

Vietnam: New Insurance Business Law

In brief

The National Assembly of Vietnam has passed the new Insurance Business Law ("**New Law**") on 16 June 2022 at the meeting of the National Assembly. The New Law has provided significant changes to the Current Law¹ and will have a major impact on the development of Vietnam's insurance market.

The New law will come into effect from 1 January 2023, except for certain provisions on risk-based capital and intervention measures that will take effect from 1 January 2028.

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Key takeaways

The New Law has provided various significant changes, with the following highlights:

- The applicable scope of the New Law is clearer than that of the Current Law.
- There will be certain changes to the scope of compulsory insurance products: The New Law has removed certain insurances on professional liabilities in the legal advisory profession and the insurance brokerage profession. The New Law does not allow insurers to deny selling compulsory insurances upon requests of policyholders who are qualified to purchase compulsory insurances.
- On insurance policies, the fundamental principles (such as: utmost good faith, insurable interest, indemnity, subrogation) are more clearly provided in the New Law. These principles are already in place in Vietnam practice, but they have not yet specified clearly in the Current Law as fundamental principles.
- There is a new provision on temporary life insurance, allowing the insurer to provide temporary insurance to a policyholder when the insurer has received an insurance application and the policyholder has paid the estimated insurance premium.
- There is a new proposed change to the operation of the insurers (i.e., provision of insurance auxiliary services and other activities directly related to the insurance business) and the New Law expands the cases where an insurer is allowed to concurrently sell different insurance products.
- The New Law recognizes the investment from a financial and insurance group, of which the investor may not be an insurer but in the group has an entity doing insurance business.
- This will be the first time a regulation on insurance business provides specific regulations and restrictions on outsourcing activities in the insurance sector.

¹ Law No. 24/2000/QH10 on Insurance Business passed by the National Assembly on 9 December 2000, as amended and supplemented by Law No. 61/2010/QH12 on amendment and supplement of a number of articles of the Law on Insurance Business passed by the National Assembly on 24 November 2010 and Law No. 42/2019/QH14 on amending and supplementing a number of articles of the Law on Insurance Business and the Law on Intellectual Property ("**Current Law**").



- It will provide a mechanism for insurers to sell insurance via online channels.
- New proposed changes applicable to the insurance agency activities will (i) set out provisions on the principles in the operation of insurance agencies, rights and obligations of parties in the insurance agency operation which are currently provided in the decree level, (ii) separate types of insurance agency certificates corresponding to each insurance product, and (iii) insurance agency certificate issued before the effective date of the new law which will continue taking effective until 31 December 2025.
- Capital adequacy ratio will be based on the actual capital and the risk-based capital.
- The New Law contains principles on technical reserves of insurers and/or reinsurers.
- There are other changes, such as foreign ownership cap, the time to apply provisions on management of risk, capital and solvency, information disclosure by insurers and on a dispute resolution body.

In more detail

1. Applicable scope of the New Law

The governing scope under the Current Law includes provisions on insurance business activities, rights and obligations of the organizations and individuals participating in the insurance, and State management over insurance business activities.

Instead of providing a broad scope similar to the current Law on Insurance Business, the New Law specifically provides for the subjects to be governed, which include the following:

- (i) insurers, re-insurers, insurance brokers, insurance agents, insurance auxiliary service providers and mutual micro-insurance companies;
- (ii) Branches of offshore non-life insurers and offshore reinsurers;
- (iii) representative offices of offshore insurers/reinsurers, offshore insurance brokers, offshore financial and insurance group;
- (iv) policyholders/insurance purchasers, insured persons and beneficiaries;
- (v) the State management authorities on the operation of the insurance business sector;
- (vi) other agencies, organizations and individuals related to the operation of insurance business.

Additionally, the New Law provides that, in case of any difference between the new insurance business law and other laws taking effect after the effective date of the New Law on the same contents regarding insurance policies, establishment, organization, operation, accounting and financial statements, solvency and prevention measure to ensure the financial safety of insurers, branches of offshore non-life insurers, mutual micro-insurance companies, re-insurers, branches of offshore re-insurers, insurance brokers, and bankruptcy of insurers/re-insurers, such other laws must specify their applicable scope or specify that such laws do not follow the New Law.

