



New Decree 46/2023/ND-CP on the insurance business

On 01 July 2023, the Government issued Decree No. 46/2023/ND-CP detailing the implementation of a number of articles of the Law on Insurance Business (“Decree 46”). Decree 46 takes effect from the signing date of (except for some provisions that took effect from 01 January 2023) and replaces Decree 76/2016/ND-CP dated 01 July 2016 of the Government, as well as other amending and supplementing Decrees. Here are some notable new points of Decree 46.

1. Expanding the scope and subjects of application

In Article 2 of Decree 46, the subjects of application have been listed more specifically that include both organizations and individuals providing insurance auxiliary services, mutual micro-insurance organizations, the insurer, the insured, the beneficiary, and the regulatory authority in charge of insurance business affairs.

In addition, in order to attract investment and materialize the commitment to allow EU reinsurance enterprises to establish reinsurance branches in Vietnam after 03 years from the effective date of EVFTA, the 2022 Law on Insurance Business has added regulations on the incorporation of branches of foreign reinsurance enterprises in Vietnam. Accordingly, Decree 46 has also added a group of subjects of

application being branches of foreign reinsurance enterprises, representative offices of foreign reinsurance enterprises, foreign financial, and insurance groups in Vietnam as prescribed under Section 8 Chapter II.

2. Providing details on the Insurance Business Database

The regulation on the Insurance Business Database is a new point of the 2022 Law on Insurance Business in order to keep up with the trend of digitalization and serve the purposes of managing, monitoring, and protecting the legitimate rights and interests of parties involved in the insurance business. Decree 46 has accordingly provided details on the legal basis for building, collecting, using, storing, managing, and providing information of Insurance Business Database from Article 6 to Article 10.

The Insurance Business Database consists of the following information: (i) Group of information about insurance enterprises, reinsurance enterprises, foreign branches in Vietnam, insurance brokerage enterprises, mutual micro-insurance organizations, foreign representative offices in Vietnam; (ii) Group of information about the insurer, the insured, the insured subject to the valid and newly arising insurance contract in the reporting period; (iii) Group of information about insurance agents; (iv) Group of information on examination, issuance of insurance certificates, insurance auxiliary certificates, insurance brokerage certificates; and (v) Group of information about the management, supervision and sanctioning of administrative violations relating to insurance business.

The provision and update of information to build the Insurance Business Database is conducted online at the web portal of the Insurance Business Database or under the form of electronic data files. Authorities, organizations and individuals shall utilize and use information from Insurance Business Database through the web portal of the Ministry of Finance.

3. Supplementing financial requirements for the issuance of Establishment and Operation Licences of insurance enterprises, reinsurance enterprises, foreign branches in Vietnam, and insurance brokerage enterprises

Organizations contributing 10% or more of the charter capital to establish an insurance enterprise or a reinsurance enterprise must satisfy the requirements specified in Articles 64, 65, and 66 of the 2022 Law on Insurance Business and financial requirements under Clause 1, Article 11 of Decree 46.

Foreign non-life insurance enterprises and reinsurance enterprises establishing a branch in Vietnam must satisfy the requirements specified in Article 67 of the 2022 Law on Insurance Business and the financial requirements under Clause 2, Article 11 of Decree 46.

Organizations contributing capital to establish an insurance brokerage enterprise must satisfy the financial conditions under Article 63 of Decree 46.

4. Adjusting minimum charter capital of insurance enterprises, reinsurance enterprises, insurance brokerage enterprises, branches of foreign non-life insurance enterprises, and reinsurance enterprises

In Decree 46, the term “*minimum charter capital*” or “*minimum allocated capital*” is used to replace the

term “*legal capital*”. In general, the minimum charter capital or minimum allocated capital has been increased compared to the previous legal capital. Insurance enterprises, reinsurance enterprises, insurance brokerage enterprises, branches of foreign non-life insurance enterprises established, organized, and operating before the effective date of Decree 46 having charter capital lower than the minimum provided under this Decree must complete the supplement of charter capital to meet such regulations before 01 January 2028.

5. Raising the standards of managerial and operational personnel, Head of inspection committee, Inspector (of joint stock company), and Head of departments, etc. of insurance enterprises, reinsurance enterprises, and foreign branches

Decree 46 sets higher standards for managerial and operational positions of insurance enterprises, reinsurance enterprises, and foreign branches such as Head of inspection committee, Inspector (of joint stock company), and Head of departments, among others. Specifically, these positions must all acquire: (i) a university degree or higher in insurance major or (ii) a university degree or higher in one of the majors in economics, finance, banking, business administration, law, accounting, auditing, and insurance certificates granted by domestic or overseas legally established and operating insurance training institutions.

