
Modernizing Duty of Disclosure in Insurance Law in Vietnam's Transitioning Economy: The Need for a Policyholder-Centric Approach

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ABSTRACT

This article examines the need for a policyholder-centric approach in modernizing Vietnam's insurance law, focusing on the shift from freedom of contract to a pro-consumer framework, the strengthening of policyholder protections, and lessons from international legal reforms. As Vietnam's market-based economy expanded in the 2000s, rising consumer awareness and widespread use of standard form contracts highlighted information asymmetries, leading to disputes and unfair claim denials. While the Law on Insurance Business as amended in 2022 incorporates the principle of utmost good faith, it retains outdated provisions that limit consumer protection. Drawing on global trends such as inquiry-based disclosure and proportional remedies, this article identifies key gaps and advocates reforms to enhance transparency, fairness, and trust in Vietnam's insurance market.

Keywords: pro-consumer, standard form contracts, duty of disclosure, policyholder, insurer, policyholder-centric approach, insurance law, Vietnam

I. Introduction

Insurance is a complex legal product with no physical form,¹ relying fundamentally on the trust between the contracting parties. One of the ways to build the trust is certainly through transparency enhancement. As a general principle of insurance law, transparency is focused on the exchange of information between contracting parties in the pre-contractual phase.² By ensuring transparency in this initial stage through compliance with the duty of disclosure, both the insurer and policyholder not only

uphold legal principles but also strengthen public confidence, ultimately contributing to a more stable and trustworthy insurance market.

In the first comprehensive Law on Insurance Business enacted in 2000 (LOIB 2000) in Vietnam, transparency and information exchange had not been a central focus for legislators. It was only with the recent amendments in the Law on Insurance Business 2022 (new LOIB, LOIB 2022)³ that these issues received significant attention. In its working papers for the new LOIB,⁴ the Drafting Law

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¹ Van Rossum, A. (2004). Ethics, governance, trust and customer relations. The Geneva Papers on Risk and Insurance. Issues and Practice, 29(1), 52-55.

² Steffek, A. K. (2022). Trust and Transparency in Insurance Contract Law: European Regulation and Comparison of Laws. Cambridge Yearbook of European Legal Studies, 24, 319-348. <https://doi.org/10.1017/cel.2022.12>

³ The new Insurance Business Law 2022 will come into effect from 1 January 2023, except for certain provisions on risk-based capital and intervention measures that will take effect from 1 January 2028.

⁴ The Ministry of Finance was assigned by The National Assembly of Vietnam to draft the revision of the LOIB, and establish a group of experts, namely, Drafting Law Commission

Commission emphasized that consumers must be aware of their duty to provide accurate information at the pre-contractual stage and understand the consequences of breaching this duty. In response, LOIB 2022 expressly incorporated the principle of utmost good faith. Yet, aside from this incorporation, the substantive provisions governing the duty of disclosure remain largely unchanged. The limited adjustments made—particularly the continued reliance on rescission as the sole remedy—have led to skepticism that the revisions amount to little more than “old wine in a new bottle,” offering insufficient improvement over the former regime.

Both LOIB 2000 and LOIB 2022 adopt an inquiry-based approach to disclosure, whereby policyholders disclose information only in response to insurers’ questions in the proposal form.⁵ The disclosure duty of the policyholder is more like a duty not to misrepresent in response to the insurer’s enquiries than a positive obligation of disclosure. Policyholders often face claim denials due to their unawareness of pre-contractual disclosure obligations and their lack of understanding of the policy at the time of purchase, which may not align with their actual needs. This leaves policyholders vulnerable, as claims can be denied for non-disclosure, regardless of fault. The insurers may issue the contract without having full and correct information relating to the risks to be insured. However, when a risk arises and a claim is made for insurance benefits, for example, under a life insurance policy, the insurers will verify the policyholder’s information related to the risks, e.g., medical record in life insurance. Based on this verification, insurers may choose to rescind the contract and refuse indemnification if the policyholder provided any incorrect information during the pre-contractual phase.⁶ The new LOIB has yet to adopt the modern proportionality-based approach to designing

remedies for breaches of the duty of disclosure, which aims to eliminate the harsh remedy of contract avoidance, a reform that has been implemented in many jurisdictions.⁷ This problem is compounded by the absence of a statutory definition of what constitutes a breach of the duty of disclosure. Vietnamese law does not specify whether the incorrect or undisclosed information must be material to the insurer’s risk assessment, premium calculation, or contract acceptance. The lack of a clear materiality requirement perpetuates ambiguity in judicial interpretation and offers little guidance for courts when disputes arise.

On the insurer’s side, although LOIB 2022 imposes expanded duties—such as providing all contractual documents and offering clear explanations of benefits, exclusions, and policyholder rights and obligations⁸—it lacks guidance on how insurers must perform these duties and the legal consequences for non-compliance. In practice, insurers maintain wide discretion in how information is conveyed, leaving prospective policyholders at a disadvantage and undermining fair treatment in insurance transactions.

This article highlights the growing importance of consumer protection in Vietnamese insurance contract law and argues for a policyholder-centric approach to the duty of disclosure. It examines the need to modernize Vietnam’s insurance framework in line with contemporary international reforms and focuses on three core issues: (i) *the shift in Vietnam from a freedom-of-contract paradigm to a more pro-consumer orientation*; (ii) *the need to reinforce protection for policyholders as the structurally weaker party in insurance contracts*; and (iii) *the influence of comparative legal developments on Vietnam’s evolving regulatory landscape*. To support this analysis, the article adopts a combined methodological approach. First, a

to prepare the new draft of the LOIB. On the agenda of the 2nd session of the 15th National Assembly, 22 October 2021, Minister of Finance Ho Duc Phuc first presented a presentation on the draft Law on Insurance Business (amended) in the meeting of the National Assembly (Online, 22 October 2020), https://sav.gov.vn/SMPT_Publishing_UC/TinTuc/PrintTL.aspx?idb=2&ItemID=38643&l=noi dung/tintuc/Lists/TinTucSuKien.:https://duthaoonline.quochoi.vn/Pages/dsduthao/chitietduthao.aspx?id=7379.

⁵ LOIB 2000 Art. 18.2.b, and Art.19; LOIB 2022 Art.21.2. a, and Art. 22.

⁶ LOB 2022, Art.22.

⁷ Jing, Z. Z., M. (2015). Limitations on the insured’s duty of disclosure in Chinese law: a comparative analysis with English, Australian and German laws. *International Company and Commercial Law Review*, Vol. 26, No. 7, 6, 224-235.

⁸ LOIB 2022, Art.20.2.

doctrinal analysis is used to examine the evolution and current structure of Vietnamese insurance law, with particular attention to the duty of disclosure, remedies for misrepresentation, and the use of standard form contracts. Second, a comparative law method is applied to evaluate influential reforms in jurisdictions such as the United Kingdom, Australia, Germany, the European Union, Japan, South Korea, and Singapore, identifying trends and transplantable models suitable for Vietnam. Third, insights from behavioral law and economics are incorporated to explain patterns of consumer misunderstanding and information asymmetry in Vietnam's insurance market. Finally, a normative legal analysis is employed to propose reforms that would shift Vietnamese insurance law toward a more policyholder-centred, transparent, and equitable framework in line with modern international standards.

