GIDE
GIDE LOYRETTE NOUEL

client alert

INSURANCE | VIETNAM | 22 DECEMBER 2014

OVERVIEW OF INSURANCE REGULATIONS

The Vietnamese insurance market is one of the most dynamic in South East Asia and by many different measures is seen to be growing rapidly. This creates great potential for investors but constraints and challenges remain that inhibit access for foreign-invested insurers.

This Client Alert identifies the types of insurance products in Vietnam, the avenue channels down which foreign insurers can gain access and conditions that need to be satisfied to achieve approval.

THE VIETNAMESE MARKET

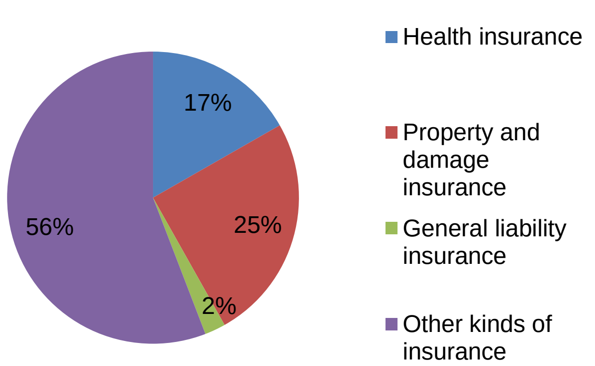
Vietnam currently has approximately 59 insurance companies operating in the market. Of these, 28% are life insurers, 49% are non-life insurers, 20% are insurance brokers and 3% are re-insurance companies

The life insurance market is dominated by foreign insurers with 88% being foreign-invested, whereas, only 37% of non-life insurers are foreign-invested. Although there are only five foreign-invested insurance brokerage companies out of a total of twelve, they are holding a larger market share than their domestic peers.

The re-insurance market is comprised of only two domestic entities, Vietnam National Reinsurance Corporation (Vinare) and PetroVietnam Reinsurance, both are "State-owned groups".

Below is a chart reflecting the Vietnam insurance revenue break-down:

Insurance revenue breakdown in 2012 (*)



(source: Vietnam's Ministry of Finance (*) 2012: last available figures;

REGULATION ENFORCEMENT AND INSURANCE PRODUCTS

Vietnam's insurance industry is regulated by the Ministry of Finance ("MoF"). The MoF is responsible for the issuance of establishment and operating licences for insurers and insurance brokers as well as the supervision of their operations. An agency of the MoF, the Insurance Supervisory Authority, supervises the insurance business and market in Vietnam and acts as the regulator.

The Vietnamese insurance industry is built upon three main groups:

- life insurance;
- non-life insurance, and
- health insurance.

Insurance entities must operate only within the scope as prescribed in their licence, and as a general rule, insurers are not permitted to conduct simultaneously life and non-life insurance business, except where a life insurer conducts personal accident and health care insurance as a supplement to life insurance.

Life Insurance

Life insurance products permitted include:

- Traditional insurance: whole life insurance, pure endowment insurance, term life insurance, endowment insurance and annuity insurance;
- Investment-linked insurance: universal life insurance and unit-linked insurance; and
- Pension insurance.

The MoF details terms and conditions which must be satisfied by insurers providing life insurance products, and personal accident and health care insurance ancillary to insurance products.

Non-life Insurance

Non-life insurance products include property and damage insurance, insurance for goods in transportation, aviation insurance, motor vehicle insurance, fire and explosion insurance, marine hull and ship owner's civil liability insurance, public liability insurance, credit and financial risks insurance, business loss insurance, agriculture insurance and guarantee insurance.

The MoF also details "compulsory" forms of insurance in respect of which (i) the MoF promulgates the applicable insurance terms and condition, premium scales and minimum sums insured and (ii) a licensed insurer must not refuse to underwrite. This "compulsory" insurance includes:

- Civil liability insurance for motor vehicle owners;
- Civil liability insurance for aviation carriers to passengers;
- Professional indemnity insurance for legal consultancy activities;
- Professional indemnity insurance for insurance brokers; and
- Fire and explosion insurance.

The MoF does not provide insurance terms and conditions, and premium scale for non-life insurers of non-compulsory products whom are free to adopt their own and are not required to obtain prior MoF approval for these. However, in circumstances in which non-life insurers fail to ensure financial stability of itself or the rights of the policy holder, the MoF may request a non-life insurer to cease underwriting products and request the insurer make specific amendments to such policies and terms.

