

Legislation on insurance contracts - some inadequacies and recommendations for finalization

Pháp luật về hợp đồng bảo hiểm - một số bất cập và kiến nghị hoàn thiện

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Abstract: The insurance contract is an agreement between the policyholder and the insurance company, in which the policyholder pays insurance premiums, and the insurance company pays insurance benefits to the beneficiary or compensates the insured party in the event of an insured event. Insurance contracts play a crucial role in recording and establishing the rights and obligations of the parties involved in the insurance relationship. Currently, the Law on Insurance Business of 2022 has introduced some adjustments regarding this type of contract; however, it has not been fully perfected. Building on this premise, this article focuses on analyzing and assessing certain limitations and shortcomings in the legal regulations pertaining to insurance contracts based on the Law on Insurance Business 2022. Subsequently, it presents recommendations for improvement.

Keywords: *Insurance contracts; inadequacies and complete; law; law on Insurance Business*

Tóm tắt: Hợp đồng bảo hiểm là sự thoả thuận giữa bên mua bảo hiểm và doanh nghiệp bảo hiểm, theo đó bên mua bảo hiểm phải đóng phí bảo hiểm, doanh nghiệp bảo hiểm phải trả tiền bảo hiểm cho người thụ hưởng hoặc bồi thường cho người được bảo hiểm khi xảy ra sự kiện bảo hiểm. Hợp đồng bảo hiểm đóng vai trò rất quan trọng trong việc ghi nhận và xác lập quyền, nghĩa vụ của các bên liên quan trong quan hệ bảo hiểm. Hiện nay, Luật Kinh doanh bảo hiểm năm 2022 đã đưa ra những sự điều chỉnh về loại hợp đồng này, tuy nhiên điều này vẫn chưa thật sự hoàn thiện. Xuất phát từ đó, bài viết tập trung phân tích, đánh giá làm rõ một số vấn đề còn hạn chế, bất cập trong quy định pháp luật về hợp đồng bảo hiểm trên cơ sở Luật Kinh doanh bảo hiểm 2022, từ đó đưa ra một số kiến nghị hoàn thiện.

Từ khóa: *bất cập; hoàn thiện; hợp đồng bảo hiểm; Luật Kinh doanh bảo hiểm; pháp luật*

1. Introduction

The Law on Insurance Business (LIB) No. 24/2000/QH10 dated December 9, 2000, passed by the National Assembly (as amended and supplemented by Law No. 61/2010/QH12 dated November 24, 2010, and Law No. 42/2019/QH14 dated June 14, 2019), has played a crucial role in the development of the insurance market in Vietnam for over two decades. However, LIB 2000 has revealed numerous shortcomings in its practical application, failing to ensure uniformity and consistency with the relevant legal system of Vietnam and our country's international commitments in this field. Therefore, on June 16, 2022, LIB No. 08/2022/QH15 was

passed by the National Assembly and became effective on January 1, 2023, with the expectation of ushering in a new development phase for the insurance market in the coming years. One of the focal points of the amended and supplemented content is the regulation of insurance contracts (ICs) – a pivotal provision in insurance business operations. Hence, continuing research, review, and evaluation of the provisions of LIB 2022 regarding this provision to clarify the remaining shortcomings and limitations is essential. This will allow for the formulating of proposals and recommendations for improvement, all necessary to protect the

legal rights and interests of the parties involved in insurance business activities.

2. Overview of Insurance Contracts

Insurance is an activity where the insured commits to compensate the policyholder in the event of a risk within the scope of insurance, with the condition that the policyholder must pay a premium. This means the policyholder transfers the risk to the insurer by paying a premium to create a reserve fund. When the policyholder encounters a risk resulting in a loss, the insurer will use the reserve fund to make payments or compensate for damages within the scope of insurance to the policyholder [1, p.11-12]. This insurance activity has given rise to a legal relationship between the insurer and the policyholder based on the insurance contract (IC) as well as the provisions of the law.

