecutive issues of two newspapers as well as notify its insurance buyers about the transfer plan. The insurance buyers are entitled to terminate their insurance contracts within 15 days from the notice and request a settlement of the remainder of their insurance premia.

### **Reports and Information Disclosure**

Section 10 of Circular 125 sets out various new requirements and templates for the financial statements, statistical and operational reports, and the monthly, quarterly, and annual reports of insurance companies and foreign branches. In addition to the quarterly and annual financial statements, non-life insurance companies, health insurance companies and foreign branches must submit 11 types of statistical and operational reports; life insurance companies must submit 16 types of reports to the MOF.

From 1 October 2012, an insurance company must disclose audited financial statements and auditors' opinions on its official website and in three consecutive issues of major local newspapers where its head office is located within the first 120 days of each financial year. In addition, a public insurance company also has to comply with information disclosure obligations applicable to public companies.

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<sup>20</sup> Amended Article 9 of the Law on Insurance, Article 23 of Decree 45, Article 45.1 of Circular 124.

<sup>21</sup> Article 44.3 of Circular 124.

<sup>22</sup> Article 74 of the Law on Insurance.

The MOF has the authority to request additional reports and may, at any time, inspect the financial and operational status of an insurance company and foreign branch.

Within 90 days from the end of the preceding financial year, every insurance enterprise shall report the results of the assessment, rankings and the measure of performance with respect to their ranking in accordance with the point systems set out by the MOF in Circular 195 together with business performance, business administration, risk management, and financial statements ascertained by an independent auditor in the preceding financial year. Any insurance enterprise at risk of insolvency shall follow the reporting regulations prescribed in Article 78 of the Law on Insurance Business.

Non-life insurance enterprises, health insurance enterprises and branches of foreign insurance enterprises are responsible for submitting periodical reports to the Ministry of Finance on the separation of the owner's equity and premia.

## Sanctions

Following Decree 41/2009/ND-CP of the Government dated 5 May 2009 (**Decree 41**) providing administrative penalties in the insurance business sector, the MOF issued Circular No.03/2010/TT-BTC dated 23 January 2010 (**Circular 03**) implementing Decree 41.

Decree 41 provides four levels of administrative penalties of between VND10 million and VND70 million for administrative breaches in violation of the following regulations:

- management regulations in an insurance company including appointments of executive officers and appointed actuary, establishment of insurance companies, re-insurance, transfers of insurance contracts, and insurance compensation;
- insurance operational regulations including unfair competition, life and non-life insurance operations, insurance products and commissions, and compulsory insurances;
- insurance agency, brokerage, and representative office regulations;
- use of capital and asset regulations;
- solvency and accounting regulations; and
- reporting and information disclosure regulations.

In addition to the penalties referred to above, the relevant authorities may apply additional sanctions such as injunctive orders, confiscation of unlawful interests or profits arising from violations.

## Legal issues in relation to insurance contracts

The Law on Insurance Business 2000, amended in 2010, contains two specific consequences in the case where an insurance contract has been established on the basis of false information.

- Article 19.2 of the Law on Insurance Business provides that “an insurer shall have the right to suspend unilaterally the implementation of an insurance contract and to collect the insurance premium up until the time of suspension of implementation of the insurance contract, upon one of the following acts being committed by the purchaser of insurance: (a) Intentionally providing false information with the aim of entering into an insurance contract in order to be paid insurance proceeds or indemnity; ...”; and
- Article 19.3 of the Law on Insurance Business provides that “in the case where an insurer intentionally provides false information with the aim of entering into an insurance contract, an insurance buyer shall have the right to suspend unilaterally the implementation of the insurance contract; and the insurer must indemnify the purchaser of insurance for any damage arising from the provision of false information.

- Article 22 (c) of the Law on Insurance Business also provides that “an insurance contract shall be void in the following circumstance: ... (d) The purchaser of insurance or the insurer was guilty of fraud when entering into the insurance contract”;
- Article 22.2 of the Law on Insurance Business provides that “void contracts of insurance shall be dealt with in accordance with the provisions of the Civil Code and the provisions of other relevant laws”.

According to the opinion of the Ministry of Justice, providing false information with the aim of entering into an insurance contract constitutes fraud when entering into a contract in accordance with the general principles of the Civil Code. Therefore, Articles 19.2 and 19.3 of the Law on Insurance Business do not comply with the Civil Code and other provisions of the Law on Insurance Business. Under the Civil Code, a void civil contract does not constitute, change, terminate or suspend any right and obligation of any parties. The relevant parties have to revert to the original situation before establishment of the void civil contract. The party which has committed the fraud must indemnify the other parties. Hence, “the right to suspend unilaterally the implementation of the insurance contract” cannot be a consequence of a void insurance contract.

### Payment of insurance premia

Circular 194/2014/TT-BTC dated 17 December 2014 provides certain amendments to Circular 125/2012/TT-BTC dated 30 July 2012 on the financial regimes of insurance enterprises (**Circular 194**). Circular 194 took effect as from 1 February 2015, and among the provisions that have been amended are the provisions on the payment of insurance premia:

- With respect to a one-time premium payment, the time limit for payment of the premium must not exceed 30 days from the effective date of the insurance contract. If the insurance period is less than 30 days, the time limit for payment of the premium must not exceed the period of insurance cover.
- With respect to a periodical payment of a premium, the time limit for payment of the first instalment of the premium must not exceed 30 days from the effective date of the insurance contract. This provision does not apply to the following premium payments:
  - Where the insurance buyer has not fully paid the premium within the time limit set for payment of the premium, the insurance contract shall no longer be effective upon expiration of the time limit for payment of the premium.
    - ◆ If no insurance event has occurred within the time limit for payment of the premium, a non-life insurance enterprise, health insurance enterprise or branch of foreign insurance enterprise shall be entitled to the revenues of the premium corresponding to the time limit for payment of the premium and record the reduction as revenue corresponding to the time of no insurance liability arising under the insurance contract.
    - ◆ If an insurance event occurs within the time limit of payment of the premium, a non-life insurance enterprise, health insurance enterprise or branch of foreign insurance enterprise shall be responsible for insurance compensation and payment of insurance and shall have the right to collect all premia to be paid under the insurance contract.
- With respect to the insurance of goods transported for customers with numerous shipments insured in a year and travel insurance for customers who are frequent travellers, if a non-life insurance enterprise, health insurance enterprise or branch of foreign insurance enterprise and the insurance buyer have signed a principal insurance contract (package insurance contract), the time limit for payment of the premium for a signed insurance contract must not be later than the 25<sup>th</sup> day of the month following the signing of the insurance contract.

- With respect to a signed insurance contract for which a non-life insurance enterprise, health insurance enterprise or branch of foreign insurance enterprise has agreed to permit the insurance buyer to owe its premium, the premium owed must be specified in the insurance contract. Only an insurance buyer with collateral or a guarantee of payment of the premium, is eligible to defer the payment of a premium, subject to agreement by the insurance enterprise.

As regards the owing of a premium with collateral, a non-life insurance enterprise, health insurance enterprise or branch of foreign insurance enterprise and the insurance buyer shall comply with the regulations on security transactions.

As regards the owing of a premium with guaranteed payment of the premium, the guaranteeing organisation must be permitted to provide guarantee services and contract to guarantee the payment of the premium.

When an insurance contract has been signed and the life insurance enterprise has agreed upon periodical payment of the premium from the insurance buyer as specified in the insurance contract, the life insurance enterprise shall record the revenue from the premium corresponding to the period or periods in which the premium has been generated, and not record the revenues of undue premia under the insurance contract.

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