Insurance and Reinsurance in Vietnam: Overview

by Nu Thi To Nguyen, *Tilleke & Gibbins*

Country Q&A | Law stated as at 01-Dec-2022 | Vietnam

A Q&A guide to insurance and reinsurance in Vietnam.

The Q&A gives a high level overview of the market trends and regulatory framework in the insurance and reinsurance market; the definitions for a contract of insurance and a contract of reinsurance; the regulation of insurance and reinsurance contracts; the forms of corporate organisation an insurer can take; and the regulation of insurers and reinsurers, including regulation of the transfer of risk. It also covers: operating restrictions for insurance and reinsurance entities; reinsurance monitoring and disclosure requirements; content requirements for policies and implied terms; insurance and reinsurance claims; remedies; insolvency of insurance and reinsurance providers; taxation; dispute resolution; and proposals for reform. Finally, it provides websites and brief details for the main insurance/reinsurance trade organisations in Vietnam.

Market Trends

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

In 2021, there were 75 insurance companies (both domestic and foreign-invested enterprises) operating in Vietnam, including:

- 31 non-life insurers, including one branch of a foreign non-life insurance company.
- 19 life insurers.
- 23 insurance brokers.
- Two reinsurance companies.

In addition, there were 21 representative offices of foreign insurance companies in Vietnam and one representative office of a foreign non-life insurance company.

The statistics below are based on an overview of Vietnamese insurance market in 2021 published by the Insurance Association of Vietnam.

Insurance

2021 saw steady growth in the insurance business in Vietnam despite the adverse impact of the COVID-19 pandemic. The total premium income in life and non-life markets combined reached VND217,338 billion (a 16.71% increase from 2020).

- **Non-life insurance.** In 2021, Vietnam's non-life insurance market premium income totalled VND57,880 billion (a 3.98% increase from 2020) and total insurance compensation paid out was VND19,355 billion.
- The top five insurers in terms of premium income were:
  - Bao Viet Holdings with a market share of 15.48%;
  - Petrovietnam Insurance Joint Stock Corporation (PVI) with a market share of 14.45%;
  - Post and Telecommunication Joint Stock Insurance Corporation (PTI) with a market share of 10.02%;
  - Bao Minh Insurance Corporation with a market share of 7.64%; and
  - MIC with a market share of 6.44%.
- **Life insurance.** In 2021, Vietnam's life insurance market premiums totalled VND159,458 billion (a 22% increase from 2020) in which the premiums for new policies were VND49,549 billion (a 18.5% increase from 2020). The insurers with the largest market shares for new policies in 2021 were:
  - Bao Viet Life with a market share of 19.15%;
  - Manulife (Vietnam) Limited with a market share of 18.62%;
  - Prudential Vietnam Assurance Private Limited with a market share of 18.06%;
  - Dai-ichi Life (Vietnam) with a market share of 11.69%; and
  - AIA (Vietnam) Life Insurance Limited with a market share of 10.38%.

Insurance brokerage

According to an industry journal article, the total insurance premiums arranged through insurance brokers in 2021 were VND13,011 billion (an 18.2% increase from 2020), in which original insurance premiums reached about VND 6,790 billion (a 13.1% increase from 2020), and reinsurance premiums reached VND5,200 billion (a 26.8% increase from 2020).

Total insurance brokerage commission revenue in 2021 reached about VND1,000 billion (a 25.7% increase from 2020), in which original insurance brokerage commissions reached about VND800 billion (a 13.4% increase from 2020), and reinsurance brokerage commissions reached about VND210 billion (a 43.4% increase from 2020).

Emerging risks

Insurance enterprises faced immense difficulties in 2021, with revenue adversely affected by pandemic control measures. For instance, several processes involved in the sale of life insurance, such as medical checkups and getting direct signatures from insurance buyers, were delayed because of the tight lockdown across the country. This also resulted in the insured's postponement of compensation. In addition, sales of some types of non-life insurance, such as vehicle insurance and travel insurance, were significantly reduced due to a lack of need. The insurance sector was also influenced by natural disasters.

Despite huge challenges in 2021, some insurance enterprises adapted to the situation by diversifying their distribution networks and co-operating with fintech companies (such as Shopee, Tiki, Lazada, Grab, Momo). Further, the Vietnamese legal framework created a solid ground for electronic insurance certificates for vehicle owners and compulsory fire insurance.

Regulatory Framework

2. What is the main legislation and regulatory authorities for insurance and reinsurance activities in your jurisdiction?

