

The principle of “insurable interest” for personal insurance contracts in Vietnam

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KEYWORDS

Insurable Interest,
Law on Insurance
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ABSTRACT

The principle of insurable interest has existed for a long time in countries with developed insurance markets. In many countries, it has been introduced in legal regulations that can regulate it entirely and strictly. In Vietnam, no law regulated it until the first Law on the Insurance Business of Vietnam was passed by the National Assembly in 2000, and recently, it was replaced by the new Law 2022. Thus, it is not easily accessible in Vietnam, especially for insurance customers in the context of changes when applying the new Law. In the article, the author employs a qualitative research methodology that collects and synthesizes secondary data from published articles and provisions in Vietnam’s legal framework to review the literature on insurable interest, which includes analyzing historical developments and legal frameworks in various jurisdictions, such as the UK, USA, and China, to provide context to the principle’s evolution and application in Vietnam. The article systematically examines the provisions of the Law on Insurance Business in Vietnam (both the 2000 and the 2022 versions), specifically focusing on the provisions regulating the principle of insurable interest. The author identifies shortcomings in the earlier legislation and discusses amendments introduced in the new Law. This legal analysis is crucial for understanding how Vietnam defines and regulates insurable interest in the personal insurance contract. The article forecasts potential opportunities and risks associated with implementing the new Law on Insurance Business 2022 provisions concerning insurable interest. It also discusses policy implications to ensure the stable development of Vietnam’s insurance market.

1. Introduction

The doctrine of insurable interest has existed for a long time in countries with developed insurance markets, such as the UK and the US. The principle

of insurable interest has become one of the essential principles for concluding and implementing insurance contracts. Therefore, any country wishes to introduce legal regulations that can regulate it entirely and strictly (Jing, 2014).

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Initially, the principle of insurable interest appeared in Vietnam through the use of international insurance terms and conditions by insurance companies (mainly in marine insurance). No law was regulating it until the first Law on the Insurance Business of Vietnam was passed by the National Assembly in 2000 (Office of the National Assembly of Vietnam, 2019). For more than 20 years, this law has contributed positively to the development of the Vietnamese insurance market, with a turnover of more than VND 200 trillion by the end of 2023, of which more than 2/3 was revenue from life and health insurance (Ngoc Cham, 2024). However, there are many shortcomings, among which are shortcomings and unreasonable regulations on insurable interest, especially for personal insurance contracts. On June 16, 2022, the National Assembly of Vietnam passed the new Law on Insurance Business, effective January 1, 2023 (Government E-newspaper, 2022). This 2022 law will significantly change the 2000 Law on Insurance Business and will significantly impact the development of the Vietnamese insurance market. One of the significant changes is the change in the provisions on the principle of insurable interest.

This doctrine is not easily accessible in Vietnam, especially for insurance customers. Moreover, in the context of changes when applying the new 2022 law, the difficulty of application is increased. Meanwhile, there is almost a lack of government guidance and research articles on this issue. In this article, the author wishes to summarize the theory of insurable interest, including the origin, concept, and perspective of developed insurance markets. The article will also present the provisions of the Law on Insurance Business of Vietnam on the principle of insurable interest, analyze the shortcomings of the Law on Insurance Business 2000, identify amendments and supplements to the Law on Insurance Business 2022, and forecast its opportunities and risks. The author collects and synthesizes data from published international articles to achieve the above objectives and synthesizes and analyzes the provisions on the research subject of the two versions (2000 & 2022) of the Law on Insurance Business of Vietnam, therefore, proposes policy implications to ensure the stable development of Vietnam's insurance market.

The structure of this research article includes the following parts: (1) Theoretical framework; (2) Research methodology; (3) Research results and discussion; (4) Conclusions.

2. Theoretical framework

2.1. History of the principle of Insurable Interest

For a long time, Insurable Interest has been considered a fundamental principle when concluding and implementing insurance contracts. The nature and content of the “insurable interest” principle can vary more or less depending on each country, from one jurisdiction to another. However, the primary reason for its emergence and existence is the same: to prevent gambling and betting under the name of insurance contracts and, at the same time, to minimize the risk of harm to the insured object for which a person proposes to purchase an insurance policy (Jing, 2014).

