Asia Pacific Insurance - Vietnam

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# Guide for Directors and Senior Managers of Insurance Companies

## Does the CEO, director or senior executives of an insurance company need to be registered or licensed by the insurance regulatory authority?

The approval of the Ministry of Finance's Insurance Supervisory Authority (MOF) is required for the appointment or change of certain positions.

## Is approval from the regulator required for the appointment of a director/senior management of an insurance company? Is there any distinction between persons acting in an executive capacity and persons in a non-executive capacity?

Yes. Prior approval from the MOF is required for the appointment of the chair of the board of members (or the board of management or the company president), the general director and an appointed actuary. For other senior executives or managers, no prior approvals from the MOF are required, but the local insurer must conduct internal assessments and procedures to ensure that appointed persons meet required criteria and qualifications.

There is no distinction between executive directors and non-executive directors.

## Is there generally any distinction between EDs and NEDs?

No. There is no distinction between the appointment of executive directors and non-executive directors as Vietnamese law does not distinguish between them. However, a general director can be considered equivalent to an executive director due to holding responsibility for the day-to-day operations of the local entity and the requirement to be a resident of Vietnam. Members of the board (or the board of management) can be considered equivalent to non-executive directors, as they are not responsible for the day-to-day operations of the local entity and act as  
authorized representatives of the local insurer's investors or shareholders.

## Is approval from the regulator required for the resignation or removal of a director/senior management of an insurance company? Is there any distinction between EDs and NEDs?

Yes. Resignation or removal for the positions of the chair of the board of members (or the board of management or the company president), the general director and an appointed actuary requires approval from the MOF under the same applications for appointments of new persons.

## Is there any nationality requirement for directors/senior management of an insurance company? If so, do any exemptions exist?

No. However, residency requirements may apply.

## Is there a minimum qualification or minimum number of years of relevant experience applicable to directors/senior management of an insurance company?

Yes. Vietnamese law provides for both minimum qualifications and minimum years of experience. These requirements vary depending on the position.

## Are there any other fitness and propriety requirements that apply to directors of an insurance company? What are they?

Yes. Candidates must satisfy the criteria of having full civil-act capacity, having no criminal conviction and not having been sanctioned or disciplined at certain levels during three consecutive years before being appointed, not being government officials and civil servants, and not having a bankruptcy status for three years.

## Are there any other negative factors which will disqualify a candidate from becoming a director of an insurance company?

Yes. These include past convictions relating to criminal offenses for the past three years, having been subjected to certain administrative sanctions (within three years) in the insurance field by the MOF, dismissal from an insurance company due to violations of internal regulations, and having been prohibited from managing a company due to past management of a bankrupt company and past violation of bankruptcy law requirements.

## Is there a residency requirement for directors/senior management of an insurance company (e.g., primary residence must be in each local jurisdiction)?

Yes. The general director (or the legal representative), deputy general directors, chief accountant, branch managers, heads of regional offices, managers/directors/heads of departments and the appointed actuary must reside in Vietnam during their term of office.

## Does the insurance company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the insurance company provide to the insurance regulatory authority in respect of its directors/senior management?

Yes. An insurance company must evaluate if executives and managers satisfy legal requirements, and whether the appointment will cause  
any conflicts of interest.

Depending on the position, local insurance companies must submit certain certifications and documents to MOF, including educational  
degrees, diplomas and professional qualifications; personal particulars or employment documents evidencing the satisfaction of minimum  
experience requirements; and a certificate of no criminal conviction.

For an appointed actuary, a certificate of fellowship by an accredited association of actuaries and a certificate of no violation of the code  
of conduct of actuaries also need to be submitted to the MOF.

## Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment for EDs and NEDs?

There is no distinction in regulatory treatment of executive directors and non-executive directors as Vietnam does not distinguish between executive directors and non-executive directors.

## Are there any overarching duties and responsibilities for directors/senior management of insurance companies arising from insurance regulations (in addition to general corporate laws)?

In addition to the duties and responsibilities for executives and managers under the Law on Enterprises, general directors, directors and senior management are responsible for the insurer's operations, including compliance with applicable insurance-specific requirements under the Law on Insurance Business.

## Will directors/senior management be personally liable for breach of insurance regulations by the insurance company? What penalties are there, if any?

Yes. The general director or chair may be personally liable, if he/she commits the following:

does not properly exercise rights and duties

fails to implement a decision of the board of members/board of management

exercises assigned rights and duties contrary to law or the company charter

uses information, know-how or business opportunities of the company for his/her personal benefit or for that of another entity

abuses his/her position for his personal benefit or for that of another entity

The general director/chair may be sued by other members or shareholders of the company for civil liabilities. In addition, there may be administrative sanctions imposed on an appointed actuary if he/she fails to fulfill the tasks and requirements provided by law. Serious violations may also be subject to criminal liability.

## Are directors/senior management of an insurance company subject to any periodic filing/notification requirements? What are they?

No. Generally, no periodical filings apply specifically to directors, with the exception of appointed actuaries of life insurers who are required to report to the MOF on an annual basis on the matters required under their duties. Reporting requirements generally apply to insurance companies.

## Is there a requirement on minimum number of the board of directors of an insurance company?

Yes. Joint stock companies must have at least three members on the management board. For a multiple-member LLC, the board of members must include at least two members. A single-member LLC may have a president or a board of members (including at least three members).

## Are there any rules around composition of the board of directors or equivalent (e.g., independence requirement or the number of executive- or management-level directors)?

Generally, no. However, an organization, being a member of a limited liability company owning at least 35% of the charter capital, may appoint no more than three members to participate in the board of members. An organization being a shareholder of a joint stock company owning at least 10% of the total number of ordinary shares may authorize a maximum of three people to attend a general meeting of shareholders.

## Are there any mandatory requirements for setting up of other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

Yes. An insurance company is required to set up the following committees:

Supervisory board (or board of controllers) – If a limited liability company has 11 members or more, or if a joint stock company has more than 11 shareholders being individuals, or has a shareholder being an organization, which holds more than 50% of the total shares, the company must set up such supervisory board (or board of controllers). The supervisory board will supervise the management and administration of the company by the board of members/board of management and will monitor the lawfulness thereof, particularly with respect to the preparation of financial statements. Under the Enterprise Law, for joint stock companies without a supervisory board, at least 20% of the members of the board of management must be independent members, and there must be an internal audit committee under the board of management.

Investment council/committee – approves the sale of unit-linked insurance products

Vietnamese law requires internal audit activities. While it is encouraged, there are no legal requirements for the establishment of audit or  
remuneration committees.

## Are directors of an insurance company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)? What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

A member of the board of members/board of management may not be a member of such board of another insurer operating in the same domain (non-life insurance or life insurance, reinsurance or insurance brokerage).

The general director or deputy general directors may not work for another insurer operating in the same domain.

The general director may not be a member of the board of another insurance company operating in the same domain.

The general director or deputy general director of an insurer can act as the head of only one branch, representative office or functional department of such insurer.

The general director or deputy general directors of a foreign branch can act as the head of only one functional department of such branch.

An appointed actuary may not concurrently hold the position of general director (director) or chief accountant of an insurer.

## Is there any requirement or prohibition for an insurance company to make a payment to its directors/senior management?

