

# DOUBLE INSURANCE CONTRACT IN THE LEGAL CONDITION OF VIETNAM

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## Abstract:

Insurance is a popular product in modern society today, it is gradually becoming an indispensable requirement in commercial operations and one of the mechanisms of risk-sharing. However, insurance regulations in Vietnam have only emerged in recent years and are gradually being improved, so there are still a lot of unclear regulations that cause different interpretations – especially the regulations on insurance. The article examines the provisions of the double insurance in the Insurance Business Law 2022 and makes a number of proposals aimed at refining the regulations of the law on this subject.

**Keywords — Insurance business Law, Double insurance, Insurance contracts, Compensation, Insurance companies.**

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## I. INTRODUCTION TO THE DOUBLE INSURANCE CONTRACT

In today's market economy, insurance is increasingly proving its important role and becoming an indispensable requirement of commercial activity and one of the important mechanisms in limiting and eliminating risks to the economy and social life. In Vietnam, insurance business was established later than in other countries around the world, and is now governed by the 2022 Insurance Business Act and the 2015 Civil Code.

In fact, for many different reasons, a client can contract multiple insurance contracts with many different insurance companies to cover the same subject with the same insurance conditions and events. At that time, insurance contracts were known as double insurance. The law does not prohibit the insured party from purchasing double insurance for the property, because it is subject to the owner's right of discretion to the asset, i.e. the property owner is entitled to purchase insurance for

assets at different insurance companies under the same terms and events to protect his or her legitimate interest in the property. [1]

The rules on double insurance apply only to property insurance contracts, which are constructed on the principle of accepting insurance not exceeding the value of the assets involved in the insurance, preventing the benefit of the insurance buyer by entering into multiple insurance agreements, with the amount of insurance exceeds the insurance value of insurance assets. Nowadays, however, there are few overlaps of insurance regulations, which leads to many different interpretations, easily confusing with co-insurance regulations.

### *The concept of double insurance*

The concept of double insurance was first recorded in the provisions of the Insurance Business Law 2000 and the Maritime Code 2005. In paragraph 1 of Article 44 of the Insurance Business Law 2000: “A coincident insurance contract is the case where the insurance buyer concludes insurance contracts with two or more insurance

*enterprises to insure the same objects, with the same insurance conditions and insured event.” [2]*

Paragraph 1 of Article 234 of the Maritime Code of 2005 also stipulates the following: “*Where two or more policies have been concluded by the assured or his/her representative for the same subject of insurance against the same maritime peril for the insured sums which in aggregate exceed the insurable value, the assured shall be deemed to have been overinsured by double insurance.*” [3]

However, the content of these regulations is not consistent. The Insurance Business Law 2000 sets the criteria for duplication of insurance including: participation in multiple insurance undertakings, the same insured, under the same conditions, the very same insurance event. In this article, there is no mention whatsoever of the element of the same insurance right, but it focuses only on the same subject matter to see if it is a double insurance. The content of this provision does not refer to the insurance mark for “the same insurance right” or the same portion of the insurance right. Because this is the basic characteristic to distinguish between “collateral insurance” and “co-insurance” relationships. Ignoring this can lead to duplication of covered benefits, which can easily lead to the risk of claiming insurance benefits, due to the likelihood of receiving compensation more than once on the same insurance benefit), such as: In this article, there is no mention whatsoever of the element of the same insurance right, but it focuses only on the same subject matter to see if it is a double insurance. Fully obeying this understanding could be confusing with the insurance. In “co-insurance” relationships, co-existing insurance contracts that share risk and cover each part of the insurance right, the total amount covered by the contracts never exceeds the actual value of the insured asset, due to the absence of duplication of the covered right. Thus, Article 44, Insurance Business Law 2000 did not distinguish insurance from co-insurance.

Meanwhile, Article 234 of the Maritime Code 2005, which states “In case of two or more insurance claims”, does not preclude the possibility that an insurance undertaking can enter into

multiple insurance contracts for the same insured and the same maritime risk. This understanding is preserved in the Maritime Code 2015.

Currently, according to clause 1, Article 49 of the Insurance Business Law 2022, “*Double insurance contract means a case in which there are two or more insurance contracts to provide insurance for the same insurance scope and object, with the same insurance period and for the same insured event, with the total sum insured exceeding the market price of the insured property at the time of entry into the contract.*” [4]

Under this rule, regardless of the number of buyers, only two or more insurance contracts for the same subject, the same terms and conditions and the same event are considered to be duplicate – even if the contracts are concluded with the same insurance company and are not considered asset insurance.

## **II. CHARACTERISTICS OF A DOUBLE INSURANCE CONTRACT**

The Insurance Business Law 2022 has overcome regulatory constraints compared to the Insurance Business Law 2000. Specific provisions to be considered a double insurance contract are to be covered for the same scope, subject, duration and event of insurance.

A double insurance contract has the following characteristics:

- Must exist from two or more property insurance contracts.
- Insurance contracts cover the same insured.
- Insurance contracts must cover a general (or partial) benefit which may lead to duplication of the covered benefit and the total amount of the insurance exceeds the value of the assets covered.
- Insurance contracts must cover the same insurance event resulting in loss to the insured. This is mandatory in order to ensure that when the insurance event occurs, at the same time there are many insurance contracts to bear liability.

There are many similarities between the coupling and the co-insurance, causing confusion in the application process. Therefore, it is important to make a distinction between Co-insurance and Co-Insurance.

According to clause 29 of Article 4 of the Insurance Business Law 2022, co-insurance is the case where the insurance undertakings, branches of foreign non-personnel life insurance enterprises agree to enter into an insurance contract with the buyer on an insurance agreement, in which the insurance enterprise, branch of foreign Non-persons Life Insurance enterprises receive the insurance premiums and compensation, pay the insurance in the proportion agreed in the insurance contract.