Parties can apply international customs in its insurance policies, reinsurance contracts or insurance brokerage contracts if (i) there is at least one party being offshore individual/organization, or (ii) both parties are Vietnamese citizens/organizations but the insured subjects or the contract implementation are outside of Vietnam. If the consequence of the application contradicts to the fundamental principles of Vietnamese laws, the Vietnamese law will apply.

2. Fundamental principles of insurance policies

On insurance policies, one of the most key objectives of the Government of Vietnam on the New Law is to improve the regulations on insurance policies to reflect the recent practice of the industry with an aim to ensure the principle of fairness, transparency and safety for insurance policy transactions between insurers and policyholders - taking into account international best practices.

The insurance industry has certain fundamental principles such as: (i) Utmost Good Faith; (ii) Insurable Interest; (iii) Indemnity; (iv) Subrogation. These principles are already in place in the Vietnam insurance practice, but they have yet to specify clearly in the Current Law. In the New Law, these principles have been included.



Based on those principles, other regulations on insurance policies have been updated to reflect those principles more clearly.

For example, on Utmost Good Faith principle, which basically require that both parties must disclose all necessary information and perform their rights and benefits at the most honestly, on the basis of absolute mutual truthfulness during the course of entering into and implementation of insurance policies, on the insurer side, the insurers must explain the terms and conditions of the insurance policies, including exclusions. Compared to the Current Law, the New Law emphasizes that the insurer must maintain evidence showing that the insurer has explained exclusion clauses and the policyholder has already understood such clauses.

On the "Insurable Interest" principle, the New Law has also provided further clarity.

For life and health insurance policies, there is a supplement to the scope of insurable interest. Under the Current Law, a policyholder may purchase life or health policies for himself or certain related persons such as spouse, parents, children, siblings, in whom the policyholder has an insurable interest. Without insurable interest, the policy may be declared invalid.

Other than those standard related persons, the New Law expands the scope to include:

- other persons who have related financial rights and obligations or who have employment relations; and
- other insured persons who agreed for the policyholder to buy life or health policy to those insured persons.

Accordingly, this expansion and clarity of the scope of insurable interest may aim to help insurers have a clearer legal basis to sell insurance products to those expanded cases, as well as to avoid the risk related to the validity of policies as to whether there is an insurance interest under a policy.

For property and damage insurances for non-life insurers, the New Law provides a separate scope of insurable interest for clarity.

3. Compulsory insurance products

Under the New Law, compulsory insurances must satisfy the following conditions:

- (i) compulsory insurances must be for the protection of public interest, environment and social security
- (ii) organizations and individuals subject to compulsory insurances must purchase compulsory insurances and can select the insurer licensed to provide compulsory insurance
- (iii) the insurers licensed to provide compulsory insurance must not reject selling compulsory insurances to organizations and individuals eligible to purchase compulsory insurances in accordance with the laws
- (iv) the minimum insurance conditions, premium and amount applicable to compulsory insurance products will be provided by the Government.

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Insurance on professional liability in the legal advisory activity and of the insurance broker had been removed. Instead, other compulsory insurances will comply with other laws and must satisfy certain conditions as above mentioned.

4. Contents of insurance policy

The New Law provides for that an insurance policy must have the following contents:

- (i) the insurer, the policyholder, the insured and the beneficiary (if any);
- (ii) objects insured;
- (iii) sum insured or value of property insured;
- (iv) insurance coverage or benefits, insurance rules, terms or conditions;



- (v) rights and obligations of insurers and the policyholder;
- (vi) insurance term and effective date of insurance policy;
- (vii) insurance premium and method of payment of insurance premium;
- (viii) time limit for and method of payment of insurance proceeds or indemnity; and
- (ix) dispute resolution.

An insurance policy must be made in writing. The evidence of concluding insurance policy is a contract, insurance certificate, cover note or other forms in accordance with the laws (which may include the electronic form).

