

Insurance and reinsurance in Vietnam: overview

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MARKET TRENDS AND REGULATORY FRAMEWORK

1. What were the main trends in the insurance and reinsurance markets over the last 12 months?

At the end of 2016, there were 62 insurance companies (both domestic and foreign-invested enterprises) operating in Vietnam, including:

- 29 non-life insurers.
- 18 life insurers.
- 13 insurance brokers.
- Two re-insurance companies.

There was also one branch of a foreign non-life insurance company operating in the country.

The following statistics are from the Insurance Supervisory Authority's report on the 2016 insurance market in Vietnam.

Insurance

2016 saw significant growth in insurance business. The total premium income in life and non-life markets combined reached VND101.767 trillion (22.64% increase from 2015).

- **Non-life insurance.** In 2016, Vietnam's non-life insurance market premium income totalled VND36.372 trillion (14.04% increase from 2015) and total insurance compensation paid out was VND12.571 trillion.
 - The top five insurers in terms of premium income were:
 - Petrovietnam Insurance Joint Stock Corporation (PVI) with VND6.782 trillion, holding a market share of 18.65%;
 - Baoviet Holdings (Bao Viet) with VND6.333 trillion, holding a market share of 17.41%;
 - Bao Minh Corporation (Bao Minh) with VND3.034 trillion, holding a market share of 8.34%;
 - PTI Insurance with VND3.020 trillion, holding a market share of 8.30%; and
 - Petrolimex Joint Stock Insurance Company (PJICO) with VND2.467 trillion, holding the market share of 6.78%.
- **Life insurance.** In 2016, Vietnam's life insurance market premiums totalled VND49.677 trillion (29.8% increase from 2015) in which the premiums for new policies were VND16.753 trillion (26.3% increase from 2015). The insurers with the largest market shares for new policies of 2016 were:
 - Prudential Vietnam Assurance Private Ltd with 21.97% of the market share;
 - Bao Viet Life with 20.29% of the market share;

- Manulife (Vietnam) Limited with 13.7% of the market share;
- Dai-ichi Life (Vietnam) with 12.68% of the market share; and
- AIA (Vietnam) Life Insurance Ltd with 11.07% of the market share.

Reinsurance

There are no detailed figures about the reinsurance business for the year 2016 in Vietnam. However, the Insurance Supervisory Authority's report discloses that the total reinsurance premium paid via brokers was VND2.941 trillion (17.9% decrease from 2015). Commission paid to brokers was VND88 billion (7.2 decrease from 2015).

2. What is the regulatory framework for insurance/reinsurance activities?

Regulatory framework

The main legislation regulating insurance activities in Vietnam is the Law on Insurance Business of 2000, as amended in 2010, as well as guiding decrees and circulars issued by governmental authorities. The amended law, which was drafted to be consistent with Vietnam's commitments to the World Trade Organisation (WTO) and international practices, dramatically changed the Vietnam insurance regulatory framework when it came into force in 2011.

The law sets out certain requirements for establishing and operating insurance businesses in Vietnam, including:

- **Legal capital and deposit.** Insurers and reinsurers must deposit a portion of their charter capital equal to 2% of their legal capital into an escrow account opened at a licensed bank in Vietnam (see *Question 9*).
- **Internal controls and checks.** Insurers, reinsurers, and insurance brokers must formulate, implement, and supervise the implementation of, among other matters:
 - rules allocating responsibilities within their respective companies;
 - procedures for the research and development of insurance products; and
 - rules on underwriting, assessment, compensation, and reinsurance.
- They must also establish a system of internal controls and checks in terms of legal compliance. The results of such internal controls and checks must be in writing and kept at the companies.
- **Risk provisioning.** Insurers and reinsurers must set aside operational reserve funds to cover insured liabilities.

- **Credit ratings for offshore insurers and reinsurers.** To provide insurance services to eligible insured parties in Vietnam, offshore insurers and reinsurers must meet certain credit ratings provided by international rating firms listed by Vietnam's Ministry of Finance (see *Question 15*).

For further details, see *Question 13*.

Regulatory bodies

The two key regulatory bodies that oversee the licensing of insurance businesses and activities in Vietnam are:

- The Ministry of Finance.
- The Insurance Supervisory Authority (a subordinate body within the Ministry of Finance).

REGULATION OF INSURANCE AND REINSURANCE CONTRACTS

3. What is a contract of insurance for the purposes of the law and regulation? How does it differ from a contract of reinsurance?