Inheriting the provisions of LIB 2000, Article 4(16) of LIB 2022 defines: "IC is an agreement between the policyholder and the insurance company, the foreign non-life insurance branch, microinsurance cooperative organization, under which the policyholder must pay a premium, and the insurance company, the foreign non-life insurance branch, microinsurance cooperative organization must compensate, pay insurance money according to the agreement in the contract." From this definition, it can be seen that the IC is considered a legal form of the insurance mechanism, reflecting an agreement to transfer risks between the policyholder and the insurer (insurance company, foreign non-life insurance branch, microinsurance cooperative organization). Under this agreement, the policyholder pays a premium (which can be considered as the cost of the risk) in exchange for a financial guarantee with the condition attached to the occurrence of risks (insurance events) that the policyholder may face [2, p.10]. The IC has several fundamental characteristics that distinguish it from other types of contracts, including (i) Agreements among parties in

the contract related to random risks; (ii) The performance of the IC is primarily to mitigate and address the consequences of risks; (iii) When entering into an IC, parties cannot foresee the consequences in advance; (iv) Determination of the insurer's responsibility depends on whether insurance events occur or not [2, p. 11]. Paragraph 1 of Article 15 of LIB 2022 has made adjustments regarding types of ICs compared to LIB 2000 [3], specifically including: Life ICs, Health ICs, and Non-life ICs (Property ICs, Damage ICs, and Liability ICs).

LIB 2022 also introduces a series of amendments and supplements to meet the requirements of consistency and uniformity within the relevant legal system and new requirements arising from practice, addressing the shortcomings of policy mechanisms and the market. This ensures a complete, transparent, equitable system of insurance business policies, in line with Vietnam's international commitments and following international standards for insurance management and supervision, suitable for socio-economic development. Some notable new points related to ICs include the addition of provisions regarding the principles of concluding and performing ICs in Article 16; the supplementation and improvement of provisions related to the content and form of ICs in Articles 17 and 18 of LIB 2022; clarification of cases for unilateral termination of IC performance and legal consequences in Article 26, 17 of LIB 2022; supplementation of provisions regarding specific issues of group ICs (Article 42 of LIB 2022). Despite the initial successes achieved, LIB 2022 still has some remaining shortcomings and overlaps, which the author analyzes and comments on below.

3. Current Provisions on Insurance Contract Exclusion Clauses and Recommendations for Improvement

3.1. Provisions on Insurance Contract Exclusion Clauses

According to LIB 2000 and LIB 2022 regulations, exclusion clauses in ICs are understood as cases in which insurance companies branches of foreign non-life insurance companies are not obligated to provide compensation or pay insurance money [4]. In other words, when the insured events are excluded from coverage in the IC, even if such events occur, the policyholders will not receive insurance payouts or compensation.

Under the provisions of Article 17 of LIB 2022, the content of ICs is not mandatory to include exclusion clauses, as required by LIB 2000. This represents a progressive development as it removes obstacles to designing insurance products without such clauses, safeguarding the autonomy of the insurance parties. Furthermore, in cases where exclusion clauses are included in the IC, the insurer must clearly and comprehensively explain these clauses to the policyholder. The purpose of exclusion clauses in ICs is to limit the insurer's liability in specific circumstances, which are as follows:

First, to ensure that the insurance company does not face the risk of insolvency when significant losses occur, such as those caused by natural disasters or war. One of the fundamental principles of insurance is to "spread the risk among many," meaning that insurance functions properly when the number of insured individuals significantly outweighs those exposed to specific risks in life, for which the insurance company must fulfill its insurance obligations. Therefore, to uphold this principle, excluding the insurer's liability in certain exceptional cases is necessary.

Second, to protect the insurer from events that are not considered risks—cases in which the policyholder or the beneficiary intentionally triggers the insured event for personal gain. Such intentional acts contradict the principle of fortuitous risk—insurable risks should be unexpected and unforeseeable (Article 16, Paragraph 5 of

LIB 2022). According to the definition of exclusion clauses in ICs in Article 19 of LIB 2022, cases listed under Article 40 of LIB 2022 are deemed as instances of exclusion of insurance liability. These cases include: a) The insured's suicide within 2 years from the date of the first premium payment or the effective date of the IC continuation; b) The insured's death due to the intentional fault of the policyholder or the intentional fault of the beneficiary; c) The insured's permanent disability due to the intentional fault of the insured, the policyholder, or the beneficiary; d) The insured's death as a result of the death penalty. All these cases involve intentional acts or legal violations. Additionally, Article 40 of LIB 2022 allows parties to the contract to agree on other cases where the insurer is not obligated to compensate or make payments under the IC.

