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Legal Newsletter  
May 2020



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## REMARKABLE REGULATIONS

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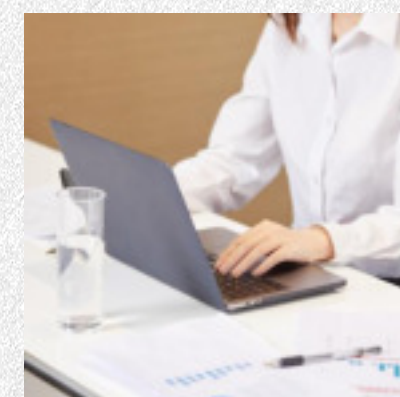


## Decree guiding the implementation of the Law on Public Investment

Based on the Law on Public Investment No. 39/2019/QH14 dated 13 June 2019 and effective from 01 January 2020, the Government issued Decree No. 40/2020/ND-CP of 06 April 2020 detailing the implementation of a number of articles of the Law on Public Investment ("**Decree 40**").

Accordingly, Decree 40 consists of 8 Chapters, 54 articles and 02 attached annexes and is applicable to organizations and individuals engaged or involved in public investment activities and management and use of public investment funds. Decree 40 governs 12 contents as follows:

- i. Dossier, contents and time of appraisal, decision on investment policies, decision on adjustment of investment policies, cases of adjustment of investment policies and public investment projects of Group A, Group B and Group C.
- ii. Dossier, contents and time of appraisal, decision on programs and projects; contents, sequence, procedures for formulating, appraising and adjusting investment projects/programs of Group A, Group B and Group C.
- iii. Principles, competence, sequence and procedures for making decisions on investment policies; principles, competence, content, sequence and procedures for formulating, appraising and deciding to invest in public investment projects of Group A, Group B and Group C in foreign countries.
- iv. Decentralization of competence, sequence and procedures for making decisions on investment policies and decisions on investment for programs and projects of Group A, Group B and Group C that use capital from lawful revenue sources of state agencies and public non-business units.
- v. Sequence and procedures for making investment for those subsidized to offset preferential loan interest rates and management expenses; making contributions to the charter capital of policy banks and state off-budget financial funds; providing investment support for other subjects under the Prime Minister's decisions.
- vi. Subjects and contents of preliminary environmental impact evaluation to decide the investment policy for the project.
- vii. Managing the implementation of the tasks of investment preparation, planning and public investment projects without construction components.
- viii. Formulation, evaluation, approval and assignment of midterm and annual plans of capital funded by legitimate revenues of state authorities and public non-business units retained for investment purposes.
- ix. Solutions to organizing and deploying the implementation and reporting to the competent authorities on the implementation of the midterm and annual public investment plans.
- x. Sequence and procedures for modification of midterm and annual public investment plans using the state budget capital.
- xi. Extension of the time for implementation and settlement of annual public investment plans using the state budget capital.
- xii. Communication system and national database on public investment.







## Decree guiding the implementation of the Law on Public Investment

In which, it is worth noting that the contents on the dossier and time for appraisal of public investment programs and projects are as follows:

### ❖ Dossier on appraisal of a public investment project

- For dossiers on appraisal of a public investment project without construction components, including:
  - A written statement for project appraisal must comprise: necessity of the project; objectives and principal contents of the feasibility study report of the project; proposal for competent authorities to decide on the public investment project.
  - Feasibility study report of the project as prescribed in Article 44 of the Law on Public Investment.
  - Reports of the Vietnam Fatherland Front Committees at all levels summarizing opinions of residents in the place where the project is to be implemented as prescribed in Article 74 of the Law on Public Investment.
  - Other relevant documents serving the appraisal of public investment projects (if any).
- Dossiers on appraisal of a public investment project with construction components must comply with the law on construction, and contain opinions of residents and other relevant law regulations.
- The number of appraisal dossiers sent to the Appraisal Council or the agency in charge of appraisal is 10 sets.

### ❖ Time for appraisal of public investment programs and projects

- The time for appraisal of public investment programs and projects without construction components, counting from the date the agency in charge of appraisal receives a complete and valid dossier, is prescribed as follows:
  - For national target programs: no more than 60 days.
  - For public investment programs (excluding national target programs): no more than 45 days.
  - For Group A projects: no more than 45 days.
  - For Group B and Group C projects: no more than 30 days.
- The time of appraisal of public investment projects with construction components must comply with the law on construction.
- The time for internal appraisal will be decided by Ministers, heads of central agencies and Chairpersons of the People's Committees at all levels.
- Where it is necessary to extend the time for appraisal of programs or projects, the Appraisal Council or the agency in charge of appraisal must report to the competent authorities for deciding the investment in such programs or projects. The extended time must not exceed the corresponding appraisal time as prescribed above.

Decree 40 takes effect from 06 April 2020 and partially invalidates Decree 73/2019/ND-CP managing investment in the application of information technology by using state budget capital.



## Coercive enforcement of criminal judgements against commercial legal entities

On 08 April 2020, the Government issued Decree 44/2020 / ND-CP on coercive enforcement of judgements against commercial legal entities ("**Decree 44**"), based on the Law on the execution of criminal judgments dated 14 June, 2019. Accordingly, Decree 44 consists of 4 Chapters and 46 Articles, providing for principles, measures, sequence and procedures for applying judgment enforcement measures against enterprises and other economic entities stipulated in Article 163 of the Law on the execution of criminal judgments.

❖ **Measures of enforcing judgments against commercial legal entities** include (i) account freezing, (ii) property distraint with a value corresponding to the amount of security for enforcement law (property distraint) and (iii) custody of documents, supporting documents, devices containing electronic data; temporarily seizing or withdrawing stamps of commercial legal entities.

❖ **Sequence of and procedures for conducting enforcement measures** are specified as follows:

### ➤ **For account freezing:**

- Blocking accounts of commercial legal entities must be based on the following grounds:
  - i. The effective judgment or decision of the Court;
  - ii. The minutes made in accordance with Article 5 of this Decree;
  - iii. Commercial legal entities serving a judgment have any account at credit institutions, state treasury, securities company, Vietnam Securities Depository Center (hereinafter referred to as account);
  - iv. Documents verifying information about the account of commercial legal entities.

- Account freezing may be applied in the following cases:

- i. Enforcement of the penalties of suspending operation for a definite time (in case of suspension of all sectors).
- ii. Enforcing the penalties of prohibiting business, banning activities in certain fields (in case of prohibiting business, banning activities in all fields); banning capital mobilization.
- iii. Enforcement of compliance with judicial measures.