No specific requirement or prohibition in this regard. However, transactions between the company and its directors/senior management may be considered related person transactions and, as such, are subject to approval from the board of members/board of management. Members of these boards who are related to such transactions are not entitled to vote.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

There is no single authority that has overall power to regulate fintech/insurtech in Vietnam. In fact, each authority may play a different role in regulating this area:

State Bank of Vietnam (SBV) – Vietnam's central bank takes charge of banking activities (for example, moneylending, payment and settlement systems, money exchange and remittance) and other banking and financial activities of credit institutions.

Ministry of Planning and Investment (MPI) is responsible for regulating investment activities (for example, equity crowdfunding platforms).

Ministry of Information and Communications (MIC) is responsible for personal data privacy.

Ministry of Finance (MOF) is in charge of insurance business by insurers and insurance brokers, as well as securities companies and fund management companies.

Ministry of Science and Technology (MOST) is responsible for the intellectual property regime.

## What are the types of fintech/insurtech activities that are regulated?

There is no single comprehensive or specific law on fintech/insurtech, but depending on the areas involved, such activities may be governed by relevant existing laws.

In principle, fintech/insurtech business must first observe the general regulations, such as the Civil Code, the Commercial Law, the Law on Enterprises, the Investment Law and other specialized regulations.

Activities involving insurance business of insurers and insurance brokers in Vietnam may be governed by or regulated under the Law on Insurance Business and its implementing regulations.

Activities involving credit institutions in relation to financial and banking services, including payment, money exchange, moneylending and remittance businesses, may be subject to, among others, the Law on Credit Institutions and the Ordinance on Foreign Exchange Control and their specific implementing regulations.

Activities involving securities companies and fund management companies may be governed by or regulated under the Securities Law and its specific implementing regulations.

## What is the attitude and what are the policy views of the regulator in relation to insurtech (if any)? Is innovation encouraged?

The Vietnamese government is aware of technological developments and it encourages fintech/insurtech activities. However, some laws and regulations would need to be adjusted or developed for fintech/insurtech activities. The authorities, such as the SBV and the MOF,  
may take a conservative view in granting relevant approval and license.

Developing corresponding legal framework for fintech activities in Vietnam – To keep up with the development of fintech in Vietnam, regulators have gradually improved and updated its legal framework, with consideration of developments of fintech/insurtech  
activities, including regulations on e-commerce activities and intermediary payment services. In relation to the insurance industry, under the recently issued new decree, the sale of insurance products "via electronic transactions" is added into the possible channels that local insurers can use for sale of insurance products. This is expected to provide a legal basis to recognize online distribution channel and promote fintech activities in the insurance market.

Supporting and funding – Vietnamese authorities are aware of the rapid development of fintech/insurtech activities in Vietnam. For the first time in Vietnam, the MOST and the government of Vietnam took the initiative of stimulating the growth of technology start-ups in Vietnam by launching the project "Silicon Valley Ecosystem in Vietnam." The project seeks to create an ecosystem of innovations and technology commercialization in Vietnam.

Nonetheless, insurance, banking and other financial services are sensitive areas that need to be regulated. Although some authorities remain rather supportive, the SBV and the MOF usually take more conservative views toward technology development in the insurance, financial and banking sectors. For instance, the SBV specifically disallows all use of virtual currency as a payment method, including Bitcoin, in Vietnam.

Generally, the government encourages fintech/insurtech innovation in Vietnam. Yet, given that insurance, banking and finance are considered sensitive areas in Vietnam, the authorities such as the SBV and the MOF may take a conservative view in granting relevant approval and licenses.

## What are the licenses required and what are the criteria and process involved?

The licenses required will depend on the specific activities contemplated. We recommend seeking the advice of local counsel.

For banking, lending, payment, foreign exchange-related services, licenses or approvals are required by the SBV. For instance, to provide intermediary payment services (for example, e-wallet, payment portal), fintech/insurtech companies must apply for an intermediary payment license at the SBV.

For insurance businesses, insurers and insurance brokers are required to apply for a business license from the MOF's Insurance Supervisory Authority.

For securities and fund management businesses, licenses or approvals are required by the MOF's State Securities Commission.

Furthermore, if the fintech/insurtech innovation involves a patentable invention or if there are plans to register a trademark, the relevant companies are strongly recommended to obtain the patent and/or trademark registrations.

Criteria to obtain a license and how long it takes to obtain the license depend on the type of license to be applied, the relevant laws and the licensing authorities.

From a general standpoint, the criteria to obtain licenses shall be based on legal conditions under local laws and relevant international treaties, for example, Vietnam's WTO Commitments, financial capacity of investors, requirements and feasibility of proposed business models, registered and paid-up charter capital, corporate governance requirements, and requirements on key personnel and human resources. The timeline may also vary depending on whether the direct licensing authority needs to consult with higher or relevant authorities before it issues the license.

## Is the use of telematics and/or biometrics regulated?

There are no specific regulations for the use of telematics or biometrics on its own. However, insurance companies should ensure that such use is compliant with any existing regulations or conduct of business requirements. Data privacy concerns may also apply. Further, depending on how such technology is used, we may need to consider whether other areas of regulation are attracted (for example, telecommunications or pharmaceuticals).

## Does the regulator draw a distinction between institutions that are "too big to fail" versus "too small to care"?

There is no specific legal regulation drawing a distinction between institutions that are "too big to fail" versus "too small to care." However, in practice, large-scale institutions or entities carrying higher risks to the relevant financial systems, whether or not from fintech/insurtech innovation, often receive more attention from or stricter supervisions by the authorities.

## What laws (if any) do insurance companies have to comply with in respect of technology risk management?

Insurance companies should comply with the Information Technology Law, the Law on Network Information Security, and the Law on E-Commerce and relevant specific guiding regulations.

## Are there any laws governing big data, including the collection, use, storage, disclosure and transfer of personal data?

Vietnam has no single comprehensive law that governs big data or addresses individual and organizational privacy rights. Instead, these issues and relevant provisions are governed under the Civil Code, the IT Law, the Law on Network Information Security, the Consumer Protection Law, the Penal Code, the Insurance Business Law, the Telecommunications Law and other specialized regulations (where applicable), where these matters are addressed in fairly general terms, and in certain implementing regulations that contain more specific provisions.

## Are there any restrictions that could hinder the growth and usage of insurtech by insurance companies under data privacy laws?

No. Vietnam data privacy regulations remain rather nascent and only impose basic privacy requirements.

As a general principle, individuals and organizations must grant their prior informed consent to the collection, use and transfer of their personal information. Proper consent requires that the individual or organization collecting, using and/or transferring the personal information, discloses to the person to whom it pertains where the information will be transmitted to and consolidated, how it will be used, to whom the personal information will be transferred and for how long it will be stored.

An organization should cease to retain personal data as soon as the purpose for which the personal data was collected is no longer being served, or when the agreed-upon retention period expires.

## Are there any laws governing cybersecurity or to mitigate cybersecurity concerns?

On 19 November 2015, Vietnam adopted the Law on Network Information Security, which will take effect on 1 July 2016. This law prescribes, among others, cyber information security activities; civil cryptography products and services; and standards and technical regulations on cyber information security. On 6 June 2017, the government and the Ministry of Public Security (MPS) released their first draft of the Law on Cybersecurity (Draft Law) for public consultation between 8 June and 8 August 2017. While a definite date is yet to be published, the National Assembly will review and comment on the Draft Law at its fourth meeting later in 2017.