II. Background

Section II provides the foundational context for understanding the necessity of shifting Vietnam's insurance regulatory framework from an insurer-centric model to a policyholder-centric approach. Subsection A examines the historical development of Vietnam's insurance sector, highlighting how the transition to a market-based economy and the emphasis on freedom of contract initially resulted in an insurer-focused legal framework. Subsection B then explores the parallel rise of consumer protection and the increasing use of standard form contracts, which exposed inherent imbalances between insurers and policyholders

and created the impetus for adopting a more pro-consumer, policyholder-centric regulatory philosophy. Together, they illustrate the economic, legal, and social factors that underpin the ongoing evolution of Vietnam's insurance law.

A. Transition to a Market-Based Economy

Inspired by the pro-market ideology of Western countries, since 1986 Vietnam's Doi Moi era has driven extensive legal reforms aimed at adapting to a burgeoning market economy and facilitating the country's integration into the global economic landscape.⁹ To support this goal, Vietnamese legislators focused on developing a comprehensive private law system. This included creating and improving laws related to property rights, and economic fields such as contract law, commercial law, enterprise law, and investment law.¹⁰ These legal reforms played a crucial role in attracting domestic and foreign investment, stimulating economic growth, providing the foundation for developing a dynamic private sector and encouraging entrepreneurship in Vietnam.¹¹

In contract law, legislators started recognizing the importance of respecting the freedom of contract, adopting a more hands-off approach and seldom interfered with contracts made by parties.¹² The shift in the legislators' mindset reflected a desire to align Vietnam's economic policies with the principles of market economics. The emphasis lies on the significant importance of the will theory as the sole basis for enforcing a contract, thereby ensuring the fairness of outcomes.¹³

⁹ Rose, C. V. (1998). The new Law and Development Movement in the post-cold War era: A Vietnam case study. *Law and Society in East Asia*, 32, 93-140.

¹⁰ Dinh, D. S. (2020). Hệ thống pháp luật Việt Nam trong tiến trình đổi mới và phát triển đất nước [The Vietnamese legal system in the process of national renewal and development]. *Journal of Vietnamese Legislative Research* (No. 01 (401)). <http://www.lapphap.vn/Pages/TinTuc/210462/He-thong-phap-luat-Viet-Nam-trong-tien-trinh-doi-moi-va-phat-trien-dat-nuoc.html> During the 40-year period, from 1946 to 1986, the National Assembly (from the first to the seventh term) only promulgated a total of 32 laws. During the 15-year period from 1987 to 2001, the eighth, ninth, and tenth National Assembly promulgated 108 laws, starting with the Law on Land, the Law on Foreign Investment in 1987 and then the Law on Foreign Investment in Vietnam in 1987. The birth of a series of important laws in the economic field such as the Law on Companies, the Law on Private Enterprises in 1990, the Law on the State Bank of

Vietnam, the Law on Credit Institutions in 1997, the Law on domestic investment promotion in 1997, the Law on Insurance Business in 2000, many tax laws and other specialized laws... laid the first bricks, laying the foundation for the establishment of a market economy institution, defining socialist direction in Vietnam for the next stages.

¹¹ Rose, (1998), *supra* note 9.

¹² Nguyen, Q. V. (2006). Freedom of contract: A Leading principle in contract law of Economically developed Countries and its absence in Contract law of Vietnam [Ph.D, Meiji Gakuin University]. Tokyo, Japan.

¹³ In the post- communist era in Central Europe, Hesselink has also identified that "the pendulum (of contract law) seems to be swinging back with a renewed faith in the capacity of individuals to take care of their own interests." Hesselink, M. W., Mak, C., & Rutgers, J. W. (2009). Constitutional aspects of European private law: freedoms, rights and social justice in the Draft

During the 2000s, Vietnam strongly upheld the principle of freedom of contract in shaping its insurance laws. Following the abolition of the state monopoly held by the sole state-owned insurer, the country sought to modernize its insurance industry and attract foreign investment. At that time, the sector of insurance was still in its infancy, governed by sparse and rudimentary legislation.¹⁴ Due to limited expertise, Vietnamese legislators refrained from enacting detailed regulations, instead encouraging self-regulation through voluntary market transactions between insurers and policyholders. Prioritising the principle of freedom of contract was seen as a key strategy for fostering market growth. The initial comprehensive insurance legislation in 2000 (LOIB 2000) was in line with this economic strategy when its Article 5 stated that Vietnam aims to attract foreign investors by encouraging insurance and brokerage companies to invest capital in Vietnam, reinvest profits to support socio-economic development, and strengthen international cooperation to enhance business efficiency.¹⁵ Foreign insurers were eager to seize the economic expansion opportunity, especially in the life insurance sector.¹⁶

The transition to a market-based economy, grounded in the principle of freedom of contract, marks a significant milestone in Vietnam's socio-economic and legal development. The enactment of the LOIB 2000 underscored the country's commitment to leveraging international cooperation and market mechanisms to protect investor interests and stimulate domestic investment. As a result, investor and insurer protection became the central focus in shaping insurance law during the

early development of Vietnam's insurance industry, granting insurers the freedom to design and develop insurance products in the Vietnamese market.

The insurer-centric approach in making insurance law was influenced by the traditional approach of insurance law around the world, in which the insurer was regarded as the party in need of protection.¹⁷ This was largely due to the assumption that insurers faced significant risks from a policyholder's non-disclosure or misrepresentation. This perspective stemmed from the belief that policyholders held critical information about the insured risk that could disadvantage insurers if not fully disclosed.¹⁸ The policyholder was considered to be in the best position to provide information related to the insured subject and the transaction during the pre-contractual stage, which is essential for minimizing transaction costs.¹⁹ During the development of insurance law, lawmakers aimed to nurture the fledgling industry, acknowledging its close resemblance to gambling.²⁰ This fostered a systematic suspicion of policyholders, prompting laws to prevent fraud or manipulation.²¹ As a result, policyholders were strictly required to disclose all material facts and avoid misrepresentation when forming an insurance contract. Any breach of this duty during the pre-contractual phase could lead to contract avoidance and allow insurers to deny claims. These requirements relating to the duty of disclosure are traditionally universal to insurance law.²² As a result, traditional insurance law was primarily designed to protect insurers, seen as the vulnerable party in need of safeguarding. This framework placed the burden of information disclosure on policyholders,

Common Frame of Reference. Centre for the Study of European Contract Law Working Paper Series(2009/05).

¹⁴ Bucheton, D., & Cominh, D. (1995). The Development of a Vietnamese Insurance Industry Organisation, Operation and Prospects. The Geneva Papers on Risk and Insurance, 20 (No. 75, April 1995), 180-186.

¹⁵ LOIB 2000, Art.5.

¹⁶ Nguyen, T. H., Nguyen, T. D. P., Tran, N. Q. Q., & Lai, T. (2021). Overview of Vietnam's insurance market: Opportunities and challenges. International Research Journal of Modernization in Engineering Technology and Science 03(03), 1092-1099.