### ➤ **For property distraint**

- Decision to distraint assets must be based on the following grounds:

- i. The legally effective judgment or decision of the Court.
- ii. The minutes made in accordance with Article 5 of this Decree.
- iii. The commercial legal entity as a judgment enforcement debtor that does not have an account or the amount in its account at any credit institution, state treasury, securities company, Vietnam Securities Depository Center is not sufficient to ensure coercive enforcement of judicial measures.
- iv. Documents verifying information about the assets of commercial legal entities.

- Some cases in which property distraint is applied:

- i. Distraint of property put up as collateral;
- ii. Distraint of a commercial legal entity's property held by a third party;
- iii. Distraint of contributed capital;
- iv. Distraint of vehicles;
- v. Distraint, use and exploitation of intellectual property rights;
- vi. Distraint of property as land use right, property subject to registration of ownership or secured transactions;
- vii. Distraint of properties attached to land.







## Coercive enforcement of criminal judgements against commercial legal entities

- Properties not distrained under Article 20 of Decree 44 include:
  - i. Properties that are prohibited from circulation in accordance with law; properties serving national defense, security and public purposes; property provided by the state budget to organizations and individuals;
  - ii. Medicines for disease prevention and treatment for employees; food, provisions, implements and other properties in service of meals to worker;
  - iii. Kindergartens, schools, health facilities, and their equipment, vehicles and other properties which are not for business purposes;
  - iv. Equipment, vehicles and tools intended for ensuring occupational safety and fire and explosion protection, and environmental pollution prevention and combat.



### ❖ Rules for applying coercive judgment enforcement measures against commercial legal entities, Article 3 of Decree 44 states:

- The enforcement is only conducted when there is a written enforcement decision by the competent criminal judgment enforcement agency.
- The decision to apply coercive enforcement measures is made according to the punishment and judicial measures imposed on commercial legal entities, contents, nature, degree and conditions for executing coercive enforcement decisions and local actual conditions.
- The time limit for applying a coercive enforcement measure to guarantee execution of court judgments does not exceed the sentence-serving term specified in the effective court judgment or decision; the time limit for guaranteeing execution of a judicial measure is determined once such judicial measure is completely enforced.
- A commercial legal entity may be subject to one or more enforcement measures at the same time if a single coercive enforcement measure does not guarantee their execution.
- Legitimate rights and benefits of relevant commercial legal entities, organizations and individuals are protected upon coercive judgment enforcement.

Decree 44 takes effect from 01 June 2020.



## Some novelties of the Decree guiding the Bidding Law on investor selection

On 28 February 2020, the Government issued Decree No. 25/2020/ND-CP detailing a number of articles of the Bidding Law on investor selection ("**Decree 25**"). Accordingly, Decree 25 takes effect on 20 April 2020 and replaces Decree 30/2015/ND-CP of 17 March 2015, with some remarkable novelties as follows:

### ❖ Governing scope

Decree 25 details a number of articles of the Bidding Law on investor selection to conduct a project, including:

- Investment projects in the form of public-private partnership (hereinafter referred to as PPP) according to the law on PPP investment.
- Investment projects using land to build commercial housing; trade and service works; multi-purpose works and multi-purpose complexes for the purpose of business.
- Investment projects that do not fall into the said two categories but are put in a bid in accordance with the specialized law and the law on socialization.

### ❖ Conditions for investors participating in bidding

An investor participating in bidding will be assessed as legally and financially independent from any consultancy contractor, competent state agencies, bid solicitor as prescribed in Article 6.4 of the Bidding Law, when satisfying the following conditions:

- Not having shares or contributed capital with the following consultancy contractors:
- ✓ Any consultancy contractor that examines or appraises the pre-feasibility study report, the feasibility study report, the design dossier and estimate.
- ✓ Any consultancy contractor that makes or appraises dossiers of prequalification, bid invitation, evaluates dossiers of prequalification and selection of contractors.
- The investor participating in bidding and the consultancy contractor do not have 30% or more of shares or capital contribution of the same organization or individual. In case the investor participates in bidding as a joint venture or a consultancy contractor is selected as a joint venture, the capital ownership ratio of other organizations and individuals in the joint venture will be determined by the total ratio of the corresponding shares or capital contribution of each member in the joint venture.
- The competent State agency and the bid solicitor do not have more than 49% of shares or capital contribution of the investor. In case the investor participates in bidding as a joint venture, the capital ownership ratio of the competent State agency and the bid solicitor in such joint venture will be determined according to the following formula:

Capital ownership ratio =

$$\sum_{i=1}^n X_i \times Y_i$$

In which:

- ✓ **X<sub>i</sub>**: capital ownership ratio of the competent State agency and the bid solicitor in the joint venture member number i.
- ✓ **Y<sub>i</sub>**: capital contribution ratio of the joint venture member number i in the joint venture agreement, **n**: Is the number of participants in the joint venture.

### ❖ Incentives in selection of investors to implement PPP projects

Decree 25 adds an incentive case in selection of investors to implement PPP projects, specifically as follows: in case the project uses BT contracts, the investor that is eligible for incentives will be deducted an amount of 5% of the bidding price after correction, modification of errors and deduction of the discount (if any) proposed by the investor for comparison and ranking.

### ❖ Responsibility for publishing information about bidding

Pursuant to Article 4 of Decree 25, the responsibility for publishing information about bidding is supplemented with some novelties as follows:

- Departments of Planning and Investment and agencies in charge of PPP investment shall be responsible for publishing information about PPP projects, lists of PPP projects and relevant information as prescribed in Articles 8.1.i and 8.1.l of the Bidding Law; information about projects, list of land-using investment projects and information about the extension or change of time limit for registering the land-using investment projects (if any), results of evaluating capability and experience of the investor registering to conduct the land-using investment projects in accordance with Articles 8.1.i and 8.1.l of the Law on Bidding.
- The bid solicitor will be responsible for the publishing of information as prescribed in Articles 8.1.a, 8.1.b, 8.1.c, 8.1.d and 8.1.dd of the Bidding Law and information about changes of the bid closing time (if any); information on contracts of PPP projects and land-using investment projects as prescribed in Article 8.1.l of the Bidding Law.
- The investor will be responsible for publishing and updating information about its capacity and experience on the investor database as prescribed in Article 5.1.d, and Article 8.1.k of the Bidding Law.
- For projects in the List of State secrets, the publishing of information will be implemented in accordance with the law on ensuring State secrets.