5. Temporary insurance

The New Law has provided for a new provision on "temporary insurance" that will apply to life insurance. In particular, the insurer issues temporary insurance to the policyholder when two following conditions are met:

- (i) The insurer has received the insurance application; and
- (ii) The estimated insurance premium has been paid by the policyholder.

The duration, sum insured and conditions of the temporary insurance may be agreed by the insurer and the policyholder. The temporary insurance will end upon the insurance's acceptance or refusal by the insurer or in other cases as agreed.

6. Operations of insurers

The New Law provides for general operation of the both life and non-life insurer that include the following:

- (i) primary insurance business, re-insurance business;
- (ii) management of funds and investments of capital from the insurance business;
- (iii) provision of insurance auxiliary services; and
- (iv) other activities directly related to the insurance business.

Compared to the Current Law, the New Law has recognized insurance auxiliary services and other activities directly related to the insurance business as one of the operations of an insurer.

The New Law still provides that an insurer is only allowed to operate life insurance, or non-life insurance or health insurance businesses, except under one of the following circumstances:

- (i) life insurers sell/operate health insurance;
- (ii) non-life insurers sell/operate health insurance having term of up to one year and insurance products that only cover the mortality risk having term of up to one year; and
- (iii) health insurers sell insurance products that only cover the mortality risk having term of up to one year.

These new provisions allow insurers to be more flexible in selling/operating their insurance products and may help insurers benefit and expand their business for more revenue.

7. Recognition of investment from offshore financial and insurance group

The New Law recognizes the investment from offshore financial and insurance groups that have an entity under the group doing insurance. That means the direct investor to the insurer in Vietnam may not have to be an insurance company.

Particularly, if an offshore financial and insurance group has satisfied the requirements under the New Law, which includes having an entity under the group doing insurance business, it can make capital contribution or acquire shares of an insurer in Vietnam. As explained by the MOF in the proposal submitted to the Government during the drafting of the new regulations, Vietnamese law should recognize this concept while other countries allow investments in the insurance sector by a financial and insurance group.

However, the New Law does not include any definition on the term of the "offshore financial and insurance group". There was also no further explanation from the MOF on this provision in the proposal submitted to the Government.

8. Outsourcing activities



The New Law provides a new provision to govern specifically outsourcing activities. Accordingly, insurers and reinsurers may negotiate and enter into contracts for third parties to perform part of their processes and operations. The New Law only provides for limited exceptions that cannot be outsourced, which are for internal control, internal audit, risk management and consultation, introduction, offering insurance products and arrangement for the insurance contract.

The New Law provides certain requirements on the outsourcing of processes and activities directly relating to insurance activities. More specifically, insurers and reinsurers are ultimately and solely responsible to policyholder. The outsourcing policy needs to be approved by the board of directors or the members' council of the insurer and reinsurers. This requirement is arguably not necessary and will create an additional burden for insurers. From an insurer's perspective, insurers should be allowed to proactively carry out necessary internal approval procedures in accordance with their own charters and internal regulations in the use of outsourcing services.

Additionally, the New Law also requires that the outsourced third party must perform at least 75% of the workload of outsourced activities. This requirement may not be consistent with other provisions that require insurers and reinsurers to hold the ultimate and sole responsibility to insurance buyers when using outsourcing services. From an insurer's perspective, insurers should be flexible and proactive in deciding and controlling outsourcing service providers as long as the insurers ensure the management of their service quality.

9. Insurance sales via online channels

The government of Vietnam recognizes and encourages the application of information technology to modernize insurance business activities, corporate governance and methods to provide services and products. The application of information technology in the insurance business must comply with the regulations of the New Law, the law on e-transactions, the law on information technology, the law on cybersecurity, the law on anti-money laundering and other relevant laws. Any new matters arising from the application of the information technology in insurance business, they will be provided by the Government.

Unlike the previous draft version, the New Law only provides for the general regulations for the sale of insurance products via online channel. Particularly, the New Law provides that organizations/individuals being allowed to provide insurance products and services via online channel include insurers, foreign insurer's branches, insurance agencies, insurance brokers, and micro-insurance companies.

