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INSURANCE LAW

Introduction on Proposed Bill to amend and supplement a number of articles of the Law on Insurance Business

By Pham Minh Long/ Luu Tien Ngoc

The Law on Insurance Business adopted by the National Assembly on 9 December 2000, took effect from 1 April 2001 (the “**Law**”). Throughout 10 years of its implementation, the Law has contributed to enhance the development of the local insurance sector. On account of its application, the number of insurance companies and insurance brokers in Vietnam has been dramatically increased, from firstly 14 to 50 in 2010, with various types of enterprise form, ownership structure, product and service. However, after 10 years, the insurance market has been developed significantly as well as there has been a number of important events affecting its development, including Vietnam’s accession to the WTO with a number of service-related commitments, with the enactment or amendment of a number of the principal laws in Vietnam, such as the Civil Code (2005), the Law on Enterprises (2005), the Law on Investment (2005), the Law on Tendering (2005), the Law on Competition (2004), etc., it is essential that certain amendment and supplementation be made to the Law, in order to comply with the Vietnam’s commitments upon accession to WTO, to be consistent with other related laws, and to better support the development of the insurance sector in such new situation.

Pursuant to the National Assembly’s agenda of drafting laws and ordinances in the year of 2010, the bill to amend and supplement to a number of articles of the Law¹ (the “**Bill**”) has been made and expected to be submitted to the National Assembly in its session at the end of 2010, for approval.

Below is a brief summary on critical changes that are proposed in the Bill in order to achieve the following main objectives:

- 1) To make the Law be compliant with the WTO commitments of Vietnam:

Cross-border provision of insurance service

Recognizing the cross-border provision of insurance services by foreign insurance organizations and individuals, which is, among others, one of Vietnam’s WTO commitments, the Bill proposes to include a case where foreign insurance organizations and individuals selling the insurance service from outside Vietnam through its border, they shall be responsible for all risks arising out of and relating to such cross-border insurance policies. And, disputes arising from such insurance policies shall be settled in accordance with provisions of the Civil Code (2005) on civil relations with foreign element and the laws of the concerned foreign country. Since this is a sensitive matter, the Bill merely proposed the basic principles. Then, the

¹ Note that the update herein is made based on Draft No.6 of the Bill amending and supplementing a number of articles of the Law on Insurance Business.

Government shall set out detailed guidelines for its implementation based on prudential management rules permitted by the WTO, such as conditions applicable to the foreign insurance enterprises, deposit requirements in Vietnam equivalent to their insurance liability in Vietnam and other related matters in order to protect legitimate rights and interests of individuals and organizations purchasing overseas insurance.

Branch of foreign non-life insurance enterprise

Recognizing the right to set up the branch of foreign non-life insurance enterprise in Vietnam, pursuant the WTO commitments of Vietnam, after 5 years from the date of the its WTO accession, the Bill proposes to include an additional regulation that foreign non-life insurance enterprises having their head offices located in one of countries being a member of the WTO, shall be permitted to operate in Vietnam, amongst other permissible forms, in the form of a branch. The issuance of the permit for establishment and operation of such branch shall be under the authority of the Ministry of Finance.

Reinsurance

According to the Law, in case of reinsurance with foreign insurance enterprise, the insurance enterprise must reinsure partly the liability for which insurance has already been accepted, with a domestic reinsurance enterprise in accordance with the regulations of the Government². However, under the WTO commitments of Vietnam, the mandatory reinsurance with a domestic reinsurance enterprise is no longer valid. Therefore, the Bill proposes to remove said provision on mandatory reinsurance with a domestic reinsurance enterprise. Accordingly, insurance enterprises may cede to and take over reinsurance from other insurance enterprises, including insurance enterprises inside and outside Vietnam.