## What innovations are insurance companies and/or regulators looking at implementing?

Fintech/insurtech is new in Vietnam, but we have seen certain insurance companies starting to look for fintech/insurtech innovations in analyzing big data, which can help them to determine their target customers and business decisions.

## Have there been fintech/insurtech-related cases (including competition and/or data privacy) in Asia Pacific

There are no specific cases by the financial regulators so far.

## What are the most immediate challenges to insurtech innovation?

The majority of consumers in Vietnam are generally still unfamiliar with fintech/insurtech innovations. As such, consumers prefer the traditional means of financial instruments, which seem to be safer and easier to use.

Vietnam lacks skilled and trained employees specializing in fintech/insurtech innovations.

Despite regular legislative updates, the legal framework of Vietnam has not effectively caught up with the rapid development of technology in general and fintech/insurtech in particular.

## What has been, or could be, the impact of fintech/insurtech on the financial services industry?

The development of fintech/insurtech innovations is expected to introduce new business opportunities and business models in the insurance, banking and financial sectors. These are expected to deliver higher growth and efficiency and better services.

## What insurtech trends or disruptions may impact insurance companies?

We expect to see insurance companies more involved in insurtech innovation in many areas. Development of insurtech will offer more financial choice to customers, which will have significant impact on the market of insurance business. We expect to see more and more  
insurance companies cooperate with insurtech players to diversify their insurance products, diversify their distribution channels and facilitate the development of the insurance market in Vietnam. In particular, electronic transactions will be developed to supersede traditional transactions. In doing so, insurers will improve their competitive advantage and bring more benefit to the insurance purchasers as well.

# Guide for Insurance Sales, Advisory and Distribution

## What are the different types of insurance intermediaries in the market and do they need to hold any licenses and minimum qualification to conduct business?

An insurance broker provides its brokerage services at the request of its clients being policyholders, except for the case where an insurance broker is authorized by the insurer to collect premiums, pay insurance proceeds or settle indemnification (but in such case, the insurance broker is not permitted to receive any remuneration from such insurer for the broker's performance of such authorized activities). The insurance brokers are licensed under procedure conducted by the MOF under the Law on Insurance Business. The insurance broker must meet the following requirements:

Contributed charter capital must not be less than the legal capital prescribed under the laws, in particular: (i) VND 4 billion (approximately USD 175,000) for a broker that conducts one of insurance brokerage services or reinsurance brokerage services; and (ii) VND 8 billion (USD 350,000) for a broker that conducts both insurance brokerage services and reinsurance brokerage services.

The broker's corporate form and charter must be licensed by the State Bank of Vietnam for their insurance agency services under their licenses.

The broker's managers/executive officers must meet the criteria and qualifications required by Vietnamese insurance business laws.

Contributed charter capital must not be less than the legal capital prescribed under the laws, in particular: (1) VND 4 billion (approximately USD 175,000) for a broker that conducts either insurance brokerage services or reinsurance brokerage services; and (2) VND 8 billion (approximately USD 350,000) for a broker that conducts both insurance and reinsurance brokerage services.

The broker's corporate form and charter must comply with regulations under Vietnamese insurance laws and other relevant laws.

The broker's managers/executive officers must meet the criteria and qualifications required by Vietnamese insurance business laws.

## Is it mandatory for insurers to offer customers the option of purchasing insurance products directly from them without going through financial advisers or intermediaries?

No. Vietnamese insurance law generally allows insurers to sell their products through any of the following methods: (a) direct sales to customers; (b) insurance intermediaries; (c) bidding; (d) e-transactions; or (e) other lawful forms.

## Do agreements between insurers and their agents need to take a certain form?

No. Generally, however, there should be written agreements between insurers and their appointed agents. The Law on Insurance Business of Vietnam requires that agreements between insurers and their agents include the following contents:

Name and address of the insurance agent

Name and address of the insurer

Rights and obligations of both the insurer and insurance agent

Contents and scope of operation of the insurance agent

Insurance agency commission

Term of the contract

Principles for settlement of disputes

## Can insurers pay volume-based commission to their appointed agents?

Yes. There is no overarching prohibition on paying sales-based commissions to appointed agents. However, the following limitations apply:

a. Agents' commissions: Insurers must pay agents commission at a maximum rate calculated according to the received insurance premium of each insurance contract. The maximum rate of commission varies depending on the types/classes of products involved.

For non-life insurance, the maximum commission is 5% for compulsory fire and explosion insurance, 20% for motor owner's civil liability insurance, 10% for voluntary fire and explosion insurance, and 0.5% for aviation insurance.

For life insurance, the commission may vary throughout the term of the policy. In the case of individual term life insurance, for instance, the commission shall not exceed 40% of the first year's premium, 20% of the second year's premium, and 15% of the premium for succeeding years. For group life insurance policies, the maximum commission rate is half of the corresponding rate applicable to life insurance provided to individuals.

For health insurance, the maximum rate of commission is 20%.

b. Brokers' commissions: The maximum rate of brokerage commission of each insurance operation/class under each insurance policy contract is 15%. This rate is calculated based on the amount of premiums as actually collected by insurers.

## Are insurers liable for any mis-selling of its agents or appointed distributors?

Yes. Under the Law on Insurance Business of Vietnam, when an insurance agent breaches the insurance agency contracts, and this breach (which can include mis-selling) causes damage to the legitimate rights and interests of the insured, the insurer must take responsibility for the breach. Accordingly, the agent shall indemnify to the insurers the amounts that the insurer has paid to the insured relating to the breach by the agent.

## Are there rules on the number of insurers that insurance brokers need to present to their customers?

No. Vietnamese laws do not provide for the number of insurers that insurance brokers need to present to their customers.

However, Vietnamese business insurance laws provide for certain prohibited acts in the insurance brokerage business. For example, the law prohibits an insurance broker from advising clients to buy insurance from an insurer whose products' terms and conditions are less competitive than those of another insurer in order to gain a higher brokerage commission.

## Can insurance brokers receive commission from both insurers and their customers? If so, can they be volume-based commission?

The law is silent on this matter, which can be interpreted as there being no restriction. However, the law provides that the insurance brokerage commission may not exceed 15% of the insurance premium that the insurer has collected.

## Can agents or appointed distributors offer rebates on insurance premiums or other special concessions to the customers?

No. As a general principle, Vietnamese business insurance laws provide that an insurance agent should only conduct activities, including insurance premium collections, with the insurer's authorization. Therefore, agents cannot offer rebates on insurance premiums or other specials without authorization from the insurer.

## Can insurers appoint offshore agents or accept business from offshore brokers?

In relation to agents, no express restriction prohibits insurers from appointing offshore agents. However, insurers cannot appoint offshore individual agents given that such entities must be Vietnamese citizens residing in Vietnam to be able to apply for individual agents. Further, the law requires that staff members of organizational agents who directly conduct agency activities must meet the same requirements as individual insurance agents (ie, a Vietnamese citizen residing in Vietnam). In order to meet this requirement, the organizational agency needs to be an onshore agent.

