

Spotlights of the new decree guiding Law on Insurance Business 2022

On June 30, 2023, the Government officially issued the new Decree No. 46/2023/ND-CP for implementing a number of articles of the Law on Insurance Business 2022 (“**Decree 46**”). Decree 46 takes effect from July 1st, 2023, and replaces the previous Decree No. 73/2016/ND-CP dated July 1st, 2016 (and its amendments) (“**Decree 73**”).

In this post, we delineate some of the notable points of Decree 46 and the comparison with Decree 73 where applicable.

Launch of Insurance Business Database

Decree 46 elaborates a new regulation of the Law on Insurance Business 2022 on building and managing a database on insurance business in order to pursue digitalization and protect the legitimate rights and interests of involved parties in the insurance business. Under Article 6 of Decree 46, the database is defined as the collection of documents, data, information regarding insurance business, and related information collected, processed, digitized, integrated, used, and stored on the information system.

A handful of different articles, in addition, detail the responsibilities of involved parties in the collection, management, usage, and connection of the data, and database for the insurance business¹.

The database will be used via the national portal of the Ministry of Finance².

Premium Calculation Methodology Registration

Insurance companies and branches of foreign insurance companies must register and obtain approval from the Ministry of Finance for the methodology and bases for calculating premiums of insurance products in the life insurance, health insurance, and motor vehicle insurance, except for civil liability insurance of motor vehicle owners prior to the launch of such products³.

The explanation form including formulas, bases, methodology, and expenses arising from the investment-linked insurance and pension insurance will be laid out by the Ministry of Finance⁴.

¹ Articles 7, 8, 9 and 10 of Decree 46

² Article 9.2 of Decree 46

³ Article 32.1 of Decree 46

⁴ Article 32.2(c) of Decree 46

Insurance companies will have 2 years of transition from the effective date of Decree 46. Those already in line with regulations to be issued by the Ministry of Finance will not be required to re-register the methodology and bases of premium calculation⁵.

Provision of Cross-border Insurance Service

Decree 46 provides that the customers of the cross-border insurance services include foreign-invested companies and foreigners working in Vietnam. Decree 46 also expands the scope of target users by allowing foreign-invested companies (the definition of which is regulated by Law on Investment 2020) regardless of their foreign ownership percentage, rather than restricting only companies with more than 49% foreign ownership under Decree 72/2016.

These amendments of Decree 46 on a number of regulations on users of cross-border insurance services being foreign-invested companies and foreigners working in Vietnam are considered to comply with WTO commitments and other treaties that Vietnam is a contracting member.

Market Entry and Licensing Procedures

Compared to Decree 73, capital requirements in Decree 46 for companies operating in insurance services have increased. Specifically, Decree 46 provides the new term “minimum charter capital” to replace the previous term in Decree 73 “legal capital”⁶.

From January 1st 2028, insurance enterprises, reinsurance enterprises, insurance brokerage enterprises, and branches of foreign non-life insurance enterprises must increase their charter capital in accordance with the minimum charter capital requirements⁷.

More Restrictive Regulations on Bancassurance

Article 62.1 Decree 46 provides tightening conditions when the organization conducting insurance agent activities is a credit institution as an insurance agent. In case one of the conditions is not satisfied, such organization shall not be allowed to conduct insurance agency activities until the organization meets all the conditions and must notify the insurance enterprise.

⁵ Article 32.6 of Decree 46

⁶ Article 35 of Decree 46

⁷ Article 35.5 of Decree 46

This Decree 46 together with Circular No. 37/2019/TT-NHNN strictly governs the bancassurance activity in Vietnam.

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

Conditions on Qualifications

Decree 46 details standards for individuals who directly conduct insurance consulting activities. In particular, they have to obtain an insurance risk assessment certificate for each type of insurance from an insurance training institution which is duly established and operated onshore and offshore equivalent instead of merely specifying “a certificate in insurance consulting” under Decree 73⁸.

Besides, the actuaries in the insurance market are required to have minimum of years of working as the official member of the International Actuarial Associations and being a Fellow in each field of insurance specified in Article 29, 30 Decree 46/20223.

The actuaries of non-life insurance companies, reinsurance companies, and branches of foreign insurance companies must be qualified as Associate after 3 years and then recognized as Fellow after 5 years from the effective date of Decree 46⁹.

The Insured Protection Fund.

One of the notable points stated in Decree 46 is the payment limit for the insured when the life insurance company goes bankrupt. Article 95.1 of Decree 46 provides that for life insurance contracts, the insured protection fund only pays up to 90% of the liability level of the life insurance enterprise but not more than VND200 million/insured/contract.

New Products Elaboration

Decree 46 elaborates a new principle for investment-linked insurance and pension insurance. Specifically, during the implementation of investment-linked insurance and pension insurance, insurance companies must ensure compliance with the following principles¹⁰: (i) maintain a solvency margin higher than the minimum

⁸ Article 84.1 of Decree 46

⁹ Articles 29 and 30 of Decree 46

¹⁰ Article 97 of Decree 46

solvency margin: VND200 billion (for investment-linked insurance); VND300 billion (for retirement insurance), (ii) Operate an information technology system which satisfies the requirements specified in Decree 46.

Decree 46 also sets forth the maximum term of premium payment must not exceed 4 years¹¹.

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¹¹ Article 98.2(b) of Decree 46