Types of insurance products

The Law³ stipulates two types of insurance products including life insurance products (with basic 5 products) and non-life insurance products (with basic 11 products), while many other insurance products have been evolved after the issuance of the Law, and are being marketed, but not yet stipulated in this Law (e.g. investment-related insurance, guarantee insurance). Thus, in order to be consistent with international practices, the Bill proposes a broader range of insurance products. According to such range, insurance products shall include life insurance and retirement insurance, non-life insurance, (voluntary) health care insurance. These insurance products shall later be stipulated in details by the Ministry of Finance.

- 2) To make the Law be consistent with the other relevant laws of Vietnam:

Priority of the Law on Insurance Business as a specialized law

To make the interpretation of the Law more consistent during its implementation, where there is certain differences between the Law and other

² Article 9.2 of the Law on Insurance Business.

³ Article 7 of the Law on Insurance Business.

relevant laws of Vietnam, including the Civil Code, the Law on Investment, the Law on Enterprises, etc., the Bill proposes a confirmation that in the event there is a difference between the provisions of the Law and other relevant laws of Vietnam, relating to insurance business, the provisions of the Law shall prevail.

Forms of insurance enterprises

Based on the old laws on enterprises in general, state-owned enterprises, and foreign investment in particular, the Law provides for five forms of insurance enterprises, including state owned insurance enterprises, shareholding insurance companies, mutual insurance organizations, joint venture insurance enterprises, and 100% foreign owned insurance enterprises⁴. However, to make the Law fully consistent with the new Law on Enterprises (which superseded all provisions of the old laws on enterprises, state-owned enterprises and foreign investment in Vietnam), the Bill proposes to comprise five forms of insurance enterprise, including shareholding insurance companies, mutual insurance organizations, limited liability companies with one member (the investor is an insurance enterprise), limited liability companies with two members and more (a 100% foreign capital insurance enterprise or a joint venture company between foreign insurance enterprise and one or more Vietnamese legal entity(ies)), and branch of foreign insurance enterprise.

Tender and competition in insurance business

To be consistent with the Law on Tendering and the Law on Competition, the Bill proposes to further include the provisions on competition and tendering applicable in the insurance sector. The Government of Vietnam shall issue its detailed guidelines in this regard.

- 3) To make the Law better cope with the development of the insurance market:

Condition for issuance of licenses for establishment and operation

Apart from the current conditions as provided by the Law (such that the amount of paid-up charter capital is not less than the level of legal capital prescribed by the Government, the form of the enterprise and its charter must comply with the provisions of laws, and the management personnel must have management skills, expertise and professional qualifications in insurance etc.), the Bill proposes to include a provision that the organizations and individuals participating in contribution of capital to set up an insurance enterprise or insurance brokers must have suitable financial capacity, and the organizations must have experiences in insurance business. It may be seen that the additional conditions have been stipulated in some legal instruments under the Law. However, the Bill proposes to further include this issue into the Law to ensure its stronger legal validity.

Changes that must be approved by the Ministry of Finance

⁴ Article 59 of the Law on Insurance Business.

In addition to changes that must be approved by the Ministry of Finance⁵ (such as change of name of the insurance enterprise, charter capital, chairman of the members' council, chief executive officer/managing general director, etc.), and the time-limit for announcing the approved changes by the insurance enterprise, the Bill proposes two further changes that require an approval of the Ministry of Finance, including those in actuary and the insurance companies' overseas investment activity. In this connection, the Bill also proposes some changes that must be notified in writing to the Ministry of Finance upon the change occurrence, including those in members of the members' council, deputy chief executive officer, director of branch, chief of representative office, chief accountant, chief of supervision board, the head of the divisions for insurance sale, insurance compensation, reinsurance, and investment.

Fund for protecting insurance purchasers

Besides compulsory reserve fund for raising the charter capital and ensuring the solvency of the insurance enterprise, and other reserve funds as prescribed by the Law⁶, the Bill proposes to include a provision that an insurance enterprise must establish a fund for protecting insurance purchasers based on its premium income, in accordance with the regulations made by the Government.

