

## Client Alert

January 2011

### Amended Law on Insurance Business

With no changes to the Law on Insurance Business since its issuance in 2000, we would like to bring to your attention the first amendments recently issued on 24 November 2010. A prime focus of the amendments is to adjust to the new insurance business environment and comply with Vietnam's WTO commitments and other international agreements and treaties. The Amended Law takes effect on 1 July 2011, and will introduce the following notable changes:

#### Part I: The Amended Law

##### 1. Cross-border transactions

Foreign-invested enterprises and foreigners working in Vietnam can use cross-border insurance services. In line with this amendment, the Amended Law provides that offshore insurers and insurance brokers can provide cross-border service in accordance with the regulations of the Government. We discuss an early draft of these regulations in Part II of this alert, below.

##### 2. Establishment of branches

The Amended Law also allows the establishment of branches of offshore non-life insurers.

##### 3. Cooperation and competition in insurance business

The principle of competition in insurance business is set out as follows: enterprise can cooperate in reinsurance, coinsurance, damage appraisal, settlement of insurance benefits, damage prevention and mitigation, human resources development, product development, training and management of insurance agents, information sharing for risk management.

In addition, subject to the compliance with relevant regulations, insurance enterprises may compete in terms of insurance conditions, scope, level of liabilities, premium, service quality, insurance capacity and financial capacity.

The selection of insurance enterprises for the projects funded by the capital or assets of the State or State owned enterprises must be conducted through bidding in accordance with the provisions of bidding regulations and this Law.

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#### 4. Reinsurance

The 2000 Law on Insurance Business provided that an insurance enterprise can provide reinsurance for foreign insurers but the insurance enterprise must reinsure partial responsibility to an onshore insurer according to the regulations of the Government. The Amended Law removes this responsibility, but provides additional requirements on onshore reinsurance providers stating that they must meet the credit ratings according to the international credit evaluation company as provided by the Ministry of Finance.

#### 5. Health insurance

The Amended Law also provides for the definition of health insurance and classifies it as an insurance business together with life insurance, non-life insurance and other insurance business regulated by laws.<sup>1</sup>

#### 6. Insured Protection Fund

The Amended Law provides for an Insured Protection Fund to be set up for the purpose of protecting the interests of the insured persons in case an insurance enterprise goes bankrupt or becomes insolvent. The financial source for this Fund will come from the premiums of all insurance contracts.

The above provisions will need to be further detailed at Decree and Circular level; and in part 2 of this alert, we discuss an early draft of such a Decree.

### Part II: Draft Decree

The Draft Decree provides details for the amended articles on the following major points:

#### 1. Cross-border transactions

In order for an insurer or an insurance brokers to provide cross-border insurance services, its origin country must be a member of the WTO and its insurance management authority must be an official member of the International Insurance and Management Association and sign a bilateral or multilateral MOU with Vietnam on cooperation in insurance business management. In addition, a foreign insurer or insurance broker must be operating at least 10 years, do not violate insurance regulations at least 3 consecutive years before providing cross-border service into Vietnam, and must be licensed by its insurance management authority to provide such services.

A foreign insurer or broker is also subject to a number of additional conditions covering such things as the minimal asset backing, credit

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<sup>1</sup> It is unclear in the Amended Law (as well as the draft decree that we discuss later) what the legal capital (i.e. the minimum capital) required for this type of insurance and whether the existing life and non-life insurers who have been selling health insurance policies must obtain an additional license in order to continue doing so.

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rating, deposit with a Vietnamese bank, and registration of products (for life insurance).

## 2. Branches of foreign non-life insurers

In order to establish a branch, a foreign non-life insurer and its branch itself must observe specific relevant conditions. Notably, the insurer must operate at least 10 years with assets valued US\$3 billion in total and must place a deposit at a commercial bank operating in Vietnam in according with guidance of Ministry of Finance.

A branch must observe the specific conditions and requirements regarding finance, tax and accounting, organization and financial investment.

In terms of finance, tax and accounting, a branch must observe rules on financial management set out in Decree No. 46/2007/ND-CP and its implementing regulations as well as accounting rules, tax duties and other regulatory requirements under Vietnamese law. In addition, the branch must maintain its equity not less than the legal capital for non-life insurers and maintain its assets in Vietnam in equivalent to the insurance liability arising from the policies in Vietnam. Annually, the branch must submit all financial statements of the foreign insurer or foreign insurance broker prepared to the competent authorities of the origin country.

In terms of organization, a branch of a foreign non-life insurer is not permitted to open a branch or representative office in Vietnam. Its officers and managers must meet certain conditions as provided under the current regulations. The head of the branch must reside in Vietnam and may not manage another business entity.

In terms of financial investment, a branch is not allowed to use its capital or the idle capital from its professional statutory reserves to make offshore investment.

## 3. Cooperation and competition in insurance business

The Draft Decree provides that an insurer in which the State or State owned companies hold 20% or more of equity capital (called a "speciality insurer") may only participate at maximum 40% of the total value of a large insurance contract (i.e. a contract having value larger than 10% of its equity) with the insured investors being State owned companies.

In addition, the sale and purchase of insurance between an insurer and an investor who owns from 20% or more of the charter capital of the insurer must be conducted through bidding mechanism or by co-insurance with other insurers. This provision is not applicable to health insurance, accident insurance and other compulsory insurance policies.

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