¹⁷ Heiss, H. (2012a). Insurance Contract Law Between Business Law and Consumer Protection. In K. B. Brown & D. V. Snyder (Eds.), General Reports of the XVIIIth Congress of the International Academy of Comparative Law/Rapports Généraux du XVIIIème Congrès de l'Académie Internationale de Droit

Comparé (pp. 335-353). Springer Netherlands. https://doi.org/10.1007/978-94-007-2354-2_15

¹⁸ Supra, note 2.

¹⁹ Julie-Anne Tarr, 'Disclosure in Insurance Law: Contemporary and Historical Economic Considerations' (2001) 6 International Trade and Business Law Annual 209-226.

²⁰ R. Merkin, 'Gambling by Insurance —A Study of the Life Assurance Act 1774' (1980) 9(3) Anglo-American Law Review 331-363.

²¹ Herman Cousy, 'About sanctions and the hybrid nature of modern insurance contract law' (2012) 5 Erasmus L. Rev. 123.

²² Anthony A. Tarr and Julie-Anne Tarr, 'The Insured's Non-Disclosure in the Formation of Insurance Contracts: A Comparative Perspective' (Pt Cambridge University Press) (2001) 50(3) The International and Comparative Law Quarterly 577-612.

driven by the logic of risk transfer: policyholders, as the ones with knowledge of the risk, were obligated to fully disclose relevant details to the insurer, who otherwise lacked knowledge of the true nature and extent of the risk.

However, the traditional universal approach often overlooked the disparity in knowledge and bargaining power between insurers and individual policyholders in the contemporary context,²³ leading to calls for reform in the developed insurance markets such as the United Kingdom and Germany to better balance the interests of both parties.²⁴ These reforms in the first two decades of the twentieth century have been significant, shaping legal reforms in other jurisdictions, a topic explored further in Section IV.

In sum, Vietnam's early transition to a market-based economy naturally produced an insurer-centric regulatory framework—one that emphasized freedom of contract, relied heavily on voluntary market mechanisms, and prioritized insurer and investor confidence as key drivers of economic development. This orientation aligned with global historical patterns and reflected the practical needs of a young insurance industry seeking capital, expertise, and stability. Yet as the Vietnamese insurance market expanded and matured, the limitations of this traditional model became increasingly visible, particularly given the persistent information asymmetries and bargaining disparities faced by individual policyholders. Doctrines designed primarily to mitigate adverse selection and safeguard insurers grew progressively out of step with the realities of a rapidly evolving consumer market.

These emerging tensions did more than expose the shortcomings of an insurer-centric system—they laid the groundwork for a broader reconceptualization of the regulatory philosophy itself. As Vietnam confronted rising disputes, declining consumer trust, and shifting international standards, it became clear that the early insurer-focused approach could no longer meet the demands of a modern insurance market. This recognition directly catalyzed the rise of consumer protection as a central regulatory concern and set the stage for the growing reliance on standard form contracts—developments that Subsection B examines in detail.

B. Developments Necessitating a Pro-Consumer Approach

Before 1986, under the centrally planned economy, the concept of consumer rights was virtually non-existent in Vietnam.²⁵ The state controlled major enterprises in essential sectors such as electricity, water, transportation, banking, healthcare, and education. Goods and services were distributed through a coupon system, leaving little room for consumer choice or market-driven protections. As a result, there was no legal framework recognizing consumers or safeguarding their interests.

However, as Vietnam transitioned to a market-oriented economy, particularly in the 2000s, consumers began to play an increasingly vital role in the marketplace. Although the evolution of the consumer protection law in Vietnam's transitioning economy emerged later than in developed markets,²⁶ it aligns with the broader trend of legal updates favoring consumers. In the early 2000s, statutory provisions were introduced to impose greater

²³ Bednarz, Z., & Manwaring, K. (2021). Keeping the (good) faith: Implications of emerging technologies for consumer insurance contracts. *The Sydney Law Review*, 43(4), 455-487.

²⁴ Hammond, E., & Kay, J. (2021). Insurance Regulation in the United Kingdom and the Federal Republic of Germany. In *Advances in Monetary Economics* (pp. 192-206). Routledge. ; Li, K. X., Wang, Y., Tang, O., & Min, J. (2016). Disclosure in insurance law: a comparative analysis. *European Journal of Law and Economics*, 41, 349-369. <https://doi.org/10.1007/s10657-012-9355-y>

²⁵ Gia Phan Do, 'The Consumer Movement in Vietnam' (2002) *Consumer Magazine*, cited in Diaz Pedregal Virginie and Figuié Muriel, 'What Is the Place of a Consumer Movement in a Transitional Economy? The Case of VINASTAS in Vietnam' in *Proceedings of the Third VDF-Tokyo Conference on the*

Development of Vietnam, Tokyo, 2 June 2007, 117-36 <http://www.grips.ac.jp/vietnam/3rdConference/Proceedings2007_3.pdf>.

"By historical conditions, during its 30 years of war for national salvation, Vietnam applied the centralized planning system for its economy. All major businesses were in the hands of the state. Goods and necessities were distributed through a system of coupons. Major services like electricity, water, transport, telecommunication, banking, health, and education were state monopolies. At that time, there was no mention of the concept of consumers or of activities to protect consumers."

²⁶ Sir Gordon Borrier, *The Development of Consumer Law and Policy—Bold Spirits and Timorous Souls* (Pt (The Hamlyn Lectures, 36th Series)) (1985) 44(1) *The Cambridge Law Journal* 150-152.

responsibilities on businesses, aiming to enhance consumer rights and protections.²⁷ These early regulations laid the foundation for a more structured consumer protection framework. The evolution of consumer protection law continued in 2005 as standard form contracts (SFCs),²⁸ typically written by the traders, became widely used in commercial transactions and were commonly employed by sellers and traders during Vietnam's booming market economy.

In Vietnam, the existence of SFCs was first acknowledged in the Civil Code in 1995 and further recognised in subsequent revisions in 2005 and 2015.²⁹ SFCs were prevalent across various industries, such as real estate, electricity, telecommunications, and banking. As explained by the Drafting Law Commission in the Law on Protection of Consumer Rights (2010), SFCs can be used for multiple transactions, promoting economic efficiency by reducing transaction costs, offering certainty, and minimizing misunderstandings between parties.³⁰ SFCs often contain terms and conditions predetermined by the dominant party, usually goods sellers or service providers with stronger bargaining power. This has raised concerns about "unequal bargaining power."³¹ Building on this context, a major milestone was reached in 2010 with the enactment of the Consumer Protection Law (CPL) 2010, which replaced previous regulations. The CPL 2010 introduced comprehensive consumer rights, product liability provisions, and stricter rules governing SFCs and general trading conditions. The overhaul of the CPL in 2023, driven by the rapid

expansion of digital commerce, reinforced these protections and further emphasized the need to balance market growth with consumer rights, advancing a more transparent and equitable business environment.³²

The legislative reforms in Vietnam marked a significant shift in lawmakers' awareness, embracing a pro-consumer philosophy in response to the limits of classical contract law. Through state intervention, regulatory measures, and judicial safeguards, legislators aimed to address imbalances in bargaining power and enhance transparency, ensuring stronger consumer protection. The growing prevalence of SFCs and rising consumer awareness in a developing market economy drove a paradigm shift in contract law, prioritizing fairness and protection for consumers.