The point of time for arising insurance liability

Under the Law, it is unclear how to determine the point of time when the insurance liability should arise. The Bill, therefore, proposes that, insurance liability shall arise when an insurance policy is executed between the insurance enterprise and the insurance purchaser, and the insurance purchaser has paid the insurance premium; or there is a proof that the insurer has agreed to provide insurance and the purchaser of insurance has paid the insurance premium; or the insurance policy has been executed and the insurance enterprise has agreed in the insurance policy allowing the insurance purchaser to be indebted to the insurance enterprise for the insurance premium.

Insurance agents

With a view to standardize the training activities and issuance of insurance agent certificates, the Bill proposes an additional provision that individuals conducting insurance agent's activities must have a certificate of training in insurance agent practices. Such certificate will be granted by a legal training center set up by the relevant competent authority. Currently, under the Law, the certificates are granted either by insurance companies or by the Vietnam Insurance Association.⁷

⁵ Article 69.1 of the Law on Insurance Business.

⁶ Article 97 of the Law on Insurance Business.

⁷ Article 86.1.c of the Law on Insurance Business.

Other Sectors

Finance

- On July 14th, 2010, the Government issued Decree No. 79/2010/ND-CP on professional skills of public debt management.
- Decree No. 78/2010/ND-CP dated July 14th, 2010 of the Government on re-lending Government's foreign loan-capital.
- On July 27th, 2010, the People's Committee of Ho Chi Minh City stipulated Decision No. 51/2010/QD-UBND on the amendment and addition to, repeal of documents of the People's Committee of Ho Chi Minh City providing for the procedures applicable at the Department of Finance and the People's Committee of district in the areas of State budget management, development investment and State budget allocations, prices, corporate finance, and management of State capital in enterprises.
- Circular No. 109/2010/TT-BTC dated July 27th, 2010 of the Ministry of Finance amending and supplementing a number of regulations on inspector card form, management and use of inspector card under the Ministry of Finance promulgated along with Decision No. 41/2008/QD-BTC dated June 24th, 2008 of the Minister of Finance.
- On July 5th, 2010, the Ministry of Finance issued Circular No. 96/2010/TT-BTC providing guidelines for recovering and handling accounting documents that are lost or damaged due to objective reasons.

Banking

- Circular No. 17/2010/TT-NHNN dated June 29th, 2010 of the State Bank of Vietnam on amendment of Clauses 2 and 3, Article 2 of Circular No.01/2010/TT-NHNN on January 6th, 2010 on the repeal of Decision No. 03/2006/QD-NHNN dated January 18th, 2006 of gold trading on overseas accounts and Decision No.11/2007/QD-NHNN dated March 15th, 2007 on amending and supplementing Decision No. 03/2006/QD-NHNN.
- On June 25th, 2010, the State Bank of Vietnam stipulated Circular No.16/2010/TT-NHNN providing guidelines for the implementation of Decree No. 10/2010/ND-CP dated February 12th, 2010 of the Government on credit information activities.

Taxation

- Decision No. 1111/QD-TTg dated July 15th, 2010 of the Prime Minister on approving the Agreement between the Government of the Socialist Republic of

Vietnam and the Government of the Republic of Tunisia for avoidance of double taxation and prevention of tax evasion regarding taxes levied on incomes.