In relation to brokers, no express restriction prohibits insurers from accepting business from offshore brokers. However, Vietnamese law imposes strict limitations on such cross-border brokerage insurance services.

a. The offshore broker must meet the requirements under Vietnamese business insurance laws to provide cross-border insurance brokerage service, including:

Having a license granted by the foreign state management agency in charge of insurance in the locality where the offshore insurer’s head office is located to conduct insurance brokerage operations. The offshore broker must have operated for at least 10 years by the time of provision of cross-border insurance services in Vietnam.

Obtaining a document from the foreign state management agency in charge of insurance in the locality where the offshore broker’s head office is located permitting the provision of cross-border insurance brokerage services in Vietnam and certifying that the offshore broker has not violated the regulations on insurance brokerage activities and other relevant foreign regulations for three years prior to the year of provision of cross-border insurance brokerage services in Vietnam

Having total assets worth at least USD 100 million in the fiscal year prior to the year of provision of cross-border insurance services in Vietnam.

Having conducted profitable business for three fiscal years prior to the year of provision of cross-border insurance services in Vietnam.

Such foreign insurance brokerage business must purchase professional liability insurance for the cross-border insurance brokerage  
services it provides in Vietnam.

b. The users of the cross-border insurance brokerage services are limited to enterprises established in Vietnam of which foreign investors hold over 49% of charter capital as well as foreigners working in Vietnam.

## Are there specific requirements on selling products through call centers, telemarketing or other distribution channels?

Generally, insurers are entitled to sell insurance products via electronic transactions and other methods in accordance with the law. However, the law does not provide for any detailed guidelines or further elaborate on any specific requirements on selling products through call centers, telemarketing or other similar distribution channels. That said, selling products through call centers, telemarketing or other similar distribution  
channels must be in accordance with general requirements on selling insurance products, anti-spamming and other regulations where relevant.

## Are there specific requirements on selling products through online channels?

There are no detailed guidelines or requirements on selling insurance products through online channels under Vietnamese law. That said, online transactions must be performed in accordance with the general requirements on selling insurance products and electronic transactions (particularly those governed not only by the Law on Insurance Business but also the Law on E-Transactions, IT Law, etc.).

## Can insurers share client information with insurance agents and brokers and vice versa? What data privacy or confidentiality laws apply?

Vietnam has no single comprehensive law that addresses individual and organizational privacy rights. Instead, relevant provisions are found in the Constitution, the Civil Code, the Penal Code, Consumer Protection Law, E-Transaction Law, IT Law, and the Law on Cyber Information Security and certain implementing regulations. The laws and regulations do not employ consistent definitions of what information constitutes personal data and vary depending upon the sector to which the regulation/law applies. At a minimum, information that would enable the identification of an individual should be considered subject to protection. As a general principle, individuals must grant their prior informed consent to the collection, use and transfer of their personal data. Data controllers must not share or disperse the collected, accessed or controlled personal data to any third party, unless it is agreed by the data subjects or requested by a competent state body. If personal data is transferred to a third party, proper consent must be obtained for this transfer.

Thus, if client information contains personal details, insurers must obtain consent from the client before sharing such information with insurance agents and brokers, and vice versa.

# Investing in Insurtech Start-ups

## Are there any limitations or criteria on the type of start-up that an insurer can invest in? Does the start-up need to be registered with any authority?

There are no specific limitations or criteria on the type of start-ups that an insurer can invest in. However, there are restrictions or caps on the insurer's capital sources to be used for investment and how much an insurer can invest in other entities (including start-up) in general.

In addition, if the start-up requires the establishment of an IT/technology-related company, it will be subject to the requirement for company registration with relevant Department of Planning and Investment and other licensing procedures, depending on the nature of the business involved.

## What are the available options in terms of investments that an insurer can make in an insurtech start-up?

The insurer can invest in an insurtech start-up by buying shares or corporate bonds or contributing equity capital to the start-up.

## What are the restrictions on investing in an onshore insurtech start-up?

For the forms of buying shares or corporate bond:

In the case of a life or health insurer or reinsurer, the maximum ratio of its total investment value in all other entities (including startup) is 50% of its idle capital from reserves for insurance operations.

In the case of a non-life/general insurer or reinsurer, the maximum ratio of its investment value in all other entities (including startup) is 35% of its idle capital from reserves for insurance operations.

For the form of contributing capital (equity ownership) to the start-up:

In the case of a life or health insurer or reinsurer, the maximum ratio of its total capital contribution (equity ownership) value to all other entities (including start-up) is 20% of its idle capital from reserves for insurance operations.

in the case of a non-life/general insurer or reinsurer, the maximum ratio of its capital contribution (equity ownership) value to all other entities (including start-up) is 35% of its idle capital from reserves for insurance operations.

## What are the restrictions on investing in an offshore insurtech start-up? Is approval required from the regulators?

The insurer can establish or contribute capital to establish an offshore insurer or an offshore branch of the insurer. However, the law remains unclear as to whether the insurer can invest in an offshore insurtech start-up.

In any case, an offshore investment by an insurer will be subject to a specific approval by the Ministry of Finance. The law provides for a time limit of 21 days that the authority is required to issue the approval or denial from the date of its receipt of a sufficient and valid application dossier, but this process takes a longer time in reality.

## Is an insurer permitted to grant loans to an insurtech start-up? Under what conditions?

Yes, provided that the insurer has satisfied the relevant requirements under the Law on Credit Institutions and the regulations of the State Bank of Vietnam.

## What type of corporate approvals is required for an insurer to invest in an insurtech start-up?

Investments in insurtech start-ups must be subject to the charter of the insurer and, depending on the legal form of the insurer, approved by the board of directors (or the equivalent body) or the general meeting of shareholders of the insurer.

## Are there any general minority shareholder protection mechanisms in your jurisdiction?

In a joint stock insurer, a shareholder or a group of shareholders holding 10% or more of the total ordinary shares for a consecutive period of six months or more, or holding a smaller percentage as stipulated in the charter of the company, has the following rights:

Nominate candidates to the board of management and the supervision board/board of controllers.

Review and make an extract of the book of minutes and resolutions of the board of management, mid-year and annual financial statements and reports of the supervision board.

Request the convening of a general meeting of shareholders.

Request the supervision board to inspect each issue relating to the management and administration of the operation of the company and other rights in accordance with the charter of the company.

In a limited liability insurer, any capital contributing member or a group of members holding 10% or more of the charter capital or a smaller percentage as stipulated in the charter of the insurer will have the following rights:

Request a meeting of the members' council.

Inspect, review, or consult transaction monitoring records, books of account and annual financial statements.

Inspect, review, consult or copy the register of members, minutes of meetings and resolutions of the members’ council and other files of the company.

Request a court to cancel a resolution of the members' council within 90 days from the date of closing of a meeting of the members' council if the sequence, procedures and conditions of such meeting or the contents of such resolution are inconsistent with or do not comply with the law and the charter of the insurer. Where any capital contributing member of the limited liability insurer holds more than 90% of the charter capital and the charter of the company does not stipulate a smaller percentage, the other group of members automatically has the abovementioned rights.

## Are there any restrictions on the insurer in terms of appointing its own staff or management to join the insurtech start-up's board of directors or management team?

There are no restrictions on the insurer as regard appointing its staff or management to join the insurtech start-up's board of directors or management team. Restrictions of Vietnamese law exist for the appointment from a local insurer to another local insurer only.