### ❖ Reducing the time to appraise the plan for investor selection

- The time limit appraising investor selection plan is a maximum of 20 days from the date of receiving a complete dossier. Thus, the time for appraising the investor selection plan has been shortened by 10 days compared to Decree 30/2015/ND-CP of 17 March 2015.
- Time for the process of investor selection for some other contents remains the same, for example:
  - ✓ The time limit for approving investor selection plan is a maximum of 10 days from the date of receiving the appraisal report.
  - ✓ The time for preparing a dossier for participation in prequalification is a minimum of 30 days from the first date of issuing prequalification inviting dossier to the bid closing date. Investors will submit dossiers for participation in prequalification before the bid closing time.



## Some novelties of the Decree guiding the Bidding Law on investor selection

### ❖ Stipulating the method of open international bidding for the land-using investment project

Decree 25 regulates open international bidding will apply to the project that fully meets the following requirements:

- Having preliminary total expenses for the project implementation (excluding expense for compensation, support, resettlement, land use levy and land rental charges) of VND 800,000,000,000 (eight hundred billion) or more.
- Having at least two investors satisfying the preliminary requirements on capacity and experience as prescribed in Article 13.3 of Decree 25; within that, there is at least one foreign investor.
- Not subject to the cases limiting foreign investors' participation or for reasons of national defense and security assurance.

### ❖ Clearly defining cases of land allocation or land lease

The Decree 25 clearly defines cases of land allocation and land lease in one of three methods: project bidding in accordance the Law on Bidding; auctions of land use rights in accordance the Law on Land; the investment policy decision in accordance the Law on Investment.

### ❖ Conditions for determination of land-using investment projects

Article 11 of Decree 25 provides the conditions for determination of land-using investment projects as follows:

- Being in the List of projects that need land recovery approved in accordance with the land law or in the land lots being used and managed by the State; the urban development program (if any) in accordance with the law on urban development.
- Being in compliance with the plans of socio-economic development, sector development; the construction master planning with a scale of 1/2,000 or 1/500 (if any) or the urban zoning plan with a scale of 1/2,000 or 1/5,000 in accordance with law provisions.
- Ineligible for organizing auctions of land use rights in accordance with the land law.

### ❖ List of land-using investment projects

Decree 25 supplements a number of new points on the List of land-using investment projects as follows:

- The projects governed by Article 1.1.b of Decree 25 and fully meeting conditions specified in Article 11 of Decree 25 (except for the projects as prescribed Article 26 of the Law on Bidding or Article 10.3 of Decree 25) will be added to the List of land-using investment projects.
- Regarding contents of published information, Decree 25 provides a number of new contents compared to Decree 30/2015/ND-CP, including summary of basic requirements of the project; time limit and investment progress; preliminary requirements on capacity and experience of investors; time limits for investors to submit the registration dossier for performing the projects. Investors will submit the registration dossier for performing the projects on the national bidding network. In case the Ministry of Planning and Investment has yet to promulgate the application roadmap and detailed guidance in accordance with Article 91.1.b of Decree 25, investors will submit the registration dossier to the Departments of Planning and Investment.

### ❖ Bidding - land allocation/land lease

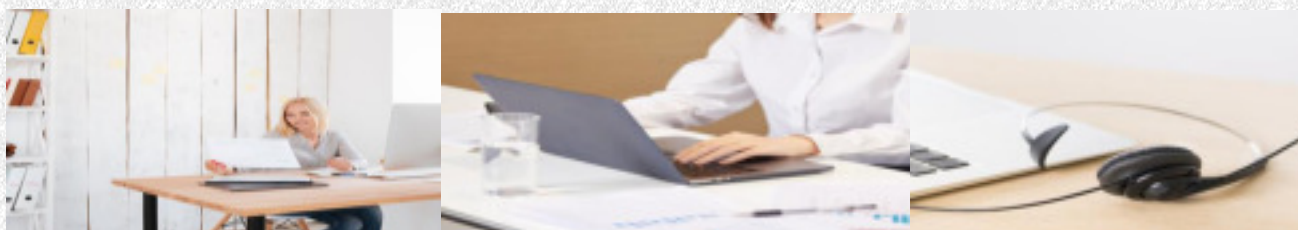
- Article 60.2 of Decree 25 stipulates that after compensation and resettlement support for the land area where the project is implemented.
- At the same time, the land allocation and land lease to the winning investor will be implemented pursuant to the sequence of and procedures for land allocation and land lease as prescribed in Article 68.3 of Decree 43/2014/ND-CP.

### ❖ Determining the floor price remitted into the state budget on the basis of the average increase value after winning the auction.

According to Article 47.2.k of Decree 25, the floor price remitted into the state budget ( $m_3$ ) will be determined by the bid solicitor by the following formula:  $m_3 = s \times \Delta G \times k$ , in which:

- ✓  $S$  is the land area with land use levy and rental of the land plot and area expected to be handed over to the investor to implement the project.
- ✓  $\Delta G$  is the average increase value after winning the auction of land use rights per land area unit of the land plot with the same using purpose within the same locality or area containing land plot and/or land area for implementing the project. In case the project area does not have land plots or land funds with the same land use purpose, such value will be determined by reference to the land database of the localities having similar socio-economic conditions.
- ✓  $k$  is adjustment coefficient for average increase value after winning auctions of land plot and land area after taking into account similarities with the land plot and land area for project implementation and other necessary factors (if any).

This value is relatively determined and will serve as a basis for investors to suggest the State budget remittance and is totally separated from the land use levy and rental which investor must pay in accordance with land law.







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## ARTICLE

GV Lawyers would like to introduce the article of Lawyer Hoang Thi Hoai Thu and Lawyer Ho Thi Tram with the title **“Is Covid-19 A Fundamental Contextual Change in Law?”** published on Saigon Economic Times on 16 April, 2020, No. 16.2020 (1,531).