From the above analysis, it can be affirmed that the provisions regarding IC exclusion clauses are essential to protect the insurer and ensure the humanitarian principles of insurance. However, the current regulations still have certain obstacles and limitations, as described below:

Firstly, LIB 2022 only defines the IC exclusion clause and requires insurance companies to explain the exclusion clause to the policyholders when concluding an IC without specifying any limitations, conditions, or principles regarding the determination of cases in which insurance companies, branches of foreign non-life insurance companies, are exempted from their insurance liability. This could lead to a situation where insurers may abuse this right by introducing numerous unfavorable exclusion provisions to policyholders, thereby serving as a basis for refusing to fulfill insurance obligations when risks occur. For example, in Article 4.3.ii.a of the regulations and terms of the "Peaceful Longevity" insurance policy (approved by Official Letter No. 1746/BTC-QLBH on

December 22, 2010, and amended and supplemented by Official Letter No. 6740/BTC-QLBH on May 24, 2011, of the Ministry of Finance) of AIA Vietnam Life Insurance Company Limited (AIA): "No insurance benefit shall be payable if: a. The insured person does not survive for at least thirty (30) days after being diagnosed with a critical illness." In practice, disputes have arisen between AIA and its customers when the company invoked a similar provision to deny insurance payouts. Specifically, just five days after being diagnosed with an illness, Mrs. T (the insured person) passed away, and the insurance company refused to pay the insurance benefits based on the aforementioned provision in the IC. The court of first instance and the appellate court invalidated the exclusion clause, citing the following arguments:

(i) The Civil Code respects the principle of freedom of contract and self-determination of the parties to the contract. However, the law also stipulates that civil transactions must be in accordance with local customs, morals, and good traditions, meaning that they must align with traditional moral and ethical values and regional language understanding. In this specific case, it is necessary to understand the policyholder's intent as insuring against the risk of death, critical illness, and accidents, which should be compensated (except for suicide, execution, murder, or death from old age). Deeming that Mrs. T passed away less than 30 days after diagnosis, as stipulated in Article 5, is illogical in the context of life and does not align with the policyholder's intent. It should be understood that the contract executed between Mrs. T and AIA must be explained in accordance with Article 409 of the 2005 Civil Code. Therefore, the general spirit of civil law should be applied to achieve a legal approach closer to justice";

(ii) Considering the entire main contract terms and supplementary insurance product clauses provided by AIA. Not everyone can

read and understand every clause in an IC. ICs are written in specialized terminology that may be difficult for ordinary individuals to comprehend. However, the law always respects the parties' agreement to the contract, provided that the transaction aligns with the regional language understanding, does not contravene legal provisions, and adheres to social and ethical standards. In this case, it is essential to understand Mrs. T's intent in purchasing insurance to safeguard against the unfortunate events of death, illness, and disability due to accidents and to receive compensation for financial risks. Therefore, it should be understood that the terms of the IC executed between Mrs. T and AIA must be explained in accordance with Article 409 of the 2005 Civil Code, applying the general spirit of civil law to resolve the matter. The analyses above illustrate that the court of first instance compelled AIA to pay Mrs. T's beneficiaries the amount of VND 120,000,000 based on legal grounds" [5, p. 61-62].

The court's approach is persuasive and reasonable, based on the principles of social ethics and fairness in civil law when there are no detailed provisions to protect the legitimate rights of the policyholder regarding the exclusion clauses. However, it can be observed that the court relied solely on the most general principles in civil law that were in effect at the time of the trial and that LIB 2022 did not provide any specific regulations or limitations regarding the invalidation of unreasonable and unfair exclusion clauses introduced by insurers.

