

Client Alert

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New Decree on Insurance Business Tightens Cross-border Access

Following the amendments to the Law on Insurance Business in late 2010 to implement Vietnam's WTO Commitments, the Government has now issued the long-awaited guidelines to further guide this implementation. Although the amendments to the Law on Insurance Business were heralded as opening up the market to cross-border services, the new Decree reflects the expected policy of tightening access once more. The Decree also provides guidance on the establishment of branches of foreign non-life insurers in Vietnam, as well as addressing some concerns with regards to bidding and competition in the insurance industry.

We set out below a brief discussion of the key points of the Decree.

Detailed Discussion

Decree No. 123/2011/ND-CP was issued on 28 December 2011 to further guide the Law on Insurance Business and to supplement Decree No. 45/2007/ND-CP. It contains the following key points.

1. Cross-border transactions

Although the WTO Commitments allow foreign insurance enterprises to provide insurance to foreigners working in Vietnam and foreign-invested enterprises in Vietnam, Decree No. 123 imposes some strict regulations around the provision of such services. Decree No. 123 also defines foreign-invested enterprises for these purposes as those with more than 49% foreign capital.

In order for an insurer or an insurance broker to provide cross-border insurance or insurance brokerage services, it must be a foreign insurance or insurance brokerage enterprise having its head office in a country with which Vietnam already signed international trade agreements regarding the supply of cross-border insurance in Vietnam (e.g., a WTO member). In addition, a foreign insurer or insurance broker must have been lawfully operating for at least 10 years and not have violated insurance regulations for at least three years before providing cross-border service into Vietnam, and must be licensed by its insurance management authority to provide such services.

Possibly the biggest restriction, however, is that the foreign insurance enterprise has to provide cross-border insurance services in Vietnam through an insurance brokerage enterprise licensed in Vietnam. A foreign

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insurance broker may also provide cross-border services, but may only act as a broker for insurance enterprises or branches of foreign non-life insurance enterprises licensed in Vietnam.

A foreign insurer or broker is also subject to a number of additional conditions covering such things as the minimal asset backing, credit 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 have operated for at least 10 years, and have assets valued at US\$2 billion in total; its home regulatory body must have already signed a cooperation memorandum with the Ministry of Finance; and the insurer must not have seriously violated the requirements regarding insurance business and other requirements of a country where its head office locates in the three consecutive years prior to applying to establish the branch in Vietnam.

The branch must maintain its granted equity not less than the legal capital for non-life insurers (VND200 billion) 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 home country.

A branch of a foreign non-life insurer is not permitted to open a branch in Vietnam. The head of the branch must reside in Vietnam during his or her term and possess professional qualifications and management ability.

A branch is allowed to use its capital or the idle capital from its professional statutory reserves to make offshore investment.

3. Bidding in insurance

Decree No. 123 requires “investors of projects using State capital from 30% or more, owners or users of assets of the State and of State-owned enterprises” to conduct a bidding process to select insurers when they purchase insurance for their projects, assets or operation (except for certain mandatory insurance products).

If the premium is less than VND3 billion, the bidding can be made under the form of competitive offer or direct appointment. For the insurers themselves, in the cases where the premium is below VND500 million, they may use the form of self-implementation (i.e. self insured). Other than that, the form of open bidding will be applied.

3. Health insurance

Under the amendments to the Law on Insurance Business in 2010, health insurance was categorized as an independent type of insurance (besides life insurance, non-life insurance and other types of insurance as provided

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by the Government). Decree No. 123 clarifies the relation among these types of insurance that life insurers may not conduct non-life insurance business and vice versa, while both life insurers and non-life insurers may conduct health insurance business. If an insurer conducts only health insurance business, it must have a legal capital of VND300 billion.

4. Other issues

Decree No. 123 also covers some other topics, including guidance on Insured Protection Fund. Accordingly, insurers and branches of foreign insurers will need to use their revenues from premiums to contribute to the Insured Protection Fund, which will be managed by the Association of Vietnamese Insurers. The detailed level of contribution and the management of the use of the fund will be guided by the Ministry of Finance.

Other topics include the conditions for a Vietnamese entity to set up an insurance or insurance broking company under the form of a limited liability company, conditions to set up a reinsurance company, and amendments to a few clauses of Decree No. 45/2007/ND-CP.

Decree No. 123 will come into effect from 15 February 2012.

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