## Are there any restrictions on entering into a service contract with the insurtech start-up upon completion of the investment? (a) Any connected party transaction restrictions? (b) Any prerequisite approvals required from the regulators or from internal committees?

Yes, subject to the charter of the insurer and the charter of the start-up, internal approvals from the board of members (or the board of directors or equivalent body) of either or both parties may be required.

The investment in the insurtech start-up must be in accordance with the insurer's internal investment regime/regulation, and subject to such regime, internal approval by the investment committee or the board of members (or equivalent body) may be required.

## Are there any regulatory requirements on the disclosure of the transactions and connected transactions thereafter between the insurer and the insurtech start-up?

If the insurer and the insurtech start-up are related parties, the parties' signatories must notify and send draft contracts or key terms of such contracts to the board and/or the general meeting of shareholders for approval before execution.

In addition, the general requirements related to transfer pricing issue, anti-money laundering and other general compliance requirements may apply.

## To what extent can the insurer provide operational support to the insurtech start-up?

The insurer can provide operational support to the insurtech start-up. No specific restrictions or licensing and/or approval requirements from governmental authorities are required. However, such support or services must be within the licensed scope of the insurer's activities if the insurer will charge for the supporting services.

## What type of remuneration is permitted for the insurer to offer to the insurtech start-up?

No specific restriction on the form of remuneration offered to the insurtech start-up exists. However, the insurer must be able to allocate such remuneration properly to one of the permitted types of expenses provided by the law for an insurer. Otherwise, such remuneration may not be recognized as deductible expenses for local tax purposes.

## How can the insurtech start-up transfer the intellectual property rights for its

Intellectual property rights are transferred through a written assignment agreement. The assignment of any trademarks, patents, industrial designs or integrated circuit layout designs that have been filed or protected in Vietnam must be recorded with the local competent authorities.

## Are there any laws governing the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up?

Vietnam does not have a single comprehensive law that addresses the protection of personal data. Relevant provisions are contained in the Civil Code, the IT Law, the Consumer Protection Law, the Penal Code, the Telecommunications Law and the Cyber Security Law and the Cyber Information Security Law, though these matters are addressed in fairly general terms, while implementing regulations contain more specific provisions. As a general principle, these laws protect information pertaining or belonging to individuals (to a lesser degree, organizations) that can serve to personally identify that individual. The collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up must be compliant with Vietnamese privacy-related laws.

# Insurance Regulatory Landscape and Key Considerations for M&A Transactions

## Who is the main regulator with oversight of insurance companies?

Insurance Supervisory Authority under the Ministry of Finance (**MOF**)

## Are there foreign ownership limitations for insurance companies? Are there shareholding caps on individuals and/or corporate bodies for insurance companies? If in the affirmative, is this encapsulated within statute or a matter of policy?

No. However, in a joint stock insurance company must have at least two corporate shareholders that together hold 20% of total shares of the insurance company, and those shareholders must satisfy the same financial requirements as those applying to corporate investors in an insurance joint venture or limited liability company (LLC).

## Can an insurance company carry on a composite business (i.e., life and non-life)? Is this encapsulated in statute or a matter of policy?

No (a matter of law).

## Are there other conditions imposed by the regulator in doing an M&A transaction?

A foreign investor of a 100% foreign-invested insurance company or an insurance joint venture company must meet a number of requirements:

Have permission from a competent authority in its home country to carry out an insurance business

Having at least seven years of experience of operation in the relevant areas of insurance to be conducted in Vietnam

Have a minimum total value of assets equivalent to USD2 billion in the year immediately preceding the year the application for issuance of a license is submitted

Must not have committed any serious violation of regulations on insurance business activities of the country where its headquarters is located within three consecutive years immediately preceding the year the application for issuance of a license is submitted

## Is dispensation given for fulfillment of these conditions and in what circumstances?

Generally, no or on a case-by-case basis.

## Is there a single presence policy and is it imposed under statute or policy? Is dispensation given and what criteria will the regulator consider?

No.

## What approvals are required for a foreign entity to take a stake in an insurer? Is there a distinction between a share deal or an asset deal?

**Share deal**

The MOF's approval is required for a stake of 10% or more of a Vietnamese insurance company.

**Asset deal**

Asset deals are not common in Vietnam. MOF approval is required for the transfer.

## How long will regulatory approvals typically take for a share deal versus an asset deal?

**Share deal**

By law, the timelines combined are around three months, but in reality, from three to six months, depending on the size of the stake and negotiation of involved parties.

For the establishment of a new insurance company, by law, the combined timelines are around three months, but in reality the entire process may take six to 12 months or more, depending on whether there are multiple investors/shareholders and the negotiation of involved parties.

**Asset deal**

For an asset deal, the transfer of insurance policies from the seller to the purchaser will be required. By law, the combined timelines are around four months for the transfer of insurance policies. In reality, the entire process may be longer, depending on the actual situation and the asset involved.

## How open is the regulator to private equity participation in an insurer?

There is no clear statutory restriction. However, the MOF would generally favor a strategic investor over a private equity investor. Generally, private equity players will not meet the foreign shareholder criteria.

## Is there a financial holding company concept (FHC) or other equivalent status? What are the implications?

There is no FHC concept for insurance companies.

## What are the typical modes of distribution for insurance companies?

Agencies, bancassurance (as a special form of agencies), brokers' direct sales and digital channels

## Is bancassurance a popular mode of distribution? What approvals are required? What are the main parameters in negotiating a bancassurance agreement?

Yes, bancassurance is a popular mode of distribution. The bank must obtain the approval from the State Bank of Vietnam for its insurance agency business. The bank’s employees who directly conduct insurance agent activities must be trained and issued insurance agent certificates.

The salient terms are:

Exclusivity

Term and termination of the agreement

Products to be distributed

Commissions and other payments

Confidentiality

Data privacy and data provision between the parties for the bank's customer data

The insurer’s training for the bank’s sale staff

## What are the top challenges in closing an insurance M&A transaction (share deal versus asset deal)?

**Share and asset deals**

Identifying the right target, which can be difficult or time-consuming given that publicly available and reliable sources of information are limited

Obtaining regulatory approvals by the MOF as the insurance regulator for completion of deals can be time-consuming, especially when acquiring a 10% stake or more

Conditions and requirements applicable to acquirers can be cumbersome

# Data Protection and Cybersecurity

## Who is the main regulator with oversight of data privacy matters?

There is no designated data privacy regulator as Vietnam has not passed a consolidated data privacy law. However, the Ministry of Information and Communications (MIC) is the government body charged to regulate matters that would include data privacy.

## What is the main legislation on the protection of personal data privacy?

There is no consolidated law that addresses the protection of personal data privacy. The concept exists under various laws and regulations, including the Constitution, the Civil/Criminal Code, the Law on Protection of Consumers' Rights, the Law on E-Commerce, the Law on Information Technology, the Law on Insurance Business, the Law on Credit Institutions and the recently passed Law on Network Information Security. Primary legislation is broad while implementing regulations (when they exist) tend to be more specific.

# Regulatory Landscape and Issues in Bancassurance

## Who is the main regulator with oversight of bancassurance matters?

The Insurance Supervisory Authority of the Ministry of Finance (the **MOF**) and State Bank of Vietnam (**SBV**).