LIB 2022 creates a space for insurance companies to design their insurance products, including the discretion to determine cases of exclusion of insurance liability. The rules and terms of the mixed insurance product covering serious illnesses, paid over three extended periods by Manulife Vietnam Limited Liability Company, as approved in Official Letter No. 1997/BTC-QLBH dated February 20,

2019, by the Ministry of Finance in Article 19.2 regarding the exclusion of liability for insurance events directly related to the causes of explosions or radiation from nuclear weapons, chemical, and atomic weapons, and exposure to radioactive contamination from nuclear and atomic installations. The rules and additional insurance terms for global health care insurance products by Dai-Ichi Life Insurance Company of Vietnam Limited, as approved in Official Letter No. 11916/BTC-QLBH dated September 30, 2020, by the Ministry of Finance, in Article 3 regulating the exclusion of insurance liability, only narrow the scope of insurance by primarily listing specific diseases and injuries that are not covered by this product. The rules and terms of the whole life insurance product with annual cancer benefit extension by Prudential Vietnam Assurance Private Limited Liability Company, approved by the Ministry of Finance in Official Letter No. 8912/BTC-QLBH dated July 4, 2017, in Article 7.1 regarding exclusions in the event of the insured's death, also list reasons related to war (declared or undeclared), riots, civil unrest, or violence. The rules and terms of the life insurance product linked to 2018 entities, approved by the Ministry of Finance in Official Letter No. 2536/BTC-QLBH dated March 7, 2018, with amendments and supplements in Official Letter No. 1223/BTC-QLBH dated February 10, 2020, in Article 10.1.1.c include cases of HIV infection, AIDS, and diseases related to AIDS, except for cases of HIV infection while performing duties at the workplace as a medical or law enforcement personnel.

From the aforementioned real-world examples, it is evident that there is a variety of cases involving the exclusion of insurance liability. However, there are still situations where insurance events occur randomly, and genuine losses or damages exist, but the insured individuals or

beneficiaries are not covered for their risks, such as death even though they did not participate in causing riots or violence, or HIV infection and AIDS outside of working hours, without any intention.

Based on the analysis presented above, the author proposes that LIB 2022 should include provisions in a generalized manner regarding limitations, conditions, or principles for determining cases of exclusion of insurance liability, which could be stipulated as follows: "Cases of exclusion of insurance liability may only be agreed upon to ensure the insurer's ability to pay or exclude cases of insurance abuse by the policyholder or the insured." One mechanism to effectively control the creation and inclusion of exclusion clauses by insurance companies and foreign non-life insurance branches in contracts is through the registration process of insurance product models by the Ministry of Finance, serving as a "filter" to eliminate provisions that could infringe upon the rights and legitimate interests of the policyholder in the IC [6]. However, the effective role of the Ministry of Finance in this regard has not been fully realized because, in practice, ICs, despite being registered, still contain many provisions lacking fairness and violating LIB regulations.

Secondly, in addition to the obligation to provide clear and comprehensive explanations of the insurer's exclusion clauses, Article 19.2 of LIB 2022 also sets the requirement that such explanations must be supported by evidence. Some opinions argue that imposing such a requirement creates an invisible hurdle, leading to inequality among parties and procedural inconvenience when entering into contracts [7]. Considering the purpose of this provision, which is to protect the policyholder—the weaker party with less specialized knowledge and less familiarity with IC negotiations—supplementing such a requirement is necessary to reduce

disputes, complaints, and litigation related to inadequate explanations or lack of understanding of crucial content such as exclusion clauses. However, LIB 2022 provides no principles or framework for this confirmation evidence. Therefore, the confirmation evidence could be a separate document, the policyholder's signature on the insurance application confirming the explanation of the IC, including exclusion clauses, or other evidence to accommodate electronic contract negotiations. Thus, if the IC contains a provision stating that the policyholder has explained the exclusion clause, can that contract be considered confirmation evidence? In practice, the insurer may provide explanations merely as a formality, prompting the customer to sign a confirmation document or verbally providing explanations that may not be consistent or contradict the terms of the IC. Moreover, LIB 2022 also lacks provisions regarding the legal consequences of violating this duty to explain, leading to inconsistency and confusion in handling such cases in practice.

Based on the analysis above, the author proposes that LIB 2022 should incorporate the following provisions:

(i) Confirmation evidence for explaining insurance exclusion clauses must be in written form, audio recordings, video recordings, or electronic data as regulated by electronic transaction laws, and it should encompass the entire content of the insurer's explanation, including foreign non-life insurance branches.