2.1.1. England

In the UK, the Marine Insurance Act of 1745 invalidated insurance policies taken out on marine cargo if the person taking out the insurance had no pecuniary interest in the goods. The English Parliament came to require an insurable interest because it was found that the making Assurances without further Proof of Interest than the Policy, hath been productive of many pernicious practices, whereby great numbers of ships with their cargoes, have been fraudulently lost and destroyed (Sharo Michael Atmeh, 2011). Legal regulation on marine insurable interest were also strengthened with the passing of the Marine Insurance Acts of 1906. The 1906 Act defined someone as having an interest in a marine adventure when: “he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof” (National Archives (Ed.)). The 1906 Act also extended the penalties for taking out a marine insurance policy without an insurable interest and made such action a criminal offense, punishable by a fine or prison for up to six months. 30 years after establishing the principle of the insurable interest for property, the regulation was extended to life insurance contracts with the Life Assurance Act of 1774. The locus of the 1774 enactment was not necessarily a concern about hastening the death of these individuals, but rather

about gambling on a morally prohibited subject. Parliament seemed to have placed another limitation on the writing of insurance policies at the time by stating that “no greater sum shall be recovered or received from the insurer than the amount of value of the interest of the insured in such life or lives, or other event or events” (Sharo Michael Atmeh, 2011).

2.1.2. *The United States*

In USA, the earliest reference to the problem concerning insurable interest occurred in the property context in 1803 in *Pritchett v. Insurance Co. of North America* (Sharo Michael Atmeh, 2011). The Pritchett court stated that insurance is a contract of indemnity. Its object is not to make a positive gain but to avert a possible loss. A man can never be said to be indemnified against a loss that can never happen to him. The Judge pegged the idea of an insurable interest to an actual loss being wrought to a person claiming proceeds under an insurance contract. Thus, the actual loss motive in this American judge’s mind seems to differ from the anti-gambling motives envisaged by the British Parliament’s version of an insurable interest. Several decades after that, the principle of insurable interest in life insurance was developed on highly fact-based grounds, and the issue wound itself into the Supreme Court. That is found in *Warnock v. Davis*. In *Warnock*, the Supreme Court stated that in all life insurance cases, there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured (US Supreme Court, 1881). The Court went on to resuscitate the wagering concerns from the British system as the reason underpinning insurable interest law in America by stating that without an insurable interest, a contract is a mere wager. Finally, the court extended the insurable interest doctrine one step further by stating that the assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name. That person stands in the position of one holding an invalid wager policy.

2.1.3. *China*

The doctrine of insurable interest in life insurance in China is governed by arts 12, 31, 33, 34, and 53 of the Insurance Law 2002. Article 12 provides a

general definition of the concept of insurable interest (applying to both property and life insurance), which states, “Insurable interest shall refer to a legally recognized interest of the proposer in the subject matter of insurance” (National People’s Congress of China, 2002). This definition establishes a narrow and restrictive test of insurable interest—“a legally recognized interest.” This is similar to the current English law position, under which the policyholder must show that his insurable interest in the life insured is legally recognized. This strict test has caused uncertainty and unfairness. In judicial practice, courts look for a legally recognized interest. This can be seen in the case of *Mr Gao v Life Insurance Co.* Mr Gao adopted an abandoned baby girl. He registered the adoption at the police station but did not register it with a civil affairs department, which must be done for a lawful adoption according to the Adoption Law. Gao took out an accident policy on his adopted daughter, who drowned a year later. He claimed, but his claim was rejected by the insurer, who argued that Gao did not have an insurable interest in his adopted daughter because he did not register the adoption according to the Law of Adoption. Thus, their relationship was not legally recognized. This is certainly unfair and harsh to the policyholder. It is submitted that the strict test of “a legally recognized interest” needs reform (Jing, 2014). Article 53 of the Insurance Law 2002 is the major article regarding insurable interest. It provides: A proposer shall have an insurable interest in the following persons:

- (1) Himself;
- (2) His spouse, children, and parents; and
- (3) Apart from the above-mentioned, other family members and close relatives bearing foster or support or maintenance relationship with the proposer;
- (4) A worker who has a working relationship with the proposer.

