Hogan Lovells

Jurisdiction update: Vietnam's insurance market

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Further information

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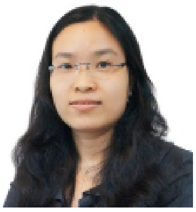

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This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

Jurisdiction update: Vietnam's Insurance Market

INTRODUCTION

Vietnam's insurance market has grown rapidly in recent years and continues to be considered a promising market. In particular, the country's demographic and economic development is expected to fuel further demand for insurance services both in the non-life and life sectors. In the last decade, Vietnam's insurance sector has been transformed from a State-owned monopolist sector to a more open industry with both domestic and foreign insurers as new entrants. Vietnam's international commitments, including its commitments under WTO accession concessions and bilateral and multilateral market access arrangements such as the ASEAN Framework Agreement on Services and the Bilateral Trade Agreement with the US, have helped to gradually liberalise this sector of the economy further. Notably, pursuant to the amended Law on Insurance Business, from 1 July 2011, foreign insurers are permitted to provide cross-border insurance services to the Vietnamese market. Also from 1 July 2011, non-life foreign insurers are permitted to set up branches in Vietnam.

MARKET OVERVIEW

The liberalisation of the country's insurance industry has offered numerous investment opportunities to foreign insurers. Currently about 61 insurers are operating in Vietnam, among these 29 non-life insurance companies, 17 life insurance companies, 12 insurance brokers, 2 re-insurance companies and one branch of a foreign non-life insurer. The non-life insurance market is still largely dominated by domestic insurers. There are about 11 foreign-invested non-life insurers out of a total of 29. With respect to life insurance, foreign-invested insurers make up 15 of the 17 life insurers, clearly dominating the market. Regarding brokerage services, seven domestic and five foreign-invested companies are operating in this area, with foreign firms making up more than 80% of the market for brokerage services. BIDV Metlife, a life insurance joint-venture company between the US MetLife and Vietnamese Bank for Investment and Development of Vietnam (BIDV) was licensed in July 2014 and started its operations from November of the same year. The number of Vietnamese reinsurance companies increased to two reinsurers in 2011 with a new player - PVI Re (PetroVietnam Reinsurance) - in addition to Vietnam National Reinsurance Corporation (VinaRe), both of which are domestic companies. Korean insurer Seoul Guarantee Insurance (SGI), who was licensed in August 2014, became the first foreign firm to open a non-life branch office as well as the first player to focus on guarantee insurance.

However foreign participation in the Vietnamese insurance market still faces various regulatory challenges. For example, the requirement that the foreign applicant must demonstrate USD2 billion in asset backing limits smaller (and, possibly, newer) entrants. In addition, Vietnamese law also requires that a foreign investor setting up a presence in Vietnam be an actual operator of insurance business when the foreign investor may prefer to hold the investment under a holding company.

INSURANCE REGULATORY FRAMEWORK

Vietnam's insurance sector and the establishment and operations of insurance companies and insurance brokers are governed by a wide range of regulations, including the following:

- Law on Insurance Business No. 24/2000/QH10 dated 9 December 2000 (as amended by Law No. 61/2010/QH12 dated 24 November 2010) ("**Law on Insurance Business**");
- Decree No. 45/2007/ND-CP by the Government dated 27 March 2007 providing guidelines for the implementation of a number of articles of the Law on Insurance Business ("**Decree 45**"), as amended by Decree No. 68/2014/ND-CP by the Government dated 9 July 2014 ("**Decree 68**");
- Decree No. 46/2007/ND-CP by the Government dated 27 March 2007 on the financial regime for insurers and insurance brokers ("**Decree 46**");
- Decree No. 123/2011/ND-CP by the Government dated 28 December 2011 providing regulations for the implementation of the Law on Insurance Business and amending Decree 45 ("**Decree 123**");
- Decree No. 98/2013/ND-CP by the Government dated 28 August 2013 on penalties for administrative

breaches in the insurance and lottery business sectors ("**Decree 98**");