(ii) In cases where the IC contains different exclusion clauses compared to the confirmation evidence, those different or omitted clauses should not apply in the event of an insurance occurrence.

3.2. Regarding the Terminology of "Cash Surrender Value" and "Account Value"

The term "cash surrender value" is mentioned in Article 37.4, Article 40.3, Article 27.3, and Article 27.4 of LIB 2022,

whereby the policyholder can receive cash surrender value in the following cases:

(i) When an insurance event occurs, the non-life insurance company or foreign non-life insurance branch is not required to pay insurance benefits or compensation.

(ii) Various unilateral contract termination scenarios, such as the policyholder not paying insurance premiums or not paying the full insurance premiums, disagreement between the parties regarding changes in the insured risk level, or the policyholder refusing to transfer the policy portfolio.

Due to the savings nature of most life insurance products, the amount of premiums paid at a certain point in time exceeds the total natural insurance premium. Consequently, the contract has a cash surrender value. Therefore, this amount belongs to the policyholder and must be returned to them.

The term "account value" is mentioned in Article 116.3 of LIB 2022 as one of the amounts that the insurance company or reinsurance company must pay when dividing assets due to bankruptcy. Clearly, "cash surrender value" is an industry-specific term in the insurance field. However, when reviewing the provisions of LIB 2000 and LIB 2022, even including Civil Code 2015, there needs to be a definition or explanation of this industry-specific term. This lack of definition fails to ensure the transparency of legal regulations, leading to different interpretations and difficulties for policyholders when accessing this market [8].

In practice, insurance companies use various terms, making it challenging to determine which term corresponds to "cash surrender value" or "account value" as defined in LIB 2022. Additionally, calculating the actual amount of cash surrender value or account value is extremely complex and difficult to understand.

Based on the analyses presented above, to ensure a uniform understanding of cash surrender value, the author proposes that LIB 2022 should include definitions and explanations for "cash surrender value" and may explain "cash surrender value" as follows: "Cash surrender value is the amount owned by the policyholder and returned to the policyholder when the life IC terminates without an insurance event. The cash surrender value equals the total premiums paid by the policyholder plus any accrued interest (if applicable) minus the total fees/costs/liabilities owed to the insurance company.

3.3. Provisions on Contract Reinstatement

Unlike other types of ICs, life ICs are concerned with the duration of human life, leading to long-term contracts that may extend for 5, 10, or even a lifetime. Due to the extended premium payment periods, policyholders may face financial difficulties preventing them from fulfilling their contracts, potentially resulting in unilateral contract termination. In such cases, Article 37.3 of LIB 2022 allows the parties to agree to reinstate the contract within 2 years. Conditions that may be agreed upon for reinstatement include:

- (i) The policyholder has paid any outstanding insurance premiums.
- (ii) The reinstatement occurs within 2 years from the termination of the life IC.
- (iii) This provision applies only in cases where the life IC was unilaterally terminated by the policyholder due to their inability to continue, despite having the option to extend premium payments, excluding other scenarios.

Given the long-term and savings-oriented nature of life ICs, most countries' legal systems allow for the reinstatement of contracts. This is intended to allow the parties to continue exercising their rights and fulfilling their obligations, thereby avoiding the termination of contracts when

both parties are still capable and willing to continue [9]. On the other hand, according to Article 3.2 of the 2015 Civil Code, which lays down the fundamental principles of civil law, individuals and legal entities can establish, exercise, and terminate their civil rights and obligations based on voluntary and consensual agreements, provided that these agreements do not violate any prohibitive provisions of the law and are in line with social ethics. Therefore, imposing conditions as described above is unnecessary.