- On July 15th, 2010, the Prime Minister issued Decision No. 1110/QD-TTg on approving the Agreement between the Government of the Socialist Republic of Vietnam and the Government of Saudi Arabia Kingdom for avoidance of double taxation and prevention of tax evasion regarding taxes levied on incomes.
- Decision No. 1519/QD-BTC dated July 2nd, 2010 of the Ministry of Finance correcting Circular No. 49/2010/TT-BTC dated April 12th, 2010 of this Ministry providing guidelines for the classification and application of tax rates for export and import goods.
- On June 30th, 2010, the Ministry of Finance stipulated Decision 1492/QD-BTC correcting Circular No. 68/2010/TT-BTC dated April 26th, 2010 of this Ministry on the registration fee.
- Circular No. 104/2010/TT-BTC dated July 22nd, 2010 of the Ministry of Finance providing for the preferential import tax rates applicable to imported materials and components imported for the manufacture of lifting equipment included in the List of key mechanical products, issued together with Decision No. 10/2009/QD-TTg.
- On July 14th, 2010, the Ministry of Finance and the State Bank of Vietnam issued Joint Circular No. 102/2010/TTLT-BTC-NHNN providing guidelines for the exchange and provision of information between tax management agencies and credit institutions.
- Circular No. 101/2010/TT-BTC dated July 14th, 2010 of the Ministry of Finance providing guidelines for the exemption from import tax under Decree No.04/2009/ND-CP dated January 14th, 2009 of the Government on incentives and support for environmental protection activities.
- On June 30th, 2010, the Ministry of Finance stipulated Circular No. 94/2010/TT-BTC providing guidelines for the implementation of value added tax refund for export goods.

Trade

- Decree No. 83/2010/ND-CP dated July 23rd, 2010 of the Government on registration of secured transactions.
- On July 12th, 2010, the Government issued Decree No. 76/2010/ND-CP on amending and supplementing Article 11 of Decree No. 06/2009/ND-CP dated January 22nd, 2009 of the Government on sanctioning administrative violations in the field of production of and trade in alcohol and tobacco.

- Decision No. 1073/QĐ-TTg dated July 12th, 2010 of the Prime Minister on approving the Overall plan on e-commerce development for the period from 2011 to 2015.
- On July 27th, 2010, the Ministry of Industry and Trade stipulated Circular No.31/2010/TT-BCT on adding items subject to automatic import permits stipulated in Circular No. 22/2010/TT-BCT dated May 20th, 2010 of the Minister of Industry and Trade applying automatic import permits to a number of steel products.
- Circular No. 29/2010/TT-BCT dated July 19th, 2010 of the Ministry of Industry and Trade on the imported brand-new cars of which the frame and machine numbers were forged for change.
- On July 9th, 2010, the Ministry of Finance issued Circular No. 100/2010/TT-BTC providing for customs procedures for goods exported and imported via air international express delivery service.
- Circular No. 99/2010/TT-BTC dated July 9th, 2010 of the Ministry of Finance providing for customs procedures for mail package, postal parcels and goods exported and imported via postal services.
- On June 28th, 2010, the Ministry of Finance stipulated Circular No. 93/2010/TT-BTC providing guidelines for the determination of acts of administrative violations in the financial field, as smuggling, commercial frauds and counterfeiting acts.

Labour

- Circular No. 20/2010/TT-BLDTBXH dated July 26th, 2010 of the Ministry of Labour, Invalids and Social Affairs regulating inspection collaborators in vocational training, self-inspection and inspection activities of the vocational colleges, vocational secondary schools and vocational training centers.
- On July 7th, 2010, the Ministry of Labour, Invalids and Social Affairs issued Circular No. 19/2010/TT-BLDTBXH providing for the system of criteria and standards for quality control of vocational training centres.

Transport

- Decree No. 81/2010/ND-CP dated July 14th, 2010 of the Government on civil aviation security.
- On July 14th, 2010, the Prime Minister stipulated Decision 1082/QĐ-TTg on the amendment of authority of pricing for public products and services in the field of national railway, road and inland waterway management and maintenance carried out in the form of State-ordering and planning.

- Decision No. 45/2010/QĐ-UBND dated July 13th, 2010 of the People's Committee of Ho Chi Minh City on the amendment, replacement or repeal of documents of the People's Committee of Ho Chi Minh City regulating administrative procedures applicable at the Department of Transport and the People's Committees of districts, wards, communes and towns in the field of urban technical infrastructure.
- On July 7th, 2010, the Ministry of Transport issued Circular No. 18/2010/TT-BGTVT providing guidelines for the implementation of a number of articles of the Agreement and Protocol implementing the Agreement on the Road Transport between the Government of the Socialist Republic of Vietnam and the Royal Government of Cambodia for non-commercial vehicles.
- Circular No. 14/2010/TT-BGTVT dated June 24th, 2010 of the Ministry of Transport regulating the organization and management of transport activities by automobiles.