In addition to the persons mentioned in the preceding paragraphs, the proposer shall be deemed to have an insurable interest in any insured person who agrees that the proposer may conclude a contract on his life (National People’s Congress of China, 2002).

It is clear that sub-arts (1), (2) and (3) concern family relationships and sub-art (4) concerns an employment relationship. The second paragraph of art. 53 is about insurable interest in others who are not included in the list and whose consent to the proposer to insure their lives is sufficient for creating

an insurable interest. Thus, art. 53 establishes three categories of insurable interest: (1) Interest arising out of family relationships, (2) Interest arising out of an employment relationship, and (3) interest arising out of the consent of the life to be insured.

2.2. *Insurable Interest*

“Insurable Interest” is a fundamental legal concept in insurance law that refers to the financial or other interest a person has in the subject matter of an insurance contract. In other words, it is the interest a person has in a property or a life (life, health, etc.) that is being proposed to be insured (Dung NT., 2020). Essentially, the principle of insurable interest operates as a defense used by the insurer to estop insured individuals who lack an interest in the person or object insured from collecting on insurance policies after an insured event happens (Sharo Michael Atmeh, 2011; Jing, 2014). There is a clear difference in the identification of insurable interests in two types of insurance contracts: Property and casualty insurance (called “indemnity” contracts) and life insurance (“non-indemnity” contracts) (Sharo Michael Atmeh, 2011). An insurable interest of a person in property arises from his ownership or use of that property in respect of which he has a financial interest or may incur financial loss or legal liability. For a human subject, a person has the right to insure his own life (including life, health, etc.) or those of his relations, whether pecuniary (in credit, labor, etc.) or of blood or affinity, to expect some benefit or advantage from the continuation of the insured’s life (Dung NT., 2020).

3. Research methods

In the article, the author employs a qualitative research methodology that collects and synthesizes secondary data from published international articles and provisions in Vietnam’s legal framework. This approach aims to summarize theoretical frameworks, historical perspectives, and legal requirements related to insurable interest, particularly within the context of Vietnam’s evolving insurance laws.

First, the author reviews existing literature on insurable interest, drawing from international sources to provide a comprehensive background. The author utilizes published international articles to gather insights into the theory of insurable interest,

its historical evolution, and its application in different legal contexts, such as the UK, USA, and China. Second, the article analyses specific provisions related to insurable interest in personal insurance contracts from the 2000 Vietnam Law on Insurance Business. A detailed examination of legal texts from Vietnam’s insurance laws provides empirical data for assessing the effectiveness and clarity of current regulations surrounding insurable interests, highlights shortcomings, and identifies necessary reforms. Next, the author presents amendments introduced in the 2022 law compared to the 2000 law and identifies opportunities and risks associated with these changes in legislation. Finally, the analysis includes a discussion of practical implications for insurance customers in light of recent legislative changes.

This systematic approach allows for a nuanced exploration of insurable interest, aiming to inform legal practitioners and policymakers about potential improvements needed in Vietnam’s insurance regulatory framework.

4. Results and Discussion

4.1. *Principle of Insurable Interests in Vietnam’s Law on Insurance Business 2000*

The principle of insurable interest in personal insurance in Vietnam is governed by Articles 3, 22, 23, and 31 of the Law on Insurance Business 2000 (Office of the National Assembly of Vietnam, 2019).

- Article 3 includes the content of the explanation of terms and clause 9 of this article provides the general definition of insurable interest: “Insurable interests are the right and obligation of custody and alimony for the insured object.”

- Clause 2 of Article 31 stipulates whom a person can propose to purchase an insurance policy for their life and health:

“The proposer may only purchase insurance for the following persons:

- a) The policyholder himself/herself;
- b) The policyholder’s spouse, children, and parents;
- c) Siblings; persons in a custody or of custody and alimony relationship;
- d) Other persons, if the policyholder has an insurable interest.”