This pro-consumer orientation has directly shaped the reform trajectory of insurance law, particularly in consumer insurance where policyholders are individuals. Nearly 25 years after the first enactment of the LOIB, the market now reflects the increasingly dominant position of insurers in drafting policy terms and controlling the negotiation process. As a result, policyholders—whether individual consumers or sophisticated commercial actors—continue to encounter fundamental challenges stemming from inherent disparities in information, knowledge, and expertise. The consumer-protection philosophy therefore becomes even more critical, guiding both current and future reforms of insurance law toward a model that

²⁷ Nguyen, V. T. (2011). Pháp luật bảo vệ quyền lợi người tiêu dùng của một số nước, vùng lãnh thổ trên thế giới và bài học kinh nghiệm đối với việc xây dựng Luật bảo vệ quyền lợi người tiêu dùng tại Việt Nam [Laws on consumer protection of some countries and territories around the world and lessons learned for the development of the Law on consumer protection in Vietnam] [LL.M, Vietnam National University, Hanoi]. Ha Noi.

²⁸ Gluck, G. (1979). Standard form contracts: The contract theory reconsidered. *International & Comparative Law Quarterly*, 28(1), 72-90. , Kessler, F. (1943). Contracts of Adhesion - Some Thoughts about Freedom of Contract. *Columbia Law Review*, 43(5), 629-642. <https://doi.org/10.2307/1117230>.

²⁹ Vietnamese Civil Code 1995, Article 406; Vietnamese Civil Code 2005, Article 407, and Vietnamese Civil Code 2015, Article 405.

³⁰ Nguyen, P. T. (2005). Về hợp đồng mẫu trong cung ứng thương mại dịch vụ [On Standard Contracts in Supplying Commercial Goods and Services]. *Journal Of State And Law* 4 54-56. , Tang, V. N. (2009). Bàn về điều kiện giao dịch chung của doanh nghiệp [On the General Transaction Conditions Concerning Businesses]. *Journal of Democracy and Law*, 3 21-28.

³¹ Kessler (1943), *supra* note 28, questioning the validity of consumers' assent due to lack of choice and discussing the risk that businesses will exploit their power and draft standard form contracts in an inequitable and overreaching manner. See, e.g., Michelle E Boardman, 'Contra Proferentem: The Allure of Ambiguous Boilerplate' (2006) 104 *Michigan Law Review* 1105, 1105 ('Bad boilerplate can shake one's faith in evolution; not only does it not die away, it multiplies'); Clayton P Gillette, 'Pre-Approved Contracts for Internet Commerce' (2005) 42 *Houston Law Review* 975, 975 ('One of the prominent themes of current contract law scholarship that has particular significance for electronic commerce is the concern that sellers will be able to exploit buyers, especially consumer buyers, by inserting into standard form contracts terms that systematically favor the former').

³² Vietnamese National Assembly passed the Law No. 19/2023/QH15 on Protection of Consumers' Rights on 20 June 2023, effective from 1 July 2024 and taking place of the Law No. 59/2010/QH12 on the Protection of Consumers' Rights in 2010, as amended in 2018.

reduces information asymmetry and strengthens the legal safeguards available to insureds in consumer insurance contracts.

In Vietnamese insurance markets insurance policies are SFCs designed and translated into Vietnamese by foreign insurers who dominate the market. For example, in the life insurance sector, the dominant insurers are from developed countries like the UK and US. Consequently, the terminology and expressions used in the life policies can be long and difficult for policyholders to grasp, regardless of whether they are individuals or entities.³³ In the life insurance sector, policies designed by insurers must be registered and reviewed by the Vietnamese Ministry of Finance before being sold in the market.³⁴ Formal control of policy content may assist policyholders in understanding the contract and reducing unfair terms when policyholders do not have equal bargaining power with insurers. However, the ex-ante administrative review mechanism faces challenges due to a lack of specialists in the insurance field, making it superficial.³⁵ In the non-life insurance sector, although insurers design policies without authority review, there is still a risk for policyholders to encounter unfair terms. This asymmetry can lead to situations where insurers abuse their power to exploit policyholders. Prospective policyholders, particularly individuals, have limited ability to influence or negotiate the contract terms.

In this landscape, several key areas of Vietnam's insurance law remain under review and are expected to evolve to further safeguard consumers. The momentum toward a pro-consumer philosophy is increasingly evident: ongoing reforms aim to enhance transparency during the pre-contractual phase, ensuring that policyholders receive clear, accurate, and

accessible information before committing to an insurance policy. Strengthening these information duties is essential not only for addressing longstanding asymmetries in expertise and bargaining power between insurers and policyholders but also for mitigating the risks inherent in the widespread use of standard form insurance contracts. Ultimately, by prioritising fairness, accountability, and substantive protection throughout the entire insurance lifecycle, the modernised legal framework seeks to foster a more equitable insurance market—one that aligns with Vietnam's broader transition toward a consumer-centred regulatory environment.

III. Challenges for Policyholders under the Current Insurance Law

A. Limited Insurance Knowledge

Vietnam's relatively young insurance market presents challenges for prospective policyholders, whether they are individuals or sophisticated commercial entities, due to limited knowledge of insurance. Behavioral studies on Vietnamese policyholders indicate that the policyholders primarily focus on costs, policy restrictions, deductibles, the insurer's reputation, and a few specific coverage provisions, often neglecting other critical terms when they make decisions to buy insurance.³⁶ This limited understanding contributes to breaches of the duty of disclosure, as policyholders may struggle with insurance terminology in questionnaires, contracts, and pre-contractual obligations.³⁷ Policyholders tend to rely heavily on insurance agents or the insurer's staff and place their trust in personal relationships with them, which can lead to disputes. Moreover, some sales staff and insurance agents lack a comprehensive

³³ Bach, T. N. N. (2022). Giải thích hợp đồng bảo hiểm và các lưu ý khi áp dụng nguyên tắc contra proferentem [Interpretation of Insurance Contract and Remarks for Application of the Principle of Contra Proferentem]. *Legislative Study*, 10 25-35.

³⁴ LOIB 2022, Art.136.

³⁵ Do, N. G. (2017). Control of Standard Terms in Consumer Contracts in Vietnamese Law: Lessons Learnt from European Experiences [Ph.D, Utrecht University]. Utrecht. 30).

³⁶ Mai, T., Nguyen, T., Vu, L., Bui, V., & Do, D. (2020). A study on behaviors of purchasing life insurance in Vietnam. *Management Science Letters*, 10(8), 1693-1700. Nguyen, H. T., Nguyen, H., Nguyen, N. D., & Phan, A. C. (2018). Determinants

of customer satisfaction and loyalty in Vietnamese life-insurance setting. *Sustainability*, 10(4), 1151.