## Is Covid-19 A Fundamental Contextual Change in Law?

*Recently, enterprises have been treating Covid-19 as a force majeure event which is expected to be exempted from liability in terms of such aspects as labour, employment, tax, economic relations, etc. Besides the force majeure event, there is another solution applicable by enterprises to any fundamentally changing situation that the parties cannot anticipate at the time of signing the contract in accordance with Article 420 of the 2015 Civil Code.*

### IN WHAT CASE IS THE FUNDAMENTAL CHANGE APPLIED?

When signing the contract, the Covid-19 epidemic has to yet appear, the production and business develops normally. When the epidemic occurred with its drastic consequences, the circumstances of contract performance seemed to change greatly. However, from a legal perspective, the determination of any "fundamental change" of circumstances must be based on very strict criteria. This must meet five conditions ([1]):

1. A change in circumstances due to an objective cause occurs after the contract conclusion;
2. At the time of entering into a contract, the parties cannot foresee a change in circumstances;
3. The circumstances change so much that if the parties had known in advance the contract would not have been concluded or entered into with completely different content;
4. Continued performance of the contract without changing the contract subject matter will cause serious damage to one party; and
5. The affected party has taken all necessary measures within the possible capacity and in accordance with the nature of the contract but cannot prevent and minimize the extent of affecting the benefits.

An example can be used to illustrate: Company A and Company B enter into an economic contract in which Company A orders goods of Company B but requires the raw materials to produce the goods must be originated from Country H. If Company C fails to use the raw materials originated from Country H, Company B will be fined 10-fold the contract value; if the goods are delayed by delivery, they shall be subject to a 10% interest, regardless of any force majeure event.

However, after signing the contract, the epidemic spreads around the world, including Country H. The policy of Country H is to close the border, all export activities come to a standstill, so Company B cannot purchase all raw materials from Country H as stipulated in the contract. Meanwhile, many employees of Company B take unpaid leave to avoid the epidemic, some of them are put under concentrated isolation. Despite only part of the materials purchased from Country H prior to the epidemic, Company B further wants to continue contracting with Company A provided that the two parties negotiate and amend/adjust some such contractual terms as materials, penalties, product unit price adjustments or delivery deadline.

The questions in the said example are "does the scenario in which Company B performs the contract meets the conditions of fundamentally changed circumstances, which factors to evaluate? Covid-19 epidemic event? Border closure? Employees taking unpaid leave? Employees being put under quarantine?"

The spreading epidemic outbreak is of an objective nature, beyond subjective intention and control of Company B before signing the contract. This event can be seen as an objective reason that causes the contract performing circumstances to change much more differently from what happened before the two parties conclude the contract. The epidemic has caused Country H to close its border, forcing Company B's employees to take unpaid leave and having some others quarantined. If Company B is aware of this situation, Company B will negotiate with company A about the use of domestic materials or may not sign contract with company A. Continued contract performance without any change in the contract subject matter will cause serious damage to Company B because the improper raw materials are originated from Country H and the delivery time may not be met due to labor shortage. Meanwhile, the contract stipulates that Company B must be punished, even in case of any force majeure event. Obviously, Company B is in "dire straits" without knowing and foreseeing it at the time of signing the contract.





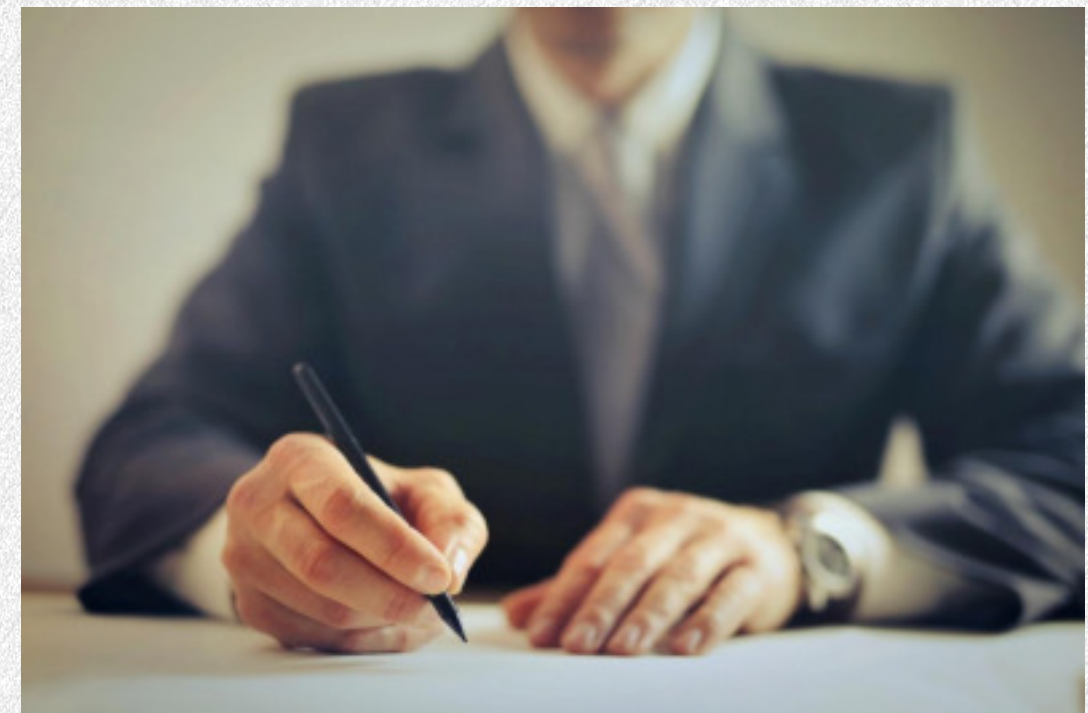
## Is Covid-19 A Fundamental Contextual Change in Law?

### IMPLEMENTING A CONTRACT IN CASE OF ANY FUNDAMENTAL CONTEXTUAL CHANGE

Article 420.2 of the 2015 Civil Code provides that in the event of fundamental contextual changes, the affected party has the right to request the other party to renegotiate the contract within a reasonable time. The right to request the other party to renegotiate a contract may open the door for Company B discussing again the performance of the contract in order to solve the situation that Company B is facing. The Civil Code also foresees that if the parties cannot reach any agreement on a contract amendment within a reasonable period, either party may ask the court ([2]): (i) to judge the contract as terminated at a specified time or (ii) amend the contract to balance the rights and legitimate interests of the parties due to fundamental contextual changes. And businesses should note that the court can only decide to amend the contract if the termination of the contract is likely to cause greater damage than the cost to execute the contract (if amended).

Especially, in the process of negotiating, amending and terminating contracts and during the court's case resolution, the parties still have to continue to perform their obligations under the contract, unless otherwise agreed ([3]). Of course, upon choosing a negotiating solution or requesting a court to resolve it, businesses requesting a contract amendment are be obligated to actively collect, produce evidences and prove that their request is grounded and legal ([4]).