- Decision No. 96/2007/QD-BTC by the Ministry of Finance ("**MoF**") dated 23 November 2007 issuing regulations on underwriting universal life insurance ("**Decision 96**");
- Decision No. 193/QD-TTg by the Prime Minister dated 15 February 2012 on the strategy for development of Vietnam's insurance market in the period 2011 – 2020 ("**Decision 193**");
- Decision No.1826/QD-TTg by the Prime Minister dated 6 December 2012 approving the scheme on restructuring of insurance companies together with restructuring of securities market ("**Decision 1826**");
- Circular No. 124/2012/TT-BTC by the MoF dated 30 July 2012 providing guidelines for the implementation of Decree 45 and Decree 123 ("**Circular 124**");
- Circular No. 125/2012/TT-BTC by the MoF dated 30 July 2012 on the financial regime applicable to insurers, reinsurers, insurance brokers and branches of foreign non-life insurers ("**Circular 125**");
- Circular No. 194/2014/TT-BTC by the MoF dated 17 December 2014 amending Circular 124 and Circular 125 ("**Circular 194**");
- Circular No. 101/2013/TT-BTC by the MoF dated 30 July 2013 providing guidance on the fund for protection of policyholders ("**Circular 101**");
- Circular No. 135/2012/TT-BTC by the MoF dated 15 August 2012 guiding the provision of unit-linked insurance products ("**Circular 135**");
- Circular No. 115/2013/TT-BTC by the MoF dated 20 August 2013 guiding pension insurance and fund of voluntary pension ("**Circular 115**");
- Circular No. 195/2014/TT-BTC by the MoF dated 17 December 2014 on ranking, reviewing and classifying insurance companies ("**Circular 195**"); and
- Joint Circular No. 86/2014/TTLT-BTC-NHNNVN of the MoF and the State Bank of Vietnam dated 2 July 2014 guiding the insurance agent activities of credit institutions, branches of foreign banks for life insurance companies ("**Joint Circular 86**").

The MoF is the regulator of the insurance industry and its authority includes the issuance of establishment and operating licences for insurers and insurance brokers as well as the supervision of their operations. The Insurance Supervisory Authority ("**ISA**", which is part of MoF) assists the MoF in supervising the insurance business and market in Vietnam. The MoF and ISA have been instructed under Decision 193 of the Prime Minister to comply with all principles on insurance management and supervision issued by the International Association of Insurance Supervisors ("**IAIS**").

TYPES OF INSURANCE PRODUCTS

Vietnam's Law on Insurance Business generally divides insurance business into three (3) categories: (i) life insurance, (ii) non-life insurance and (iii) health insurance. An insurer is not permitted to simultaneously carry out life and non-life insurance business. However, a life insurer may concurrently provide personal accident and health care insurance as a supplement to its life insurance operations. In addition, an insurance company is required to operate within the scope of activities set out in its establishment and operation licence as granted by the MoF.

Life insurance

Permitted life insurance products include whole life insurance, pure endowment insurance, term life insurance, endowment insurance, annuity insurance, investment linked insurance and pension insurance. Life insurers must comply with insurance regulations, clauses and premium scales ratified by the MoF when providing life insurance products and personal accident and health care insurance ancillary to life insurance products.

In addition to traditional life insurance protection, investment linked insurance is a new field in the Vietnamese insurance industry allowed by the MoF since 2007. Investment linked insurance combines basic life insurance protection with an investment

vehicle. Under Vietnamese law, there are two policy types of investment linked insurance, namely universal life insurance and unit-linked insurance.

- Put simply, with universal life insurance, premiums from policy-owners form an indivisible universal life fund and policy-owners share in the results from investments made from such fund, provided that the return must not be less than the minimum investment rate which the insurer undertakes in the insurance contract.
- With respect to unit-linked insurance, premiums from policy-owners may be separated into different unit-linked funds with different investment targets. Unit-linked funds are divided into equal units. Policy-owners of unit-linked insurance may decide to invest their insurance premiums to purchase certain units of the unit-linked funds and enjoy the investment benefits as well as incur the investment risk from the unit-linked funds chosen.

Different from traditional life insurance products where customers' premiums are invested in safe channels such as treasury bonds, premiums from investment-linked insurance are funnelled into possibly more profitable (and riskier) channels such as the securities market or real estate. Therefore, the development of investment-linked products tends to follows closely the growth of available investment channels. With its introduction of legislation on open-ended funds effective from 1 March 2012, Vietnam attempts to provide additional channels to grow the securities market. A number of life insurers have launched investment-linked insurance products (e.g. Prudential, Manulife, AIA etc.) and investment-linked insurance may continue to grow as the Vietnamese become more familiar with the combination between insurance and investment and more confident in the sustainability and sustainable growth of investment channels (securities, real estate, etc.) while, at the same time, becoming more willing to accept additional risks and volatility for their investments.

