

Some notable contents of the Decree providing guidelines for implementation of the Law on Insurance Business

By Vision & Associates

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On 1 July 2023, the Government issued Decree No. 46/2023/ND-CP (“**Decree 46**”) detailing the implementation of a number of articles of the Law on Insurance Business 2022 (“**LIB 2022**”). Decree 46 took effect on the date of signing; particularly, Article 33, Articles 35 to 54, Articles 81, 82, 83, and Clauses 1 to 6, Article 93 of Decree 46 took effect retroactively on 1 January 2023.

In this article, we only summarize some notable new contents of Decree 46:

1. Financial conditions of insurers, reinsurers, and foreign enterprises’ branches in Vietnam

(a) Minimum charter capital

- The minimum charter capitals required for life insurers are as follows:
 - (i) Business of life insurance, health insurance: at least VND 750 billion (*previously VND 600 billion*);
 - (ii) Insurance business mentioned at point (i) above and unit-linked insurance plan or pension insurance: at least VND 1,000 billion (*previously VND 800 billion*); and
 - (iii) Insurance business mentioned at point (i) above, unit-linked insurance plan and pension insurance: at least VND 1,300 billion (*previously VND 1,000 billion*).
- Minimum charter capitals required for general insurers:
 - (i) Business of general insurance (except aviation insurance, satellite insurance) and health insurance: VND 400 billion (*previously VND 300 billion*);
 - (ii) Insurance business mentioned at point (i) above and aviation insurance or satellite insurance: VND450 billion (*previously VND350 billion*); and
 - (iii) Insurance business mentioned in point (i) above, aviation insurance and satellite insurance: VND 500 billion (*previously VND 400 billion*).
- Minimum charter capital required for a health insurer: VND400 billion (*previously VND 300 billion*).
- Minimum charter capital required for reinsurers:
 - (i) Reinsurance business, general reinsurance concession or both general reinsurance and health reinsurance: VND 500 billion (*formerly VND 400 billion*);
 - (ii) Reinsurance business, life reinsurance concession or both life reinsurance and health reinsurance: VND 900 billion (*formerly VND 700 billion*); and
 - (iii) Reinsurance business, reinsurance concession of all three types of life reinsurance, general reinsurance and health reinsurance: VND 1,400 billion (*previously VND 1,100 billion*).
- Minimum charter capital required for brokers:
 - (i) Broker (either primary insurance or reinsurance brokerage): VND5 billion (*formerly VND 4 billion*);

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(ii) Broker (both primary insurance and reinsurance brokerage): VND10 billion (*formerly VND 8 billion*).

- Insurers, reinsurers and brokers established, organized, and operating before the effective date of Decree 46 and having their charter capitals lower than the minimum charter capital required in accordance with Decree 46, must supplement the charter capital and deposit as prescribed, prior to 1 January 2028.

(b) Minimum allocated capital

- Minimum allocated capitals for foreign general insurers' branches:
 - (i) Business of general insurance (except aviation insurance, satellite insurance) and health insurance: VND 250 billion (*previously VND 200 billion*);
 - (ii) Insurance business mentioned in point (i) above and aviation insurance or satellite insurance: VND 300 billion (*previously 250 billion*); and
 - (iii) Insurance business mentioned at point (i) above, aviation insurance and satellite insurance: VND 400 billion (*previously VND 300 billion*).
- Minimum allocated capitals for foreign reinsurers' branches (*these are new regulations*):
 - (i) Reinsurance business, general reinsurance concession or both general reinsurance and health reinsurance: VND 400 billion;
 - (ii) Reinsurance business, life reinsurance concession or both life reinsurance and health reinsurance: VND 450 billion; and
 - (iii) Reinsurance business, reinsurance concession of all three types of life reinsurance, general reinsurance and health reinsurance: VND 700 billion.
- A foreign general insurer's branch established, organized, and operating before the effective date of Decree 46, which has an allocated capital lower than the minimum amount required in accordance with Decree 46, must the allocated capital and deposit as prescribed, prior to 1 January 2028.