Thus, in addition to force majeure events, the provisions on fundamental contextual changes are very meaningful for businesses, creating more solutions to problems in certain difficult circumstances. Concurrently given that the principle of civil law is characterized by freedom, voluntary commitment, agreement, the parties should attach importance to the provisions on contract performance upon any fundamental contextual change.



Accordingly, to make it easier for the parties to resolve the dispute, the parties to the contract should clearly define the (i) fundamental contextual changes, (ii) enumerate objective and subjective reasons, (iii) specify the responsibilities for the parties to perform in case of any fundamental change, the rights and obligations of the parties in such circumstances. At that time, the settlement of disputes, whether through contract amendment negotiation or settlement at the competent jurisdiction, will be much more facilitated.

[1] Article 420.1 of the 2015 Civil Code

[2] Article 420.3 of the 2015 Civil Code

[3] Article 420.4 of the 2015 Civil Code.

[4] Article 6.1 of the 2015 Civil Procedure Code.





## READING FOR YOU



01

**Tightening the Regulation on Buying and Selling Corporate Bonds with CIs**



02

**From 01 January 2020, Taxpayers Only Pay Personal Income Tax In Case of Gaining Income of Over 11 Million**



03

**How to activate the term 'force majeure' in the contract with Covid-19**





## Tightening the Regulation on Buying and Selling Corporate Bonds with CIs

*“Credit institutions (CIs) will not be allowed to buy corporate bonds if the bad debt ratio is over 3%. The draft also stipulates that credit institutions are not allowed to buy issued corporate bonds to contribute capital, acquire shares in other enterprises.”*

The State Bank of Vietnam (SBV) is seeking consultation on the draft circular regulating that credit institutions and branches of foreign banks (collectively referred to as CIs) buy and sell corporate bonds (CBs).

The draft Circular introduces some new points in the direction of tightening Corporate Bonds transactions of CIs. For example, the draft stipulates that CIs are only allowed to buy CBs when the bad debt ratio is below 3% according to the latest audited financial statements at the time of purchase, except for cases of purchasing CBs under the restructuring plan approved by a competent authority.

CIs are not allowed to buy bonds including buying from the initial public offering and other organizations and individuals of the issuing enterprise that has suffered bad debts at the buying CIs and at other CIs within the latest 12 months before the time of buying approval decision. This regulation aims to limit CIs that cannot control bad debt ratio below 3%, but still carrying out the trading of CBs and at the same time contributing to limiting bad debts, improving the credit quality of CIs.

In addition, the draft also stipulates that CIs are not allowed to buy issued Corporate Bonds to contribute capital, acquire shares in other enterprises. This draft is to prevent CIs from acquiring CBs to contribute capital or buy shares in enterprises because through checking, it has been discovered that some enterprises issue bonds to implement investment projects/programs, increase capital scale, but actually to mobilize to contribute capital, buy shares of other enterprises. CIs have difficulty controlling the purpose of using capital and cash flow from bond issuance.

Another provision also mentioned in the draft is that CIs buy and sell CBs to hold until maturity, when selling CBs to another CI, they not allowed to buy back the sold and/or issued CBs of the same batch/same issuance except for the sale of CBs under the restructuring plan approved by a competent authority.

Besides, the draft also mentions some inherited provisions from Circulars 22 and 15 that CIs are not allowed to get loans from other CIs to acquire CBs, ineligible to buy CBs to restructure their debts of the issuing enterprises. The draft Circular also stipulates the responsibilities of the CIs, internal regulations on activities related to trading, holding Corporate Bonds.

According to Le Hai, Cafe.vn, on 29 April 2020





## From 01 January 2020, Taxpayers Only Pay Personal Income Tax In Case of Gaining Income of Over 11 Million

The Standing Committee of the National Assembly decided to pass its resolution on raising family circumstance deduction to VND 11 million as required by the Government.

At the press conference on the 9th National Assembly session, in the afternoon of May 18, answering questions related to the raise of family circumstance deduction for personal income taxpayers the Government has just proposed, Mr Nguyen Truong Giang, Deputy General Secretary of the National Assembly said that at last week's 45th session, the Standing Committee of the National Assembly considered and decided to raise family circumstance deduction to VND 11 million according to the Government's statement.

Mr Giang said, as authorized by the National Assembly, its Standing Committee has no right to decide those who are subject to taxes, but may decide to adjust the raise of family circumstance deduction if CPI fluctuations rise above 20% at the proposal of the Government. In fact, since 2013, CPI has increased by 23.2%.

"The proposed raise of family circumstance deduction to VND 11 million is consistent with rising CPI fluctuations," contended Truong Giang.



According to the Government's proposal, the fresh raise of family circumstance deduction will apply to the taxation period of 2020, because according to the current regulations, the wage and salary taxation period of enterprises is annually calculated, starting from 01 January. For cases of temporary tax payment based on family circumstance deduction of VND 9 million and VND 3.6 million per dependent, the personal income tax payable will be re-determined based on the fresh family circumstance deduction when finalizing the personal income tax in 2020.

According to the Government's statement to the Standing Committee of the National Assembly, the family circumstance deduction increases from VND 9 million to VND 11 million per month, dependents from VND 3.6 million to VND 4.4 million per month. The Government says about 1 million people will not have to pay personal income tax.

Examining the draft resolution, the Finance and Budget Committee of the National Assembly expressed its agreement to this deduction. However, this Committee proposes that in the coming time, the Government will summarize and evaluate the overall implementation of the Law on Personal Income Tax for the 2011-2020 period to make a fundamental and comprehensive revision.





## How to activate the term 'force majeure' in the contract with Covid-19

The article with the title **"How to activate the term 'force majeure' in the contract with Covid-19"** is presented based on some important contents in the recent talk show held on 01 May 2020 with the topic **"Legal Issues Of Businesses From The Pandemic"** by Saigon Economic Times and Ho Chi Minh City Young Entrepreneurs Association. Accordingly, as keynote speakers, Lawyer Tran Thanh Tung of Global Vietnam Lawyers Law Firm (GV Lawyers) and Lawyer Tran Vo Quoc Son of Samsung Electronics Vietnam Co., Ltd. shared some opinions from the legal perspective about influence of COVID 19 on businesses and analyzed some legal solutions to minimize legal risks during COVID 19 period.

The effects of Covid-19 may be considered a force majeure event, but actually implementing this clause of the contract is not easy.

Sharing at an online talk show held by Saigon Times in the morning of May 1, Lawyer Tran Thanh Tung of Global Vietnam Lawyers Law Firm said Covid-19 brought legal consequences upon many businesses.

