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LEGAL UPDATE

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VIETNAM'S NEW LAW ON INSURANCE BUSINESS

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On 16 June 2022, the Vietnam National Assembly promulgated the new Law on Insurance Business No. 08/2022/QH15, which will go into effect on 01 January 2023 with the exception of some requirements that have a transition period. The Government will issue a Decree to implement this new law.

Below are the key changes that may be of interest to investors.

1. Clearer Applicability[1]

The new law sets out a clear scope of applicability, in contrast to the broad scope of the current Law on Insurance. In particular, the following entities are to be governed under the new law:

(i) Insurance companies, reinsurance companies, insurance agents, insurance brokerage companies, organizations and individuals providing auxiliary insurance services, and mutual organizations providing microinsurance.

(ii) Branches of foreign non-life insurance companies and foreign reinsurance companies ("foreign branches").

(iii) Representative offices of foreign insurance companies, foreign reinsurance companies, foreign insurance brokerage companies, and foreign financial and insurance groups in Vietnam.

[1] Arts. 2 and 3.2

(iv) The insurance purchasers, the insured, and the beneficiary.

(v) State management agency in charge of insurance business activities.

(vi) Organizations and individuals involved in insurance business activities.

Insurance policies must comply with the Law on Insurance Business, except for in the two following scenarios where the parties may decide to apply international customs to their insurance policies, reinsurance contracts, or insurance brokerage contracts:

(i) if a party to the contract is an offshore entity; or

(ii) if the parties to the contract are Vietnamese, but the insured subjects or the contract implementation are outside of Vietnam.

However, if the result of applying such international customs to the insurance policies is against the basic principles of Vietnamese law, Vietnamese law shall prevail.

2. Foreign investors are allowed to own 100% shares of an insurance company in Vietnam

Previously, foreign investors were allowed to own 100% shares or charter capital of insurance and reinsurance companies in Vietnam. However, this condition has been clearly confirmed under the new law, with reference to Vietnam's commitments to the WTO and other international treaties.[2]

3. Insurable interests are clearly defined

The new law provides a clearer definition of insurable interests which the policy owner must have (i) at the time of entering into an insurance policy (for life insurance policies and health insurance policies) and (ii) at the time of incurring losses (for property insurance policies and damage insurance policies). In particular,

3.1. For life insurance policies and health insurance policies[3]

The insurance purchaser has insurable interests with the following people:

(a) The insurance purchaser himself/herself;

(b) Wife, husband, father, mother, and/or child of the insurance purchaser;

(c) A sibling or another person who has a nurturing or supportive relationship with the insurance purchaser;

[2] Art. 68

[3] Art. 34

(d) A person with financial interests or labor relations with the insurance purchaser;

(e) The insured agrees in writing for the insurance purchaser to purchase health insurance for him/her.

3.2. For property insurance policies and damage insurance policies[4]

With respect to property insurance policies, the insurance purchaser has insurable interests when an entity has title, other rights to the property, or the right of possession or use (in case such person is not the owner).

Concerning damage insurance policies, the insurance purchaser has insurable interests when an entity has financial interests, financial obligations and responsibilities, or economic damage with respect to the subject matter insured.

4. Introduction of a new term of "temporary insurance"[5]

Under the new law, the insurance companies are allowed to issue temporary insurance to the insurance purchaser from the time:

(a) The insurer has received the request for insurance coverage; and

(b) The estimated insurance premium has been paid by the insurance buyer.

The insurer and the insurance purchaser shall agree upon the temporary insurance term, amount, and conditions. The temporary insurance ends after the insurer accepts or refuses to provide coverage or otherwise as agreed.

5. Auxiliary services to the insurance business industry

Under the new law, other services related to the insurance business industry have been recognized as a type of operations of insurance companies and branches of foreign non-life insurance companies. These include[6]:

(a) Insurance business, reinsurance business, reinsurance transfer;

(b) Management of funds and investment of capital from the insurance business activities;

(c) Provision of insurance auxiliary services; and

(d) Other activities directly related to insurance business activities.

