

NATIONAL ASSEMBLY

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SOCIAL REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, June 14, 2019

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 granted on the basis of decisions on granting protection issued by competent authorities in

accordance with registration procedures specified in this Law or on the basis of recognized international registration granted accordance with international agreement to which the Socialist Republic of Vietnam is a signatory.

Industrial property rights to well-known trademarks shall be granted on the basis of their use instead of registration.

Industrial property rights to geographical indications shall be granted on the basis of decisions on granting protection issued by competent authorities in accordance with registration procedures specified in this Law or international agreement to which the Socialist Republic of Vietnam is a signatory.

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

"3. It is considered that an invention does not lose its novelty if it is directly or indirectly disclosed by the person entitled to registration specified in Article 86 of this Law or by the person who has information about the invention 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 disclosed in the industrial property application or industrial property protection announced by industrial property authority in case the announcement is inconsistent with provisions of laws or the application is submitted by a person ineligible for registration.

3. Amendments to Article 61:

"Article 61. Level of invention

1. Inventions are considered to be inventive based on technical solutions that have been publicly disclosed in the form of use or written description or in any other form at home and abroad prior to the submitting date or the privilege date of the patent application if those applications entitled to privileges; or the invention is an innovation and cannot be easily created by a person with average knowledge about the corresponding technical field.

2. 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 level of invention."

4. Amendments to Article 80:

a) Amendments to Clause 1:

"1. Names and indications that have become common name of goods widely accepted by consumers in Vietnam;"

b) Amendments to Clause 3:

"3. Any geographical indication that is identical or similar to a trademark under protection or being submitted under a trademark application with early or privileged submitting date, the use of which may cause confusion over commercial origin of goods;"

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

"3. Applications for granting industrial property rights may be submitted physically or electronically."

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 called international proposals.

2. The announcement of international proposals and handling of third-party opinions, assessment of conditions for protection of geographical indications in international proposals shall comply with the equivalent provisions specified in this Law for geographical indications in geographical indication applications submitted to industrial property rights authority.

8. Amendments to Clause 2 of Article 136:

"2. Trademark holders shall use trademark continuously.

Trademark use under a trademark use agreement by a transferee is also considered an act of using the holder's trademark.

In case the trademark is not used continuously for five years or more, the Trademark Certificate of Registration shall be invalidated in accordance with Article 95 of this Law."

9. Amendments to Article 148:

"Article 148. Effect of industrial property rights transfer agreement

1. As for industrial property rights granted on the basis of registration specified in Point a, Clause 3, Article 6 of this Law, an industrial property rights transfer agreement shall only come into force when it has been registered with industrial property rights authority.

2. As for industrial property rights granted on the basis of registration specified in Point a, Clause 3, Article 6 of this Law, industrial property rights agreements shall come into force according to the agreement between the parties.

3. Industrial property rights agreements specified in Clause 2 of this Article, except for trademark use agreements, shall be registered with an industrial property rights authority to be valid for third parties.

4. An industrial property rights agreement shall be invalidated if transferor's industrial property rights are invalidated.

10. Addition of Clauses 4 and 5 after Clause 3 of Article 89:

"4. The defendant in a lawsuit over the infringement of intellectual property rights and receive acquittal from the Court is entitled to request the Court to order the plaintiff to reimburse for their reasonable expenses such as the cost of hiring a lawyer or other expenses in accordance with laws.

5. In case an organization or individual abuses the procedures for intellectual property protection and thus causes damage to another organization or individual, the organization and individual suffering damage is entitled to request the Court to force the abuser to pay damages, including reasonable costs of hiring a lawyer. Acts of abusing intellectual property rights protection procedures include acts of intentionally exceeding the scope or objective of this procedure."

11. Amendments to Clause 1 of Article 205:

"1. In case the plaintiff can prove that the infringement of intellectual property rights has caused material losses to him/her, he/she is entitled to request the Court to decide the compensation amount according to one of the following grounds:

a) The total financial losses and the profits that the defendant has gained from the infringement of intellectual property rights, if the plaintiff's reduction in profits has not been included in material losses;

b) The transfer price of intellectual property rights if the intellectual property rights were transferred to the defendant by the plaintiff under an intellectual property rights agreement within the scope of the infringement;

c) Other material losses calculated by the intellectual property right holder in accordance with provisions of lawsoft;

d) In case it is impossible to determine the damages for material losses according to the provisions specified in Points a, b and c of this Clause, the damages shall be determined by the Court based on the level of loss, in which case the damages shall not exceed VND5 million.”

12. Amendments to Clause 1 of Article 218:

"1. When the requester for suspension of customs procedures has fulfilled the obligations specified in Article 217 of this Law, the customs authority shall issue the decision of suspension.

The customs authority shall provide the intellectual property rights holder with information on name and address of shipper; exporter, consignee or importer; description of goods; quantity of goods; origin of goods (as the case may be), within 30 days from the date of issuance of the decision to apply administrative measures to handle trademark counterfeiting and smuggled goods specified in Clause 4, Article 216 of this Law.”

Article 3. Effect

1. This Law will take 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. Regulations on intellectual property rights in this Law will take effect from January 14, 2019, applying to the following cases:

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

b) Requests for invalidation of the Patent for invention, Patent for useful solutions, Certificates of geographical indications registration issued on the basis of applications for industrial property rights submitted from January 14, 2019;

c) Requests for invalidation 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. Applications for inventions and geographical indications submitted before January 14, 2019 shall be processed in accordance with Law on Intellectual Property No. 50/2005/QH11 amended in accordance with Law No. 36/2009/QH12.

3. Trademark use agreements signed between the parties but not registered with industrial property rights authority 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 shall be handled in accordance with provisions of Law on Intellectual Property No. 50/2005/QH11 amended in accordance with Law No. 36/2009/QH12.

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

CHAIRMAN OF NATIONAL ASSEMBLY

Nguyen Thi Kim Ngan