In August 2013, the MoF issued Circular 115, its first-ever specific regulations on pension insurance and voluntary pension funds. In addition to Vietnam’s compulsory social insurance scheme which provides pension benefits, pension insurance is a voluntary form of savings to fund retirement and may be in the form of individual insurance or group insurance. Group pension insurance is maintained by companies and provides insurance benefits to the companies’ covered employees on retirement.

Non-life insurance

Non-life insurance products include property insurance and damage insurance, insurance for goods in transit by road, sea, river, rail and air, aviation insurance, motor vehicle insurance, fire and explosion insurance, marine hull and ship owner’s civil liability insurance, public liability insurance, credit and financial risks insurance, business loss insurance, agriculture insurance and guarantee insurance, which was added as a new non-life product by Decree 68 effective from 25 August 2014.

Vietnamese law sets out certain forms of compulsory insurance in respect of which (i) the MoF promulgates the applicable insurance regulations, clauses, premium scales and minimum sums insured and (ii) a licensed insurer must not refuse to underwrite.

Current compulsory insurance includes:

a) Civil liability insurance for motor vehicle owners;

b) Civil liability insurance for aviation carriers to passengers;

c) Professional indemnity insurance for legal consultancy activities;

d) Professional indemnity insurance for insurance brokers; and

e) Fire and explosion insurance.

Although Vietnamese law provides for certain other mandatory professional liability insurance in certain industries (e.g. construction, securities, fund management, auditing, asset evaluation, notary etc.), those are not categorised as compulsory insurance as the MoF does not control the standard terms and conditions as well as premium scales and minimum sums insured of these insurances and a licensed insurer is not obliged to accept underwriting them.

For non-compulsory products, non-life insurers may adopt and implement their own insurance regulations, clauses and premium scales and are not required to obtain prior MoF approval for these. However, the MoF may also request a non-life insurer to cease underwriting products, where their rules, terms and conditions and premium rates fail to ensure the financial safety of a non-life insurer or the rights of policy-owners, and request the insurer to make specific amendments to such policies and their terms.

Health insurance

Effective from 1 July 2011, Vietnam's Law on Insurance Business recognises health insurance as a new subset of insurance products which includes: personal accident insurance, medical expenses insurance and health care insurance. Insurance regulations, clauses and premium scales of health care insurance products must be ratified by the MoF. Prior to 1 July 2011, these were categorised as non-life insurance generally and could therefore be provided separately either by non-life insurers or by life insurers as part of a life insurance package. In the latter scenario, the life insurers aim to provide a comprehensive insurance coverage that includes a main insurance product, such as whole life insurance, plus a rider such as accident insurance or dependent support. This continues to be permitted under the new classification.

REINSURANCE

In Vietnam, an insurer is only permitted to retain a maximum liability on each risk or on each loss at no more than 5% of its equity. The maximum level of retention of liability applicable to a reinsurer is 10% of its equity. An insurer or reinsurer must therefore cede the portion of liability exceeding the applicable thresholds to other insurers or reinsurers. Having said this, insurers may only transfer part of the liability which they have insured to one or more "reinsurers", including to other insurers or overseas (re-)insurers. This is to avoid potential abuse by reinsurers to earn reinsurance commission while the original insurers are actually incapable of underwriting the direct insurance. Any regular insurer may accept to reinsure part of the liability for which another insurer has accepted insurance, as may proper reinsurers.

Foreign insurers are permitted to provide unrestricted cross-border reinsurance services. However, ceding reinsurance to overseas reinsurers may not be implemented on more favourable conditions than those for ceding reinsurance to domestic reinsurers. When accepting to reinsure liability of a Vietnamese insurer, a foreign leading reinsurer and foreign reinsurers of more than 10% of the total liability under the policy must have at least a "BBB+" rating by S&P or Fitch, a "B++" rating by A.M.Best, or a "Baa1" rating by Moody's, or they must have been granted equivalent ratings in the most recent fiscal year. If an insurer is reinsured by an overseas company of the same group which does not have any of the above mentioned credit ratings, the insurer must submit to the MoF a written confirmation by the insurance regulator of the home country of such reinsuring group company certifying that such reinsuring group company ensures its solvency in the fiscal year preceding the year of receiving reinsurance.

DISTRIBUTION CHANNELS

Insurers may distribute their products directly, via insurance agents and insurance brokers, via tendering or other channels consistent with the law. Insurers in Vietnam tend to use multichannel distribution strategies, including agents, bancassurance, and telemarketing.

Bancassurance has developed rapidly in Vietnam since 2007 and more insurance companies are using bancassurance to expand their market share.