Insurers, foreign insurer's branches and micro-insurance companies can proactively choose the form of providing insurance services/products via online channels. Insurance agencies, however, can only provide insurance products via online channels within the scope of its insurance agency contract.

Insurers, reinsurers, foreign insurer's branches and insurance brokers needs to set up, maintain and operate the IT system for the distribution of insurance products via online channel.

Details of the distribution of insurance products via online channel will be provided for by the Minister of Finance.

10. Insurance agency operations

The New Law still require must-have contents that must be included in the insurance agency contract, including, among others:

- names and addresses of the insurer and the agent;
- scope of the insurance agency activities;
- commissions, bonuses, assistance and other benefits for the insurance agents; and
- terms of the contract and dispute resolution bodies.

The New Law sets out principles in the operation of insurance agencies, the rights and obligations of insurers, and the rights and obligations of insurance agencies in the insurance agency's operation, rather than setting out these provisions in a decree as it is under the current regulation. Particularly, the New Law still provides some new regulations as follows:

- (i) Compared against the current Decree No. 73, the New Law provides four new principles in the insurance agency operation, which includes the following:
 - An individual insurance agent of an insurer shall only be entitled to work as insurance agent for other insurer(s) in the same segment.
 - An individual insurance agent may only carry out insurance agent activities for insurance products he or she has been trained to sell such products.



- For organizational agent (such as a bank under a bancassurance arrangement):
 - Similar to the current regulations, a bank may act as an insurance agency for a second insurer if the bank has obtained the consent from the first insurer.
 - The New Law specifies that an organizational agency needs to register the insurance agency operation under the Enterprise Law. For organizations doing conditional business, their licenses or approvals for doing business issued by relevant authority must include the insurance agency activity. For example, if a bank acting as an organizational agency to an insurer, then the banking license of such bank and the enterprise registration certificate of the bank needs to include insurance agency business line. While this is not provided in the current Law, it is required in the bancassurance regulations and in practice. The New Law has made this update to clarify the requirements.
 - The organizations must satisfy requirement on personnel and other conditions as provided by the Government.
- Information of individuals operating as insurance agents and employees in an insurance agency who directly performs the insurance agency activities must be registered and updated in the insurance business management system.
- (ii) In relation to the rights of the insurer, the insurer has the right to organize the agency network in line with its business strategy. Additionally, the insurer is obligated to register and update information about individuals conducting insurance agent activities and employees of the insurance agents who directly conducts insurance agent activities in the insurance business management system operated by the MOF.
- (iii) The insurance agent is obligated to keep confidential the customers' data and is not allowed to provide customers' information to any third party without consent from the customers, unless otherwise required by law.

The New Law also separates the types of insurance agency certificates corresponding to each insurance product, including: life insurance agency certificate; non-life insurance agency certificate; and health insurance agency certificate.

Due to these changes and to give a transition period for insurers to prepare, Insurance agency certificates issued before the effective date of the new law will continue taking effective until 31 December 2025. It is likely that, after that date, insurance agents need to follow the regulations under the new insurance business law to obtain a new insurance agency certificate. The MOF may provide more implementing circular or guidelines on insurance agent certificates.

11. Capital adequacy ratio

The New Law requires that the insurers and/or reinsurers must constantly maintain their capital adequacy ratios, which is between the actual capital and risk-based-capital in accordance with the regulation of the MOF.

It is a new change in the New Law that the capital adequacy ratio be determined based on risk-based-capital. The risk-based capital is determined based on the size and quantification of the impacts of various groups of risks on the business activities of the insurers and reinsurers, including the following:

- (i) **Insurance risks:** These include risks arising from fluctuations in technical factors corresponding to types of life insurance, non-life insurance and health insurance.
- (ii) **Market risks:** These include risks arising from the market for investment activities of insurers and reinsurers.
- (iii) **Operational risks:** These include risks arising from operating processes, systems, and management of insurers, re-insurers.
- (iv) **Other risks:** These include risks arising from other partners or other factors that have not been taken into account at insurance risks, market risks or operational risks.