Particularly, for appointed actuary of non-life insurance enterprises, reinsurance enterprises, and foreign branches in Vietnam, after 03 years from the effective date of Decree 46, they must be at least an Associate of one of the Associations of actuaries being an official member of the International Actuarial Association. After 05 years, they must be a Fellow, trained as an actuary in the field of non-life insurance of the Associations of actuaries being an official member of the International Actuarial Association.

6. Notifying the Ministry of Finance on the opening, termination or change of locations of branches and representative offices of insurance enterprises and reinsurance enterprises

In order to reduce administrative procedures and facilitate the operation of enterprises, Article 136 of the 2022 Law on Insurance Business has abolished the requirement to obtain prior approval for the opening, termination or change of locations of branches and representative offices of insurance enterprises, and reinsurance enterprises. Instead, insurance enterprises and reinsurance enterprises are only required

to notify the Ministry of Finance within 15 days from the date of change. Decree 46 specifically provides documents attached to written notice to be sent to the Ministry of Finance, including:

- (i) A letter of competent body as prescribed in the company's charter on the opening, termination or change of location of the branch or representative office;
- (ii) Report on responsibilities, arising problems, and handling plan upon termination of branch or representative office ensuring no damage to current obligations to the State, interests of the insurer, and other related subjects; and
- (iii) Evidence of the right to use the location of the branch or representative office when opening or changing the location of the branch or representative office.

Within 07 working days from the date of receipt in full of valid dossiers, the Ministry of Finance shall send an official letter recording the opening, termination or change of location of branches or representative offices in Vietnam of the insurance enterprises and reinsurance enterprise and notify that to the business registration authority.

7. Tightening conditions for operation by insurance agents

Insurance agent activities through credit institutions, especially through banks (Bancassurance) have drastically developed and made a significant contribution to the total revenue of the insurance market in Vietnam. Yet, rapid growth results in some shortcomings in the management of bancassurance. Therefore, Article 62 of Decree 46 lays down stipulations ensuring tightened management of such distribution channel when the organization conducting insurance agency activities is a credit institution and a foreign bank branch operating as an insurance agent.

In particular, for organizations conducting insurance agency activities being credit institutions and foreign bank branches:

- (i) A specialized department must be established to carry out insurance agency activities;
- (ii) The head of the department specialized in performing insurance agency activities must have at least 03 years of working experience in the field of finance, banking, insurance, and have a university degree or higher in insurance major. If he/she

does not have a university degree or higher in insurance major, he/she must have a university degree or higher in another major and an insurance certificate according to regulations of the Ministry of Finance;

(iii) At each branch of a credit institution that conducts insurance agency activities, it must ensure that there should be at least 03 employees being trained and have insurance agent certificates suitable to the type of insurance that the credit institution offers. While at each transaction office of a credit institution that conducts insurance agency activities, it must ensure that there is at least one employee being trained and has an insurance agent certificate suitable to the type of insurance that the credit institution offers;

(iv) There should be an appropriate information technology system to ensure adequate, accurate and prompt provision of information related to insurance contracts utilized through agents;

(v) There is a process to monitor and control the quality of the performance of insurance agency activities of the employees in the agent. The quality control process must ensure that the employees of the agent directly carrying out agency activities strictly comply with the principles of the agency operation and the authorized contents in the agency contract and other relevant laws; allow insurance enterprises and foreign branches in Vietnam to participate in the inspection and supervision of the quality of agency activities of the employees of the agent; the settlement of violations against the employees in the organizations conducting insurance agency activities when directly performing agency activities; and

(vi) At each branch, the transaction office of a credit institution and a foreign bank branch must set up a separate transaction counter (or separate transaction desk) to carry out insurance agency activities, separated from other transaction areas and professional activities of credit institutions and foreign bank branches.

8. Amending the provision and use of cross-border insurance services

In general, Decree 46 inherits the former regulations on the provision and use of cross-border insurance services. However, Decree 46 amends a number of regulations on users of cross-border insurance services being foreign-invested economic organizations and foreigners working in Vietnam to ensure compliance with WTO commitments, as

well as removing the regulation that life insurance and health insurance are not applicable to regulations on the provision and use of cross-border insurance services.

9. Discontinuing deduction and payment to the Fund for Protection of the Insured

According to the provisions of Clause 4, Article 157 of the 2022 Law on Insurance Business, insurance enterprises and branches of foreign non-life insurance enterprises shall stop deducting and paying the Fund for Protection of the Insured from 01 January 2023 given that the insurance industry also has a compulsory reserve fund with the similar purpose of ensuring the liability of the insurance enterprises in case of insolvency, contributing to the protection of the insured. It is unnecessary to maintain both funds at the same time which might create a burden for both insurance enterprises and the insured. For that reason, basically, Chapter VI of Decree 46 only regulates the management and use of the balance of the Fund for Protection of the Insured.

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