## Is bancassurance a popular mode of distribution? What types of bancassurance partnership arrangements are available?

Yes.  
  
Bancassurance partnerships are generally divided into the exclusive and non-exclusive arrangements (the default requirement is that a credit institution or a foreign bank branch in Vietnam may not concurrently act as an insurance agent to other insurers without a written consent of the insurer that it is currently the agent to).

## What are the main parameters in negotiating a distribution agreement?

The salient terms are:

exclusivity;

term and termination of the agreement;

products to be distributed;

commissions and other payments;

confidentiality;

data privacy and data provision between the parties for the bank’s customer data; and  
g) the insurer’s training for the bank’s sale staff.

## Are insurance companies and banks required to hold any specific license (whether to be obtained on an ad hoc or ongoing basis) in order to enter into the distribution agreements to provide bancassurance services and products?

Yes, insurance companies must be licensed, and for life and health insurance products, the products must be approved by the Ministry of Finance.  
  
Insurance agency operation of banks must be approved by the State Bank of Vietnam.

## Are there any legal or regulatory restrictions on the insurance company or the bank providing exclusivity to the other party?

There is no legal restriction for an insurer to appoint a bank as its exclusive distributor or the term/duration of the appointment.  
  
However, a bank may not concurrently act as agent for other insurers unless it is approved by the insurer of which such bank is an existing agent.  
  
To the extent that an exclusive arrangement is possible, the length of the exclusivity is a matter of negotiation between the parties.

## Assuming full exclusivity is not possible for legal or regulatory reasons, would the bank be able to grant the insurance company preferential treatment? If yes, under what conditions?

Yes, and the form of the preferential treatment is a matter of negotiation.

## What type of engagement (if any) with the regulators would be legally required in connection with the negotiation/entering into of the distribution agreements?

Periodical (quarterly) reporting is required to the MOF (for insurers) and to the SBV (for banks). No specific approval is required under the law.

## Would the insurance company and/or the bank be required to submit the distribution agreements (and any ancillary documents) to the regulators as part of any notification/approval process? If yes, do the regulators require any specific terms to be included in the distribution agreements?

No, there are no specific legal requirements for the insurance company or the bank to submit the distribution agreements (and any ancillary documents) to the regulators.  
  
The law requires distribution agreements (i.e., agency agreements) to contain certain key provisions. However, there are no specific requirements for the details of each provision.

## If the distribution agreements are submitted, would the regulators review/provide comments and require that the agreements be modified?

In practice, it is uncommon that regulator will comment on the terms, although the regulators have an extensive regulatory power to do so. If the distribution agreement is requested to be submitted to the regulators, it is likely that the regulators would only provide comments to the provisions that they find contrary to the law.

## Would any antitrust/competition analysis have to be conducted with respect to the insurance company and/or the bank prior to entering into the distribution agreements?

It would be prudent to undertake a competition law review to make sure that there will be no potential risk of violation.

## What are the competition law considerations that might impact the term (e.g., duration) of a distribution agreement?

Insurance regulations prohibit the below anti-competition activities, and therefore should be considered in reviewing a distribution agreement:

Establish collusion among insurance enterprises;

Illegally intervene in the selection of insurance enterprises;

Provide untruthful information;

Fight for customers by obstructing employees or customers of other insurance enterprises;

Conduct illegal sales promotions; and

Conduct other illegal acts in cooperation, competition and bidding.

## Under applicable laws and regulations, would the insurance company be allowed to use customer information (consisting of certain personal and demographic data) possessed by the bank to: (a) develop new products and refine marketing strategies, among others; (b) conduct its own telemarketing or direct mail activities; and (c) cross-sell products?

Yes, provided that the bank has to obtain consent from relevant customers.

## Are there any laws or regulations limiting or prohibiting the dissemination of customer information without the customers’ consent? Are customers allowed to waive any of these limitations or prohibitions?

Yes. Customers may provide consent to the banks to disclose their information to insurers.

## Are there any other prohibitions or limitations resulting from applicable privacy laws relating to the sharing of customer information for purposes of marketing and distribution of insurance products?

None.

## Are there any prohibitions or limitations in respect of compensation arrangements for bancassurance transactions (up-front/staggered payments, commission payments, bonus payment schemes)?

Yes, there are certain limitations.  
  
In respect of commissions, commission rate must be subject to maximum limits set out by the MOF for each type of product. In respect of other expenditures for banks (as insurance agents), for non-life insurers, there is a restriction that expenditure for agent rewards and agent support must not exceed 50% of insurance commissions of insurance policies implemented in a fiscal year.

## What are the sanctions for non-compliance with the prohibitions or limitations in respect of compensation arrangements?

For payment of commission at a higher rate than the limit required under the law, a monetary fine from VND90 to VND100 million (approximately USD4,500 to USD5,000) may be imposed. A part of the license relating to the violation may also be ceased for two to three months. Illegal profits are required to be disgorged.

## Would the regulators request information on compensation arrangements (for specific jurisdictions or globally)?

Yes, the MOF might request information through periodical reporting requirements or their inspections from time to time.  
  
For life insurers, they are required to report to the MOF on a quarterly basis on total premiums collected, total commissions and other payments to its banks/agents. Banks are also required to report to the SBV on total amounts of these payments on a quarterly basis.  
  
For non-life insurers, no such specific requirements for periodical reports on compensation arrangements with banks. Only general requirements for quarterly reports on the list of agents are applicable.

## Are there any restrictions in relation to the classes of insurance products which may be offered pursuant to a bancassurance arrangement?

None, provided that life or health insurance products must be approved by the MOF before sale under current regulations.

## Are there any products or product lines that the insurance company would be unable to offer to and distribute through the bank?

None.

## Would the policy forms used by the insurance company have to be approved by any regulator? Would the insurance company own the intellectual property rights relating to such policy forms?

For life and health products, policy forms must be reviewed and approved by the MOF before the insurers can offer and sell their products in the market. Also, life insurance policy template and terms and conditions need to be registered with the Vietnam Competition Authority in accordance with the law on consumer protection.  
  
Insurers own the IP rights to such forms.

## Are there any prohibitions or limitations in respect of co-branding between the bank and the insurance company?

None, except for a general requirement that the conclusion/execution of insurance policies (between a life insurer and its customers) and the conclusion of other contracts (between a bank as the insurer’s agent and its customers) must be separated and that each of the insurer and the bank must independently take responsibility for their own products and services (including the case where the insurer and the banks agree to link insurance products with banking products and services).

## Would the bank personnel be required to hold any specific license in order to distribute the insurance products? Are there any reasons why bank personnel may be prohibited from distributing insurance products?

No. However, the bank would generally exercise care regarding the level of access to its customer data.  
  
In addition, the sales people are usually employed by the bank rather than the insurer. Vietnamese law prohibits insurers from paying commissions to their sales people.

## If the sales person is employed by the bank: (a) is the insurance company required to have oversight or provide special training; and (b) are there applicable laws and regulations allowing the insurance company to compensate the bank for the service provided by its sales personnel?

Yes, the insurance company must provide training and issue insurance agency certificates to the sales personnel.

Insurance company may compensate the bank in the forms of commission, sale bonus and agent supporting amount, and the bank may use such compensation to pay its sales personnel.

## If the sales person is employed by the insurance company, are there any restrictions on their access to the bank’s branches?