³⁷ Hoang Minh, Không có chuyện “bẫy” khách hàng trong hợp đồng bảo hiểm [There is no such thing as "trapping" customers in insurance contracts] (Online, 13 May 2023) *Tạp chí Tài chính* <<https://tapchitaichinh.vn/khong-co-chuyen-bay-khach-hang-trong-hop-dong-bao-hiem.html>>.

Phuong Chi, Hạn chế bất cập trong hoạt động bảo hiểm [Limitations and shortcomings in insurance activities] (Online, 2 July 2023) *Dai Doan Ket*, <<https://daidoanket.vn/han-che-bat-cap-trong-hoat-dong-bao-hiem-10255386.html>>.

understanding of the insurance products they sell, leading to inaccurate or misleading advice being provided to consumers during the purchasing process.³⁸ As a result, consumers may not fully understand what is covered under their insurance policy.

Notably, the new LOIB, which took effect on January 1, 2023, has not been effective in reducing the volume of disputes brought by policyholders regarding pre-contractual information duties. The persistent issue of mis-selling in bancassurance during 2023 and 2024 has further eroded public confidence in the insurance sector.³⁹ This situation has highlighted the inadequate disclosure of information to policyholders, preventing them from making well-informed decisions before entering insurance contracts and leaving many unaware of the terms and conditions outlined in their policies.

Amid growing social pressure to change the law to reduce disputes and enhance public trust in the insurance industry, the Vietnamese Ministry of Finance (MoF), responsible for overseeing the insurance market, revised regulations to safeguard long-term interests and maximize insurance accessibility.⁴⁰ The latest strategy to develop Vietnam's insurance market by 2030⁴¹ aims to perfect the legal system and policies on insurance comprehensively, transparently, and equally, aligning with international standards and practices. To achieve the 2030 goals, the government must keep taking significant steps towards enhancing policyholder's trust in insurance through the enactment of pro-policyholder legislation and

safeguarding the interests of the disadvantaged contracting party in insurance transaction.

B. Limited Policyholder Protections

While the new LOIB incorporates the principle of utmost good faith governing the pre-contractual duty of disclosure and information and makes some minor adjustments to remedy inconsistencies in handling breaches of the duty not to misrepresent, the fundamental provisions remain largely unaltered. As a result, the law still falls short in providing robust protection for policyholders, leaving critical gaps that need further reform.

First, the law did not clarify the scope of the material information in the duty not to misrepresent by the policyholder, which is limited to the risk objects or extending to any information in the insurance contract requested by the insurer. Any wrong answer to the immaterial questions in the application form can lead to a breach of the duty. In two separate cases, the policyholder falsely answered "No" to the question "*Does the applicant have life insurance policies at different insurance companies?*" despite holding multiple policies with different insurers. In the 12 April 2021 appeal,⁴² the provincial court ruled that the policyholder had breached the duty of disclosure under the LOIB, making the contract void ab initio, and thus, the insurer had no obligation to indemnify. However, in the earlier 2 February 2021 judgment,⁴³ the same provincial court held that the policyholder only needed to disclose information related to personal status and health. The varying rulings in these cases highlight how the court's discretionary authority has led to uncertainty and unpredictability in the

³⁸ Kim Lan, Tranh chấp bảo hiểm, lỗi đầu chi của khách hàng [Insurance disputes, not just the customer's fault], (Online, 29 Sep 2019) (Website of Vietnamese Ministry of Finance) <https://mof.gov.vn/webcenter/portal/ttnctbhp/pages_r/l/chi-tiet-tin?dDocName=MOFUCM163019>.

³⁹ Vietnamese Ministry of Finance (MoF), "Bộ Tài chính công bố kết luận thanh tra việc bán bảo hiểm qua ngân hàng tại 04 doanh nghiệp bảo hiểm" [The Ministry of Finance announced the conclusion of the inspection of insurance sales through banks at 04 insurance enterprises], (Online, 30 June 2023) <https://mof.gov.vn/webcenter/portal/btcvn/pages_r/l/tin-bo-tai-chinh?dDocName=MOFUCM279937&dID=282529chinh?dDocName=MOFUCM279937&dID=28252>

⁴⁰ Tram Anh, 'Sau vụ ép khách hàng mua bảo hiểm, sẽ cấm hoặc ngừng kinh doanh nghiệp vụ nếu vi phạm nghiêm trọng' [After forcing customers to buy insurance, business operations will be

banned or stopped if serious violations are committed] Vn Economy (February 25, 2023), <<https://vneconomy.vn/sau-vu-ep-khach-hang-mua-bao-hiem-se-cam-hoac-ngung-kinh-doanh-nghiep-vu-neu-vi-pham-nghiem-trong.htm>>.

⁴¹ Vietnamese Government, 'Strategy to develop Vietnam's insurance market to 2030' (Jan 5, 2023) <https://chinhphu.vn/?pageid=27160&docid=207181&classid=2>.

⁴² Case No.338/2021/DS-PT, People's Court of Ho Chi Minh City, 12 April 2021, (Law Library, Web page) <<https://thuvienphapluat.vn/banan/ban-an/ban-an-ve-tranh-chap-hop-dong-bao-hiem-so-3382021dspt-270340>>.

⁴³ Case No.137/2021/DS-PT, People's Court of Ho Chi Minh City, 02 February 2021, (Vietnam Law, Web page) <<https://luatvietnam.vn/ban-an/ban-an-137-2021-ds-pt-2-507984-d11.html>>.

interpretation and determination of breaches of the duty of disclosure.

Vietnam's insurance law should introduce a materiality or reliance test, requiring insurers to prove a breach of the duty of truthful disclosure and representation. Under this test, the insurer must demonstrate that the misrepresentation or non-disclosure is material to the decision to accept the policy, meaning it would influence the judgment of a prudent underwriter. If the misrepresentation or non-disclosure is not material and does not affect the insurer's decision, it cannot be considered a breach of the duty.

Second, the old and new LOIB adopts the “*all or nothing*” approach to the payment of insurance money in addressing the issue of policyholder's misrepresentation. The insurer may avoid the contract regardless of whether the insured was fraudulent, intentional, grossly negligent or innocent in his failure to provide a material fact. The innocent misrepresentation is currently treated the same as the fraudulent or intentional misrepresentation. The sole remedy of avoidance in the event of a breach of the duty of disclosure and representation is harsh and allows an insurer to reject the whole claim even if they would have accepted the risk if they were given full disclosure, albeit at a higher premium. Legal scholars have called for reform for the purpose of creating fair treatment for insureds by clarifying the conditions required under the duty of representation.⁴⁴ Specific questions include whether Vietnamese insurance law should adopt the doctrine of proportionality, and the materiality test to examine the way in which Vietnamese courts determine the occurrence of a breach of the duty, whether a breach occurs intentionally or by gross negligence.

Third, there is a need for stronger enforcement of the insurer's duty to interpret the terms and conditions for the potential

policyholder preceding the conclusion of the insurance contract. Because insurers have an informational advantage over the insured regarding the benefits and indemnity available under the insurance, policyholders need to receive clear explanation of policy terms and adequate advice to assess whether to get the insurance, and if so on what terms and at what premium.