Accordingly, some companies do not receive suppliers' materials, resulting in the inability to complete signed orders. Epidemic control and social distancing also disturb business situation and human resource management. Lawyer Tung said that these conditions urge enterprises to terminate the contract under force majeure terms.

Among the three factors to be able to "activate" the contract termination under force majeure terms including objective impact, force majeure and non-remediability. According to Tung, Covid-19 may be considered a case to apply the force majeure clause, but it must be proved that the person responsible for implementing the contract cannot remedy any consequence despite exhaustion of his all efforts.

Lawyer Tran Vo Quoc Son, a legal head of Samsung Electronics Vietnam Co., Ltd. said that the actual implementation under force majeure terms has encountered many difficulties because it had to be placed in a specific contract to be identified. *"To prove the contract performance impossible is an art coupled with soft power and convincement. This needs objectivity to satisfy any aspirations"* Mr. Son said.



From the left, MC Quoc Khanh, Lawyer Tran Thanh Tung and Lawyer Tran Vo Quoc Son at the online seminar on the morning of May 1. Photo: TBKTSG

In order to apply force majeure event, first of all, the three important factors must be taken into account: contract scope, contract termination terms and preconditions. First, if you do not aim at force majeure issues, you should discuss contract termination terms ahead of time or contract amendments.

And for any contract with a separate force majeure clause, the matter, Son said, lies in the fact that the practice of the business tends to maintain the force majeure clause, listing the impact factors from Covid-19. But people forget about the system of laws on force majeure events varies from country to country. *"Each international convention has different terms of application, so it depends on how the contract is negotiated in detail. Accordingly, the parties can decide to apply what way that will be best to benefit them,"* Son said.

If either party applies the force majeure clause but the other party does not agree on it, according to Tung, it is necessary to handle it well to maintain relationship with customers. We should start to resolve for the benefit of both parties rather than through legal measures. Handling the matter legally is a last resort. At that point, it is necessary to see whether it is any force majeure event.

Lawyer Son said, this case should give priority to propose appropriate solutions for both parties. For example, for premises lease, there are cases where the partner amends the contract. For production activities, the partner will share the cost. *"However, it should be noted that whether or not the application is successful is a highly sensitive and difficult issue. If ignoring any consideration, either party will go against the contract, impair the contract, erode any trust",* Mr. Son noted.





## How to activate the term 'force majeure' in the contract with Covid-19

At present, some businesses as raw material importers are suffering from a high price by suppliers in China due to their relying on the pandemic as a force majeure reason to raise prices. **According to lawyer Tran Thanh Tung**, to solve this situation, it is necessary to answer questions such as: What is the deposit for the order? Is it difficult to find alternative materials? Does delivery occur weekly?

Attorney Tran Vo Quoc Son further noted that it is necessary to consider what this type of item is. It is difficult to apply force majeure if it is an essential product. If this product can only be produced by that unit, it may be considered to impose additional costs.

A pandemic is also a time for businesses to perfect the terms of force majeure events in contracts with partners. Lawyer Tran Thanh Tung said that Vietnamese businesses often copy model contracts. This is fine but it needs to be adapted to specific conditions.



In addition, the importance is that we should not recognize any contract through handling situations when there is a dispute. Instead, contract management needs to have a greater vision, with policies on procurement, selection of partners, suppliers, etc toward proactivity. At that time, the enterprise will maintain model contracts, then think about the actual situations to properly draft the contract.

Once the model contract is available, the enterprise must ask how to deal with the contract, which department will put forward the contract, which department will appraise and approve or finalize, and then use this model for negotiation and signing.

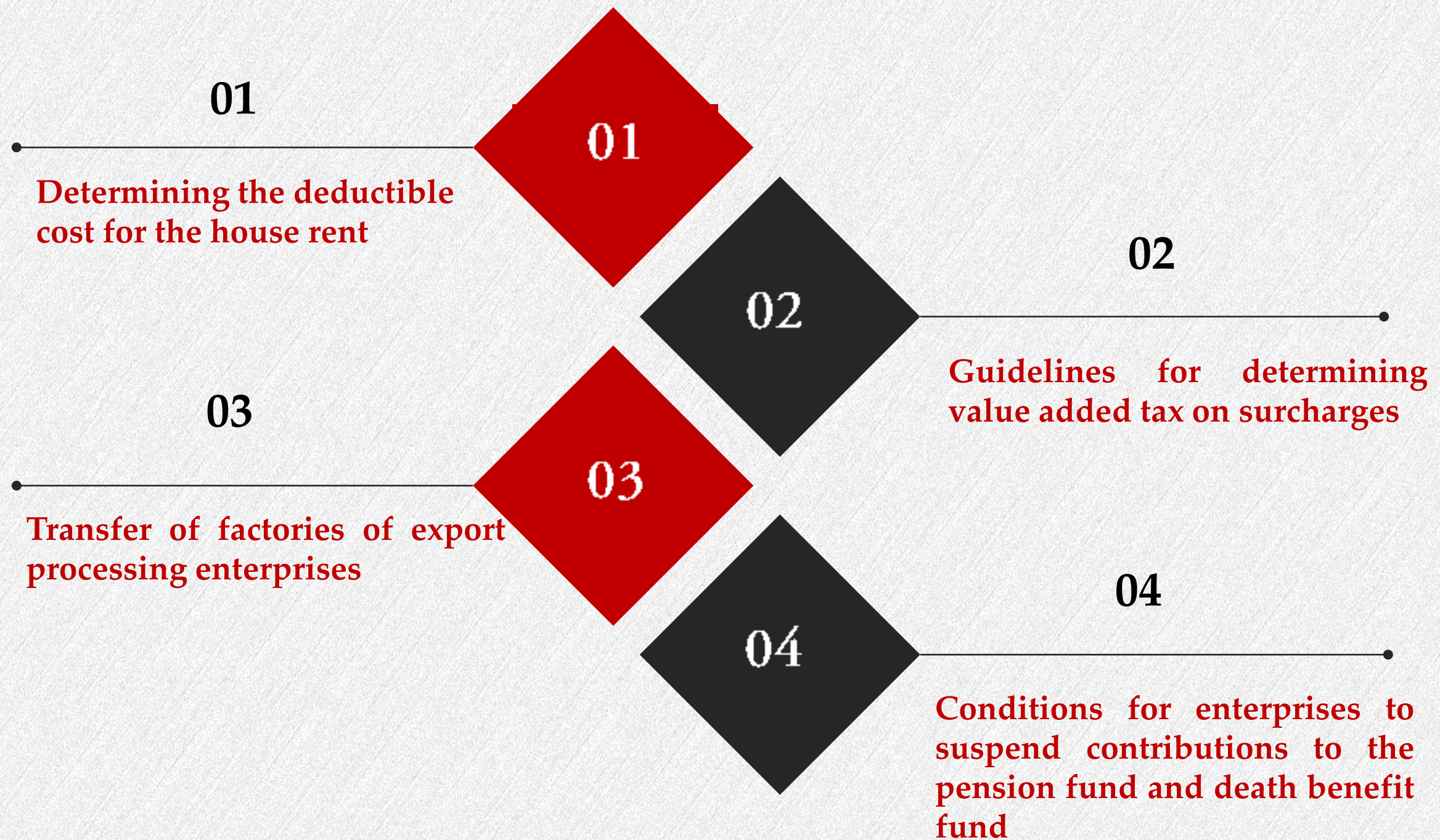
*According to Vien Thong, vnexpress.net*