No. However, the bank would generally exercise care regarding the level of access to its customer data.  
  
In addition, the sales people are usually employed by the bank rather than the insurer. Vietnamese law prohibits insurers from paying commissions to their sales people.

## Are banks allowed to lease space to insurance companies to market its products in the bank’s branches?

If the bank is an insurance agent of the insurer and the parties enter into a distribution agreement (agency contract), the bank will normally provide some space without additional fees to the insurance companies to distribute its products.  
  
If the bank leases space to the insurance company by way of entering into a lease agreement, this may be difficult because it will require the bank to register for a leasing business  
as one of its lines of business.

## Are there any investment requirements (e.g., minimum stake to be held by the insurance company in its distribution partner) or any other similar legal or regulatory obligations that may affect the insurance company’s ability to enter into the distribution agreements?

None.

## Are there any recent (or pending) developments in laws and regulations that may be relevant to the negotiation and/or the entering into of the distribution agreements (or the provision of services by the insurance company and/or the bank pursuant thereto)?

Yes, the MOF and the SBV issued a joint circular No. 86/2014/TTLT-BTC-NHNNVN on 2 July 2014 on bancassurance between banks and life insurers in Vietnam. Specifically, this joint circular provides guidelines on the principles and conditions for credit institutions to carry out life insurance agency activities, provides key contents of insurance agency agreements (i.e., distribution agreements), specifies the commissions and expenses for management of agents, states the rights and obligations of credit institutions and life insurance companies, provides arrangements for training for sale staff of credit institutions, and provides for reporting requirements.

## Are there any other issues that may affect the insurance company’s ability to enter into the distribution agreements and provide bancassurance services on an ongoing basis to the bank?

None.

# Top 10 Issues to Consider in a Regional Bancassurance Deal

## What are the issues to consider in respect of exclusivity rights in a bancassurance agreement?

Vietnamese law treats the bank as an agent of the insurer and the bancassurance agreement as an insurance agency agreement. The legal default requirement is that a credit institution or a foreign bank branch in Vietnam may not concurrently act as an insurance agent to other insurers without a written consent of the insurer to which it is currently the agent. However, no legal restrictions are imposed on insurers from entering into bancassurance agreement with more than one bank.  
  
In practice, parties can further elaborate the scope of exclusivity such as restrictions in relation to certain products, a certain period of time or certain geography.

## What are generally the obligations of an insurer in terms of providing manpower support?

Vietnamese law imposes an obligation on the insurer to develop training programs and coordinate with the bank in organizing and providing training courses and take responsibility for granting insurance agent certificates to the bank’s staff members, who directly act as individual insurance agents.  
  
Any other obligations on providing manpower support is a matter of negotiation between the insurance and the bank on a case-by-case basis.

## What are the typical rights and provisions in relation to insurer’s right to access the bank’s customer database and also the obligations of an insurer that is in receipt of such information?

The bank’s customer database is subject to banking secrecy, data protection and privacy regulations. As banks are under a strict duty to maintain confidentiality and secrecy, banks will only allow the insurer the right to access their customer database after it has received the relevant consent from the customer or as may be otherwise permitted by the law.  
  
The disclosure by the bank to the insurer is also typically subject to strict confidentiality provision. In practice, the insurer generally has to agree to use such customer data for purposes specified in the consent, to maintain such data strictly confidential, and not disclose the information to any third party whatsoever (including each of the insurers’ subsidiaries, related companies, associated companies, agents, servants or to employees of the insurers, except employees who are required to have the information in order to carry out the insurers’ obligations under the bancassurance agreement).

## What are the issues to consider in respect of compensation payable by the insurer to the bank and cost of distribution of bancassurance products?

There are two separate components of compensation payable to the bank, including commissions and other expenditures.  
  
In respect of commissions, commission rate must be subject to maximum limits set out by law for each type of insurance products. Banks typically request for the maximum amount of commission payable under law. As a matter of negotiations, the parties may wish to consider giving themselves the flexibility in determining the commission structures reflecting the parties’ view on bancassurance product competitiveness, market segmentation and any impact on bancassurance product sales volume.  
  
In respect of other expenditures for banks (as insurance agents), apart from commissions, other expenses and fees to be paid to the bank should be classified as “expenses for management of insurance agents.”  
  
Accordingly, “expenses for management of insurance agents” includes expenses for initial training and examination for issuance of insurance agent certificates, expenses for improving knowledge to agents, expenses for recruiting agents, expenses for rewarding agents and expenses to support agents. For this part, applicable to non-life insurers, there is a restriction that expenditure for agent rewards and agent support must not exceed 50% of insurance commissions of insurance policies implemented in a fiscal year.  
  
It is common in practice, especially in an exclusive bancassurance transaction, that the insurer will pay the bank an upfront fee as an exchange for the exclusivity offered by the bank. It is uncertain under the law whether such upfront fee can be considered “expenses for management of insurance agents”. If not, there is a risk that such upfront fee would not be considered as legitimate business expenses of the insurer for income tax calculation purposes.

## What can parties do if the insurer is unable to develop or refuses to develop a bancassurance product or cease offering a bancassurance product?

This is a matter of negotiation between the insurer and the bank, noting that the development of products is subject to the approval or reporting requirements by the law. Parties normally set up a steering committee to work out business plans and supervise the implementation of the same. This committee will discuss any issue and find the solutions, or escalate to higher management to resolve before the bank can sell such product for another insurer or terminate the agreement.

## What are the possible terms and issues relating to intellectual property that has been jointly developed (JDIP) pursuant to a bancassurance agreement?

A bancassurance agreement may have a provision on the ownership of the JDIP as well as the use and transfer of such JDIP. Normally, such JDIP will be under joint ownership and the transfer must be approved by both parties, unless otherwise agreed by the parties.  
  
The bancassurance agreement may also have a provision on the license of the JDIP, which is created and developed by a party to the other party in connection with the performance of the licensee obligations for the term of the bancassurance agreement, and vice versa, in which the licensor shall provide a warranty that the JDIP does not infringe any third-party rights or law.  
  
The license of the JDIP, which is created and developed by a party, should be terminated upon the termination of the bancassurance agreement. The parties should also reach an agreement on how to dispose of the rights in the JDIP, which is jointly owned by the parties upon termination of the bancassurance agreement.

## What happens to the facilitation fee for the promotional and marketing activities paid by the insurer to the bank in the event of an early termination?

This is a matter of negotiation between the insurer and the bank. Facilitation fee is not commonly seen in Vietnam as a matter of practice, given the restriction on the expenses that the insurer may incur as mentioned in Question 4 above.

## A pro-rata refund of the facilitation fee in the event of an early termination may not be fair to the banks as the banks would typically invest and incur more costs and expenses during the initial years of a bancassurance agreement to promote and market and put in place a business structure to supports the objectives of the bancassurance agreement. How can the parties address this issue?

This is a matter of negotiation between the insurer and the bank. Facilitation fee is not commonly seen in Vietnam as a matter of practice, given the restriction on the expenses that the insurer may incur as mentioned in Question 4 above.

## Can a party ask for an indemnity for any losses, expenses and damages suffered as a result of an act by a bank staff and conversely can a bank to ask for an indemnity or any losses, expenses and damages suffered which is attributed to the other party?