Health Insurance

Products categorised as health insurance include: personal accident insurance, medical expenses insurance and health care insurance. Currently in Vietnam, these products are provided either by non-life insurers or by life insurers as part of a life insurance package. There has yet been any insurance company set up to provide solely health insurance products. Similarly to life insurance, terms and conditions and premium scales of health care insurance products must be ratified by the MoF.

Re-insurance

Foreign insurers are permitted to provide unrestricted cross-border reinsurance services. When accepting to reinsure liability of a Vietnamese insurer, a foreign lead reinsurer and foreign reinsurers of more than 10% of the total liability under the policy must have at least a “BBB+” rating by S&P or Fitch, a “B++” rating by A.M. Best, or a “BAA1” rating by Moody’s, or they must have been granted equivalent ratings in the most recent fiscal year.

INSURANCE DISTRIBUTION METHODS

Infrastructure and geographical difficulties have encouraged the growth of multichannel distribution strategies for insurers in Vietnam. The use of agents, brokers, bancassurance, and telemarketing is common. Bancassurance in particular has witnessed a strong growth with more insurance companies using this distribution channel to increase their market share. In particular with regard to bancassurance, banking institutions have acted as a sales channel for insurance companies (both life and non-life) in recent years.

However, Vietnam did not have specific regulations on bancassurance. Despite the apparently distinctive financial expertise and skills that banking institutions and their employees have, bancassurance agents (banking institutions and their staff members selling insurance products) used to be regulated by general insurance laws in the same way as ordinary insurance agents (ordinary corporate agents and individual agents respectively). The tight regulatory controls over mandatory insurance agent credentials and the lack of clear and distinctive guidelines for bancassurance activities often made participation of banking institutions in bancassurance arrangements commercially unfeasible.

As of 1 September 2014 this has changed. A first-ever and specific set of regulations, Circular No. 86/2014/TTLT-BTC-NHNNVN (“**Joint Circular 86**”), on bancassurance in the field of life insurance was issued by the MoF in conjunction with the State Bank of Vietnam (being the regulator of the banking activities) and entered into force on that date. Joint Circular 86 officially recognises the bancassurance business structure, aims to remove obstacles inhibiting bank participation and lightens the burden on resources of bancassurance providers, notably in terms of compulsory training requirements. It is hoped that Joint Circular 86 will help to further promote the bancassurance model in Vietnam.

MEANS OF ACCESS TO THE VIETNAMESE INSURANCE MARKET

Legal entities

The most common means of access for foreign insurers and brokers is to establish a 100% foreign-owned insurance company or cooperate with a local insurer in the form of a joint venture enterprise, usually in the form of a limited liability company. Entering into a joint venture with a local insurer can provide established distribution channels and reduce the volume of legal compliance and red tape.

Alternatively, a foreign insurer may acquire capital contributions in an existing Vietnamese insurance company, and 100% ownership is permitted if the existing insurer is a limited liability company. However, things become more complex when acquiring shares in an existing shareholding insurance company; the following foreign ownership caps will apply:

- An individual shareholder can only hold up to 10% of the charter capital of the target company;
- An institutional shareholder can only hold a maximum of 20% of the charter capital of the target company exceptions may apply e.g. acquisition of shareholding in a distressed/restructured target insurance company or acquisition to become a strategic shareholder); and
- The maximum shareholding owned by a shareholder and related persons/affiliates in aggregate is limited to 20% of the charter capital of the target company.

Representative offices or branches

Setting up a representative office can be a quick way to gain access to the market but few insurers have shown interest in the approach. Representative offices do not constitute “business entities” which means they are prohibited from engaging in profit-generating activities.

Cross-border supply

Foreign insurance enterprises may provide insurance to foreign-invested enterprises in Vietnam (with more than 49% foreign-owned capital) and foreigners working in Vietnam.

REQUIREMENTS FOR INVESTMENT

Conditions applicable to the offshore parent entity

In order to invest into Vietnam, a foreign insurer needs to satisfy certain criterion set out under Vietnamese laws. The most commonly seen conditions are (i) at least 10 years' experience in insurance operations; (ii) assets of at least USD 2 billion in the year prior to the year of lodging the application file (for setting up an insurance company); (iii) profitability for a period of three consecutive years prior to the year of lodging the application file and (iv) approval of the insurance regulator of the home country of the foreign insurer.