Contract of insurance

Under the Law on Insurance Business, an insurance contract is an agreement between an insurance buyer and an insurance company in which the insurance buyer pays premiums while the insurance company agrees to pay insurance monies to the beneficiary or indemnify the insured on the occurrence of an insured event.

The fortuity principle, meaning that an event must be uncertain to occur, is applied both in law and in practice.

An insurance buyer must have an insurable interest in an insurance contract. Otherwise, the insurance contract will be null and void. Insurable interests are defined to include rights of ownership, rights to possession, rights to use, property rights, and rights and obligations to foster and provide financial support for the insured party.

Contract of reinsurance

There is no explicit definition for contracts of reinsurance under Vietnamese laws. However, the Law on Insurance Business defines the reinsurance business as the operation carried out by an insurance company in which it receives premiums paid by another insurance company for the former's commitment to pay compensation for the agreed insured liabilities.

4. Are all contracts of insurance/reinsurance regulated?

All contracts of insurance/reinsurance are regulated. The Law on Insurance Business sets out requirements for all types of insurance contracts (including, their forms, rights and obligations of both the insurer and the insured, and conditions for termination).

Insurance products in Vietnam are divided into three categories:

- Life insurance products.
- Non-life insurance products.
- Health insurance products.

The Ministry of Finance must approve the rules, terms, and premium scales of life and health insurance products before insurers can sell them to the public. This requirement does not apply to non-life insurance products, except for vehicle insurance, the rules, terms and premium scales of which must be registered with the Ministry of Finance.

However, reinsurance contracts are not specifically regulated under Vietnamese laws.

CORPORATE STRUCTURE

5. What form of corporate organisation can insurers take?

Foreign insurers can participate in Vietnam's insurance market through one or several methods, including:

- **Cross-border supply.** An offshore insurer can sell non-life insurance products to foreign-invested enterprises and foreigners working in Vietnam. A foreign-invested enterprise means an enterprise in which the foreign shareholders' equity accounts for more than 49% of the charter capital of the enterprise. Additionally, an offshore insurer must satisfy certain operational and financial requirements before it can sell insurance products to customers in Vietnam. For example, it must have total assets of at least US\$2 billion for an insurance company or US\$100 million for a reinsurance company and a minimum "BBB+" rating from Standard and Poor's or Fitch, "B++" rating from A.M. Best, and/or a "Baa" rating from Moody's.
- **Company incorporation.** Foreign insurers can establish a limited liability company or a joint stock company in the form of a wholly foreign-owned company or a joint venture with one or more Vietnamese parties to engage in insurance, reinsurance, and brokerage businesses in Vietnam. There are no foreign ownership thresholds for insurance companies.
- **Branch office.** Foreign non-life insurers are allowed to open branches in Vietnam to carry on insurance business activities within the parent company's permitted scope of business and to the extent permitted under the laws of Vietnam.

REGULATION OF INSURERS AND REINSURERS

6. Are all insurers and reinsurers regulated? Are they all regulated in the same way?

All insurers and reinsurers are regulated by the Law on Insurance Business and are generally regulated in the same way.

7. Can insurers and reinsurers carry on non-insurance business? Are there any restrictions on their business activities?

Insurers and reinsurers must carry out the business specified in their licences. Subject to the business lines set out in their licences, insurers and reinsurers can carry out non-core businesses (including providing services related to loss prevention, evaluation, investment in real estate, and the purchase of shares and corporate and government bonds) subject to restrictions on the ratios of idle funds to be used to engage in these non-core businesses as provided for by the law.

However, life insurance companies cannot concurrently carry on their life insurance business and a non-life insurance business. There are exceptions if the life insurance company conducts health insurance or human accident insurance business operations in support of life insurance.

A foreign branch can only conduct practices and sell insurance products that its parent non-life insurance company is permitted to trade in as under the regulations of its home country.

Reinsurance business under the Law on Insurance Business consists of ceding to one or more other insurance companies part

of the liability insured and agreeing to insure again a part or all of the liability which another insurance enterprise has insured.

8. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

The general requirements relating to the transfer of risk are:

- An insurer must not reinsure part or all of an insured liability in order to only earn a commission.
- An insurer can only retain a maximum liability amount on each risk or each separate loss which does not exceed 5% of its own equity capital. A reinsurance company may only retain a maximum liability amount on each risk or each separate loss which does not exceed 10% of its own equity capital.
- An insurer can transfer part of the insured liability to one or more other insurers or reinsurers, but cannot transfer all of the insured liability in an insurance contract to another insurer, reinsurer, or foreign branch.
- An insurer must not reinsure a reinsured risk.

