

LEGAL UPDATES

August 2022

What's new this month?

—
Law on Intellectual
Property amended to
align with new-
generation free trade
agreements

—
Significantly notable
points in the new Law
on insurance business



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- Contributed by Benjamin Yap Soon Tat and Dang Thi Tuong Vi -

Upcoming regulations on the third amendment of the Law on Intellectual Property and the new Law on Insurance Business

passed on June 2022

This Legal Updates of August 2022 includes two main contents: (1) Law No. 07/2022/QH15 dated 16 June 2022 amending Law on Intellectual Property; and (2) Law on Insurance Business No. 08/2022/QH15 dated 16 June 2022. Such regulations are expected to have a considerable impact on related sectors.

Law On Intellectual Property Amended To Align With New-Generation Free Trade Agreements

On 16 June 2022, the National Assembly of Vietnam voted to pass Law No. 07/2022/QH15 ("**Amended IP Law 2022**") amending Law on Intellectual Property No. 50/2005/QH11 ("**Current IP Law**") for the third time since its first promulgation in 2005. The Amended IP Law 2020 will take effect on 1 January 2023, save for provisions on sound marks protection and those on the protection of test data for agrochemicals which will come into force on 14 January 2022 and 14 January 2024 respectively.

Copyright and related rights

Author and co-author

"Author" and "co-author" have been defined under Decree No. 22/2018/ND-CP ("**Decree 22**") and now are officially provided in the Amended IP Law 2022.

The Amended IP Law 2022 has concise wording of "author" as the person directly creating the work, without detailing the extent of work such person creates and the kind of work like under Decree 22.

The Amended IP Law 2022 has defined "co-author" more clearly as those who jointly create the work directly provided that their contributions are combined into a complete work, compared to the vague interpretation replicated from the term "author" under Decree 22. This clarification provides grounds to differentiate joint authors from those who just simply support, advise or supply materials to others in the creation of work.

Moral rights and economic rights

The Amended IP Law 2022 allows authors to transfer the right to give title to their works to the transferee of economic rights in addition to the right to publish the work.

The Amended IP Law 2022 further clarifies the rights to display works to the public, reproduce works, distribute or import original or copies of works, communicate works to the public and lease the original or copies of cinematographic works and computer programs. These clarities of economic rights mostly focus on manners for exercising these rights, especially helping to distinguish between displaying works to the public and communicating works to the public.

Safe harbour for intermediary service providers

The Amended IP Law 2022 also provides the legal liabilities of intermediary service providers ("**ISP**"). This is the internalisation of Vietnam's commitments in EVFTA and formally generalises some regulations in Circular No. 07/2012/TTLT-BTTTT-BVHTTDL.

ISP is broadly defined as enterprises that provide technical means for organizations and individuals using services to put digital information content on the telecommunications network and the Internet; and/or provide online connectivity for the public to access and use digital information content on the telecommunications network and the Internet. They can be enterprises providing Internet services; telecommunication enterprises; enterprises providing rental services for digital information storage, including rental services for websites; enterprises providing social networking services; and enterprises providing digital information search services.

ISP is generally responsible to deploy technical measures and cooperate with competent authorities and rights holders to enforce measures protecting copyrights and related rights on the Internet and telecommunications networks. However, they may be exempted from liability for infringement of copyright and related rights in some cases such as "mere conduit", "caching" and "hosting" or as decided by the authorities.



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Strengthening intellectual property protection and enforcement

A third party could initiate a cancellation against a trademark by demonstrating that such trademark (i) has become the common name of a product or service, or (ii) is used in an improper way to mislead consumers about the nature, quality or place of origin of the product or service.

In addition, a patent status may not be granted in relation to confidential inventions if the patent filing violates the security controls requirements.

Commercial entities, besides individuals, may also be subject to criminal liability in case their intellectual property infringement constitutes a crime. This inclusion is made in line with relevant provisions in the current Penal Code No. 100/2015/QH13.



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Significantly notable points in the new law on insurance business

The National Assembly of Vietnam passed the new Law No. 08/2022/QH15 on Insurance Business ("**New LOIB**") on 16 June 2022 to replace Law No. 24/2000/QH10 on Insurance Business ("**Current LOIB**"). The New LOIB will come into effect on 1 January 2023 and is expected to have a positive impact on the long-term development of the insurance market.

Applicable scope

As opposed to the current LOIB, the New LOIB explicitly outlines the subjects to be governed, including (i) insurers, re-insurers, insurance brokers, insurance agents, insurance auxiliary service providers and mutual microinsurance companies; (ii) branches of offshore non-life insurers and offshore reinsurers; (iii) representative offices of offshore insurers/reinsurers, offshore insurance brokers, offshore financial and insurance group; (iv) policyholders/insurance purchasers, insured persons and beneficiaries; (v) the State management authorities on the operation of the insurance business sector; (vi) other agencies, organizations and individuals related to the operation of insurance business.

Applying international customs

In case (i) at least one party is an offshore individual or organization, or (ii) both parties are Vietnamese citizens or organizations, but the insured subjects or the implementation of the contracts are outside of Vietnam, the parties may agree to apply international customs to their insurance policies, reinsurance contracts, or insurance brokerage contracts. However, the Vietnamese laws will still prevail in case results from such application conflict with the essential tenets of Vietnamese laws.

Reaffirming foreign investment

Vietnam has removed restrictions on foreign shareholding in the insurance sector under Vietnam's commitments at the WTO. The New LOIB has reaffirmed that foreign investors are allowed to own shares or contributed capital up to 100% of charter capital of insurance enterprises and reinsurance enterprises.

Requirements for the insurance business

The New LOIB requires the insurers/ reinsurers to maintain a capital adequacy ratio between the actual capital and risk-based capital of which detailed guidance will be issued by the Ministry of Finance.

Insurers/ reinsurers are not allowed to invest in certain businesses such as real estate (save for some cases, such as purchasing stocks of listed companies, owning real estate for using as headquarters or holding within three years due to the debt clearing); precious metals and gems; intangible fixed assets; and derivatives or derivative contracts.



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