- Article 22 stipulates cases where insurance contracts are invalid, in which Clause 1, Point (a)

states: An insurance contract is invalid when the insurance buyer does not have insurable interest;

- Articles 23 and 24 stipulate the termination of an insurance contract and its legal consequences. Accordingly, Clause 1, Article 23 and Clause 1, Article 24 stipulate that an insurance contract terminates when "... The policyholder no longer has insurable interests." In this case, "the insurance enterprise must refund the insurance premium to the policyholder corresponding to the remaining period of the insurance contract for which the policyholder has paid the insurance premium, after deducting reasonable expenses related to the insurance contract."

4.2. The problem of the legal regulations on the Principle of Insurable Interests in the Law on Insurance Business 2000

First of all, the definition of Insurable Interest for the personal object as "the right and obligation of custody and alimony for the insured" shows the following shortcomings:

- It does not include the most basic case of human insurance, which is when a person buys insurance for his own life, body, and health. This issue is actually related to other personal rights, specifically "the right to be guaranteed safety of life, health and body" stipulated by Article 32 of the 2015 Civil Code (13th National Assembly of Vietnam, 2015).

- The existence of a blood relationship (parents - children, siblings) does not mean the existence of the obligation of custody and alimony. For example, Clause 2, Article 69 of the Law on Marriage and Family 2014 stipulates that the obligation of parents is to "... nurture, care for, protect the rights and legitimate interests of minor children, adult children who have lost their civil act capacity or have no ability to work and have no assets to support themselves" (13th National Assembly of Vietnam, 2014). However, Clause 2, Article 31 above show that only blood relations are needed to be able to buy insurance, that is, even if there is no obligation of custody and alimony. "Custody obligation" and "Alimony obligation" are two issues that are not independent but also do not completely coincide in terms of subject and case of occurrence. For example: After divorce, a couple can still have an alimony obligation (Article 115 of the Law on Marriage and Family 2014). In reality, there are some cases, such

as a person requesting to buy life insurance for his/her ex-husband/ex-wife or the child after divorce, but for some reason - for example, domestic violence, not being given custody of the child will certainly be rejected by the insurance company.

Second, Clause 9, Article 3 (in Chapter 1 - General provisions) should be general (general definition of insurable interest), and Article 31 (in Chapter 2, Section 2 - Personal insurance contracts) should have the meaning of specific regulations on the type of personal insurance (detailed list of cases with insurable interest). However, after listing a number of cases in points a, b, Clause 2, Article 31, points c, d is written: "c. ...; people with custody and alimony relationships; d. Other people if the insurance buyer has insurable interest". This way shows that Article 31 has not fulfilled its task of clarifying the details but has increased confusion and ambiguity because it is not known whether Article 31 is an explanation and application of Article 3, Clause 9 to personal insurance or Article 3, Clause 9 is only meant to supplement Article 31 partially.

Third, the provisions on insurable interests in the 2000 Law on Insurance Business are still unclear: The contract may be invalid when there are no insurable interest (Article 22) and may be terminated when there are no more insurable interest (Article 23), but the Law does not stipulate when there must be insurable interest, nor does it stipulate the consequences of an invalid contract; The use of the phrase "brother, sister, sibling" may be misunderstood as the case where "brother, sister" does not necessarily mean "real brother," "real sister".

4.3. Changes of the Law on Insurance Business 2022 on regulations of Insurable Interest for human subjects

The National Assembly of Vietnam passed the new Insurance Business Law on 16 June 2022, which came into effect on 1 January 2023, except for certain provisions on risk-based capital and intervention measures, which will take effect on 1 January 2028. This Law 2022 provides significant changes to the Law on Insurance Business 2000 and will have a major impact on the development of Vietnam's insurance market. One of the important changes is the change in the provisions on the principle of insurable interest.