OPERATING RESTRICTIONS

Authorisation or licensing

9. Does the entity or person have to be authorised or licensed?

Insurance/reinsurance providers

Insurers and reinsurers wishing to conduct insurance business in Vietnam must be licensed by the Ministry of Finance (MOF). Vietnamese and foreign individuals or companies wishing to set up insurance or reinsurance companies in Vietnam must satisfy certain general conditions and requirements as set out below:

- **Managers.** Managers must have technical qualifications. Some are also required to reside permanently in Vietnam throughout their terms.
- **Paid-up charter capital.** Capital contributions must be in the form of cash and may not use capital from loans or investment trusts of other entities. Corporate investors contributing 10% or more of the charter capital are required to have conducted a profitable business for three consecutive years before the year of licence submission and to have not incurred cumulative losses prior to the submission of the licence application.
- Corporate investors operating in sectors that require legal capital must undertake that their owner's equity less than minimum legal capital is at least equal to the amount of capital to be contributed. The charter capital must not be less than:
 - for insurance companies: VND300 billion for non-life insurance businesses and VND600 billion for life insurance businesses;
 - for reinsurance companies: VND400 billion for non-life reinsurance or health reinsurance business; VND700 billion for life reinsurance or for both life reinsurance and health reinsurance businesses and VND1.100 trillion for life, non-life and health reinsurance.
- **Deposit.** Insurers and reinsurers must deposit a portion of their charter capital equal to 2% of their legal capital into an escrow account opened at a licensed bank in Vietnam.
- **Total assets.** For foreign companies, the parent entity must have total assets of at least US\$2 billion in the year prior to the year of submitting an application file for branch establishment in Vietnam. For Vietnamese companies, the parent company must have at least VND2 trillion in total assets. Foreign non-life

insurers are only allowed to open branches in Vietnam. A branch office of a foreign non-life insurer must be licensed by the MOF before operation. In order to obtain this licence, the parent entity must:

- have been operating in the non-life insurance business for ten years or more;
- have total assets of at least US\$2 billion in the year prior to the year of submitting an application file for branch establishment in Vietnam;
- have conducted business profitably for three consecutive financial years prior to the year of submitting the application file;
- have a head office in a country which is a member to a treaty on insurance cross-border services with Vietnam;
- Capital contributions must be legal and it is not permissible to use capital from borrowing, or investment trust funds, in any form. In addition, the insurance authority of the country in which the parent company is headquartered must have signed a co-operation agreement with the MOF on the management and supervision of the activities of foreign non-life insurance company branches in Vietnam, and the branch office must have capital of at least VND200 billion.

Insurance/reinsurance intermediaries

Insurance agents. An insurance agent can be an individual or a company. They must be authorised by a licensed insurance company through an insurance agency contract.

Individuals who conduct insurance agency activities must:

- Be Vietnamese citizens and reside permanently in Vietnam.
- Be 18 years of age or older, have full capacity for civil acts, and be of good standing.
- Possess insurance agency certificates as granted by training institutions approved by the MOF.

Companies that conduct insurance agency activities must:

- Be lawfully established and operating in Vietnam.
- Ensure that staff who directly perform insurance agency activities satisfy the conditions set out above for individual agents.

Insurance brokers. Domestic insurance brokers must be licensed by the MOF and only companies, not individuals, can act as insurance brokers. They must:

- Be companies established in the finance, banking, and/or insurance areas.
- Have paid-up charter capital of not less than the required legal capital of VND4 billion.

Foreign insurance companies that wish to establish wholly foreign-owned insurance brokerage subsidiaries in Vietnam, joint stock companies, or joint ventures with Vietnamese partners must also:

- Have been lawfully operating in the insurance business for ten years or more.
- Have conducted business (either within or without the insurance business) profitably for three consecutive financial years prior to the year of submitting an application file for company establishment or a joint venture.
- Have obtained all necessary licences and approvals for the provision of brokerage insurance in their home country.
- Be of good standing.

Other providers of insurance/reinsurance-related activities

There appear to be no other entities that provide insurance/reinsurance-related activities other than those mentioned above regarding insurers/reinsurers and their intermediaries.