Agents

The agency model has been and will continue to be a major distribution channel in Vietnam especially given the distribution challenges posed by the country's geography and infrastructure.

Under authorisation granted by an insurance company, insurance agents may offer and sell insurance, arrange for the conclusion of insurance contracts, collect premiums, deal with claims for indemnity and pay insurance proceeds upon occurrence of insured events and undertake other activities related to the performance of an insurance contract. Agents comprise corporate agents and individual agents.

- An individual agent is required to have a practising certificate issued by a training establishment (e.g. the Association of Vietnam Insurers, insurance companies or training entities) approved by the MoF. The MoF also provides mandatory guidelines for the necessary program, contents and form of training required to obtain these certificates.

- Corporate agents are duly incorporated companies under Vietnamese law and must employ duly licensed individual agents who directly perform agency services.

Vietnamese law prohibits officers and staff of an insurer from acting as insurance agents for the same insurer. In addition, insurance agents tend to be exclusive agents as agents (both corporate and individual) of one insurer and may not simultaneously act as agents for other insurers, unless their principal approves.

Insurers operating in Vietnam must comply with the maximum permissible rates of insurance agency commissions set out by the MoF, for example: 0.5% - 20% for non-life insurance, 5%-50% for life insurance, 20% for health insurance and 10% for guarantee insurance depending on specific scenarios.

In accordance with Joint Circular 86 regulating bancassurance activities, from 1 September 2014, credit institutions and branches of foreign banks may carry out activities as insurance agents for life insurance companies if so approved in their operational licence. Credit institutions and branches of foreign banks cannot concurrently act as agents for another life insurance company unless the current life insurance company approves so in writing.

Brokers

Insurance brokers must be licensed by the MoF and only enterprises may act as brokers. Brokers provide information on types of insurance, policy terms and premiums, and general information on insurance enterprises to insurance buyers. Brokers may also help the insurance buyers to assess and manage risk, select suitable insurance products, and negotiate and enter into insurance contracts. Normally a broker represents the insurance buyer but receives its commission payment from the insurance company. Brokerage services are most commonly utilised in non-life insurance such as liability insurance, personal accident and health insurance, property insurance, or general liability insurance. In practice, local insurance buyers tend to be not fully aware of the role of insurance brokers. In particular, small and medium-sized businesses in Vietnam tend to contact insurance companies directly.

The maximum insurance brokerage commission for each insurance service arranged by a broker must not exceed 15% of the actual insurance premium collectible by the insurance company.

FOREIGN INVESTMENT IN THE INSURANCE SECTOR

Under Vietnam's current WTO commitments (and other international agreements providing for most-favoured nation status), Vietnam is more clearly required to permit foreign-invested insurance companies to operate in Vietnam and the pace of approvals has picked up (although it can still take from 2-3 years before the MoF issues the relevant approval for foreign-invested insurers). Since 1 January 2008, 100% foreign-invested general insurers may apply to engage in statutory insurance business, including motor vehicle third party liability, insurance in construction and installation, insurance for oil and gas projects, and insurance for projects and construction works of high danger to public security and the environment. With an aim to fulfil Vietnam's international undertakings in the insurance sector, a number of legal instruments guiding the Law on Insurance Business have been amended or issued in order to simplify and reduce administrative procedures and to make these legal instruments consistent with the developmental status of the insurance market and with international standards on insurance management and supervision, ensuring publicity, transparency and equality for all entities participating in the market.

Forms of business

Legal entities

Foreign insurers and brokers may establish a 100% foreign-owned insurance company or cooperate with a local insurer in the form of a joint venture enterprise. In a number of instances, foreign investors have established joint ventures with local partners as a means to significantly reduce red tape for the establishment and to facilitate the distribution of their products. As noted above, there are currently 15 foreign-invested life insurance companies (including 4 joint ventures and 11 wholly foreign-owned companies), 11 foreign-invested non-life insurance companies (including 3 joint ventures and 8 wholly foreign-owned companies), and 5 wholly foreign-invested insurance brokerage companies operating in Vietnam.

