

No. 42/2019/QH14

LAW

**AMENDMENTS TO SOME ARTICLES OF LAW ON INSURANCE
BUSINESS AND LAW ON INTELLECTUAL PROPERTY**

Pursuant to Constitution of the Socialist Republic of Vietnam;

The National Assembly promulgated Law on amendments to some articles of Law on Insurance Business No. 24/2000 / QH10 amended to some articles in accordance with Law No. 61/2010 / QH12 and Law on Intellectual Property No. 50/2005 / QH11 amended to some articles in accordance with Law No. 36/2009 / QH12.

Article 1. Amendments to Law on Insurance Business

1. Addition of Clauses 21, 22, 23, 24, 25 and 26 after Clause 20 of Article 3:

"21. *Insurance auxiliary service* is an integral part of insurance business activities, implemented by insurers, insurance brokers, other organizations and individuals for profit purpose, including insurance consulting, insurance risk assessment, actuarial analysis, insurance loss assessment, insurance claim assistance.

22. *Insurance consulting* is an activity that provides consulting services on insurance programs, insurance products, insurance risk management, prevention and reduction of losses.

23. *Insurance risk assessment* is an activity that identifies, classifies and assesses the nature and extent of risks, assesses the risk management on people and property and civil liability as a basis for insurance participation.

24. *Actuarial analysis* includes collection and analysis of statistical data; calculation of insurance premiums, professional reserves, capital, solvency margin; evaluation of business performance results and determination enterprise value in order to ensure financial safety of insurers.

25. *Insurance loss assessment* is an activity that determines actual state, cause, loss level; calculates and allocates liability for compensation as a basis for insurance claim assistance.

26. *Insurance claim assistance* is an activity that assists policyholders, the insured, beneficiaries or insurers in carrying out procedures on insurance claim assistance.

2. Amendments to Article 11:

Article 11. Right to participate in professional - social organizations on insurance business

Insurers, insurance agents, insurance brokers, individuals and organizations providing insurance auxiliary services are able to participate in professional - social organizations on insurance business for the purpose of developing insurance market, protecting legitimate rights and interests of members in accordance with laws.

3. The title of Chapter IV is changed as follows:

“Chapter IV

**INSURANCE AGENCIES, INSURANCE BROKERS, INSURANCE
AUXILIARY SERVICES”**

4. Addition of Section 3 after Section 2 of Chapter IV:

“Section 3

INSURANCE AUXILIARY SERVICES”

Article 93a. Provision of insurance auxiliary services

1. Principles of providing insurance auxiliary services:

a) Honesty, objectiveness, transparency; guarantee of legitimate rights and interests of related parties;

b) Compliance with standards and technical regulations in insurance auxiliary services;

c) Compliance with ethical rules, professional conduct issued by social – professional organizations.

2. Individuals and organizations that meet the conditions specified in Article 93b of this Law shall be entitled to provide insurance auxiliary services in according with the following provisions:

a) Individuals are entitled to provide insurance consulting services;

b) Insurers, insurance brokers and other juridical persons shall be entitled to provide insurance auxiliary services (collectively referred to as “insurance auxiliary service providers”).

3. Responsibilities of individuals and organizations providing insurance auxiliary services:

a) Customers’ information shall be kept secret and used for right purpose, not be revealed to a third party without consent of customers, unless it is provided in accordance with laws;

b) Individuals providing insurance consulting services shall purchase professional liability insurance that covers insurance consulting services; insurance auxiliary service providers shall purchase professional liability insurance in accordance with each type of insurance auxiliary service;

c) Insurance auxiliary service providers shall not provide insurance loss assessment services and insurance claim assistance for insurance contract that the providers are both the insurance buyer and the insured or beneficiary;

d) Insurance brokers shall not provide insurance loss assessment services for the insurance agreements they brokered.