10. What are the main exemptions or exclusions from authorisation or licensing?

There are no major exemptions or exclusions applicable (see *Question 9*).

Restrictions on ownership and control

11. Are there any restrictions on the ownership or control of insurance-related entities?

Insurance/reinsurance providers

Managers of insurance or reinsurance companies must satisfy general conditions (see *Question 9*). Additionally, depending on the position, a manager must have two to five years of experience.

There are no foreign ownership or control restrictions except that foreign investors can only establish:

- Limited liability insurance and reinsurance companies.
- Joint stock companies.
- Non-life insurance or reinsurance branches in Vietnam.

The conditions for managers of a branch office of a foreign non-life insurer are the same as those applicable to managers of insurers or reinsurers.

Insurance/reinsurance intermediaries

Insurance agents. An officer or employee of an insurer cannot act as an insurance agent of that insurer.

Brokers. The same conditions for the managers of insurers or reinsurers apply to brokers (see *above, Insurance/reinsurance providers*).

Other providers of insurance/reinsurance-related activities

Not applicable. See *Question 9, Other providers of insurance/reinsurance-related activities*.

12. Must owners or controllers be approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?

Insurance/reinsurance providers

An insurance or reinsurance company must notify and obtain the approval of the Ministry of Finance (MOF) for transfers of shares representing 10% or more of the charter capital of that company.

The MOF's approval is required for:

- Changes of key corporate officers (these include the chairman of the board of management, the general director (or director), or the appointed actuary of the company).
- Changes to the name of the company.
- Setting up and termination of branches and representative offices of the company.
- Changes to the head office address.
- Changes to the scope and contents of operations.

- The split, merger or consolidation of the company.

For the branch office of a foreign non-life insurer, the MOF's approval must be obtained before:

- It increases or decreases its approved capital.
- Changes are made to the director of the branch or the appointed actuary.

If the parent company changes its chairman of the board of management or the general director, or changes the name of the branch, the registered office address, or the scope and contents of operations, then the branch must notify the MOF.

Insurance/reinsurance intermediaries

See *above, Insurance/reinsurance providers*.

Other providers of insurance/reinsurance-related activities

Not applicable. See *Question 9, Other providers of insurance/reinsurance-related activities*.

ONGOING REQUIREMENTS FOR THE AUTHORISED OR LICENSED ENTITY

13. What are the key ongoing requirements with which the authorised or licensed entity must comply?

Insurance/reinsurance providers

Insurance and reinsurance providers are subject to requirements in relation to:

- **Charter capital.** Contributed charter capital must be maintained at no less than the required legal capital.
- **Risk provisioning.** The legally required reserve funds for operational risks must be maintained.
- **Solvency.** The minimum solvency margin must be maintained.

For non-life insurance, the minimum solvency margin is the greater of:

- 25% of the total insurance premiums actually retained at the time of determining the solvency margin; or
- 12.5% of the total primary insurance premiums plus reinsurance premiums at the time of determining the solvency margin.

For life and health insurance, the minimum solvency margin is:

- for contracts with terms of five years or less, the aggregate of 4% of the reserve funds for risk provisioning and 0.1% of the sums insured; or
- for contracts with terms greater than five years, the aggregate of 4% of the insurance reserve funds for risk provisioning and 0.3% of the sums insured.
- **Deposit.** A deposit of a portion equivalent to 2% of their legal capital must be set aside into an escrow account opened at a licensed bank in Vietnam. See *Question 2*.

Branch offices of a foreign non-life insurer are subject to requirements in relation to:

- **Contributed capital.** The capital contributed by the parent entity must be maintained at no less than the required legal capital (VND200 billion).
- **Compulsory reserves fund.** 5% of its annual post-tax profits must be set aside for a compulsory reserve fund of up to 10% of the branch's allocated capital.

Insurance/reinsurance intermediaries

Insurance brokers are subject to the following requirements for:

- **Charter capital.** Brokers must maintain their contributed charter capital in an amount no less than the required legal capital.
- **Deposit.** The same conditions apply as those of insurance and reinsurance providers (see above).
- **Professional liability insurance.** Brokers must buy and maintain professional liability insurance.

Other providers of insurance/reinsurance-related activities

Not applicable. See *Question 9, Other providers of insurance/reinsurance-related activities.*

Penalties for non-compliance with legal and regulatory requirements

14. What are the possible consequences of an entity failing to comply with applicable legal and regulatory requirements? What recourse do policyholders have if they have done business with a non-approved entity?