Article 37.3 of LIB 2022 merely states that "the parties may agree to reinstate the terminated life IC" without specifying the form of this agreement, such as whether it must be in writing, as required for the IC itself. In practice, disputes have arisen over asset-based ICs, but similar to life IC reinstatement. These disputes have been resolved and summarized in judgment No. 37/2020/AL regarding the validity of asset-based ICs in cases where the policyholder paid insurance premiums after the premium payment period ended (source judgment based on the Director's Decision No. 28/2018/KDTM-GĐT dated June 26, 2018, regarding a trade dispute IC in Dong Nai Province) as follows:

"[4]... After receiving the insurance premium from Company N, the Joint Stock Insurance Company P and Insurance Company P1 had no objections and did not provide any written notice regarding late premium payments. As a result, both contracts became ineffective as of May 1, 2015. However, Insurance Company P1 still accepted, issued value-added tax invoices and reported taxes for the two insurance premium payments received from Company N. Therefore, Joint Stock Insurance Company P and Insurance Company P1 implicitly acknowledged Company N's late insurance premium payments and recognized the validity of these two contracts. [5] Consequently, when an insurance event occurs, Joint Stock

Insurance Company P must assume responsibility for compensation as stipulated in the contracts signed by both parties."

The application of the contract's continued validity, as per Judgment No. 37/2020/AL, is within the scope of cases that meet the following conditions:

(i) The contract specifies that if one party violates the deadline for performing obligations, the contract will be naturally invalidated.

(ii) The party that violates the obligation performs it late, and the other party agrees or does not object [10, p. 667].

Therefore, the unilateral termination of the contract, as stipulated in Article 26.1 and Article 37.3 of LIB 2022, does not automatically render the IC void. However, it leads to the same legal consequence, which is the termination of the contract. The agreement to continue the IC's validity during disputes is not established in writing but in specific actions. For example, Insurance Company P1 continued to accept, issue value-added tax invoices, and report taxes for the two insurance premium payments received from Company N. Similarly, with the agreement to reinstate the contract's validity, there should be no strict requirement for a written agreement to be effective.

Based on the arguments presented, the author proposes some amendments and additions as follows:

Firstly, it is necessary to amend Article 34.4 of LIB 2022 to reflect that the reinstatement of the contract's validity is based on the parties' agreement without imposing additional conditions as analyzed.

Secondly, there should be provisions regarding the form of agreement for reinstating the contract's validity by insurance companies or foreign branches. This agreement could be through the policyholder's premium payment, except in cases where the policyholder reinstates the

contract with the intention of insurance fraud.

Thirdly, expand the scope of the provision on contract reinstatement to apply not only to life ICs but also to health ICs and property ICs when premium payments are divided into one or more installments

3.4. Provisions on Responsibilities and Legal Consequences of Violating Information Provision Obligations

When entering into ICs, providing accurate and truthful information is of utmost importance because information forms the basis for the parties to consider and decide on the IC, as well as its conditions and terms. In practice, there are numerous ICs where the obligation to provide information is not fulfilled or inaccurate information is provided within the relevant timeframe [11].

One new aspect of LIB 2022 has addressed the overlapping issues that existed in the 2000 version when dealing with the consequences of providing inaccurate information. Accordingly, the stipulation for contract cancellation is applied as a replacement for the suspension of contract performance or contract nullification. Handling the legal consequences of these ICs as void, as provided for in Article 127 of the 2015 Civil Code, is unfeasible because it requires a court declaration of nullity, which adds complexity and cost burdens for both insurers and policyholders. Additionally, Article H of Article 25 of LIB 2022 eliminates cases of providing false information to initiate a contract to prevent confusion. This new point has contributed to resolving overlaps and complexities in handling the consequences of violating information provision obligations and enhancing the responsibilities of each party when entering into ICs.

According to the provisions in Article 22.2 and 22.3 of LIB 2022, the acts considered violations of information

provision obligations for each party are as follows:

(i) For the policyholder: intentionally providing incomplete or false information to initiate the IC for compensation or insurance payments.

(ii) For insurance companies or foreign non-life insurance company branches: intentionally failing to fulfill the obligation to provide information or providing false information to initiate the IC.

Therefore, the basic behavior of each party is essentially the same, including providing incomplete or false information.

