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# Amendments to Criminal Procedure Code set to facilitate criminal enforcement of industrial property rights

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- **The National Assembly has passed a law amending some provisions of the Criminal Procedure Code**
- **The amendments remove a cumbersome requirement that resulted in infringements of industrial property rights often being sanctioned administratively, rather than criminally**
- **The authorities can now initiate criminal cases against offences under Article 226.1 of the Penal Code on their own initiative**

On 12 November 2021 the National Assembly passed a law amending some provisions of the Criminal Procedure Code. Among the major changes introduced to achieve more effective and transparent criminal proceedings, the amended law removes the requirement that a request or complaint must be filed by the victim (ie, the rights holder) in order to commence a criminal investigation and prosecution against offences of infringement of industrial property rights through the manufacturing of, or trading in, trademark counterfeit goods or geographical indication (GI) counterfeit goods under Article 226 of the Penal Code.

## Background

Under Article 226 of the Penal Code, where the infringing goods are trademark counterfeit goods or GI counterfeit goods with a value of over D200 million (approximately \$8,700), the illegal profit obtained is over D100 million (approximately \$4,350), or the damages caused to the rights holder amount to over D200 million (approximately \$8,700), the infringer may:

- be ordered to pay a fine of up to D5 billion (approximately \$217,400);
- be sentenced to up to three years in prison; and
- have its business suspended for up to two years.

However, under the former Articles 155.1 and 157.8 of the Criminal Procedure Code, to commence a criminal investigation and prosecution against offences of infringement of industrial property rights under Article 226 of the Penal Code, a request or complaint by the victim - namely, the holder of the rights being infringed - was required. Such request or complaint is not required to commence a criminal investigation and prosecution against the offences of manufacturing or trading in fake goods under Article 192 of the Penal Code.

In practice, in many cases involving offences of infringement of industrial property rights under Article 226.1 of the Penal Code, enforcement agencies were not able to contact the rights holders so that the latter could make a complaint or request. As a result, the infringements were sanctioned administratively, rather than criminally. This hurdle also meant that the enforcement agencies were reluctant to consider the criminal liabilities of infringing acts meeting the threshold of criminal offences under Article 226.1 of the Criminal Code.

## Key change

Under the amended Criminal Procedure Code, to commence a criminal investigation and prosecution against the offence of infringing industrial property rights under Article 226.1 of the Penal Code, it is no longer necessary for the victim to make a complaint or request. Accordingly, the authorities can now initiate criminal cases against such offences on their own initiative.

## Comment

The amended Criminal Procedure Code constitutes a further step towards Vietnam complying with the requirements set forth in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Article 18.77.6(g) of the CPTPP provides that the competent authorities of the member countries "may act upon their own initiative to initiate legal action **without** the need for a formal complaint by a third person or right holder".

The amendments shall take effect from 1 December 2021. It is hoped that the amendments will facilitate criminal enforcement in practice and that the competent authorities will be more proactive in initiating criminal proceedings against offences of infringement of industrial property rights.

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