Table 1 below will serve as an argument to discover

Table 1. Identify amendments and supplements to the provisions on the principle of insurable interest of the Law on Insurance Business 2022 (Office of the National Assembly of Vietnam, 2019 & 15th National Assembly of Vietnam, 2022)

Law on Insurance Business 2000	Law on Insurance Business 2022	Modifications or additions
Clause 9, Article 3 provides the general definition of insurable interest: “Insurable interests are ... the right and obligation of custody and alimony for the insured object.”	There is no definition of insurable interest in Article 4 - Definitions and terms	Abolish the general definition of insurable interest in the wording clause and instead specify it directly in each type of insurance contract.
There is no provision on the principles of contract conclusion and performance.	Article 16 - Principles of concluding and performing insurance contracts Concluding and performing insurance contracts must comply with the “principle of insurable interests: the insurance buyer must have insurable interests appropriate to each type of insurance contract” (clause 2)	Add a provision regulating the principles of contract conclusion and performance, in which “insurable interests” is one of the basic principles.
Clause 2, Article 31: “The proposer may only purchase insurance for the following persons: a) The policyholder himself/herself; b) The policyholder’s spouse, children, and parents; c) Siblings; persons of custody and alimony relationship; d) Other persons, if the policyholder has an insurable interest.”	Article 34: Insurable interest of life insurance contracts, health insurance contracts 1. The proposer for an insurance policy has insurable interests in the following persons: a) The policyholder himself/herself; b) The policyholder’s spouse, father, mother, or child; c) A real brother, real sister, or other persons having a custody and alimony relationship; d) A person having a financial interest or employment relationship with the policyholder; đ) The insured agrees in writing to the policyholder to purchase health insurance for them. 2. The policyholder must have insurable interest when entering into the insurance contract.	- Affirm “The policyholder has insurable interests...” instead of “The policyholder can only purchase insurance for...”; - Clarifying the “real” sibling relationship; - Add cases with insurable interests in points d and đ: “d) A person having a financial interest or employment relationship with the policyholder; đ) The insured agrees in writing to the policyholder to purchase health insurance for them.” - Clearly define the time when there must be an insurable interest as “at the time of entering into the insurance contract”.
Article 22: An insurance contract is void when “the policyholder has no insurable interest.”	Article 25: An insurance contract is void when “the policyholder has no insurable interest at the time of entering into the contract.” “When an insurance contract is void, the contract is no longer effective from entering into it.” The insurance company and the policyholder shall return what they have received to each other. The party at fault causing the damage must compensate.”	Add provision on when insurable interest must exist and the legal consequences of void contract.
Articles 23 and 24 stipulate the termination of an insurance contract if the policyholder no longer has insurable interests.” and its legal consequences.	There is no provision regarding termination of the insurance contract when the insured no longer has insurable interests.	Eliminate the provision to terminate the contract when there are no more insurance interests.
There is no requirement that an insurable interest be present before an insurance contract can be assigned.	Article 28: “The transferee of an insurance contract must have an insurable interest”.	Add an additional condition for accepting the transfer of an insurance contract is that there must be an insurable interest.

the additional amendments of the new Law:

It can be affirmed that the new legal provisions on insurable interests are more precise and more rigorous: It has affirmed that insurable interests are one of the five basic principles for concluding and implementing insurance contracts; It has resolved the inconsistency between Clause 9, Article 3 and Clause

2, Article 31 of the Law on Insurance Business 2000 by removing the general definition of “insurable interests are the rights and obligations of custody and alimony”, instead, affirming the cases where “the insurance buyer has insurable interests” in life and health insurance contracts; The Law on Insurance Business 2022 clearly defines the time when

there must be insurable interests as “at the time of concluding the insurance contract”, if at the time of concluding the contract the insurance buyer does not have insurable interests, the insurance contract will be invalid and the consequences of an invalid contract are also stipulated explicitly in Clause 2, Article 25 of this Law; Some wording changes also contribute to making the regulations clearer and more precise. In addition, the provisions of the Law on Insurance Business (2022) on insurable interest have expanded the subjects participating in health insurance and life insurance.

4.4. Policy implications

4.4.1. Strengthen information dissemination and enforcement guidance for new legal provisions on insurable interest

As mentioned above, the insurable interest doctrine is not easily accessible in Vietnam, especially for insurance customers. Moreover, in the context of changes when applying the new 2022 law, the difficulty of application is increased. However, there is almost a lack of government guidance and research documents on this issue. Therefore, Government and Insurance Professional Associations need specific guidance documents and organize appropriate activities (seminars, websites, etc.) to disseminate legal regulations to the public and society.

