

## Client Alert

June 2016

### Vietnam Released Draft New Decrees on Insurance Business to Improve the Insurance Legal Environment

#### Recent developments

The Government of Vietnam has recently released drafts of two new decrees ("**Draft New Decrees**") to propose reforms and amendments to replace the nearly ten-year-old rules under Decree No. 45<sup>1</sup>, Decree No. 46<sup>2</sup>, as amended, in 2011 by Decree No. 123<sup>3</sup>, and in 2014 by Decree No. 68<sup>4</sup> (collectively, the "**Current Rules**"), implementing the Law on Insurance Business.

The Government is proposing a comprehensive review and reform of the insurance legal framework. The review covers all legal aspects, from the corporate establishment and operation to financial and investment regimes, for insurers, insurance brokers, agents and insurance related entities in Vietnam.

The Draft New Decrees aim to improve and streamline the legal framework and to address practical issues for the development of the market. However, these Draft New Decrees also contain some stricter or new requirements on, among other things, qualifications and shareholding structure for institutional shareholders in local joint stock insurers, IT system, additional operational reserves, and restrictions on offshore reinsurance.

We set out below some key proposed amendments under the Draft New Decrees.

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- 1 Decree No. 45/2007/ND-CP dated 27 March 2007 of the Government providing detailed regulations on the implementation of a number of articles of the Law on Insurance Business ("**Decree No. 45**").
- 2 Decree No. 46/2007/ND-CP dated 27 March 2007 of the Government providing regulations on financial regime of insurance enterprises and insurance brokerage enterprises ("**Decree No. 46**").
- 3 Decree No. 123/2011/ND-CP dated 28 December 2011 of the Government providing detailed regulations on the implementation of a number of articles of the amended Law on Insurance Business, and amending and supplementing a number of articles of Decree No. 45 ("**Decree No. 123**").
- 4 Decree No. 68/2014/ND-CP dated July 9, 2014 of the Government on amendments to Decree No. 45 ("**Decree No. 68**").

## 1. Stricter requirements for institutional shareholders in an insurance joint stock company

Under the Current Rules, to set up a local insurer in the form of a joint stock company (JSC) in Vietnam, there must be at least two founding institutional shareholders investing in the local insurer. The Draft New Decrees additionally require that those institutional shareholders must satisfy the same requirements as those which currently only apply to institutional investors in an insurance joint venture or limited liability company (LLC).

Accordingly, an offshore insurer wishing to set up or invest in a local insurer in Vietnam, whether in the form of LLC or JSC, must have, among other things,

- at least ten years of operation experience;
- a minimum of US\$2 billion as its total asset value; and
- a good standing in the past three years.

Further, the institutional shareholders must own at least 20% of the insurance JSC's total shares. The Ministry of Finance ("**MOF**") proposed this requirement to aim at improving the corporate governance and financial capacity for insurance JSCs in Vietnam.

## 2. Restrictions on reinsurance

The MOF proposed revising the provisions on reinsurance. These are aimed at improving the retention level of the local insurance market, reducing the Vietnam market's reliance on offshore reinsurers, and more quickly protecting the interest of the insured, especially for major projects in Vietnam. For these purposes, the MOF proposed including the following requirements under the Draft New Decrees:

- When a local insurer cedes insurance to offshore insurers, it must collect reinsurance commissions to cover costs and expenses of their insurance arrangements and corporate management. A minimum rate of reinsurance commission will be provided by the MOF.
- The maximum level of liability per single risk or loss that a local insurer may retain must not exceed 10% of its owner equity capital.
- A minimum level of liability per single risk or loss must follow specific guidance by the MOF.
- If a local insurer cedes insurance in accordance with a designation of the insured (fronting), the maximum rate of reinsurance to be designated must not exceed 90% of the level of insurance liability.

## 3. Registration of vehicle insurance products

The MOF proposed requiring non-life insurers to register policy wording, terms and conditions, premium schedule of vehicle insurance products. An approval from the MOF is required before the relevant non-life

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insurers can sell those insurance products to the market. However, this requirement does not apply to compulsory civil liability insurance for vehicle owners.

#### 4. Stricter requirements for insurance agents

The Draft New Decrees add a new requirement that every insurance agent must apply for a new insurance agent certificate if he or she has not acted as an insurance agent for a period of two years or when he or she moves to act for a new insurer.

#### 5. Other amendments proposed by the MOF

- An insurer may establish transaction offices or business locations only in the provinces or cities where the insurer has established its head office or branch offices. The MOF proposed this restriction to be consistent with the Enterprise Law.
- Insurance brokers may collect consultancy service supply fees to be paid by customers (in addition to brokerage commissions paid by insurers). The MOF proposed adding this clarification to address the practical demands of insurance brokers in Vietnam.
- Non-life insurers are required to make operational reserves for the risk of natural disasters. Life insurers are required to make operational reserves for payment of committed interest rates for life insurance, pension and investment-link insurance products. Operational reserves, for reinsurance, or health insurance, are also required for any insurers which provide reinsurance or health insurance, respectively.
- Insurers can invest in, among other things under the Current Rules, local authority bonds and fund certificates.
- The sale of insurance products “via electronic transactions” is added into the possible channels that local insurers can use for sale of insurance products, together with those which are currently permitted, including: direct sale, via insurance agents, insurance brokers, and via tendering.

\* \* \*

The Draft New Decrees are available at the MOF’s website<sup>5</sup> for public comments. Please note that those draft versions and the above provisions are subject to changes by the MOF. Please let us know if you have any suggestions or comments on these Draft New Decrees, or any other provisions you would like to add to the Draft New Decrees. We can assist you with sending your comments in an appropriate form to the drafting team of the Government accordingly.

5 See two Draft New Decrees at: [http://www.mof.gov.vn/webcenter/portal/btc/r/cd/dtvb/ctdtvb?centerWidth=0%25&id=11981&leftWidth=100%25&rightWidth=0%25&showFooter=false&showHeader=false&\\_adf.ctrl-state=14bb60z4be\\_78&\\_afrLoop=21483799419555389](http://www.mof.gov.vn/webcenter/portal/btc/r/cd/dtvb/ctdtvb?centerWidth=0%25&id=11981&leftWidth=100%25&rightWidth=0%25&showFooter=false&showHeader=false&_adf.ctrl-state=14bb60z4be_78&_afrLoop=21483799419555389); and [http://www.mof.gov.vn/webcenter/portal/btc/r/cd/dtvb/ctdtvb?centerWidth=0%25&id=11980&leftWidth=100%25&rightWidth=0%25&showFooter=false&showHeader=false&\\_adf.ctrl-state=14bb60z4be\\_45&\\_afrLoop=21483810879409379#!%40%40%3F\\_afrLoop%3D21483810879409379%26centerWidth%3D0%2525%26id%3D11980%26leftWidth%3D100%2525%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26\\_adf.ctrl-state%3D17d3ziupay\\_37](http://www.mof.gov.vn/webcenter/portal/btc/r/cd/dtvb/ctdtvb?centerWidth=0%25&id=11980&leftWidth=100%25&rightWidth=0%25&showFooter=false&showHeader=false&_adf.ctrl-state=14bb60z4be_45&_afrLoop=21483810879409379#!%40%40%3F_afrLoop%3D21483810879409379%26centerWidth%3D0%2525%26id%3D11980%26leftWidth%3D100%2525%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26_adf.ctrl-state%3D17d3ziupay_37) (both last accessed on 9 June 2016).

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