(c) Financial conditions for insurers, reinsurers, and foreign enterprises' branches in Vietnam to be granted an establishment and operation license

- According to the provisions of Decree 46, organizations which contribute 10% or more of the charter capital to establish an insurer or reinsurer must satisfy the conditions specified in Articles 64, 65 and 66 of the LIB 2022 and the following financial conditions:
 - (i) Capital-contributing organizations operating in business lines that require minimum legal capital or charter capital or minimum capital: must ensure that equity minus legal capital or minimum charter capital or the minimum capital is greater than or equal to the expected capital contribution amount;
 - (ii) Capital-contributing organization is an organization established and operating under the provisions of the Law on Credit Institutions, the LIB, and the Law on Securities: must maintain and satisfy the conditions of financial safety and security and be *approved* by the competent authority to participate in capital contribution. Where relevant laws do not require a competent authority's written approval, the capital contributing organization must obtain a written *certification* of this from the competent authority;
 - (iii) Capital-contributing organizations being insurers, reinsurers, foreign financial and insurance groups: must ensure to maintain and meet financial safety conditions and be *allowed* by competent authorities of the countries where these organizations are

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headquartered to establish insurers and reinsurers in Vietnam. Where the relevant laws do not require a competent authority's written permission, the capital contributing organization must obtain a so written certification from the competent authority; and

- (iv) Having financial statements for 3 consecutive years preceding the year of applying for an establishment and operation license, which have been audited with complete approval.

Basically, these conditions are similar to those provided by Decree No. 73/2016/ND-CP dated 1 July 2016 of the Government, detailing implementation of the Law on Insurance Business 2000, as amended ("Decree 73"). However, compared to Decree 73, these conditions are more detailed than those of Decree 46.

- Decree 46 also clearly provides that, when establishing a branch in Vietnam, a foreign general insurer or reinsurer must meet the conditions specified in Article 67 of the LIB 2022 and the financial conditions, including the conditions included in points (i) and (iv) above.

Basically, these conditions are similar to those provided by Decree 73.

(d) Conditions for capital increase

For the first time, Decree 46 stipulates that, insurers, and reinsurers which wish to increase their charter capitals and foreign branches in Vietnam which wish to increase their allocated capital must meet the following conditions:

- The increase in charter capital and allocated capital is made in Vietnam Dong;
- Shareholders, capital contributors of insurers and reinsurers, parent companies of foreign branches in Vietnam are not allowed to use loans or entrusted investment capital of other organizations and individuals to supplement charter capitals, allocated capitals for the insurers, reinsurers, and foreign branches in Vietnam; and
- A joint-stock company, after increasing its charter capital, must satisfy the conditions on shareholder structure provided in Article 66 of the LIB 2022.

However, joint stock companies established before 1 January 2023, will only have to meet the conditions for shareholder structure provided in Article 66 of the LIB 2022, as from 1 January 2026.

- In case where an insurer or reinsurer supplements its charter capital from the source of capital contributed by new shareholders or capital contributors, these new shareholders and capital contributors must satisfy the conditions provided in Clauses 1 and 2, Article 64 and Article 65 of the LIB 2022.

(e) Conditions for capital decrease

- For the first time, Decree 46 stipulates that insurers, reinsurers and foreign branches in Vietnam which wish to reduce their charter capital or allocated capital must meet the following conditions:

- (i) Meet all financial requirements as prescribed in Decree 46; and
- (ii) After decreasing the charter capital or allocated capital, comply with the regulations on capital, solvency margin as prescribed by law and conditions on shareholder structure provided in Article 66 of the LIB 2022 for joint stock companies.

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- Decree 46 maintains the restriction of Decree 73, which does not allow a decrease of charter capital for single-member limited liability companies.

2. Conditions for organizations operating as insurance agent

Compared with Decree 73, Decree 46 stipulates stricter conditions for organizations operating as insurance agents. Specifically:

- (a) An organization operating as an insurance agent, which is a credit institution or foreign bank's branch, must satisfy the following conditions:
- Establishing a specialized division to carry out insurance agent activities;
 - The head of the division in charge of performing insurance agent activities must have at least 3 years of working experience in the fields of finance, banking, insurance and have a university degree or higher specialized in insurance. If he/she does not have a university degree or higher in insurance, he/she must have a university degree or higher in another major and a certificate on insurance according to regulations of the Ministry of Finance (“MOF”);
 - At each branch of a credit institution conducting insurance agent activities, it must ensure that at least 3 employees are trained and have insurance agent certificates suitable to the type of insurance for which the credit institution acts as the agent. At each transaction office of a credit institution conducting insurance agency activities, it must ensure that at least one employee is trained and has an insurance agent certificate suitable to the type of insurance for which the credit institution acts as the agent;
 - Having an appropriate information technology system, ensuring full, accurate and timely provision of information related to insurance policies made through the agent;
 - There is a process to monitor and control the quality of the performance of insurance agent activities by employees in the agent. The quality control and supervision process must ensure that the staff in the agent directly carrying out agent activities strictly comply with the principles of agent operations and the authorized contents in the agency contract and relevant laws; insurers and foreign branches in Vietnam are allowed to participate in the inspection of and supervision over the quality of agent activities carried out by employees in the agent; dealing with violations against employees in the agent when directly performing agent activities; and
 - At each branch or transaction office of a credit institution or foreign bank's branch, a separate transaction counter (or separate transaction desk) must be set up to carry out insurance agent activities, which must be separated from the area of banking transactions and other professional activities of the credit institution or foreign bank's branch.
- (b) Other organizations (other than credit institutions and foreign banks' branches) operating as insurance agents must satisfy the following conditions:
- Having at least 3 employees directly performing insurance agent activities; and
 - There is a process to supervise over the compliance with the principles of insurance agent operations in accordance with the provisions of the LIB 2022 for employees performing in insurance agent activities.
- (c) Organizations currently operating as insurance agents must satisfy the new conditions under Decree 46 within one year from the effective date of Decree 46. Thus, the deadline for all organizations operating insurance agents to comply and to improve the personnel quality and the consulting process is 1 July 2024.