Insurance/reinsurance providers

If an insurance or reinsurance provider fails to comply with the applicable laws and regulatory requirements, it is subject to the following key sanctions:

- Administrative sanctions:
 - the maximum fine for individuals is VND100 million and the fines for a company may be up to VND200 million; and
 - additional penalties may be imposed on the violators such as the suspension of operations for a certain term or the revocation of licences.
- Claims for damages and penalties by claimants through civil action.
- Criminal penalties (fines or imprisonment) where fraudulent acts are involved.

If a policyholder has entered into an insurance contract with a non-authorized insurer, it is likely that the insurance contract will be held void on the basis of violating relevant legal provisions on licences. If so, the policyholder has recourse and may claim premiums paid and damages.

Insurance/reinsurance intermediaries

Similar sanctions as applied to insurers apply to intermediaries and other providers of insurance/reinsurance-related activities (see above, *Insurance/reinsurance providers*).

Other providers of insurance/reinsurance-related activities

Not applicable. See *Question 9, Other providers of insurance/reinsurance-related activities.*

RESTRICTIONS ON PERSONS TO WHOM SERVICES CAN BE MARKETED OR SOLD

15. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?

The restrictions on the persons to whom insurance services and contracts can be marketed or sold are:

- Insurance buyers must have full capacity for civil acts (generally, they must be 18 years of age or older).
- Insurance buyers must have an insurable interest in the coverage, see *Question 3* for a definition of insurable interests.

- Offshore insurers can only sell non-life insurance products to foreign-invested enterprises in which the foreign investor(s) owns more than 49% of the charter capital and foreigners working in Vietnam. See *Question 5* for the conditions an offshore insurer must satisfy to sell products in Vietnam.

REINSURANCE MONITORING AND DISCLOSURE REQUIREMENTS

16. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?

The extent to which a reinsurance company can monitor claims, settlements, and underwriting of the cedant company is typically set out in the reinsurance contract. There are no mandatory legal provisions in relation to reinsurance contracts which would regulate this monitoring.

17. What disclosure/notification obligations does the cedant company have to the reinsurance company?

There are no mandatory legal provisions on notification obligations. The obligations should be agreed by the parties in the relevant reinsurance contract.

INSURANCE AND REINSURANCE POLICIES Content requirements and commonly found clauses

18. What are the main general form and content requirements for insurance policies? What are the most commonly found clauses?

Form and content requirements

Insurance contracts must be made in writing. In addition, the Ministry of Finance must approve the rules, terms, and premium scales of life and health insurance products before those products can be sold to the public.

The rules, terms and premium scales for motor vehicle insurance must be registered with the Ministry of Finance before providing insurance products. For all other non-life insurance products, a non-life insurance business or foreign branch may itself formulate its insurance rules, terms and premium scales. Also see *Question 21, Insurance policies.*

Commonly found clauses

Commonly found provisions in insurance contracts, and which are also statutorily required, include:

- Names and addresses of the insurance company, insurance buyer, insured or beneficiary.
- Object of insurance.
- Sum insured, value of the insured property for property insurance.
- Insurance scope, insurance conditions, insurance terms.
- Terms on exclusion of insured liability.
- Insurance duration.
- Premium rate, mode of premium payment.
- Time limit and mode for paying insurance monies or indemnity.
- Provisions on the settlement of disputes.
- Day, month, and year of concluding the contract.

19. Is facultative or treaty reinsurance more common? What are the most commonly found clauses in reinsurance policies?

Facultative/treaty reinsurance

There are no statistics on this. However, the authors believe that facultative reinsurance is more common in Vietnam.

Commonly found clauses

Common clauses for a reinsurance contract include the following:

- Fees.
- Each party's respective share of the insured amounts.
- Events in which the payment obligations of the reinsurer are exempted (for example, when the insurer wrongly compensates the insured).

IMPLIED TERMS

20. Are there any terms that are implied by law or regulation (even if not included in the insurance or reinsurance contract)?

Vietnam law requires a general duty of good faith and fair dealing. The courts will construe ambiguities in insurance contracts in favour of insurance buyers.

CUSTOMER PROTECTIONS

21. How do customer protections in the general law affect insurance contracts? What customer protections are generally included in insurance policies to supplement this?