4. Contracts providing insurance auxiliary services shall be made in writing.

Article 93b. Conditions on providing insurance auxiliary services

1. Every individual providing insurance consulting services shall:

a) Be at least 18 years of age and have full legal capacity; and;

b) Have a bachelor's degree or higher majoring in insurance. In case of no bachelor's degree or higher majoring in insurance, there must be a bachelor's degree or higher in another major and a certificate of training in insurance consulting granted by a training institution legally operating in Vietnam or overseas.

2. Every organization providing insurance auxiliary services shall:

a) Be a juridical person, legally established and operated;

b) Ensure that individuals directly performing insurance auxiliary activities in the organization meet the conditions specified in point a, clause 1 of this Article; have qualifications that are appropriate for the insurance auxiliary services they provide and granted by a training institution legally operating in Vietnam or overseas.

Individuals directly performing insurance loss assessment shall also meet the criteria applied to assessors in accordance with commercial law.

The actuaries shall also meet the criteria on law compliance, morality, qualification and experience in actuarial analysis, and are members of International Actuarial Association.

Government shall provide detailed guidance on this point.

3. The Minister of Finance shall provide guidance on the content of training program, examination and certificate granting on insurance auxiliary services of domestic training institutions and the recognition of certificates of insurance auxiliary services granted by overseas training institutions.

5. The title of Chapter VI is changed as follows:

“Chapter VI

INSURERS AND FOREIGN-INVESTED INSURANCE BROKERS CROSS-BORDER SERVICE PROVISION”

6. Amendments to Clause 2 of Article 105:

“2. Insurers, foreign insurance brokers providing insurance services across the border, foreign organizations providing insurance auxiliary services across the border, foreign individuals providing insurance consulting services in accordance with regulations of Government.”

7. Amendments to Article 120:

Amendments to Clause 1:

"1. Promulgate and provide guidance on implementation of legislative documents on insurance business and insurance auxiliary services; build strategies, plans and policies on development of Vietnamese insurance market;"

b) Amendments to Clause 4:

"4. Supervise insurance business activities through professional operations, financial standing, enterprise administration, risk management and law compliance of insurance enterprises and insurance brokers; take necessary measures to make sure insurance enterprises to fulfill financial requirements and fulfill commitments to insurance buyers.

Supervise insurance auxiliary service activities through compliance with regulations on standards and technical regulations relevant to insurance auxiliary services, liabilities of individuals and organizations providing insurance auxiliary services, conditions for providing insurance auxiliary services and provision of insurance auxiliary services across the border;"

8. Addition of Clause 9a after Clause 9 of Article 124:

"9a. Violations of technical regulations relevant to insurance auxiliary services; liabilities of individuals and organizations providing insurance auxiliary services; conditions for providing insurance auxiliary services; providing types of insurance auxiliary services and provision of insurance auxiliary services across the border;"

Article 2. Amendments to Law on Intellectual Property

1. Amendments to Point a, Clause 3 of Article 6:

a) Industrial property rights to inventions, industrial designs, layout designs and trademarks shall be established on the basis of decisions of the competent state agency on the grant of a protection title according to the registration procedures stipulated in this Law or the recognition of international registration under treaties to which the Socialist Republic of Vietnam is a contracting party.

For a well-known mark, industrial property rights shall be established on the basis of use process, not subject to any registration procedures.

Industrial property rights to geographical indications shall be established on the basis of decisions of the competent state agency on the grant of a protection title according to the registration procedures stipulated in this Law or the recognition of international registration under treaties to which the Socialist Republic of Vietnam is a contracting party.

2. Amendments to Clause 3 and addition of Clause 4 after Clause 3 of Article 60:

"3. An invention shall not be considered having lost its novelty if it is published by the person having the right to register specified in Article 86 of this Law or the person who obtained information about the invention directly or indirectly from that person under the condition that the patent application is submitted in Vietnam within 12 months from the date of disclosure.