Construction – Real Estate

- On July 24th, 2010, the People's Committee of Ho Chi Minh City stipulated Decision No. 49/2010/QĐ-UBND on amending and supplementing the documents of the People's Committee of Ho Chi Minh City regulating the administrative procedures applicable at the management board of South region in the field of construction and land.
- Circular No. 106/2010/TT-BTC dated July 26th, 2010 of the Ministry of Finance providing guidelines for the fee for issuance of certificates of land use rights and of ownership over houses and other assets attached to land.
- On June 29th, 2010, the Ministry of Planning and Investment issued Circular No.15/2010/TT-BKH detailing the preparation of the report on evaluation of tender dossiers regarding consultancy services package.

Natural Resources - Environment

- Decree No. 72/2010/NĐ-CP dated July 8th, 2010 of the Government providing for the prevention of and fighting against crimes and other violations of laws on environment.
- On July 9th, 2010, the Prime Minister stipulated Decision No. 1065/QĐ-TTg on approval of adjustment of and supplement to the planning on exploration, exploitation and use of minerals for cement production in Vietnam up to 2020.
- Decision No. 3550/QĐ-BCT dated July 5th, 2010 of the Ministry of Industry and Trade on the addition to the planning on zones for exploration, exploitation, processing and use of mineral group of white limestone (marble), feldspar, kaolin and magnezit until 2015, with orientation to 2025.

- On July 28th, 2010, the Ministry of Natural Resources and Environment issued Circular No. 13/2010/TT-BTNMT providing for awards on environment in Vietnam.
- Inter-ministerial Circular No. 107/2010/TTLT-BTC-BTNMT dated July 26th, 2010 of the Ministry of Finance and the Ministry of Natural Resources and Environment on amending and supplementing Inter-ministerial Circular No.125/2003/TTLT-BTC-BTNMT dated December 18th, 2003 and Inter-ministerial Circular No. 106/2007/TTLT-BTC-BTNMT dated September 6th, 2007 providing guidelines for environmental protection charges regarding waste water.

Science - Technology

- On July 14th, 2010, the Government stipulated Decree No. 80/2010/ND-CP providing for the cooperation and investment with foreign partners in the field of science and technology.
- Decision No. 49/2010/QD-TTg dated July 19th, 2010 of the Prime Minister on approving the list of high technologies prioritized for development and investment and the list of high-tech products encouraged to be developed.
- On June 30th, 2010, the Directorate for Standards, Metrology and Quality issued Decision No. 1070/QD-TDC on amending Section 7 of DLVN 54: 2009, issued together with Decision No. 919/QD-TDC dated June 26th, 2009 of the Director General of this Directorate on the issuance of the Vietnam Metrology technical documents.
- Circular No. 09/2010/TT-BKHCN dated July 23rd, 2010 issued by the Ministry of Science and Technology promulgating the Regulation on assessment of key laboratories.
- On July 9th, 2010, the Ministry of Science and Technology stipulated Circular No. 07/2010/TT-BKHCN regulating the operation of the specialized council of key laboratory and the council of key laboratories.
- Circular No. 06/2010/TT-BKHCN dated July 2nd, 2010 of the Ministry of Science and Technology amending and supplementing a number of articles of the Regulation on organization and operation of the key laboratories issued together with Decision No. 08/2008/QD-BKHCN dated July 8th, 2008 of the Minister of Science and Technology.
- On June 28th, 2010, the Ministry of Industry and Trade issued Circular No.28/2010/TT-BCT detailing a number of articles of Law on Chemicals and Decree No. 108/2008/ND-CP dated October 7th, 2008 of the Government detailing and providing guidelines for the implementation of a number of articles of Law on Chemicals.