12. Technical reserves

The New Law requires insurers to reserve an amount of money that an insurer or re-insurer must set aside for the purpose of paying its insurance liabilities that may arise from the signed insurance contracts.

Under the New Law, technical reserves must be, among others, separately established for each type of insurance operation, be equal to the liabilities committed by the insurer in the insurance contracts, and be separated between the insurance contracts of



the insured subjects inside territory of Vietnam and those of the insured subjects in foreign countries, regardless of the involvement of the same insurance operation, unless otherwise stipulated by laws.

13. Other proposed changes

The New Law also proposes other important changes to the current regulation, including the following:

(i) Foreign ownership ratio

The New Law sets out a clear foreign ownership ratio that applies to a foreign investor making investment to local insurers and reinsurers. Particularly, foreign investors are allowed to own shares/contribute capital up to 100% charter capital of local insurers/reinsurers.

(ii) Insurance market information and database

The New Law provides that there will be an insurance business database under the management and operation of the MOF for the purpose of state management, insurance business, protection of the lawful rights and interest of the relevant parties in insurance business operation.

Accordingly, insurers, reinsurers, insurance brokers and auxiliary insurance service providers have the obligation to provide the information of insurers, the insured subject and other relevant information for establishing the insurance business database system.

The collection, use, storing and provision of information of the database system must ensure the confidentiality, information safety, protection of private life, personal secrets, family secrets and trade secrets in accordance with the laws. The insurance business database system will connect to other national databases and industry-specialized database.

The information collected must be use for the right purpose, and must not be provided to a third party without the consent of the policyholder, the insured, except for the case required by law.

(iii) Application of provisions on capital determination, solvency and preventive measures

The provisions on the management of risk, capital, and solvency are proposed to fully apply to insurers and reinsurers on 1 July 2028 with a grace period of five years after the New Law's effective date of 1 July 2023.

(iv) Information disclosure

Insurers are required to disclose information on a regular and irregular basis, such as information about effective judgments and rulings of the court relevant to the operations of insurers, decisions on sanctions against administrative violations in insurance business, decisions to prosecute managers of the insurers, etc. While the current Law on Insurance Business only requires insurers to disclose information about their financial statements, the scope of information to be disclosed under the New Law is broader and may cause an administrative burden on insurers.

(v) Provision on dispute resolution

The New Law has a specific provision on dispute resolution bodies in case a dispute arises. Particularly, if there is any dispute arising from the performance of an insurance policy, the parties to such policy will settle by amicable negotiation. In case of failure to negotiate, the parties can choose either mediation or arbitration or court litigation to settle their dispute in accordance with the insurance contract and the applicable laws.

In addition to the above topics, the New Law provides for new regulations on the following topics:

The insurer must provide evidence that it has explained exclusion clauses to the policyholder and that the policyholder has understood such clauses. However, the New Law is silent on what should be used as the evidence that the insurer has fulfilled their obligation; or how to deal with the case when the insurer cannot present such provision. While this gives the insurer a flexibility, it may arise an issue on uncertainty in terms of enforcement of such regulation in practice.

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- Exclusion clauses will not apply where the policyholder has a force majeure reason for providing late notifications to the insurer of the occurrence of the insured event.
- The New Law sets out specific provisions on: (i) how to determine the beneficiary in the insurance policy; (ii) the need for the determination of the beneficiary to be accepted by the insured (if the policyholder is not the insured); and (iii) the case of replacement of the beneficiary.
- Specific legal basis for provisions of group insurance products (whereby a single policy may cover an entire group of multiple insured people), which are in place in the practice but not clearly provided in the Current Law.
- Provision of conditions applicable to investors to set up or contribute capital to insurance companies in Vietnam, and procedures for the application for the establishment of insurance companies in the New Law instead of decree level, as is currently provided under the Decree No. 73.
- On prevention of insurance frauds, the New Law also provides for a new section dealing with the control and prevention of insurance frauds.
- A person who directly performs the brokerage services must have a bachelor degree or higher on insurance area or an insurance broker certificate issued by a licensed training center in Vietnam or foreign countries. The MOF shall stipulate training programs, the examination and issuance of the insurance brokerage certificates.



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