Similar to LIB 2000, LIB 2022 also raises the issue of fault on the part of the violator, specifically intentional fault. So, what basis is there to prove whether a party has a fault or is without fault, whether intentional or unintentional? Is the insurance company allowed to have unintentional faults that lead to violations and not be held responsible for its business function? The author agrees that determining whether the violating party has a fault (intentional or unintentional) is unnecessary when determining whether there has been a violation. Therefore, when requesting the application of contract cancellation, the violating party does not need to prove the fault of the violating party but only the existence of the violation [12, p. 626]. However, in the IC relationship, policyholders often have limited understanding of ICs, do not fully grasp the meaning, purpose, and significance of the information provision obligation, or may not remember all the details about their health and medical history. Therefore, if not explained clearly, the violation by the policyholder could be unintentional. In contrast, insurance companies and foreign non-life insurance company branches are business entities that conduct their business professionally and should understand and be responsible for providing accurate and complete information without citing

unintentional reasons to avoid responsibility.

Based on the above analysis, the author proposes amending the provisions in Article 22 of LIB 2022 by removing the element of fault when determining the violation, specifically as follows: "In cases where foreign non-life insurance companies or foreign non-life insurance company branches intentionally fail to fulfill the obligation to provide information or provide false information to initiate the IC, the policyholder has the right to cancel the IC and receive a refund of the insurance premiums paid."

4. Conclusion

In essence, LIB 2022 has introduced numerous reforms and advancements to address the contradictions and shortcomings of the previous LIB with other legal normative documents concerning IC regulations. However, some limitations still exist and need to be rectified, particularly in terms of provisions related to liability exclusion clauses, specialized terminology, contract reinstatement, and legal consequences, as discussed above. In the scope of this article, the author has provided an overview of ICs, analyzed and assessed the aforementioned limitations, and proposed improvements. This effort aims to ensure the consistency and coherence of the legal framework and safeguard the lawful rights and interests of relevant parties in insurance relationships, thereby promoting the stability and development of this field.

References

- [1] National Economics University, "Insurance Textbook", Statistical Publishing House, Hanoi, 2000, pp. 11-12.
- [2] T. P. Thu, "Law on Property Insurance Contracts in Vietnam, Master's Thesis in Law", Hanoi National University, 2014, pp. 10.
- [3] Section 2 of Article 12 of LIB 2000 states: "2. Types of Insurance Contracts include:
a) Human Insurance Contracts;

- b) Property Insurance Contracts;
c) Civil Liability Insurance Contracts”.
- [4] Paragraph 1 of Article 19 of LIB 2022 contains similar provisions to Paragraph 1 of Article 16 of LIB 2000, which states. “Article 16 of LIB 2000 on Exemption Clauses in Insurance Contracts
1. Exemption clauses in insurance contracts stipulate cases where insurance companies are not obligated to compensate or pay insurance money when an insurance event occurs”.
- [5] D. V. Dai, “Some Legal Issues Arising in the Practice of Life Insurance”, *Legal Science Journal of Vietnam*, Issue 07(119), pp. 61-62, 2018.
- [6] D. P. Thao, “Exclusion of Liability in Insurance Contracts”, 2018. [Online]. Available: <https://tapchitoaan.vn/bai-viet/kinh-te/loai-tru-trach-nhiem-bao-hiem-trong-hop-dong-kinh-doanh-bao-hiem>. [Accessed 02/10/2023].
- [7] VCCI, “Comments on the Draft Law on Insurance Business”, 2022. [Online]. Available: http://vibonline.com.vn/bao_cao/vcci_go-p-y-du-thao-luat-kinh-doanh-bao-hiem. [Accessed 02/10/2023].
- [8] M. Phuong, “Premium Payment of 120 Million, Settlement of the Contract Receiving Over 36 Million”, 2021. [Online]. Available: <https://thanhvien.vn/dong-bao-hiem-120-trieu-tat-toan-hop-dong-nhan-duoc-hon-36-trieu-post1055498.html>. [Accessed 02/10/2023].
- [9] N. T. N. Han, “Legal Aspects of Terminating Life Insurance Contracts, Master's Thesis in Law”, University of Law, Ho Chi Minh City, 2011, pp. 35.
- [10] L. T. Dung, “Vietnamese Case Law - Analysis and Commentary from Case Number 01 to Case Number 43”, Legal Publishing House, Hanoi, 2021, pp. 667.
- [11] Report on explanation, reception, and adjustment of the draft Law on Insurance Business (amended) on April 14, 2022, by the National Assembly's Standing Committee.
- [12] T. N. Quang, “Contract Law”, Dân trí Publishing House, 2020, pp. 626.

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