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3. Cross-border provision of insurance services and insurance brokerage services

Decree 46 maintains the provisions of Decree 73 applicable to reinsurance services, international marine insurance, international aviation insurance, and international reinsurance brokerage. Accordingly, the cross-border provision of these services will comply with the applicable laws and the best practices.

For the remaining insurance services and insurance brokerage services:

(a) Services providers

Similar to Decree 73, Decree 46 stipulates that a foreign insurer or insurance broker having headquarters located in a country or territory in which Vietnam and that country or territory have signed international treaties on trade, including an agreement on provision of insurance services in Vietnam in cross-border supply is entitled to provide insurance services or insurance brokerage services in Vietnam in cross-border supply.

(b) Service users

Different from Decree 73, Decree 46 has expanded the users of insurance services provided across borders, including all foreign-invested economic organizations (*instead of just enterprises with more than 49% of charter capital owned by foreign investors as stipulated in Decree 73*) and foreigners working in Vietnam (*similar to the provisions of Decree 73*).

4. Pension insurance

This is a new form of insurance, which is prescribed by Decree 46 for the first time:

(a) Kinds of pension insurance

- Pension insurance for an individual; and
- Pension insurance for a group of employees (group pension insurance), whereby the insurance buyer is the employer, the employee will receive all rights and interests under the insurance policy after a certain period of time determined by agreement between the parties and recorded in the insurance policy.

(b) Basic insured benefits under a pension insurance policy

Insurers may design their own pension insurance products but must ensure the following requirements:

- For periodic pension benefits: Pension benefits are paid periodically until the death of the insured or for at least 10 years, depending on the agreement in the insurance policy; and
- For risk insurance benefits: The policyholder is entitled to benefits during the premium payment term and these benefits can be continued during the period of receiving pension benefits, depending on the agreement in the insurance policy. Decree 46 clearly provides for risk insurance benefits, including: Funeral benefits and Death insurance benefits and Total permanent disability benefits.

(c) Establishment and management of a voluntary pension fund

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When providing pension insurance, insurers must set up a voluntary pension fund; monitor and keeps business accounts for revenues, expenses, assets and capital sources of the voluntary pension fund separated from the other contracting owner's funds and equity funds.

When setting up a voluntary pension fund, an insurer must use its own equity fund to contribute to the voluntary retirement fund not less than VND 200 billion and must maintain a minimum of VND 200 billion in this fund.

Insurer may not use the assets of the voluntary pension fund to pay fines for violations of the laws, debts and transactions not related to the voluntary pension fund.

(d) Investment limit for a voluntary pension fund

The investment limit in each portfolio of investment assets of the voluntary pension fund must be consistent with the investment policies and investment objectives specified in the method and basis for charging the products registered with the MOF and the following regulations:

- Deposit at a credit institution: is not limited but up to 20% of the total value of assets invested by the voluntary pension fund in a credit institution;
- Government's debt instruments: is unlimited and guaranteed at least 40% of the total value of investment assets of the voluntary pension fund;
- Bonds guaranteed by the Government, local government's bonds, secured corporate bonds: up to 25% of the total value of investment assets of the voluntary pension fund;
- Stocks (except shares of securities companies, finance companies, finance leasing companies), unsecured corporate bonds, capital contribution portions in other enterprises: maximum 20% of total value of investment assets of the voluntary pension fund; and
- Investment in issued shares of an enterprise, corporate bonds: up to 5% of the volume of each issue and up to 5% of the total value of investment assets of the voluntary pension fund.

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