*For more detail, please visit <https://www.thesaigontimes.vn/td/303112/tuong-thuat-truc-tuyen-toa-dam-nhung-van-de-phap-ly-cua-doanh-nghiep-nhin-tu-dai-dich.html>*





## ANSWERS TO QUERIES







## Answers to Queries

### 1. Determining the deductible cost for the house rent

- The non-cash payment is only applicable where there is an invoice for each purchase of goods or services valued at VND 20 million or more (inclusive of VAT). In case an enterprise rents an individual's house to make an office, the dossier for determining deductible expenses is the property lease contract and documents of property rental payment. Individuals leasing assets are not required to issue an invoice in this case.
- In case the contract prescribes that an enterprise pays tax on behalf of an individual, the total rent, including the taxes paid on behalf of an individual, will be included in deductible expenses when determining corporate income tax.

*(Guidelines are provided in Official Letter 30300/CT-TTHT dated 05 May 2020 of the Ha Noi City Tax Department)*



### 2. Guidelines for determining value added tax on surcharges

- In case the Company has used the marine transport services provided by domestic and foreign shipping lines and incurred the surcharge for sulfur emission reduction (hereinafter referred to as surcharge) payable to the shipping companies, the value added tax (VAT) is determined on the following principle:
- In case the Company uses services of foreign shipping lines:
  - ✓ If this surcharge is determined to be an additional charge paid together with the price of the marine transport service provided by the foreign carrier, it is not required to declare and pay VAT.
  - ✓ If this surcharge is determined to be an additional charge other than the price of the marine transport service that the foreign carrier is entitled to from the services performed outside Vietnam, it is not required to pay foreign contractor tax (VAT, CIT) in Vietnam, if they are entitled from the services provided in Vietnam, they will be subject to foreign contractor tax in Vietnam (paying VAT at the ratio of 5% of turnover and paying CIT at the ratio of 5% on turnover).
- In case the Company uses services of Vietnamese shipping lines:
  - ✓ If this surcharge is determined to be an additional charge paid together with the price of the marine transport service, the 0% VAT rate for international transport activities shall be applied if the conditions specified at Article 9.2.c of Circular No. 219/2013/TT-BTC are met.
  - ✓ If this surcharge is determined to be an additional charge other than the price of the marine transport service, the service is provided in Vietnam, the VAT rate of 10% will apply.

*(Guidelines are provided in Official Letter 25222/CT-TTHT dated 20 April 2020 of the Ha Noi City Tax Department)*





## Answer to Queries

### 3. Transfer of factories of export processing enterprises

A company sells an export processing enterprise (EPE) the works of the Technical Center and the Manufacturing Plant, the attached equipment which is imported or purchased domestically will be subject to customs procedures as prescribed in Article 1.51 of Circular No. 39/2018/TT-BTC amending and supplementing Article 75.3 of Circular No. 38/2015/TT-BTC. The Company is proposed to base on actual construction activities for determining the origin of equipment sold together with the Technical Center and Production Plant, specifically:

- For equipment purchased domestically (without having to carry out import procedures) or equipment with import origin, but having fully implemented the tax policy and the policy on management of imported goods at the time of making the original declaration when the Company is enjoying the EPE policy, it is not required to go through the customs procedures and declare and pay tax when converting from EPE to an enterprise without enjoying EPE policy.
- For equipment with import origin (including imported from abroad, domestically, from EPEs) that have not fully implemented tax policies, policies on management of imported goods at the time of making declarations, before transferring to other EPEs, the Company is requested to carry out procedures for changing the purpose of use as prescribed in Article 25 of Decree No. 08/2015/ND-CP amended and supplemented by Article 1.12 of Decree No. 59/2018/ND-CP of 20 April 2018 of the Government.

*(Guidelines are provided in Official Letter 2869/TCHQ-GSQL dated 04 May 2020 of the General Department of Customs).*

03

### 3. Transfer of factories of export processing enterprises







## Answer to Queries



### 4. Conditions for enterprises to suspend contributions to the pension fund and death benefit fund



Official Letter 1511/LDTBXH-BHXX dated 04 May 2020 of the Ministry of Labour, War Invalids and Social Affairs specifies the conditions for enterprises to suspend contributions to the pension fund and death benefit fund, particularly:

#### ▪ Cases of suspension include:

Business operation has been suspended for at least one (1) month due to changes in structure, technology, crisis, economic depression or execution of state policies upon economy restructuring or fulfillment of international agreements.

Difficulties caused by any natural disaster, conflagration, epidemic or crop failure.

#### ▪ Conditions for suspending contribution to the pension fund and death benefit fund:

Enterprises falling into one of the aforesaid cases may suspend contribution to the pension fund and death benefit fund when one of the following conditions is satisfied:

- ✓ The work assignment is impossible to employees whose part subject to social insurance (SI) payment must suspend their jobs and account for at least 50% of the total number of present employees before the suspension.

The loss caused by natural disaster, fire, epidemic or crop failure is over 50% of the total assets (excluding land).

- ✓ The loss caused by natural disaster, fire, epidemic or crop failure is over 50% of the total assets (excluding land).
- ✓ Having fully paid SI premiums by the end of January 2020 and downsizing at least 50% of the employees who have paid SI over the period from January 2020 to the date of application. The decreased employees who have paid SI includes:
- ✓ Employees terminating their labor contracts (LC)/employment contracts (EC) as prescribed by law minus employees newly entering into LCs, ECs during the period from 01 February 2020 to the application date.
- ✓ Employees suspending the performance of their LCs for a minimum period of 14 working days in the month.
- ✓ Employees taking unpaid leave for a minimum period of 14 working days in the month.
- ✓ Employees suspending their jobs for a minimum period of 14 working days in the month.