The main legislation regulating insurance activities in Vietnam is the Law on Insurance Business of 2000, as amended in 2010 and 2019, as well as guiding decrees and circulars issued by governmental authorities. The Law on Insurance Business of 2000 along with its amendments will be replaced by the new Law on Insurance Business which was enacted on 16 June 2022 and will come into effect on 1 January 2023.

The Insurance Supervisory Authority under the Ministry of Finance is the principal authority supervising insurance related activities in Vietnam.

In general, regulations applicable to an insurance subsidiary in Vietnam do not extend to a foreign insurance group to which the subsidiary belongs. However, if the foreign insurance group provides cross-border insurance or reinsurance services in Vietnam, it will be subject to Vietnamese law.

3. Which types of insurance and reinsurance activities and insurers are regulated in your jurisdiction?

Under Vietnamese law, enterprises conducting insurance business, reinsurance business and insurance brokerage activities must be licensed by the Ministry of Finance (MOF). For insurance agency services and services auxiliary to insurance, enterprises providing these services do not need to be licensed by the MOF but their employees must satisfy certain legal requirements to provide the services.

Insurance companies are classified into joint stock insurance companies, limited liability insurance companies, insurance cooperatives, and mutual insurance organisations. There are three main types of insurers, depending on the products the insurers provide, including life insurance companies, non-life insurance companies and health insurance companies.

Vietnam does not have a specific regulation for Islamic insurance (*takaful*).

Authorisation

Insurers and Reinsurers

4. What authorisations are required to carry our insurance and reinsurance activities in your jurisdiction and how are they obtained?

Application

Insurers and reinsurers wishing to conduct insurance business in Vietnam must obtain an establishment and operation licence issued by the MOF. The procedure to obtain the licence can be found at *https://mof.gov.vn/webcenter/portal/TrangdchvcngBTC/pages_home*. (Please note that this published procedure may not be up to date. Thus, it is recommended to consult legal advisors for the applicable procedure.)

The documents necessary for obtaining an establishment and operation licence include:

- Application form. This form is standard and can be found in Circular No. *50/2017/TT-BTC* of 15 May 2017 of the MOF as amended from time to time.
- Draft charter of the enterprise.
- Operational plan for the first five years, clearly stating the methods for establishment of insurance reserves, reinsurance programme, capital investment, business efficiency, solvency of the insurer and economic benefits of the establishment of the enterprise.
- List, CVs and diplomas evidencing the capabilities and professional qualifications of the managers and officers of the enterprise.
- Level of capital contribution, capital contribution method, and list of organisations and individuals that hold 10% or more of the charter capital; financial situation and other information relating to such organisations and individuals.
- Insurance regulations, terms, schedules of premiums and commissions of the insurance products planned to be offered.

The licence application fee is VND140 million (approximately USD6,020) for life insurers and reinsurers; VND70 million (approximately USD3,010) for non-life insurers and reinsurers; and VND4 million (approximately USD170) for insurance brokers. There are no ongoing fees.

Conditions

Vietnamese investors can set up an insurance company in the form of a joint stock or limited liability company. Foreign investors can set up the same corporate forms, as well as non-life insurance or reinsurance branches in Vietnam.

The general conditions and requirements for setting up insurance or reinsurance companies in Vietnam are as follows:

- **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.
- Corporate investors operating in sectors that require legal capital must undertake that their owner's equity less the minimum legal capital is at least equal to the amount of capital to be contributed. In general, the charter capital must not be less than:
    - for insurance companies: VND300 billion for non-life and health insurance businesses, and VND600 billion for life insurance businesses; and
    - for reinsurance companies: VND400 billion for non-life reinsurance or for both non-life reinsurance and health reinsurance businesses; VND700 billion for life reinsurance or for both life reinsurance and health reinsurance businesses and VND1.1 trillion for life, non-life and health reinsurance businesses.
    - The minimum legal capital may be higher for insurance businesses in specific sectors.
- **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 USD2 billion in the year prior to the year of submitting an application file. For Vietnamese companies, the parent company must have at least VND2 trillion in total assets.
- 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 lawfully operating in the non-life insurance business for seven years or more;
    - have total assets of at least USD2 billion in the year prior to the year of submitting an application file for branch establishment in Vietnam;
    - have not committed any serious breach of the law on insurance business activities of the home country for the three years immediately preceding the year of application;
    - 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 being a member to a treaty in which Vietnam has agreed to the establishment of branches of foreign non-life insurers in Vietnam; and
    - implement capital contributions legally; 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.