The analysis highlights the need for clearer standards in determining breaches of the duty of disclosure, limiting contract rescission for non-disclosure, and strengthening insurers' obligations to ensure transparent pre-contractual information. It underscores the urgent need for legislative reform to enhance consumer protections and restore balance in modern insurance markets.

IV. Global Trends and Implications for Vietnamese Insurance Law

Recent legal reforms in insurance law across multiple jurisdictions demonstrate a clear trend toward modernizing legislation in favor of policyholders. These reforms increasingly prioritize the protection of insurance consumers by incorporating measures inspired by broader consumer law principles. Key changes include the shift to an inquiry-based model for the pre-contractual duty of disclosure and the replacement of the “*all or nothing*” approach in remedies for breaches, both of which significantly strengthen policyholder protections in the global insurance market. In the Vietnamese context, the complexity of insurance policies, combined with policyholders' limited understanding and the potential financial consequences of disclosure breaches, underscores the urgent need to adopt similar consumer-protective measures. Drawing on these international reforms can guide Vietnam in

⁴⁴ Insurance Supervisory Authority, Ministry of Finance, (2019). Workshop on Improving Regulations on Insurance Contracts https://mof.gov.vn/webcenter/portal/cqlgsbh/pages_r/chi-tiet-tin-cuc-quan-ly-giam-sat-bao-hiem?dDocName=MOFUCM158327; Institute for Legislative Studies under the National Assembly Standing Committee and the National Assembly's Economic Committee, (2021). Workshop on Comments on Draft Law on Insurance Business <https://quochoi.vn/uybankinhte/lapphap/Pages/home.aspx?Item1>

D=660; Tran Linh Huan and Nguyen Phuoc Thanh Truong, ‘Pháp luật về giao kết và thực hiện hợp đồng bảo hiểm - Một số bất cập và kiến nghị hoàn thiện’ (The Law on Entering and Performing Insurance Contracts - Some Shortcomings and Suggestions for Improvement) Tạp chí Tòa án nhân dân [People's Court Journal] (Online) <https://tapchitoaan.vn/phap-luat-ve-giao-ket-va-thuc-hien-hop-dong-bao-hiem-mot-so-bat-cap-va-kiem-nghi-hoan-thien6688.html>.

developing a more balanced, transparent, and pro-policyholder insurance regulatory framework.

A. Global Reforms in Duty of Disclosure

For centuries, the evolution of insurance contract law was slow and largely unaffected by sudden shifts. However, since the early 21st century, two major developments have transformed insurance law and practice: the emergence of big data technology and significant reforms in insurance contract law.⁴⁵ Ongoing reform efforts in insurance contract law across various common and civil law regions have focused on safeguarding consumer benefits in insurance dealings. A significant recent change involves the policyholder's pre-contractual duty of disclosure, which has undergone substantial revisions.⁴⁶

Among common law jurisdictions, the UK led the reform of the duty of disclosure in the insurance law, influencing other common law jurisdictions. The English and Scottish Law Commissions began reviewing insurance contract law relating to the disclosure obligations of the policyholder and proposed relevant reforms in 2006.⁴⁷ This led to legal reforms in the duty of utmost good faith in both consumer and business insurance in the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and the Insurance Act (IA) 2015.

Accordingly, there is a distinction between consumer insurance and business insurance concerning the policyholders' duty of disclosure between the CIDRA and the IA. The CIDRA removes the duty of disclosure insofar as it required the consumer to volunteer information

that they have not been first asked to provide and shifts to a new duty to take reasonable care in the light of all the relevant circumstances. This means that insurers must rely only on information drawn from direct questions put to the insured. Different from the CIDRA 2012, the IA 2015 introduced a new duty of fair presentation in both commercial and non-consumer (business) insurance contracts in its section 3(1).⁴⁸ This duty requires the insureds to disclose every material circumstance they know or ought to know, or to provide sufficient information to put the insurer on notice to make further inquiries. The approach in the IA combined inquiry-based disclosure and traditional voluntary disclosure which ensures that insureds are fully aware of their obligations and reduces the likelihood of disputes arising from misunderstandings. Failure to respond to the insurer's request to confirm or amend information supplied may be considered misrepresentation under the CIDRA.⁴⁹ Section 3(2) provides a non-exhaustive list of factors that may be taken into account when determining if the duty has been broken.⁵⁰ Furthermore, a policyholder's failure to fulfil this duty will not usually give insurers the right to rescind the contract but will allow for a proportional remedy such as scaling down a claim payment.

The transformation of insurance law in Australia began earlier than in the UK, taking root in the mid-1980s following the publication of the Australian Law Reform Commission (ALRC) report in 1982.⁵¹ This led to enactment of the Insurance Contracts Act (ICA) 1984, which was further revised by the Financial Sector Reform (Hayne Royal Commission Response) Act 2020 (Cth), effective from 11 January 2021. The latest reform, influenced by

⁴⁵ Tereszkiewicz, P. (2019). Digitalisation of insurance contract law: preliminary thoughts with special regard to insurer's duty to advise. In *InsurTech: A Legal and Regulatory View* (pp. 127-146). Springer.

⁴⁶ Lowry, J. (2012). Pre-contractual Information Duties: The Insured's Pre-Contractual Duty of Disclosure-Convergence Across the Jurisdictional Divide. In J. B. a. K. Lazarus (Ed.), *Research Handbook on International Insurance Law and Regulation*. Edward Elgar Publishing. <https://doi.org/https://doi.org/10.4337/9781849807890>

⁴⁷ The review began with a Joint Scoping Paper issued in January 2006. The Law Commission and the Scottish Law Commission, *Insurance Contract Law: A Joint Scoping Paper*, (London: Law Commission, January 2006). Initial possible reforms started since 1957 with the establishment UK Law Reform Committee,

followed by English Law Commission in 1980 and National Consumer Council in 1997.

⁴⁸ The Insurance Act 2015 received the Royal Assent on 12 February 2015, and came into force on 12 August 2016, <<https://www.legislation.gov.uk/ukpga/2015/4/contents/enacted> > accessed 1 March 2025.

⁴⁹ Lowry, J. R., Philip. (November 2012). 'That Wicked Rule, that Evil Doctrine ...': Reforming the Law on Disclosure in Insurance Contracts. *Modern Law Review* 75(6). .

⁵⁰ This approach has been used in other areas, such as the UK Sale of Goods Act 1979, Section 14(2B).

⁵¹ Robert Merkin, A Report for the English and Scottish Law Commissions on The Australian Experience of Insurance Reform <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2015/03/ICL_Merkin_report.pdf>.

the UK insurance law reform, simplified the consumer's duty of disclosure by introducing a consumer duty to take reasonable care not to make a misrepresentation when entering into, renewing, extending, varying, or reinstating an insurance contract. Additionally, related to the consequences of any misrepresentation, an insurer will need to show not just that a representation made by the consumer was factually incorrect, but that the misrepresentation resulted from the consumer's failure to take "reasonable care" when responding to the insurer's questions.⁵² These reforms reduce the policyholder's disclosure burden while placing greater responsibilities on the insurer.