General law

Consumer protection in Vietnam is regulated by the Law on Consumer Protection 2010 and its guiding decree of 2011. The Law on Consumer Protection provides less protection than the Law on Insurance Business does, because the former deals with consumers in a broad sense across a variety of business areas. However, the Law on Consumer Protection sets out other requirements for contracts with end-consumers, which also apply to insurance transactions.

Insurance policies

Under the Law on Consumer Protection of 2010, certain provisions of contracts with end-consumers, including insurance contracts, are invalid and unenforceable, for example those that:

- Restrict or exclude the consumer's right to make complaints and institute lawsuits.
- Allow organisations or individuals providing services to unilaterally change the terms and conditions of the contract.
- Exclude liabilities of organisations providing services where those organisations provide such services through a third party.
- Force consumers to comply with their obligations even if the organisation providing the services has not fulfilled its obligations.

If a standard form contract breaches a legal provision on consumer protection, then the Vietnamese authorities can require the drafting party to either revise or rescind the violating clauses. Even if a standard form contract provides that dispute resolution will be through arbitration, the consumer can choose to bypass this forum and bring the dispute before courts.

Under the current law, life insurance contracts must be registered with the Ministry of Industry and Trade to ensure compliance with the laws on consumer protection.

STANDARD POLICIES OR TERMS

22. What are the main standard policies or terms produced by trade associations or relevant authorities?

There are currently no standard policies or terms produced either by trade associations or the relevant authorities in Vietnam. The Law on Insurance Business and its guiding legislation set out mandatory and optional requirements for the parties to follow.

INSURANCE AND REINSURANCE POLICY CLAIMS

Establishing an insurance claim

23. What must be established to trigger coverage under an insurance policy?

An insurance claim is triggered when the following elements are met:

- An insurance contract has been entered into.
- Either:
 - the premium has been paid in full by the buyer; or
 - the insurer has allowed payment of the premium to be deferred.
- An insured event has occurred.

THIRD PARTY INSURANCE CLAIMS

24. What are the circumstances in which third parties can claim under an insurance policy?

The law does not set out any circumstances in which third party beneficiaries who are not the insurance buyer can claim under an insurance policy. In practice, third parties can claim on the occurrence of an insured event given in their policies. However, the Civil Code of 2015 provides an exception that if mortgaged property is insured, the mortgagee (the party taking security) must notify the insurer of the mortgage. Otherwise, the mortgagee cannot directly claim against the insurer.

TIME LIMITS

25. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

The time limits are:

- One year from the date of occurrence of the insured event, except for the case of *force majeure*.
- If the claimant can successfully prove that it did not know the date of occurrence of the insured event, the time limit of one year will run from the date when that claimant becomes aware of the occurrence of the insured event.

ENFORCEMENT

26. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

The original policyholder or other third party cannot enforce the reinsurance contract against a reinsurer and can only claim against the insurer.

REMEDIES

27. What remedies are available for breach of an insurance policy?

The remedies available for the parties, as set out under the relevant contracts or civil law, are:

- Specific performance.
- Damages.
- Penalties.
- Termination.

Additionally, the Law on Insurance Business provides that, where the insurable interest ceases to exist, then either party can terminate the contract and the insurer must refund the buyer part of the paid insurance premium which corresponds to the remaining duration of the insurance contract, after deducting expenses.

PUNITIVE DAMAGE CLAIMS

28. Are punitive damages insurable? Can punitive damages be reinsured if they are covered by an underlying policy?

The concept of punitive damages does not exist under Vietnamese law. However, contracting parties can agree in their contract that if there is a breach, the breaching party must pay the non-breaching party an agreed penalty amount. The maximum amount of penalty depends on the nature of the contract (civil, commercial, or construction). Theoretically, these penalty amounts can be insured and reinsured. However, as Vietnam's insurance market is in an early stage, and because insurance policies generally exclude coverage for liabilities arising out of breach of contract, such coverage has not yet been seen in the market.

INSOLVENCY OF INSURANCE AND REINSURANCE PROVIDERS

29. What is the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services? What regulatory and/or other protections exist for policyholders if the insurance company is insolvent?

The main regulatory framework for this matter is the Law on Insurance Business and the Law on Bankruptcy of Vietnam.

Once an insurer is in the stage of insolvency, it must immediately report its financial status and reasons for insolvency to the Ministry of Finance (MOF). The stage of insolvency is when the insurer's solvency margin is below the statutory thresholds (see *Question 13*). During this stage, the insurer must work out a plan to overcome its financial difficulties, which must be approved by the MOF. If the insurer does not become solvent in accordance with the approved plan, then the MOF will issue a decision on the establishment of a Solvency Control Committee to directly monitor

the insurer's measures to become solvent. If the insurer is still insolvent but can still pay outstanding debts, then it may be dissolved. Otherwise, it must undergo bankruptcy proceedings as provided for under the Law on Bankruptcy of 2014.

