



## LEGAL UPDATE

### LATEST DRAFT INSURANCE BUSINESS LAW MORE IN LINE WITH PREVALENT VIETNAMESE LAWS

After 20 years in force, the Insurance Business Law of 2000 (amended in 2010 and 2019) (**IB Law**) no longer aligns with other relevant laws and international practices. Considering these shortcomings, the Ministry of Finance (**MOF**) is now drafting a new law (**Draft Law**). The latest version of the Draft Law has recently been discussed in the National Assembly Standing Committee and includes substantial changes compared to the IB Law. It is expected to enter into effect on 1 July 2023.

This update summarises the most remarkable changes to the IB Law proposed under the Draft Law.

#### 1. Group Insurance Contracts

The Draft Law defines “Group Insurance Contracts” (**GIC**) as insurance contracts with more than one beneficiary. These kinds of insurances are also called “Collective Insurance Contracts”. Despite the advantages of these legal constellations compared to individual insurance contracts, the IB Law is silent on this type of contract. When companies wish to subscribe their employees to the same insurance policy, a GIC is preferable due to efficiency.

Under the Draft Law, the GIC constellation applies to life and health insurance. According to the amendment, it will be possible to convert GICs into individual insurance contracts after the death of one of its members.

##### 1.1. Filing a Lawsuit to Collect Insurance Premium

The IB Law bans insurers from initiating legal action to request the policyholder to pay an insurance premium if they fail to settle the payment. However, according to the Draft Law, this prohibition will not apply to GIC insurers.

##### 1.2. Subrogation

According to the IB Law, insurers may reduce compensation in some instances if the insured party has contributed to the damage. This applies when the insured party refuses to transfer the subrogation to the insurer but at the same time waives its claims for the same damages against another (infringing) party. The Draft Law takes a further step in this

direction to safeguard the insurers’ interests by allowing the insurers discharged from liability in these cases.

##### 1.3. Condition Triggering the Insurer’s Obligation to Pay

Per the IB Law, the insurer of a liability insurance contract is obliged to pay compensation to a third party who sustained deliberate or negligent injury from the policyholder. To be consistent with the 2015 Civil Code’s regulations on tortious liability, the Draft Law no longer requires the element of negligence or intent on the policyholder’s side to trigger the insurer’s obligation to pay.

#### 2. Dispute Resolution

To promote the application of alternative dispute resolution (**ADR**) in settling Vietnamese insurance disputes, the Draft Law requires negotiation or mediation efforts before allowing an escalation to competent courts or arbitral tribunals. Regarding the nature and complexity of such conflicts, this provision might pave the way for more insurance cases to be handled by mediators and arbitral tribunals instead of conventional court litigation.

#### 3. Revised Scope

Insurers, reinsurers and insurance brokers have practised insurance auxiliary services and other activities directly related to the insurance business in Vietnam for a long time. The IB Law left many of these activities unregulated, including insurance consultancy, insurance risk assessment, insurance calculation, insurance loss assessment, insurance claim settlement assistance. Therefore, the Draft Law extends the IB Law’s scope to insurance auxiliary services and other activities directly related to the insurance business.

#### 4. Online Insurance Products and Services

To catch up with the technological progress of the Industrial Revolution 4.0, the Draft Law allows insurance companies and insurance brokerage companies to introduce and promote their products and services on their websites. It also enables them to conclude various insurance contracts



on the companies' websites or apps or via electronic trading floors.

#### **5. Investment and Establishment Conditions**

According to the IB Law, all changes in the operation of insurance and reinsurance companies must be subject to MOF's approval following a registration process. The Draft Law now moves to simplify procedures by allowing specific changes by notification only (e.g. amendments to company charter, opening, closing, or changing branch and representative office locations). The Draft Law also requires a change on any beneficial owner of Vietnam-based insurance and reinsurance companies (defined as individual shareholders directly or indirectly holding at least 25% of the companies) to be subject to notification with MOF.

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