As the bank is only an agent of the insurer, it is the insurer that will be liable toward the customers. However, the insurer can seek compensation from the bank for any breach by the bank staff of regulatory requirements or fraud or any activity infringing the laws directly or indirectly related to the sale of the bancassurance products.  
  
The bank may also seek damages for breach of the bancassurance contract by the insurer.

## What are the issues to consider when forming a bancassurance steering committee?

A bancassurance steering committee is not required under Vietnamese law and there is no specific rule on it. It is, therefore, optional. However, this model is commonly seen in practice as the bancassurance steering committee (**BSC**) can facilitate collaboration and ensure the effective implementation of the bancassurance business and the annual business plan.  
  
The issues that the parties may wish to consider may include composition of the BSC; frequency of BSC meetings; quorum for BSC meetings; matters falling within the scope of the BSC (e.g., drawing up the annual business plans, implementation of business plans, monitoring performance of targets and business plans, determining standard operating protocols, facilitating and resolving issues); decision-making process (e.g., whether it should be by majority or unanimous vote) and proposed resolutions if there is a deadlock in the BSC (e.g., escalation to senior management).

# Digitalization in Insurance Guide

## Is there any specific regulation governing the sale of insurance through online platforms?

There is no single comprehensive or specific law on sale of insurance through online platforms. Decree No. 73/2016/ND-CP allows the sale through online platforms to be one of the insurance product distribution channel. However, there is no further guidance on the sale of insurance product via this channel.  
  
We also note that Decree No. 52/2013/ND-CP and its implementing regulations on e-commerce activities explicitly exclude e-commerce websites and applications operating in insurance business from their scope of application.

## Is the sale of insurance through mobile applications subject to the same requirements as the online sale?

There is no single comprehensive or specific law on sale of insurance through online platforms.  
  
The law provides that the sale of insurance products via electronic means is considered a distribution channel. The sale of insurance through mobile applications may be considered the sale via electronic means. Therefore, the sale of insurance through mobile applications may be treated as same as the online sale. However, this is untested in practice given the lack of regulation on online sale.  
  
As stated above, we also note that Decree No. 52/2013/ND-CP and its implementing regulations on e-commerce activities explicitly exclude e-commerce websites and applications operating in insurance business from their scope of application.

## Set out three key regulatory requirements for the distributions of products online or through mobile applications.

There are no specific regulations on online sale of insurance products, therefore, there are no requirements for the distributions of products online or through mobile applications. It appears that the requirements applying to the insurer for the distribution of products online or through mobile applications will be same as the requirements for an insurer to distribute the insurance product via other channels.

Under Law on Insurance Business and its guiding documents, there are certain requirements on an insurance product to be sold, for example:

Life insurance products and health insurance products must be approved by the MOF before being sold;

For non-life insurance products:

For automobile insurance products, their policy wordings and premium schedules must be registered with the MOF before being sold;

For other non-life insurance products, the insurers can formulate the policy wordings and premium schedules at their own discretion.

Insurers must announce the information about the insurance products permitted to be sold, including: Policy wordings, premium schedules, insurance request forms and documents related to the execution and implementation of insurance contracts on the websites of the MOF, the Insurance Association of Vietnam and the Insurers.

## Do the current insurance regulations in your jurisdiction allow the KYC process be done online or electronically? If so, what are the key requirements?

There is no specific insurance regulation allowing the KYC process be done online or electronically.

Note that Vietnamese law requires a face-to-face contact for new clients in case of "transactions relating to new technology". Under the Decree No. 116/2013/ND-CP guiding Anti-Money Laundering Law, "transaction relating to new technology" is defined as "transaction using technology which allows the customer to conduct the transaction without face-to-face meeting with the staff of the reporting entity". As such, it is arguable that the sale of products through online platform can be considered a "transaction relating to new technology". If so, AML regulations still requires insurance company to have a face-to-face contact with the customer when it is the first time of setting up the contractual relationship with the customer and to request the customer to provide required information for KYC purpose (Article 8.1, Decree No. 116/2013). It appears that this regulation implies that for new customers for insurance, insurers are required to have face-to-face contact at least one time, whether or not the insurers’ sale of insurance products and the channel they use is considered a "transaction relating to new technology".

## Do the insurance regulations permit insurance policies/contracts to be concluded through digital means? For example, through a “click-through” or “e-signature”, without any wet signature.

Under the Law on Insurance Business, sale via electronic means is an allowed distribution channel of an insurance company. However, there has not been any further guidance on this distribution channel yet. The lack of detailed guidance makes it unclear on how a proper sale of insurance via electronic means should be.

E-contract and e-signatures, including "confirmation" click-through process (e.g., by ticking a box), and acceptance through conduct (e.g., use of site), are generally accepted. Vietnamese law provides that there shall be no discrimination between physical documents with pen-and-paper signatures and electronic documents, including "click-through" agreements. That said, if there is any dispute regarding the validity and enforceability of a electronic agreement (such as "click-through" agreement), the validity as evidence of such agreement shall be determined based on the reliability of the method by which the agreement was generated, stored or communicated; the method to ensure and maintain the integrity of the agreement; the method by which its originator was identified, and any other relevant factors. (Article 14, E-Transaction Law).

## Is there any specific regulation governing the advertising of insurance products through online platforms or the use of aggregators?

No. There is no specific regulations from insurance business law perspective on advertising of insurance products through online platforms. Advertising of insurance products through online platform is subject to the same regulation as advertising through other means. The use of aggregators is not specifically regulated under Vietnamese laws.

## Are there any customer service requirements if the insurers sell their products online?

There is no specific regulations on customer service requirements if the insurers sell their products online. The insurers should comply with general regulations on provide information to the customers under the Law on Insurance Business. For example, the insurers have the responsibility to fully supply information on the insurance contracts and explain terms and conditions to the customer; and the insurers have to keep confidential the information supplied by the customer.

## If an obligation is imposed on insurers to allow customers to amend or update their policies online, are there any specific regulatory requirements governing that process?

There is no such obligation imposed yet.

## Are insurers required to apply for specific insurance licenses in order to conduct online sales?

No. There are no specific regulations on online sales of the insurers. In practice, certain insurers still sell their insurance products via online channel with their current insurance licenses but that practice is limited to a few simple products that do not require endorsement given the lack of guidance in the law on this distribution channel.

## In order to conduct online sales, are insurance intermediaries required to apply for any specific insurance licenses?

No. There are no specific regulations on online sales of the insurance intermediaries.

## Are there specific requirements on the commission rates paid to insurance intermediaries for online sales? Please specify if these rates are different from the rates applicable in the case of insurance sale through other means.

There is no specific regulations on online sales of the insurance intermediaries. Circular No. 50/2017/TT-BTC specifies the commission rates for the insurance brokers and there is no distinction on the commission rates paid between online sales and other means.

## Where the insurers do not engage in online insurance sales themselves, but engage intermediaries to do so, would the insurers be deemed as offering or selling insurance products online?

No. There are no specific regulations on online sales of the insurers, therefore, it is uncertainty whether the insurers would be deemed as selling insurance products online where the insurers engage intermediaries to sell insurance products online.

Under the Law on Insurance Business and its guiding documents, although the insurers do not directly conduct the online sale, the insurers will be responsible for the sale of insurance products conducted by the intermediaries (e.g., agents).

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