Key Stages and Timing

According to the law, the MOF has 21 working days from receiving the application file to request any supplementation or amendment. Such supplementation or amendment must be made within six months of the date of request. The decision on an application will be made within 60 days on receipt of a legitimate application file. However, this timeline is longer in practice for the officials in charge to review the dossiers.

Duration and Renewal

The duration of authorisation is normally from 20 to 50 years, at the discretion of the licensing authority. The term is renewable. To extend the operation duration, the company must satisfy conditions prescribed under the law and submit a request file to the MOF for consideration and decision.

Insurance Intermediaries

5. How are insurance intermediaries regulated? What authorisations do they require?

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 and have full capacity for civil acts.
- 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 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 insurance companies, or joint ventures with Vietnamese partners must also:

- Contribute capital in cash; it is not permissible to use capital from loans or investment trusts of other entities.

- Have been lawfully operating in the insurance brokerage business for seven years or more.
- Have not committed any serious breach of the law on insurance brokerage business activities of the home country for the three years immediately preceding the year of application.
- Have conducted business (either within or outside the insurance brokerage 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 from the insurance authority of their home country for the provision of insurance brokerage in Vietnam.

Providers of services auxiliary to insurance. A provider of services auxiliary to insurance (including cross-border services) can be an individual or a company. However, the individual can only provide insurance consultancy services, while the company can provide full services auxiliary to insurance. An individual who provides insurance consultancy services must:

- Be 18 years or older with full civil act capacity.
- Have a university or higher-level degree in the specialised insurance sector. If the individual does not have such degree, then he or she must have a university or higher-level degree in another specialty and also a certificate of insurance consultancy issued by a training institute lawfully established and operating either in Vietnam or abroad.

An organisation that provides services auxiliary to insurance must:

- Have legal entity status and be duly incorporated and operating.
- Ensure that any individuals directly providing the services auxiliary to insurance within the organisation are 18 years or older with full legal capacity Each individual must also have a diploma or certificate appropriate for each type of services auxiliary to insurance provided, and the certificate must be issued by a training institute lawfully established and operating either in Vietnam or abroad.
- Individuals directly engaged in insurance loss assessment activities must also satisfy the criteria for assessors stipulated in the commercial law, which requires an appropriate university or college degree, professional certificate, and three years of experience in assessment of goods or services.
- Individuals directly providing actuarial services must also satisfy the criteria on compliance with law, ethics, qualifications, insurance actuarial practicing experience and membership in the International Actuarial Association.
- A foreign individual or organisation who provides cross-border services auxiliary to insurance to entities in Vietnam who are not insurers, foreign insurance branch offices, or insurance brokerages in Vietnam must cooperate with a licensed provider of services auxiliary to insurance in Vietnam.

Exemptions and Foreign Insurers

6. Are there exemptions or exclusions from authorisation or licensing? Are there specific exemptions or exclusions for foreign entities to carry on insurance or reinsurance business in your jurisdiction?

There are no major exemptions or exclusions applicable.

Fronting

7. Is fronting prohibited or are there any limitations to such insurance arrangement?

Vietnam law does not prohibit fronting. However, fronting may be subject to some limitations. For example, in the case of construction insurance, the fronting ratio is capped at 90% of total insurance coverage.

Legal Forms

8. What legal forms are generally used for insurance and reinsurance business? Does a specific corporate form have to be used?

Vietnamese investors can carry out insurance and reinsurance business in the following forms:

- Joint stock insurance companies.
- Limited liability insurance companies.
- Insurance cooperatives.
- Mutual insurance organisations.

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 USD2 billion for an insurance company or USD100 million for an insurance brokerage and a minimum "BBB" rating from Standard and Poor's or Fitch, "B++" rating from A.M. Best, and/or a "Baa1" 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 and health 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.
- **Representative office.** Foreign insurers and foreign insurance brokerages are allowed to open representative offices in Vietnam as liaison offices. A representative office is permitted to conduct market surveys and support the investment projects of the foreign insurer or foreign insurance brokerage in Vietnam. However, it is not permitted to engage in any sales or other revenue-generating activities in Vietnam.

Restrictions on Insurance Activities

9. Are there restrictions on the types of insurance activities that authorised entities can carry out? Can insurers and reinsurers carry on non-insurance business?

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 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.

Ownership Restrictions

10. Are there restrictions on the ownership or control of insurance-related entities in your jurisdiction?

There are no notable restrictions on ownership of insurance-related entities, including foreign ownership. However, nominee arrangements are generally prohibited under Vietnamese laws.

11.Must owners or controllers notify or obtain approval before taking, increasing or reducing their control or ownership of an insurance-related entity?