Representative offices or branches

An alternative way of achieving a presence in Vietnam is the establishment of a representative office or a branch. Under local law, a representative office does not constitute a "business" entity, which means that it is prohibited from engaging in profit-generating activities. Accordingly, foreign insurers have usually not shown much interest in setting up a representative office if they wish to expand their activities in Vietnam, although representative offices have proved useful during the licensing process. As mentioned earlier, under Vietnam's WTO commitments, foreign insurers have been permitted to establish in Vietnam as a branch of an overseas insurer for non-life insurance business from 2012 onward. This commitment was reflected in the amendments to the Law on Insurance Business in 2010 which have already anticipated this requirement so that, starting 1 July 2011, non-life foreign insurers are permitted to set up branches in Vietnam. Only recently, a branch office of a foreign insurer was established for guarantee insurance activities following the permission of this new insurance product provided in Decree 68. As no commitment on life insurance branches has been made, the establishment of life insurance branches is subject to local legislation only. There is no explicit prohibition on the establishment of a life insurance branch by a foreign insurer; however, as far as reported, no branches of foreign life insurance companies have been established to date.

Cross-border supply

Foreign insurance enterprises may provide insurance to enterprises incorporated in Vietnam with more than 49% foreign-owned capital and foreigners working in Vietnam. In order for an insurer or an insurance broker to provide cross-border insurance or insurance brokerage services, it must satisfy certain conditions such as:

- Its head office must be in a country with which Vietnam has already signed international trade agreements regarding the supply of cross-border insurance into Vietnam (e.g. a WTO member);
- Having lawfully operated for at least 10 years and not violated insurance regulations for at least three years before providing cross-border service into Vietnam;
- Being licensed by the insurance regulator of its home country to provide such services;
- Providing cross-border insurance services in Vietnam through an insurance brokerage enterprise licensed in Vietnam; and
- Other conditions regarding the minimal asset backing (USD2 billion applicable to offshore insurers or USD100 million applicable to offshore brokers), credit rating (at least a “BBB+” rating by S&P or Fitch, a “B++” rating by A.M.Best, or a “Baa1” rating by Moody’s or equivalent ratings), profitable operations in the last three years, security deposit of at least VND100 billion (about USD5 million) with a Vietnam-incorporated bank, etc.

Investment conditions

A foreign insurer establishing an insurance company or an insurance brokerage company must satisfy certain conditions: notably, (i) have 10 years' experience in insurance operations; (ii) have assets of at least USD2 billion in the year prior to the year of lodging the application file (for an insurance company); (iii) have been profitable for a period of three consecutive years prior to the year of lodging the application file and (iv) receive the approval of the insurance regulator of the home country of the foreign insurer.

In addition to these, to set up a non-life branch, a foreign insurer must satisfy a number of additional conditions, such as (i) such insurer must be head-quartered in a jurisdiction with which Vietnam has signed commercial treaties that allow the establishment of branches of foreign non-life insurance businesses in Vietnam and (ii) the insurance regulator of the home country of the foreign insurer has signed a cooperation agreement with the MoF in relation to the management and supervision of the activities of branches of foreign non-life insurance businesses in Vietnam.

Capital and solvency requirements

The minimum levels of "legal capital" applicable to various insurance activities are set out below:

Activities	Legal capital
Non-life insurance (excluding aviation and satellite insurance) and/or health insurance	VND300 billion (approximately USD15 million)
Additional capital required for aviation insurance and satellite insurance	plus VND50 billion (approximately USD2.5 million) for each type of insurance
Life insurance (including health insurance, but excluding investment linked insurance and pension insurance)	VND600 billion (approximately USD30 million)
Additional capital required for unit-linked insurance	plus VND200 billion (approximately USD10 million)
Additional capital required for pension insurance	owner's equity of at least VND1 trillion (approximately USD50 million)
Reinsurance (non-life and/or health insurance)	VND400 billion (approximately USD20 million)
Reinsurance (life or life and health insurance)	VND700 billion (approximately USD35 million)
Reinsurance (all types of insurance)	VND1,100 billion (approximately USD55 million)
Non-life branches	VND200 billion (approximately USD10 million)
Insurance brokerage (direct insurance or reinsurance)	VND4 billion (approximately USD200,000)
Insurance brokerage (direct insurance and reinsurance)	VND8 billion (approximately USD400,000)
Additional capital required for insurance companies with more than 20 branches and representative offices	plus VND10 billion (approximately USD500,000) for each additional branch or representative office

**Note: USD-equivalent is converted based on exchange rate of USD1 = VND20,000 for ease of reference. Actual exchange rate is different and may change from time to time. The current market exchange rate is USD1 = VND21,850 as of 1 July 2015.*

In Vietnam's context, the term "legal capital" refers to the minimum amount of registered and paid-up capital that the investors (members in a limited liability company and shareholders in a joint stock company) are required to contribute as owner's equity to the company before such company may commence commercial operations. Depending on the insurer's requirements, the charter capital may be further increased and/or its operations may additionally be funded by debt.