4. The provisions of Clause 3 of this Article shall also be applied to any invention published in an industrial property application or industrial property certificate published by state management authority on industrial property rights in case the publication is inconsistent with laws and regulations or the application is submitted by a person not having the right to register.

3. Amendments to Article 61:

"Article 61. Inventive step of the invention

1. An invention shall be considered involving an inventive step if, based on technical solutions already publicly disclosed through use or by means of a written description or any other form, inside or outside the country, prior to the filing date or the priority date, as applicable, of the invention registration application, it constitutes an inventive progress and cannot be easily created by a person with average knowledge in the art.

2. A technical solution which is an invention disclosed in accordance with Clause 3 and 4, Article 60 of this Law which must not be used as a basis for evaluation of the inventive step of the said invention."

4. Amendments to Article 80:

a) Amendments to Clause 1:

"1. Names and indications that have become generic name of goods according to the perception of relevant consumers in Vietnam;"

b) Amendments to Clause 3:

"3. Geographical indications identical with or similar to a protected mark or to a mark that is the subject of an application with earlier filing date or priority date, where the use of such geographical indications is likely to cause a confusion as to the origin of products ;"

5. Addition of Clause 3 after Clause 2 of Article 89:

"3. Applications for registration of industrial property rights shall be filed in paper form to the state management authority on industrial property rights or electronic form under the online filing system."

6. Amendments to Section 4 of Chapter VIII:

“Section 4

**INTERNATIONAL APPLICATIONS, INTERNATIONAL PROPOSALS
AND PROCESSING OF INTERNATIONAL APPLICATIONS,
INTERNATIONAL PROPOSALS”**

7. Addition of Article 120a after Article 120 in Section 4 of Chapter VIII:

“Article 120a. International proposals and processing of international proposals on geographical indications

1. Proposals for recognition and protection of geographical indications in accordance with international agreement to which the Socialist Republic of Vietnam is negotiating, are referred to as international proposals.

2. The publication of international proposals and handling of third-party opinions, assessment of protection conditions of geographical indications which are the subject matters of international proposals shall be conducted in compliance with the relevant provisions specified in this Law for geographical indications in geographical indication applications filed to the state management authority on industrial property rights.”

8. Amendments to Clause 2 of Article 136:

"2. Owners of marks are obliged to use such marks continuously.

Trademark use by a licensee under a trademark license agreement is also considered an act of using the trademark by the trademark holder.

Where a mark has not been used for 5 consecutive years or more, the ownership right to such mark shall be invalidated according to the provisions of Article 95 of this Law."

9. Amendments to Article 148:

"Article 148. Validity of contracts for transfer of industrial property rights

1. For the industrial property rights established on the basis of registration according to the provisions of Point a, Clause 3, Article 6 of this Law, an industrial property right assignment contract shall be valid upon its registration with the state management agency in charge of industrial property rights.

2. For the industrial property rights established on the basis of registration according to the provisions of Point a, Clause 3, Article 6 of this Law, an industrial property object license contract shall be valid as agreed upon by the involved parties.

3. Industrial property rights license agreements specified in Clause 2 of this Article, except for trademark license agreements, shall be registered with a state management authority on industrial property rights in order to be legally effective to third parties.

4. Validity of an industrial property object license contract shall be terminated ex-officio upon the termination of licensor's industrial property rights."

10. Addition of Clauses 4 and 5 after Clause 3 of Article 198:

"4. The defendant, including organization or individual, in a lawsuit over the infringement of intellectual property rights who is concluded by the court not to infringe a right by the Court is entitled to request the Court to order the plaintiff to award payment of reasonable costs of hiring attorneys or other expenses as provided for under related law.

5. In case an organization or individual abuses the procedures for enforcement of intellectual property right that causes damage to another organization or individual, the organization and individual suffering from damage is entitled to request the Court to force the abusing party to compensate for the damages caused by the abuse, including reasonable costs of hiring attorneys. Acts of abusing intellectual property right enforcement procedures include acts of intentionally exceeding the scope or objective of these procedures.”