The said employees only includes those who sign indefinite ECs/LCs, definite LCs, LCs contracts with a term of from 01 to less than 12 months; paid managers of enterprises and cooperatives.

*(Guidelines are provided in Official Letter 1511/LDTBXH-BHXX dated 04 May 2020 of the Ministry of Labour, War Invalids and Social Affairs)*





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## LIST OF LEGAL DOCUMENTS ISSUED IN THE MONTH







## List of Legal Documents Issued In The Month

No.	Document title	Issuance date	Effective date
<b>GOVERNMENT</b>			
1	Decree 52/2020/ND-CP on investment in construction and commercial operation of golf courses	27/4/2020	15/6/2020
2	Decree 51/2020/ND-CP amending and supplementing a number of articles of the Decree 14/2014/ND-CP dated 26 February 2014 of the Government detailing the implementation of the Electricity Law on electricity safety	21/4/2020	21/4/2020
3	Decree 50/2020/ND-CP providing for the taking-over, management and use of international emergency aid for relief and remediation of natural disaster consequences	20/4/2020	15/6/2020
4	Decree 49/2020/ND-CP detailing the Law on Enforcing Criminal Judgments regarding community reintegration	17/4/2020	15/6/2020
5	Decree 48/2020/ND-CP amending and supplementing a number of articles of the Decree 36/2016/ND-CP of the Government dated 15 May 2016 detailing a number of articles of the Law on Hydro-Meteorology	15/4/2020	01/6/2020
6	Decree 47/2020/ND-CP on the management, connection and sharing of digital data by state agencies	09/4/2020	25/5/2020
7	Decree 46/2020/ND-CP on customs procedures, inspection and supervision of goods in transit via the ASEAN Customs Transit System to implement Protocol 7 on the Customs Transit System	09/4/2020	01/6/2020
8	Resolution 42/NQ-CP on measures to support people affected by the COVID-19 epidemic	09/4/2020	09/4/2020
9	Decree 45/2020/ND-CP on the implementation of administrative procedures in the electronic environment	08/4/2020	22/5/2020
10	Decree 44/2020/ND-CP on coercing the judgment execution against commercial legal entities	08/4/2020	01/6/2020
11	Decree 43/2020/ND-CP on execution by lethal injection	08/4/2020	15/4/2020
12	Decree 42/2020/ND-CP providing for the list of dangerous goods and the transport of dangerous goods by road motor vehicles and the transport of dangerous goods on inland waterways	08/4/2020	01/6/2020
13	Decree 41/2020/ND-CP extending deadlines for paying taxes and land rent	08/4/2020	08/4/2020
14	Decree 40/2020/ND-CP detailing and guiding the implementation of a number of articles of the Law on Public Investment	06/4/2020	06/4/2020
15	Decree 39/2020/ND-CP promulgating the Special Preferential Import Tariff of Vietnam to implement the Trade Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Cuba for the period of 2020 - 2023	03/4/2020	20/5/2020

No.	Document title	Issuance date	Effective date
<b>GOVERNMENT</b>			
16	Decree 38/2020/ND-CP detailing and guiding the implementation of a number of articles of the Law on Vietnamese Guest Workers under Contract	03/4/2020	20/5/2020
<b>THE PRIME MINISTER</b>			
1	Decision 15/2020/QD-TTg regulating the implementation of policies assisting the citizens with difficulties due to the COVID-19 pandemic	24/4/2020	24/4/2020
2	Directive 19/CT-TTg continuing to implement measures to prevent and control the COVID-19 pandemic in the new situation	24/4/2020	24/4/2020
3	Decision 14/2020/QD-TTg promulgating the Regulations on Coordination in Resolving International Investment Disputes	08/4/2020	01/6/2020
4	Decision 447/QD-TTg announcing the COVID-19 pandemic	01/4/2020	01/4/2020
<b>MINISTRY OF INDUSTRY AND TRADE</b>			
1	Circular 08/2020/TT-BCT providing for the Rules of Origin under the Vietnam - Cuba Trade Agreement	08/4/2020	25/5/2020
<b>MINISTRY OF FINANCE</b>			
1	Circular 30/2020/TT-BTC guiding a number of articles of Decree 30/2018/ND-CP dated 07 March 2018 of the Government detailing the establishment and operation of the asset valuation council; sequence and procedures for asset valuation in criminal proceedings and Decree 97/2019/ND-CP dated 23 December 2019 of the Government amending and supplementing of a number of articles of Decree 30/2018/ND-CP	17/4/2020	01/6/2020
2	Circular 29/2020/TT-BTC providing guidance on penalties for administrative violations against regulations on management and utilization of public properties	17/4/2020	02/6/2020
3	Circular 23/2020/TT-BTC regulating the advance, borrowing from the State budget fund	13/4/2020	01/6/2020
4	Circular 21/2020/TT-BTC amending and supplementing a number of articles of the Circular 36/2019/TT-BTC dated 17 June 2019 of the Ministry of Finance on providing guidance on computerized optional lottery business	08/4/2020	08/4/2020
<b>MINISTRY OF CONSTRUCTION</b>			
1	Circular 01/2020/TT-BXD on promulgating National Technical Regulation on Fire Safety of Buildings and Constructions	06/4/2020	01/7/2020
<b>HO CHI MINH CITY PEOPLE'S COMMITTEE</b>			
1	Decision 10/2020/QD-UBND on support levels for renting houses for temporary residence for households and individuals pending the relocation of houses and residential land for resettlement in Ho Chi Minh City	10/4/2020	20/4/2020





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## CONTACT US

[info@gvlawyers.com.vn](mailto:info@gvlawyers.com.vn)

### HCMC - Head Office

8/F, Centec Tower  
72 – 74 Nguyen Thi Minh Khai  
Ward 6, District 3  
Ho Chi Minh City, Vietnam  
Tel: +84 (28) 3622 3555

### Ha Noi - Branch

10A/F, CDC Building  
25 Le Dai Hanh  
Hai Ba Trung District  
Ha Noi, Vietnam  
Tel: +84 (24) 3208 3555

### Da Nang - Branch

3/F, Indochina Riverside Tower  
74 Bach Dang  
Hai Chau District  
Da Nang City, Vietnam  
Tel: +84 (28) 3622 3555

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