If bankruptcy proceedings have begun for an insurer, then the policyholders are considered as unsecured creditors of that insurer. Their priority for payment ranks below those of secured creditors, court fees for the bankruptcy proceedings, unpaid payments to employees, and state insurance schemes.

The current Law on Insurance Business sets out a separate legal framework for the establishment of an Insured Protection Fund. This fund is to protect the insured in case an insurance company is insolvent or bankrupt. The fund would be financed by extraction of statutorily mandated percentages on the premiums of the insurance contracts. In September 2014, this fund was set up and managed by the Association of Vietnamese Insurers.

30. Can excess insurance policies "drop down" to provide coverage if the primary insurer goes into insolvency?

Vietnamese law is silent on this issue and leaves this to be subject to the agreement of the involved parties. As a result, if the parties do not agree on conditions for first payment by the primary insurer, then on insolvency of the primary insurer, the insurance provider who provides excess insurance amounts must pay the claimant the excess insurance amount.

31. Is a right to set-off mutual debts and credits recognised in an insolvency proceeding involving an insurer or reinsurer?

A right to set-off mutual debts and credits is recognised in an insolvency proceeding involving an insurer or reinsurer. However, any insurance claims underlying those debts or credits must be made after the court has issued a decision to open bankruptcy proceedings against the insurer.

TAXATION OF INSURANCE AND REINSURANCE PROVIDERS

32. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services?

Insurers and reinsurers located in Vietnam are subject to corporate income tax (CIT) and value added tax (VAT) at the following rates:

- CIT: generally 20%.
- VAT, as follows:
 - certain insurance services, for example, life and health insurance, reinsurance, among others, are allowed VAT exemptions;
 - insurance companies can enjoy a VAT rate of 0% for insurance services provided to companies located in non-tariff zones or overseas organisations and individuals;
 - overseas organisations without permanent establishments in Vietnam do not pay VAT in Vietnam; and
 - a VAT rate of 10% applies to the remaining services.

Offshore insurers are subject to foreign contractor's tax in Vietnam, which is composed of CIT and VAT. The tax calculation for offshore insurers is more complicated. Depending on the circumstances, for example, whether a potential tax payer has a permanent

establishment in Vietnam, the law provides different ways for calculating taxes.

INSURANCE AND REINSURANCE DISPUTE RESOLUTION

33. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes?

There are no special procedures or venues for insurance-related disputes.

34. Are arbitration clauses in insurance and reinsurance agreements enforceable?

Subject to the requirements for validity of an arbitration clause under Vietnam's arbitration law, including the requirement that it must be made in writing, an arbitration clause in an insurance contract is only enforceable if the insurance buyer, as a consumer, agrees to arbitration at the time of dispute. This is regardless of whether an arbitration clause is included in a standard-form insurance policy. Otherwise, he can opt for a court settlement (see *Question 21*).

Subject to the satisfaction of the requirements for validity of an arbitration clause under Vietnam's arbitration law, an arbitration clause in a reinsurance agreement is enforceable.

35. Are choice of forum, venue and applicable law clauses in an insurance or reinsurance contract recognised and enforced?

These clauses are enforced in Vietnam. However, if no party to the contract is a foreign individual or entity, then a Vietnam forum, venue, and governing law must be used. If a party is a foreign individual or entity, then a foreign forum, venue, and governing law may be used.

REFORM

36. What proposals are there for reform of the law, regulation or rules relating to the provision of insurance or reinsurance services?

There are no proposals for reform of the law or regulations in insurance business in the near future.

MAIN INSURANCE/REINSURANCE TRADE ORGANISATIONS

The Association of Vietnamese Insurers (Hiệp hội Bảo hiểm Việt Nam)

Main activities. Representing and protecting the rights of Vietnamese insurers, reinsurers, and brokerage firms. Operating the Insured Protection Fund. Representing the insurance industry in participating in the process of drafting laws and regulations on insurance. Providing education and training services. Providing mediation services and other services.

W www.avi.org.vn

ONLINE RESOURCES

Ministry of Justice of Vietnam

W <http://moj.gov.vn>

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