Among civil law countries, reforms also aim to provide stronger protection for policyholders,⁵³ Germany pioneered reforms regarding policyholders' pre-contractual duties of disclosure and consequences of policyholders' duty breach, when the German federal government set up a commission to review insurance contract law in 2000.⁵⁴ The new Insurance Contract Act (VVG) came into effect on 1 January 2008 providing policyholders with protection aligned with modern consumer law concepts.⁵⁵ The new law recommended substantial changes, adoption of inquiry-based disclosure instead of voluntary disclosure, and abolition of the "all or nothing" principle which often led to unfair results.⁵⁶

Policyholders who breached their policy obligations intentionally were not entitled to any claim under the insurance policy, whereas in cases of negligence the insurer had to pay the full amount, and the new law requires payment of claims in cases of recklessness but will be reduced depending on the policyholder's degree of responsibility.⁵⁷

Amidst the wave of legal reforms, several EU countries, including France,⁵⁸ Spain,⁵⁹ Italy,⁶⁰ Sweden,⁶¹ have undertaken significant reforms to the duty of disclosure. Equivalent rules are found in the Principles of European Insurance Contract Law (PEICL),⁶² which is more consumer-friendly in terms of obligations.⁶³ In terms of the consequences for breaching disclosure obligations, the all or nothing approach was abolished and replaced by the principle of proportionality.

Beyond Europe, some Asian jurisdictions have also embraced reform. Japan's 2010 amendments to the Insurance Act enhanced consumer protection by adopting a similar protective stance, and requiring insurers to ensure policy clarity,⁶⁴ while South Korea's reforms to the Commercial Act imposed stricter transparency obligations on insurers at the underwriting stage.⁶⁵ In Singapore, significant reforms to its insurance law were built upon the recommendations from the Singapore Academy of Law's Law Reform Committee's 2020 report

⁵² Australian Insurance Contracts Act 1984, Section 20B.

⁵³ Jürgen Basedow, 'The Common Frame of Reference and Insurance Contract Law', in Grose, F. & Boele-Woelki, K. (2007), *The Future of European Contract Law*. Kluwer Law International. 149.

⁵⁴ Koch, R. (2010). German Reform of Insurance Contract Law. *European Journal of Commercial Contract Law*, 2. https://doi.org/10.7590/EJCCL_2010_03_02

⁵⁵ Heiss, H. (2012b). Proportionality in the new German Insurance Contract Act 2008. *Erasmus Law Review*, 5(2), 105-120.

⁵⁶ Koch, R. (2010). German Reform of Insurance Contract Law. *European Journal of Commercial Contract Law*, 2. https://doi.org/10.7590/EJCCL_2010_03_02

⁵⁷ Heiss, H. (2012b). Proportionality in the new German Insurance Contract Act 2008. *Erasmus Law Review*, 5(2), 105-120.

⁵⁸ In France, the French Insurance Code (Code des Assurances) was amended in 2005 to introduce more lenient remedies for breaches of this duty, with further reforms in 2018 focusing on proportionality and fairness, especially within consumer insurance contracts.

⁵⁹ In Spain, the 2015 amendment to the Insurance Contract Law (Ley de Contrato de Seguro 1980) reinforced the principle of good faith by imposing stricter obligations on insurers to provide clear and comprehensible policy terms, thereby reducing the burden on policyholders in fulfilling their disclosure duties.

⁶⁰ In Italy, the 2012 reform of the Insurance Code (Codice delle Assicurazioni 2005) strengthened consumer protection by requiring insurers to provide clearer pre-contractual information and limiting the circumstances in which policies can be voided for non-disclosure.

⁶¹ The Swedish Insurance Contracts Act 2005 entered into force on 1 January 2006, for a detailed review see Hjalmarsson, 'The Swedish Insurance Contracts Act 2005: An Overview', *NFT* (2008), 85-92.

⁶² Anderssen, H. B. (2017). The Duty of Disclosure in the PEICL: A Scandinavian Perspective. *European Review of Private Law*, 967-987. <http://www.kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\ERPL\ERPL2017060.pdf>

⁶³ Luik, O.-J. (2016). The application of principles of European insurance contract law to policyholders of the Baltic States: A measure for the protection of policyholders [Ph.D, University of Tartu, Estonia]. Näituse

⁶⁴ Maruyama T, 'The 2010 Amendments to the Japanese Insurance Act: A New Era for Policyholder Protection' (2011) *Journal of Japanese Law*.

⁶⁵ Kim J, 'Reforms in South Korea's Insurance Law: Enhancing Consumer Protection and Transparency' (2012) 7(1) *Asian Journal of Comparative Law* 123-145.

published on 28 February 2020.⁶⁶ The report calls for codifying Singapore's insurance laws into a single piece of legislation modelled on the CIDRA 2012 and the IA 2015.⁶⁷

In brief, recent legal reforms in insurance law across several jurisdictions reflect a trend toward modernizing insurance legislation in favor of the policyholder. These reforms increasingly aim to protect insurance consumers, including policyholders, insured individuals, and third-party beneficiaries, by introducing various protective measures inspired by consumer law principles.⁶⁸ Notable changes include the reform of the policyholder's duty of disclosure during the pre-contractual phase through an inquiry-based model and the abolition of the "all or nothing" approach in remedies for breaches of this duty. These reforms significantly enhance the protection of policyholders. The aim of a pro-consumer insurance law framework is not to stifle the insurance industry but to foster a balanced relationship between insurers and policyholders and enhancing the transparency in information exchange.

B. Legal Transplantation to Vietnamese Insurance Law

The reform of insurance law in Vietnam does not occur in isolation but is influenced by global trends in consumer protection and market regulation. Lessons from established legal systems provide valuable insights for shaping a more balanced and policyholder-friendly legal framework. As a country with a rich history of legal borrowings,⁶⁹ Vietnam is well positioned to incorporate foreign legal principles, particularly when such solutions may help to address the policyholder's weaker bargaining

position and enhance transparency in information exchange with insurers.

Vietnam's legal system has evolved under diverse foreign influences, shaped by its historical position at the intersection of Confucian and Southeast Asian traditions.⁷⁰ Due to historical influences, Vietnam's legal framework has developed as a layered structure, with new laws overlaying older ones.⁷¹ As a result, Vietnamese law reflects a diverse blend of legal traditions, where contemporary principles intertwine and coexist with traditional concepts.⁷² Advocacy for a legal framework in state governance has resulted in implementing numerous statutes over the last four decades in embracing a market-based economy.⁷³ This transformation has been intertwined with the modernization of the Vietnamese legal system, especially developing contract law, business law, and commercial law. In the contract law, Vietnam experienced fundamental changes in the end of the twentieth century corresponding to profound social, political, and economic changes in Vietnamese society. Legislators were deeply inspired by Western classical contract law, which arose in the nineteenth century – the heyday of the philosophy of *laissez-faire*⁷⁴ and later became open to the inception of pro-consumer philosophy in the Civil Code and the Law on Consumer Protection.