Insurance couples can also bear signs: contracting multiple insurance contracts of different organizations for the same insured, the same event and the same insurance conditions. Insurance contracts coexist to share risks and cover different interests in the same asset. In the absence of duplication of covered benefits, the total amount covered by the insurance contracts in the case of the insurance contract is always less than or equal to the actual value of the property. [5]

On the contrary, in the case of double insurance, since many contracts also guarantee a right, it will inevitably lead to insurance exceeding the value, the amount of insurance obtained from the contracts will be greater than the value of the right covered, and thus violate the principle that the insurance amount does not exceed the insurance value in property insurance.

If the insurance contract is duplicate, the buyer of the insurance must be affiliated with each insurance company and the insurance companies may not know about it, then the co-insurance is the purchase of all the insurers in the same contract.

In a double insurance contract, the insurance undertakings will only be liable to compensate for the insurance in a proportion: the amount of insurance agreed and the total amount of the insurance covered by the contracting parties to the insurance contract. The total amount of the insurance company's compensation does not exceed the actual value of the property's loss.

For co-insurers, when a risk occurs, the direct insurer is the enterprise involved in the coins with the compensation rate based on the co-contract. Liability for insurance compensation will be based on the rate that the insurer has signed, without

having to share liability with the other insurers, even in cases where the insurers are unable to pay.

The basic content of the insurance contract is based on the principle of limiting the rights that can be covered. The insurer is entitled to enter into multiple insurance contracts to secure that right, but it is not possible, by entering into more asset insurance agreements, that the asset may be guaranteed more rights than they have, as well as compensation more than the damage they have incurred in the loss of the load [5]. When the buyer of the insurance is covered in different companies, each company is only liable to compensate in proportion to the agreed amount of insurance in respect of the total amount covered by all the contracts that the purchaser has entered into, ensuring the principle that the total amounts compensated by the insurance companies do not exceed the value of the actual loss. For example, Mr. A had a car on January 21, 2022. A purchased a physical insurance of vehicles at enterprise B with the amount of insurance of 1.1 billion dong. On March 25, 2022, A bought insurance for this car at Enterprise C for 900 millions dong. Two contracts on the same terms and insurance events. On April 20, 2022, the vehicle was in an accident (risk covered), total loss.

The value of the accident vehicle (risk occurring within the coverage), total loss. The value of the vehicle at the time of the loss was estimated at 800 millions dong. In this case, the compensation value of each enterprise is determined as: (the amount of compensation received by one enterprise over the total amount received by the enterprise) multiplied by the actual value of the assets at the time of loss, according to this formula enterprise B must pay 440 millions and enterprise C pay 360 millions.

A double insurance contract only applies to property insurance and does not apply to insurance contracts involving human beings. Because the subject of the insurance contract is property or civil liability that can be calculated in money and the subject in the human insurance contract cannot calculate the value. In addition, due to the provisions on the coverage of property and damage insurance under the Insurance Business Law 2022,

the cover is understood to apply only to property insurance, not to health insurance.

Health insurance has rights to disability benefits (usually the health insurance product of non-life insurance companies), hospital allowance and medical expenses; disability allowance rights, hospital allowances are covered in the form of mortgage so no double insurance is applied, the insured person receives all the benefits from the insurance contracts. The actual cost is that the cost of medical services is damaging, so the principle of damage insurance (similar to property insurance) is applied, so it will apply double insurance, insurance contracts and contributions compensate in proportion to the amount of insurance, the total amount of compensation does not exceed the medical costs in the invoice. [6]

Article 49 of the Insurance Business Law 2022 provides for double insurance, but the current legislation does not provide any further explanation of how this regulation is applied, resulting in the following difficulties:

*First*, are the insurance contracts exactly the same in all four of the above-mentioned characteristics?

*Secondly*, the provision of the same conditions is unclear. By each insurance policy of each insurance company will be constructed completely differently. Insurance companies can still apply more flexibility through the addition, modification of the terms in each specific contract to suit the specifics of each customer. So, it makes a difference between insurance companies, from the wording to the content of the terms.

*Finally*, the Insurance Business Law stipulates that the amount of compensation for each insurance contract is calculated according to the ratio of the agreed insurance amount to the total amount covered by all the contracts that the insurer has entered into. This affects the rights of the insured person by the process of agreement of the amount of insurance between the insurance companies that can last for months or years where the insurer has not yet been able to receive compensation for the consequences of the loss.

### **III. SOME PROPOSALS TO REFINE THE PROVISIONS OF THE LAW ON DOUBLE INSURANCE CONTRACTS**

Currently, the Insurance Business Law 2022 does not stipulate that insurance buyers are responsible for informing the insurance companies concerned of double insurance contract information. This puts insurance companies in a passive position when an insurance event occurs, it's very likely that there will be a benefit situation, or if the insured person joins two insurance companies but only complains to one insurance company, it will be unfair to the other insurance company. [7]

All insurance contracts entail the obligation of the insurance company to compensate, so the law needs to supplement the provision that the insurance buyer/insured party has the right to demand that any insurance company pay in advance of the amount of damage rather than waiting for the insurance companies to agree to share the compensation and then pay to the insurance purchaser/insurer because this process can be prolonged, affecting the insured person's delay in receiving compensation to remedy the consequences.

In the context of a growing economy, refining the legal system of insurance business is essential to creating a healthy, transparent and fair business environment. The Insurance Business Law 2022 contains provisions to limit the benefits of insurance, protect the rights of the parties when entering into insurance contracts. In order to implement this Act effectively, there is a need for close cooperation between authorities, insurance companies and insurance participants in raising awareness, improving management, monitoring and dispute resolution.

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