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[4] Art. 44

[5] Art. 36

[6] Art. 63.1

6. Types of insurance that the insurance companies are allowed to provide

Insurance companies and branches of foreign non-life insurance companies are only permitted to provide one single type of insurance, i.e. either life insurance, non-life insurance, or health insurance businesses, except for in the following circumstances[7]:

(a) Life insurance companies provide health insurance;

(b) Non-life insurance companies and branches of foreign non-life insurance companies provide products (i) in the form of health insurance with a term of 1 year or less and (ii) insurance products covering mortality risk with a term of 1 year or less;

(c) Health insurance companies provide insurance products covering mortality risk with a term of 1 year or less.

7. Loosening conditions for foreign investment into insurance companies in Vietnam

Previously, investors into an insurance company must have been (i) an insurance company or (ii) a subsidiary of a foreign insurance company, which specializes in making offshore investment and is authorized by its parent foreign insurance company to contribute capital to an insurance company in Vietnam.

Under the new law, investment from offshore financial and insurance groups into insurance or reinsurance companies is allowed, which means that the direct investor into an insurer in Vietnam may not have to be an insurance company.[8]

Even though the new law does not define the term “offshore financial and insurance group,” the new law provides that the type of insurance that it intends to invest in Vietnam is the type in which it is directly implemented or has subsidiaries implement it.[9] This means that offshore financial and insurance groups can invest in the insurance business if it or its subsidiary provides such an insurance business.

8. Introduction of capital adequacy ratio

The new law introduces the new capital adequacy ratio model to replace the solvency margin model. Accordingly, the insurers and/or reinsurers must constantly maintain their capital adequacy ratio, which is between the actual capital and risk-based capital, in accordance with the regulation of the Ministry of Finance.[10] This change may cause pressure to raise capital for certain insurers. Nevertheless, the new law allows for a transition period of 5

[7] Art. 63.3

[8] Arts. 65 and 66

[9] Art. 65.1 (c)

[10] Art. 95

years, meaning the insurer has from the effective date of this law until 2027 to reach full compliance with the capital adequacy ratio.

9. Insurance market information and database[11]

The new law provides that the Ministry of Finance shall build and manage an insurance business database for state management, insurance businesses, and protection of the lawful rights and interests of the relevant parties in insurance business operation.

The insurers, reinsurers, foreign branches, insurance brokers, mutual organizations providing microinsurance, and auxiliary insurance service providers must provide the information of insurance purchasers, the insured, the subjects insured, agencies, and other relevant information for establishing the insurance business database system.

The information collected must be used for legitimate purposes and must not be provided to a third party without the insurance purchaser or the insured's consent, unless required by law.

10. Investment in real estate

The new law states that insurance companies, reinsurance companies, and foreign branches are not allowed to borrow money to invest or entrust investments into securities, real estate businesses, or contribute capital to other enterprises.[12]

Insurance companies, reinsurance companies, and foreign branches are not allowed to do real estate business, except for in the following cases: buying shares of a real estate company listed on the stock market, fund certificates of public funds; buying, investing in, or owning real estate to use as a head office, a working place, or a warehouse for its business; leasing the unused premises under its ownership or use rights; holding real estate due to the disposal of bonds secured by real estate, due to the deduction of receivables with real estate within 03 years from the date of holding.[13]

The Government shall detail investment limits of insurance companies, reinsurance companies, and foreign branches.[14]

11. Online selling for insurance products

The new law recognizes the application of technology in the insurance business. For the first time, the law provides general regulations for selling insurance products via online channels. Accordingly, insurers, foreign insurer's branches, insurance agencies, insurance brokers, and microinsurance companies are permitted to sell their products and services via

[11] Art. 11
[12] Art. 99.2 (c)
[13] Art. 99.3 (a)
[14] Art. 99.5

online channels. These entities must set up, maintain, and operate an IT system for such distribution channels. The Ministry of Finance will provide further details regarding this matter.[15]

12. Other material provisions

The requirement on contribution to the fund for protection of the insured is to be abolished on 01 January 2023 by the new law. The balance of the fund, which has accumulated over the years, will be managed and used per the guidance of the Government.

[15] Arts. 87.4 (d) and 12

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