In addition to the legal capital requirement, insurers must use a part of their paid-up charter capital to pay a security deposit into a commercial bank operating in Vietnam at 2% of the applicable legal capital. An insurer may only use its security deposit to meet undertakings to policy-owners when it is insolvent and upon written approval of the MoF. Once used, the insurer is obliged to pay an additional security deposit equivalent to the amount used within 90 days.

With respect to pension insurance, insurers must maintain a voluntary pension fund, the assets of which consist of (i) at least VND200 billion (approximately USD10 million) contributed by the insurance company from its owner's funds and maintained throughout the operation of the fund, (ii) insurance premium and (iii) assets generated from investment activities using the foregoing sources. Pension fund must not be used to pay for administrative fines, debts and any other purposes not relating to such pension fund. All assets formed from premium paid belong to the insured.

In general, an insurer operating in Vietnam is required to:

- Continuously maintain its paid-up charter capital (owner's capital) at no less than the legal capital;

- Set up premium reserves (for paying out its insurance liabilities determined in advance and arising from insurance contracts which it has entered into);
- Always maintain its solvency at no less than the minimum solvency margins set out by law. In particular, life insurers that provide unit-linked insurance or pension insurance must respectively maintain their solvency margins at least VND200 billion (approximately USD10 million) or VND300 million (approximately USD15 million) higher than the minimum solvency margins;
- Contribute 5% of after-tax profits annually to establish its compulsory reserve fund (to be maintained up to 10% of the charter capital); and
- Make contributions to the policy-owner protection fund maintained centrally at the Association of Vietnamese Insurers ("**AVI**"). The fund is to protect insured persons in the event that the insurer becomes insolvent or bankrupt. Contribution for this fund is announced by the MoF annually but currently does not exceed 0.3% of total premium revenue from primary insurance contracts of an insurer. Contributions are made until the accumulated fund amounts to 5% of total assets of a general insurer or 3% in the case of a life insurer.

As mentioned above, whether a life insurer is permitted to underwrite unit-linked insurance or pension insurance depends on its solvency margin. Therefore, it is unlikely that the MoF would approve for newly-established insurance companies to provide those types of insurance products. Rather, the MoF would need to review the solvency margins of a life insurance company throughout some years of operation before ratifying for a life insurance company to provide these products.

It should also be noted that Vietnam has implemented anti-money laundering legislation, under which insurance companies are obliged to establish internal regulations on anti-money laundering, collect, verify and monitor information about their clients, report to the State Bank of Vietnam and take particular measures (e.g. postponement of transactions or freezing of accounts, sealing or seizing assets based on decisions of state authorities) where transactions are suspicious, of a high value or carried out by 'risky' clients.

Possible channel of investments

An insurer may make investments from its (i) equity, (ii) so-called "idle capital" (akin to premium reserves minus funds for regular pay-outs), and (iii) any other lawful sources of funds. Vietnamese law requires that investments from each source be accounted for separately. An insurer is expressly prohibited from:

- Borrowing loans for direct investments or entrusted investments in securities, real estate or capital contribution to other enterprises; and
- Reinvesting in any form in its shareholders or its affiliated persons/entities, except for deposits with shareholders being credit institutions.

Investments from owner's capital

Subject to the MoF's prior approval, insurers are allowed to make offshore investments from its equity which exceeds the legal capital level or the minimum solvency margin. At present, such offshore investment can only be made to set up offshore insurance companies or an offshore insurance branch. Some Vietnamese non-life insurers have initiated the trend of investing offshore, like Post and Telecommunications Joint Stock Insurance Corporation (“**PTI**”), which invested in the Laos insurer Lane Xang Assurance Public Insurance Joint Stock Company in 2011) or BIDV's Insurance Company (“**BIC**”), which invested in the Laos-based Laos-Vietnam Insurance Joint Venture in 2008 and in the Cambodia-based Cambodia-Vietnam Insurance Company Plc in 2009.