Due to its flexibility in legal development regardless of being a civil law follower, Vietnam has been receptive to adopting ideas and regulations from common law jurisdictions to enhance its own insurance framework. It was clearly evidenced by the fact that the country's first Maritime Code 1990, for example, was significantly influenced by the UK Marine

⁶⁶ Singapore Academy of Law. Law Reform Committee. (2020). Report on reforming insurance law in Singapore.

⁶⁷ Roberts, I., Sykes, N., Joel Harris, J. (2020, March 25, 2020). Shaking up the Insurance Industry: Proposal to Reform Insurance Law in Singapore. Clyde&Co.

⁶⁸ Davey, J. (2023). The shape of insurance contract law. In J. Burling & K. Lazarus (Eds.), *Research Handbook on International Insurance Law and Regulation* (2nd ed., pp. 2-23). Edward Elgar Publishing.

⁶⁹ Gillespie, J. D. (2017). *Transplanting Commercial Law Reform: Developing a 'Rule of Law' in Vietnam* (1st edition ed.). Routledge.

⁷⁰ Phan, Huong, 'Overview of the Vietnamese Legal System' (2019) Keio University Press.

⁷¹ Gillespie, (2017), *supra* note 69.

⁷² Pham, D. N., & Do, H. H. (2018). The Soviet Legacy and Its Impact on Contemporary Vietnam. In J. G. Hualing Fu, Pip Nicholson and William Partlett (Ed.), *Socialist Law in Socialist East Asia* (pp. 151-172). Cambridge University Press. 6).

⁷³ *Ibid*.6.

⁷⁴ Kessler (1943), *supra* note 28, recalls that 'freedom of contract does not commend itself for moral reasons only; it is also an eminently practical principle. It is the inevitable counterpart of a free enterprise system. As a result, our legal lore of contracts reflects a proud spirit of individualism and of *laissez faire*.' (641). For further views on the role of freedom of contract and the free market society, see Max Weber, *Economy and Society*, trans G Roth & C Wittich (University of California Press, 1978).

Insurance Act 1909.⁷⁵ In the new LOIB of 2022, Vietnam incorporated the principle of utmost good faith originated from the UK as indicated in the working paper of the Drafting Law Commission.⁷⁶ The Drafting Law Commission prepared comprehensive research on experiences and observation of regulations in several common law and civil law jurisdictions (such as the UK, Germany, France, Japan...) to find out the most suitable lessons for Vietnam.⁷⁷

Notably, despite stemming from different legal traditions, the insurance laws of the UK and Germany have adopted a similar consumer-centric approach to reforming the duty of disclosure and information.⁷⁸ The law reforms in other common law and civil law jurisdictions, as discussed in the previous section, also share a focus on enhancing protection for policyholders.⁷⁹

The trend in insurance law reform to protect policyholders, seen in both common law and civil law countries, aligns with the internal pressures within Vietnam's insurance market. To enhance consumer protection while maintaining market efficiency, Vietnam should pursue more comprehensive reforms by adopting solutions observed in foreign law reforms, using the UK as a typical jurisdiction in common law and Germany as a typical civil law jurisdiction.

One specific reform is adopting the inquiry-based disclosure to shift greater responsibility to insurers to clearly explain policy terms. While Vietnam has taken steps to incorporate inquiry-based disclosure, clearer requirements are needed to determine whether a breach of the duty of disclosure has occurred. This would help prevent insurers from misusing breach claims as a basis for denying policyholder claims. Additionally, both the UK and Germany have introduced proportionate remedies for breaches

of the duty of disclosure, moving away from the harsh consequence of contract rescission. Germany's focus on applying the same standards to both consumer and business insurance, categories shared with Vietnam, shall provide the notable impact to the inclusion of the policyholder-centric approach in reforming duty of disclosure. Germany also has further strengthened its emphasis on proactive insurer disclosure, providing a model for Vietnam in developing clearer and more transparent pre-contractual information duties.⁸⁰ Integrating the lessons learned from the legal reforms in these two jurisdictions could provide valuable insights for Vietnam's reform efforts, helping to create a pro-policyholder framework tailored to the needs of Vietnam's evolving insurance market.

V. Conclusion

Vietnam's drive to adopt the policyholder-centric approach in modernizing the duty of disclosure in insurance law stems from a combination of internal and external factors. Domestically, growing public dissatisfaction with existing legal frameworks has underscored the urgent need for reform. Disputes over claim denials, insurers' dominance in negotiations, and the widespread use of SFCs have highlighted significant power imbalances and contributed to a lack of trust in the insurance market. Furthermore, the rising philosophy of consumer protection in contract law in Vietnam's recent law reforms has strengthened the demand for a pro-policyholder approach that ensures fairness and accountability.

Externally, Vietnam's reform efforts are shaped by international trends and legal transplantation. Comparative studies of reforms in other jurisdictions offer valuable lessons for

⁷⁵ Pham, S. H. Q. (2004). Cơ sở hình thành nghĩa vụ cung cấp thông tin trong giao kết hợp đồng bảo hiểm [Basis for the formation of the obligation to provide information in the conclusion of an insurance contract]. *Journal of Legal Science* (04).

⁷⁶ Drafting Law Commission, Ministry of Finance, International experiences on the law on insurance business and insurance market (Report, August 2021) 85–89.

⁷⁷ The Ministry of Finance was assigned by The National Assembly of Vietnam to draft the revision of the LOIB, and establish a group of experts, namely, Drafting Law Commission to prepare the new draft of the LOIB. Working papers of Drafting

Law Commission were published at: <<https://duthaoonline.quochoi.vn/Pages/dsduthao/chitietduthao.aspx?id=7379>>.

⁷⁸ Hammond, E., & Kay, J. (2024), *supra* note 24. Li, K. X., Wang, Y., Tang, O., & Min, J. (2016), *supra* note 24. Schwartz, D. (2007). Resolving the Disclosure Puzzle in Insurance Law. *Bus. L. Rev.*, 6, 175.

⁷⁹ Li, K. X., Wang, Y., Tang, O., & Min, J. (2016), *ibid*.

⁸⁰ Ziemiak, M. (2019). Pre-contractual information duties of insurers. A German and Polish Approach, *Prawo Asekuracyjne* (2).

addressing shared challenges, particularly regarding pre-contractual duties of disclosure. Vietnam's willingness to adopt and adapt foreign principles reflects its broader strategy of aligning with global best practices while addressing domestic needs.

By responding to these driving factors, Vietnam seeks to create a fair, transparent, and stable insurance market that meets the evolving needs of its policyholders. Protecting policyholders' interests is not only essential for restoring trust and fostering market confidence but also for ensuring the availability of insurance as a crucial social and economic safety net. These reforms represent a significant step toward modernizing Vietnam's insurance law and aligning it with contemporary societal values and international standards. It is worth emphasizing that protecting the long-term interest of policyholders is essential to fostering the availability of insurance to society as a whole.⁸¹

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⁸¹ Priest, G. L. (2016). A principled approach toward insurance law: The economics of insurance and the current restatement project. *George Mason Law Review*, 24, 635-650. 22).

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