An insurance, reinsurance or insurance brokerage company must notify and obtain the approval of the MOF for any transfer 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 or charter capital of the company.
- Setting up and termination of branches and representative offices of the company.
- Changes to the address of head office, branch or representative office of the company.
- 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.

Ongoing Requirements

12. What are the key ongoing requirements for an authorised entity?

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 or reinsurance, 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 or reinsurance, the minimum solvency margin is:

  - for unit-linked insurance contracts, 1.5% of the insurance reserve funds plus 0.3% of the sums insured which carry risks;
  - for universal life insurance contracts and retirement insurance contracts, 4% of the insurance reserve funds plus 0.3% of the sums insured which carry risks;
  - for other life and health insurance contracts:
  - for contracts with terms of five years or less, the aggregate of 4% of the reserve funds and 0.1% of the sums insured; and
  - for contracts with terms greater than five years, the aggregate of 4% of the insurance reserve funds and 0.3% of the sums insured.

- **Deposit.** A deposit of a portion equivalent to 2% of the enterprise's legal capital must be set aside into an escrow account opened at a licensed bank in Vietnam. See *Question 4*.
- **Financial statements.** Insurance and reinsurance providers must disclose their financial statements.

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 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.
- **Financial statements.** Insurance brokers must disclose their financial statements.

Penalties for Non-Compliance

13. What are the penalties for non-compliance with the regulatory requirements?

If insurance or reinsurance providers, insurance intermediaries and other providers of insurance or reinsurance-related activities fail to comply with the applicable laws and regulatory requirements, they are subject to the following key sanctions:

- Administrative sanctions:
  - the maximum fine for individuals is VND100 million and the fine 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-authorised 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.

Sales and Marketing

14. Are there any requirements or restrictions on how insurance/reinsurance services are sold and marketed?

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. Insurable interests are defined to include rights of ownership, rights of possession, rights of use, property rights, and rights and obligations to foster and provide financial support to the insured party.
- 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 8* for the conditions an offshore insurer must satisfy to sell products in Vietnam.
- In general, there are no special rules for dealing with vulnerable customers under Vietnamese insurance laws.

Transfer of Risk

15. What are the restrictions on a transfer of insurance or reinsurance business and risk? Is there a specific mechanism for this?

The general requirements relating to the transfer of risk are:

- 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.
- The transfer of an entire insurance contract for one or several insurance operations between insurance companies can be effected in the following cases:
  - the insurance company holding the contract is in danger of insolvency;
  - the insurance company holding the contract is split up, separated, consolidated, merged or dissolved; or

  - it is so agreed upon between the insurance companies.

- The transfer of insurance contracts can be carried out under the following conditions:
  - the transferee is carrying out the insurance business to be transferred;
  - the rights and obligations under the to-be-transferred insurance contracts must not be altered until the insurance contracts expire;
  - the transfer of insurance contracts must be made together with the transfer of funds and professional reserves related to the entire insurance contracts to be transferred; and
  - the insurance companies transferring the insurance contracts must file their applications proposing the transfer of insurance contracts to the MOF, clearly stating the reasons and plans of transfer, together with the to-be-transferred contracts. The transfer of an insurance contract can be carried out only after it has been approved in writing by the MOF. Within 30 days from the date of approval, the insurance contract-transferring enterprises must make public the transfer and notify it in writing to the insurance buyers.

Reinsurance Contracts and Risks

16. Is facultative or treaty reinsurance more common? What are the most common 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.

Common 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).

17. Can insurers cede risks without limitation to foreign reinsurers?

Vietnam-based insurers can only cede risk to an eligible foreign reinsurer subject to the threshold discussed in *Question 8* above.

18. Does a reinsurance company typically 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.

19. Does the cedant company have disclosure/notification obligations 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.

Contracts and Policies

Content Requirements and Common Clauses

20. 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. See *Question 14* for a definition of insurable interests.

Contract of Reinsurance

There is no explicit definition for contracts of reinsurance under Vietnamese laws. However, the Law on Insurance Business defines 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.

21. What are the main general form and content requirements for insurance policies? What are the most common clauses?

Form and Content Requirements

Insurance contracts must be made in writing. In addition, the MOF 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 MOF 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 23, Insurance policies*.

Common 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 and 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.

Implied Terms

22. Are any terms implied by law or regulation (even if not included in an 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

23. How do customer protections in 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 of 2010 and its guiding legislation. 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, 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 file 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 laws and regulations, life insurance standard contracts must be registered with the MOF then be published on the website of the Ministry of Industry and Trade.