With respect to domestic investment, insurers may invest their surplus equity (i.e. after ensuring their infrastructure costs and operational expenses) as follows:

		Type of Transaction	Limitation on investment
	1)	Purchase of Government bonds or Government-guaranteed bonds of enterprises, or deposits with credit institutions	Unlimited
Non-life insurers/ health insurers/ reinsurers / brokers/ non-life branches	2)	Purchase of shares, unsecured bonds of enterprises, and capital contribution in other enterprises	Not to exceed **35%** of idle capital from insurance reserves
	3)	Real estate business and lending	Not to exceed **20%** of idle capital from insurance reserves
	1)	Purchase of Government bonds or Government-guaranteed bonds of enterprises, or deposits with credit institutions	Unlimited
Life insurers	2)	Purchase of shares, unsecured bonds of enterprises, and capital contribution in other enterprises	Not to exceed **50%** of idle capital from insurance reserves
	3)	Real estate business and lending	Not to exceed **40%** of idle capital from insurance reserves

Premium investment

As seen in other emerging markets, for example China, restrictions on premium investments can present a major challenge. Due to foreign exchange restrictions, insurers are in practice limited to investing their premiums onshore. Insurers may only invest their "idle capital" (akin to premium reserves minus funds for regular pay-outs) as follows:

		Type of Transaction	Limitation on investment
Non-life insurers/ health insurers/ reinsurers/ brokers/ non-life branches	1)	Purchase of Government bonds or Government-guaranteed bonds of enterprises, or deposits with credit institutions	Unlimited
	2)	Purchase of shares, unsecured bonds of enterprises, and capital contribution in other enterprises	Not to exceed **35%** of idle capital from insurance reserves
	3)	Real estate business and lending	Not to exceed **20%** of idle capital from insurance reserves
Life insurers	1)	Purchase of Government bonds or Government-guaranteed bonds of enterprises, or deposits with credit institutions	Unlimited
	2)	Purchase of shares, unsecured bonds of enterprises, and capital contribution in other enterprises	Not to exceed **50%** of idle capital from insurance reserves
	3)	Real estate business and lending	Not to exceed **40%** of idle capital from insurance reserves

Reinsurance companies conducting business in life reinsurance, non-life reinsurance and health reinsurance must conduct separate cost accounting for investments made from idle capital from insurance reserves for each type of reinsurance. Idle capital from insurance reserves of reinsurers may be invested separately and subject to the same limitations applicable to each type of life reinsurance, non-life reinsurance and health reinsurance. Presently, the two main investment channels include deposits at local or foreign-invested banks and trading in government bonds. Although the private bond market has recently seen increased activity, Vietnam's stock market and real estate markets remain volatile. Of note, a number of (both local and foreign-invested) insurance companies have established their own fund management arms.

Despite the foregoing, it should be noted that the MoF is to adopt specific prohibitions, channels and thresholds applicable to investments made from the assets of unit-linked funds and pension funds.

M&A challenges

As an alternative (or in addition, for that matter) to setting up a new company, foreign insurers may acquire shares/equity in existing insurance companies in Vietnam. Foreign investors can also purchase shares in a listed/unlisted company or in an "equitised" (akin to privatised) State-owned insurer. Under local law, every transaction that involves the transfer of 10% or more of the charter capital of a target insurance company, as well as every transaction (a) that would result in a shareholder with a shareholding of less than 10% owning 10% or more of the charter capital of a target insurance company, or (b) following which a shareholder with a shareholding of more than 10% of the charter capital of a target insurance company would hold less than 10%, is subject to the prior approval of the MoF.

If acquiring capital contributions in an existing insurer which operates in the form of a limited liability company, foreign investors can acquire up to 100% of an existing insurance company. For example, in late 2005, Australia's QBE Insurance Group Ltd. bought Allianz General Insurance (Vietnam) Co. Ltd. from German insurer Allianz AG and from the International Finance Corporation to convert the company into QBE Insurance (Vietnam) Co. Ltd. In 2007, Japanese Dai-ichi Life Insurance successfully acquired the entire capital contributions in Bao Minh CMG, a joint venture between local Bao Minh Joint Stock Company and Australian Colonial Mutual Life, converting it into a wholly foreign-owned life insurance company.

If acquiring shares in an existing shareholding insurance company, the following foreign ownership caps will apply:

- The maximum shareholding by an individual shareholder is limited to 10% of the charter capital of the target company;
- The maximum shareholding by an institutional shareholder is limited to 20% of the charter capital of the target company; and
- The maximum shareholding owned by a shareholder and related persons/affiliates in aggregate is limited to 20% of the charter capital of the target company.