Communication

- Circular No. 16/2010/TT-BTTTT dated July 19th, 2010 of the Ministry of Information and Communications detailing and providing guidelines for issuance of licenses for activities in printing press, publication of additional issues, publication of supplements, and publication of special issues.
- On June 29th, 2010, the Ministry of Information and Communications stipulated Circular No. 14/2010/TT-BTTTT detailing a number of articles of Decree No.97/2008/ND-CP dated August 28th, 2008 of the Government on the management, provision and use of Internet services and electronic information on the Internet with respect to activities managing websites and on-line social network services.

Administration - Judiciary

- Decree No. 75/2010/ND-CP dated July 12th, 2010 of the Government on sanctioning administrative violations in cultural activities.
- On July 12th, 2010, the Government issued Decree No. 73/2010/ND-CP on sanctioning administrative violations in the field of security and order and social safety.
- Resolution No. 25/NQ-CP dated June 2nd, 2010 of the Government on the simplification of 258 administrative procedures under the scope of management functions of the Ministries and branches.
- On July 27th, 2010, the People's Committee of Ho Chi Minh City stipulated Decision No. 52/2010/QD-UBND on the repeal of documents of the People's Committee of Ho Chi Minh City regulating administrative procedures applied in the management board of export processing zones and industrial parks of Ho Chi Minh City in the field of emigration and immigration management.
- Decision No. 50/2010/QD-UBND dated July 27th, 2010 of the People's Committee of Ho Chi Minh City on the addition to and repeal of documents of the People's Committee of Ho Chi Minh City providing for administrative procedures applied in the People's Committee of district in the field of mass culture, advertisement and performance arts under the State management function of the Department of Culture, Sports and Tourism.
- On July 13th, 2010, the People's Committee of Ho Chi Minh City issued Decision No. 44/2010/QD-UBND on the repeal of documents of the People's Committee of Ho Chi Minh City regulating administrative procedures applied in the People's Committees of districts, wards, communes and towns in the field of development investment and allocation of State budget, enterprise establishment and development.

- Circular No. 06/2010/TT-BNV dated July 26th, 2010 of the Ministry of Home Affairs providing for the titles and codes of public officials as Paralegals.

Agriculture

- On June 28th, 2010, the Ministry of Industry and Trade stipulated Decision No.3388/QD-BCT on approval of development plan for Vegetable Oil Industry of Vietnam to 2020, with orientation to 2025.
- Circular No. 43/2010/TT-BNNPTNT dated July 14th, 2010 of the Ministry of Agriculture and Rural Development on amending and supplementing Articles 16 and 17 of Circular No. 06/TT-BNN-NNPTNT dated February 2nd, 2010 of the Ministry of Agriculture and Rural Development regulating the order and procedures for quarantine of aquaculture and aquatic products.
- On June 28th, 2010, the Ministry of Agriculture and Rural Development issued Circular No. 38/2010/TT-BNNPTNT providing for the management of plant protection products.

Miscellaneous

- Decision No. 1042/QD-TTg dated July 6th, 2010 of the Prime Minister on the approval of the framework agreement on economic, cultural, educational, scientific, technical, sport and tourist co-operation between the Government of the Socialist Republic of Vietnam and the Government of Palestine State.
- On July 2nd, 2010, the People's Committee of Ho Chi Minh City stipulated Decision 41/2010/QD-UBND announcing the documents of which the validity is expired.
- Circular No. 17/2010/TT-BKH dated July 22nd, 2010 of the Ministry of Planning and Investment detailing the pilot online tendering.
- On June 30th, 2010, the Ministry of Finance issued Circular No. 95/2010/TT-BTC amending and supplementing the Regulation on Organization and Management of securities transactions made by public companies that are not yet listed in Hanoi Securities Trading Center, accompanying Decision No.108/2008/QD-BTC dated November 20th, 2008 of the Minister of Finance.

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