Standard Policies or Terms

24. 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.

Claims

Establishing a Claim

25.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.

Time Limits

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

The time limit is 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.

Subrogation

27. Does an insurer have subrogation rights to claim against third parties who have caused loss to the insured? What conditions must be satisfied to do this?

For life and health insurance, in cases where the death, injury or illness of an insured was caused directly or indirectly by the act or omission of a third party, the insurer will remain obliged to pay the insurance proceeds and will not have the right to demand reimbursement of the money that it has paid to the insured from the third party.

For property insurance, the insurer has subrogation rights to claim against third parties when the following conditions are satisfied:

- The third parties are at fault.
- The insurer has already indemnified the insured.

Third Party Claims

28. In what circumstances can third parties 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.

29. 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 (unless otherwise agreed in the insurance policy).

Insurance of Punitive Damages

30. 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.

Remedies for Breach of Policy

31. What remedies are available to the insurer and to the insured for breach of the insurance policy by the other party? On what basis are they claimed?

Insurer's Remedies

An insurer can terminate the policy and claim damages in one of the following cases:

- The insured fails to comply with its disclosure obligations.
- There are changes in the factors used as basis for premium calculation leading to an increase in the insured risks and the insurance enterprises recalculate the premium for the remaining periods of the insurance contracts, but the insured refuses to accept the premium increase.
- The insured fails to pay the insurance premiums as agreed between the parties.
- The insured fails to take measures to ensure safety for the insured objects and does not remedy within the time limit provided by the insurer.

Insured's Remedies

The insured can terminate the policy and claim damages in the following cases:

- The insurer intentionally supplies untruthful information to enter into insurance contracts.
- There are changes in the factors used as a basis for premium calculation leading to the reduction in the insured risks and the insured requests the insurer to reduce the premiums for the remaining periods of the insurance contracts, but the insurer refuses to reduce the premiums.

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

Dispute Resolution

32. 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.

33. Are arbitration clauses in insurance and reinsurance agreements enforceable? Are they commonly used in commercial insurance disputes?

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, the buyer can opt for a court settlement (see *Question 23*).

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.

34. 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 the forum, venue, and governing law must be Vietnam. If at least one party is a foreign individual or entity, then a foreign forum, venue, and governing law can be used.

Insolvency

35. What is the regulatory framework for distressed or insolvent insurance or reinsurance companies? What 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 MOF. The stage of insolvency is when the insurer's solvency margin is below the statutory thresholds (see *Question 12*). 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 Ministry of Finance.

36. 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.

37. 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.

Tax

38. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance 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 at a rate of 20%.
- VAT, as follows:
    - certain insurance services, for example, life and health insurance and 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.

InsurTech

39. Outline the impact of new technology on the insurance sector.

The current regulations on insurance business allow the insurer to sell insurance products via e-transactions, and the insurer must take the initiative in setting up, maintaining and operating a system of information technology infrastructure, equipment and software to serve its business. Other than that, the Law on Insurance Business does not provide specific guidelines for e-transactions or InsurTech. However, the insurer must comply with a wide range of regulations in Vietnam regarding data protection, consumer protection, cyber security, and so on.

In practice, some insurers apply technology to shorten the lead time from the first contact with clients to contract signing. In particular, the general process is that the clients can check the available e-insurance package of the insurer via the website, read all the terms and conditions, fill in the forms and submit supporting documents (if required). The application documents will then be vetted thoroughly by the insurer prior to granting approval. Insurers still courier the hard copy of contracts to the clients for their retention.

Generally speaking, the government of Vietnam is currently encouraging companies to apply new technology in their businesses in all sectors; however, the government has yet to issue regulatory sandbox-type schemes for the insurance industry.

Reform

40. What proposals are there to reform the law and regulation of insurance and reinsurance services?

On 16 June 2022, the National Assembly adopted Law No. 08/2022/QH15 on Insurance Business. This new law will replace the Law on Insurance Business of 2000 along with its amendments and come into effect on 1 January 2023.

Contributor Profile

Nu Thi To Nguyen, Associate

Tilleke & Gibbins
T +84 24 3772 6688
F +84 24 3772 5568
E *nu.n@tilleke.com*
W *www.tilleke.com*

Professional Qualifications. BA, Diplomatic Academy of Vietnam; LLB, Hanoi Law University

Areas of Practice. Commercial transactions and M&A; dispute resolution; tech/media/telecom.

Languages. Vietnamese, English, Chinese

END OF DOCUMENT