An institutional shareholder may own more than 20% of the shares of a shareholding insurance company in the following cases:

a) Ownership of shares for the purpose of restoring the solvency of an insurer and reinsurer in case of insolvency;

b) Ownership of shares by the State in an insurer or reinsurer in accordance with a restructuring plan; or

c) Ownership of shares by a strategic institutional shareholder subject to the MoF's approval. Such approval is subject to the following conditions:

   i. An asset base of at least USD2 billion;

   ii. Profitable operations (without accumulated losses) during the last three years preceding the application;

   iii. Operating experience in the finance, banking or insurance sector of at least five years; and

   iv. Committing not to withdraw capital from the target company for three years.

If acquiring shares in a public company[1], foreign shareholding in such companies are currently limited at 49% in the aggregate. However, new Decree 60/2015/ND-CP which was issued on 26 June 2015 and comes into effect on 1 September 2015 will allow for majority control of public companies by foreign investors in the insurance sector.

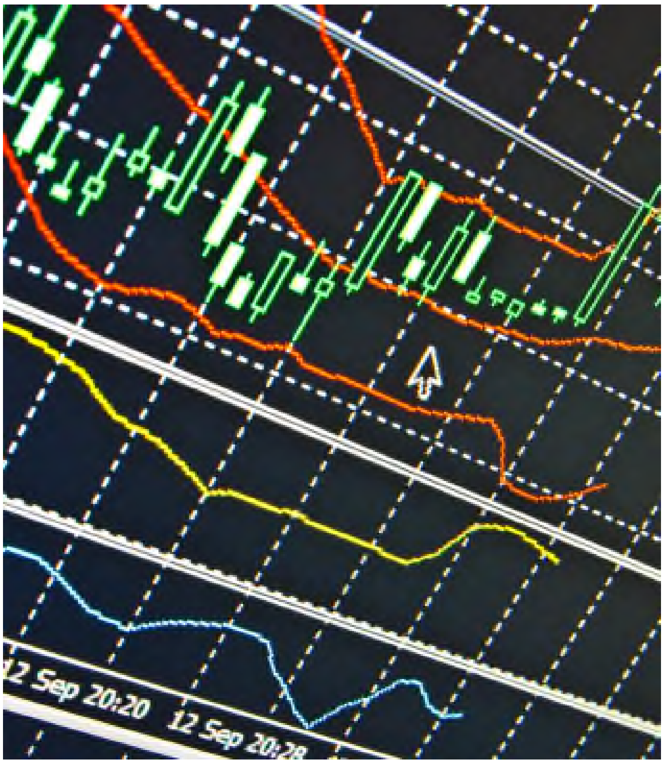
In the last decade, Vietnam has privatised its major State-owned insurers by converting them into joint stock companies (including the privatisation of Bao Viet Insurance Corporation, the country's largest life and non-life insurance corporation, in 2005 and Bao Minh Insurance Corporation, the country's second largest insurer, in 2004). Whilst the State remains the majority shareholder in Bao Viet and Bao Minh, Sumitomo Life Insurance has acquired an 18% shareholding in Bao Viet Holdings and AXA became a foreign strategic investor with the holding of its 16.65% stake in Bao Minh. Another financial and insurance group of Vietnam, PVI Holdings also has Funderburk Lighthouse Limited and Germany's HDI-Gerling Versicherungs AG (part of the Talanx Group) as shareholders with a 12% and 25% stake respectively. In 2008, SwissRe acquired 25% of the Vietnam National Reinsurance Corporation (Vinare), after Vietnam's main State-owned reinsurer was privatised.

OTHER CONSIDERATIONS AND OUTLOOK

Vietnam's insurance market is often viewed as a promising growth market. For example, with a population of more than 90 million and a penetration level of below 10%, the life insurance sector has immense growth potential in this market. Premium development in recent years also shows strong growth in the non-life sector, possibly supported by the sector for statutory insurance having been opened to foreign-invested insurers.

At the same time, Vietnam's economic challenges continue to create uncertainty for insurers and Vietnam's risk-rating remains high pursuant to A.M. Best's CRT-5 (Country Risk Tier 5) category rating for Vietnam – the highest tier for countries considered to present the most risk.

However, with its high premium growth and a steadily growing insurance customer base, Vietnam's insurance market appears promising and its development should be further supported with the country adopting international insurance business best practices and standards.



1 Under the Law on Securities, a joint stock company is a public company if it: (i) has made a public offer of shares; (ii) has shares listed on a stock exchange; or (iii) has shares owned by at least 100 investors (excluding professional securities investors) and paid-up charter capital of VND 10 billion or more (USD 500,000). A professional securities investor can be a commercial bank, financial institution, finance leasing company, insurance business organisation or securities business organisation.

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