11. Amendments to Clause 1 of Article 205:

"1. Where the plaintiff can prove that an act of infringing upon intellectual property rights has caused material damage to him/her, he/she shall have the right to request the court to decide on the compensation level on one of the following bases:

a) Total material damage calculated in an amount of money plus profit gained by the defendant as a result of an act of infringing upon intellectual property rights where the reduced profit amount of the plaintiff has not yet been calculated into such total material damage;

b) The price of the licensing of an intellectual property object with the presumption that the defendant has been licensed by the plaintiff to use that object under a license contract within a scope corresponding to the committed infringing act;

c) Material damages valued by other legitimate measures submitted by the intellectual property right holder.

d) Where it is impossible to determine the level of compensation for material damage on the bases specified at Points a, b and c of this Clause, such compensation level shall be set by the court, depending on the damage extent, but shall not exceed VND 500 million.”

12. Amendments to Clause 1 of Article 218:

"1. When persons requesting the suspension of customs procedures have fulfilled their obligations specified in Article 217 of this Law, customs offices shall issue decisions on suspension.

The customs authority shall inform the intellectual property rights holder with the name and address of shipper; exporter, consignee or importer; description of goods; quantity of goods; the country of origin of goods (if known), within 30 days of the issuance of decision to take administrative measures to handle counterfeit trademark goods and pirated copyright goods in accordance with Clause 4, Article 216 of this Law.”

Article 3. Effect

1. This Law takes effect from November 1, 2019, except for the case specified in Clause 4 of this Article.

2. Addition of section 32a after section 32, Appendix 4, List of Sectors and Trades Subject to Conditional Business Investment of the Law on Investment No. 67/2014 / QH13, which was amended in accordance with Law No. 90/2015 / QH13, Law No. 03/2016 / QH14, Law No. 04/2017 / QH14 and Law No. 28/2018 / QH14 as follows:

“32a. Insurance auxiliary services include insurance consulting, insurance risk assessment, actuarial analysis, insurance loss assessment and insurance claim assistance.

3. Insurance auxiliary services arising from insurance business activities shall be regulated by the Government and approved by the Standing Committee of the National Assembly before issuance.

4. Provisions on intellectual property rights in this Law take effect from January 14, 2019, applying to the followings:

a) Applications for industrial property rights submitted from January 14, 2019;

b) Requests for invalidation of patent, utility solution, geographical indication registration certificates granted on the basis of applications for industrial property rights submitted from January 14, 2019;

c) Requests for termination of trademark registration certificates submitted from January 14, 2019;

d) Lawsuits over infringement of intellectual property rights accepted by competent authorities from January 14, 2019; other requests relevant to intellectual property protection carried out from January 14, 2019.

Article 4. Transitional provisions

1. Within 01 year from the effective date of this Law, individuals and organizations that have been providing insurance auxiliary services before the effective date of this Law shall meet conditions on providing insurance auxiliary services according to regulations of this Law. Otherwise, they shall not continue to provide insurance auxiliary services until the conditions are fully met.

2. Patents and geographical indications applications submitted before January 14, 2019 continue to be processed in accordance with Law on Intellectual Property No. 50/2005/QH11, amended and supplemented by Law No. 36/2009/QH12.

3. Trademark license agreements signed between the parties but not yet being registered with state management authority on industrial property rights before January 14, 2019 are only valid for third party from January 14, 2019.

4. Unsolved lawsuits over infringement of intellectual property rights accepted by competent authorities before January 14, 2019 continue to be settled in accordance with Law on Intellectual Property No. 50/2005/QH11, amended and supplemented by Law No. 36/2009/QH12.

This Law was passed by the 14th National Assembly of the Socialist Republic of Vietnam at 7th session on June 14, 2019.

**CHAIRMAN OF NATIONAL
ASSEMBLY**

Nguyen Thi Kim Ngan