Depending on the nature of the insurance operations in Vietnam additional conditions may be applicable. For example, to set up a non-life branch, a foreign insurer must satisfy that (i) it is head-quartered in a jurisdiction with which Vietnam has signed commercial treaties that allow the establishment of branches of foreign non-life insurance businesses in Vietnam and (ii) the insurance regulator of the home country of the foreign insurer has signed a cooperation agreement with the MoF in relation to the management and supervision of the activities of branches of foreign non-life insurance businesses in Vietnam.

Another example is the cross-border supply of insurance or insurance brokerage services. The following additional conditions are applicable:

- The foreign insurer/broker must be in a country with which Vietnam has already signed international trade agreements regarding the supply of cross-border insurance into Vietnam (e.g. a WTO member);
- Cross-border insurance services must be provided through an insurance brokerage enterprise licensed in Vietnam; and
- Other conditions regarding the minimal asset backing (USD 2 billion applicable to offshore insurers or USD 100 million applicable to offshore brokers), credit rating (at least a "BBB+" rating by S&P or Fitch, a "B++" rating by A.M. Best, or a "BAA1" rating by Moody's or equivalent ratings), profitable operations in the last three years, security deposit of at least VND100 billion (about USD50 million) with a Vietnam-incorporated bank, etc.

Invested legal capital

In Vietnam, "legal capital" refers to the minimum amount of registered and paid-up capital that an offshore parent company is required to contribute as owner's equity to its presence in Vietnam.

The minimum levels of legal capital applicable to various insurance activities are set out below:

Activities		Levels of required legal capital[1]	
		VND	**USD equivalent[2]**
1. Non-life insurance		300 billion	15 million
and	health insurance	300 billion	15 million
and	aviation insurance	350 billion	17.5 million
and	satellite insurance	400 billion	20 million
2. Life insurance		600 billion	30 million
and	health insurance	600 billion	30 million
and	unit-linked insurance	800 billion	40 million
and	pension insurance	1 trillion[3]	50 million
3. Health insurance		300 billion	15 million
4. Non-life re-insurance		400 billion	20 million
and	health reinsurance	400 billion	20 million
5. Life re-insurance		700 billion	35 million
and	health insurance	700 billion	35 million

1 With these levels of legal capital, an insurer/broker is allowed to open up to 20 branches and/or representative offices. For each additional branch and/or representative office, VND10 billion (approximately USD 500,000) needs to be supplemented to the charter capital of the insurer/broker.

2 USD-equivalent is converted based on exchange rate of USD1 = VND20,000 for ease of reference. Actual exchange rate is different and may change from time to time.

3 This requirement is applicable to the owner's equity capital of the local insurance company. This should be checked against the company's financial statements.

GIDE

6. Health re-insurance	400 billion	20 million
7. All-types re-insurance	1,100 billion	55 million
8. Non-life branch	200 billion	10 million
9. Direct insurance brokerage	4 billion	200,000
and re-insurance brokerage	8 billion	400,000
10. Re-insurance brokerage	4 billion	200,000

Solvency margin

In addition to the legal capital requirement, insurers must also invest 2% of the applicable legal capital as a security deposit into a commercial bank operating in Vietnam. The security deposit may only be used to meet undertakings to policy-owners when it is insolvent and upon written approval of the MoF. Insurers must also comply with other prudential requirements, such as:

- minimum solvency margins,
- premium reserves,
- compulsory reserve fund and
- contributions to the policy-owner protection fund etc.

Money laundering

Anti-money laundering legislation exists under which insurance companies are obliged to establish internal regulations on anti-money laundering; collect, verify and monitor information about their clients; report to the State Bank of Vietnam and take particular measures (e.g. postponement of transactions or freezing of accounts, sealing or seizing assets based on decisions of state authorities) where transactions are suspicious, of a high value or carried out by "risky" clients.

CONTACTS

SAMANTHA CAMPBELL
Partner
samantha.campbell@gide.com

NASIR PKM ABDUL
Of Counsel
nasir.pkmabdul@gide.com

PHONG NGUYEN
Senior Associate
phong.nguyen@gide.com