4.4.2. Applying eKYC (Electronic Know Your Customer) in customer identification and authentication

The Law on Insurance Business 2022 affirms that insurable interests are a fundamental principle of concluding and implementing insurance contracts. In particular, amendments and supplements of the new Law on insurable interest help make the provisions more specific and precise for personal insurance contracts. However, in practice, to determine the insurable interests of the insurance applicant, it is necessary to collect the customer's personal information. This process is no less complicated and time-consuming. In a digital technology context, insurance companies must apply eKYC (Electronic Know Your Customer) to identify and authenticate customers. eKYC allows insurance companies to identify customers 100% online through mobile

applications or the insurance company's website to automatically extract information from the insurance applicant's identification documents with high accuracy. This helps save time, reduce cumbersome paperwork, increase transparency and security of personal information, and ensure customer transaction safety.

4.4.3. Improving and enhancing the quality of business management

The newest Insurance Business Law 2022 adds two cases with insurable interests (in Article 34, clause 1, points d and đ): “d) A person having a financial interest or employment relationship with the policyholder; đ) The insured agrees in writing to the policyholder to purchase health insurance for them.” (15th National Assembly of Vietnam 2022) It helps expand the scope of insurance participants and opens opportunities to increase the life and health insurance market size. But it poses potential risks and challenges. Allowing people outside of blood, family, or affinity relationships to buy insurance for each other (i.e., having insurable interests in each other) can promote profiteering behavior in human life. Therefore, if the business management of insurance companies is not good, it will create management loopholes for insurance fraud intentions from bad customers. Applying digital technology such as eKYC is only a technical solution, and the more important thing is that insurance companies need to improve the quality of their management team and perfect the management process. The Government and Professional Associations need to create a common database and a coordination mechanism to support insurance companies in accessing accurate customer information, avoiding fraudulent and profiteering behaviors right from the time of proposing to sign a contract to protect the safety of the insured, to ensure the business and the public benefits.

5. Conclusions

In conclusion, the principle of insurable interest has existed for a long time in countries with developed insurance markets. There, it has been introduced in legal regulations that can regulate it entirely and strictly. In Vietnam, it was regulated when the first Law on the Insurance Business of Vietnam was passed by the National Assembly in 2000, and recently, it

was replaced by the new Law 2022. Thus, it is not easily accessible, especially for insurance customers in situations of change when applying the new Law. In this context, the findings of this research article have significant contributions: The author has researched, analyzed, and synthesized legal documents, scientific articles, and other documents related to the principle of insurable interests, especially for personal insurance contracts, thereby providing a relatively in-depth and comprehensive view to help everyone (including customers and insurance companies) understand and apply this principle in practice in concluding and implementing insurance contracts; It also provides a theoretical basis for legal science research in the insurance field by academics and lawmakers to perfect the legal framework of insurance; The policy implications of the article also contribute to ensuring the stable development of the Vietnamese insurance market when applying the changes to the new Law on Insurance Business 2022.

In addition, the research article has some limitations as follows: (1) The scope of the research is still narrow: The research only focuses on the principle of insurable interests in human insurance contracts according to the legal regulations of Vietnam, without expanding the comparison with other countries in the region; (2) Lack of practical data: The author analyses research matters mainly based on theoretical review and legal regulations, there is not much practical data related to the application of this principle in Vietnam.

In the future, the insurable interest doctrine in Vietnam can be further researched and clarified in the following directions: (1) Expanding the scope of research: Conducting comparative research on the insurable interest doctrine with other countries in the ASEAN region or Asia; (2) Enhancing practical data: Conducting surveys or interviews with insurance experts to gain deeper insights into the practical application of the insurable interest principle; (3) Analyzing economic impacts: Assessing the economic impacts of applying the insurable interest principle as prescribed by the new Law 2022 on Vietnam's insurance market, including the impact on insurance companies and insurance participants, including studying new trends in customer behavior and needs when applying changes in legal regulations related to this principle.

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