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NEWLY ISSUED LEGAL DOCUMENTS

1. New guidance on compulsory civil liability insurance for third parties in construction activities

On 11 August 2022, the Ministry of Finance issued Circular 05/2022/TT-BCT (“**Circular 05/2022**”) guiding the implementation of a number of articles of Decree 119/2015/ND-CP prescribing compulsory insurance in construction investment activities and Decree 20/2022/ND-CP amending and supplementing a number of articles of Decree 119/2015/ND-CP prescribing compulsory insurance in construction investment activities. The Circular contains noteworthy novelties related to compulsory insurance of civil liability for third parties as follows:

1.1 Insurance premiums

Construction contractors must obtain compulsory civil liability insurance for third parties when performing the construction works.

The premiums of compulsory civil liability insurance for third parties will be equal to 5% of the compulsory insurance premiums for a work under construction. Based on the level of risk of the insured object, the insurance enterprise (IE) may increase or decrease the premium up to 25%.

1.2 Compensation

According to Article 33.1 of Circular 50/2022, when third parties suffer out-of-contract damage in terms of their health, life, or property directly arising during the construction process within the insurance coverage (*except for the cases beyond insurance coverage specified in Section 1.3 below*), the IE must pay compensations to the insured as follows:

- The specific level of compensation for health and life will be determined based on each type of injury by reference to the Table of compensation levels for damage to health and life as prescribed in Appendix V of Circular 50/2022 or according to the agreement (if any) between the insured and the injured

or the heirs of the injured (where the injured is dead) or the representative of the injured, but this level must not exceed the compensation level specified in Appendix V of Circular 50/2022. In case a court decision is available, the compensation level will be determined based on the court decision but must not exceed the one specified in Appendix V of Circular 50/2022.

- The specific level of compensation for property/an accident will be determined according to the actual damage and fault, but must not exceed the level of insurance liability as agreed in the insurance policy.
- Relevant legal costs (if any). The total amount of insurance payment by the IE in respect of legal costs will not exceed the amount covered by insurance as prescribed in Article 1.7 of Decree 20/2022/ND-CP.

1.3 Circumstances beyond insurance coverage

Circumstances falling out of insurance coverage for compulsory third-party civil liability insurance include:

- (1) General insurance liability including:

- (i) Losses caused by war, riots, strikes and acts of hostile forces, rebellion, malicious acts on behalf of or in connection with political organizations, confiscation, expropriation, requisition, confiscation or destruction or damage caused by order of competent state agencies.
- (ii) Losses caused by terrorism;
- (iii) Losses caused by nuclear reaction, nuclear radiation or radioactive contamination;
- (iv) Losses arising from intentional violations committed by the insurance buyer or the insured (*this provision does not apply to compulsory insurance for workers on construction sites in case such workers take any self-defense act or save people or assets or use stimulants under the doctor's prescriptions*);
- (v) Losses arising where an insurance buyer has no insurable interests such as: the rights to ownership, the rights to possession, the right to use, the property rights; the rights and obligations to foster and provide financial support for the insured objects;
- (vi) Losses arising from the suspension of construction works or consequential loss therefrom (*whether partial or complete suspension of construction works*); and
- (vii) Losses to data, software and computer programs.
- (2) Losses arising from environmental pollution or contamination. *This exclusion does not apply to damage to health, life and property caused by environmental pollution or contamination or unforeseen risks.*
- (3) Damage to property on the ground or to health or life caused by the displacement or weakening of load-bearing parts and geological conditions.
- (4) Damage being the result of an accident caused by a motor vehicle or a vessel, barge or aircraft covered by the vehicle owner's civil liability insurance for third parties.
- (5) Liability as a result of injury or illness caused to workers of the project owner or contractor in connection with the insured construction work.
- (6) Losses or damage to property under the ownership or lawful management and use of the project owner or contractor or their workers or employees.
- (7) Losses related to use asbestos or any materials containing asbestos.

Circular 50/2022 will take effect from 01 October 2022 and replace Circular 329/2016/TT-BTC.

2. Novelties on foreign exchange management for international bond issuance

On 29 July 2022, the State Bank of Vietnam issued Circular 10/2022/TT-NHNN ("Circular 10/2022") guiding foreign exchange management with respect to the

issuance of bonds to international market by enterprises not entitled to government guarantee. Circular 10/2022 has some novelties as follows:

2.1 Grounds for consideration and certification of registration for international bond issues

According to Article 5 of Circular 10/2022, the grounds for consideration and certification of registration for international bond issues include:

- The value of the international bond issue must be within the total annual limits of external commercial self-borrowing and self-repaying loans that are approved by the Prime Minister.
- The issuing organization must fully satisfy the current regulations on conditions for foreign loans, foreign exchange management for foreign borrowing and debt payment without government guarantee, and the current laws on offering of corporate bonds to the international market.

2.2 Registration of an international bond issue

Article 7 of Circular 10/2022 stipulates that the issuer will register an international bond issue by the 2 steps as follows:

- *Before offering bonds for sale:*

After the international bond issuance plan is approved, at least 20 working days before the issuer offers bonds to the international market, it must submit to the State Bank (the Department of Foreign Exchange Management) one set of dossier of

registration of the limit of the international bond issue.

- *During the bond offer:*

- Where the bond issue value is within the total limits of external commercial self-borrowing and self-repaying loans annually approved by the Prime Minister, after selecting underwriting organizations, agents and legal advisors relating to the issue, and before the date of determining the bond price, the issuing organization shall submit the prescribed documents.

- After the prescribed documents are officially signed by and between the concerned parties, the issuing organization will complete the dossier of registration for the issue with the official documents as prescribed.

- Where the result of the issue leads to changes in the information in Part 3 of the Application for registration of an international bond issue, the issuing organization will update and re-submit such application.

- Where officially-signed contracts and agreements contain information different than those stated in the drafts already sent to the State Bank and such information is not contrary to relevant law regulations, the issuing organization will submit a report on the changes between the

official contracts or agreements and the last drafts sent to the State Bank.

2.3 Cases where it is not required to register the change of an international bond issue

Article 9.2 of Circular 10/2022, the international bond issuing organizations only need to notify the change in writing (by postal service or in person) to the State Bank, without the need to register the changes to the following information:

- Changes to the time of capital withdrawal, principal payment within 10 working days compared to the plan approved by the State Bank.
- Change to the address of the issuing organization.
- Change to the trade name of the banks providing banking account services where the issuing organization opens accounts for borrowing and repaying foreign loans.
- Change to the plan for payment of interests and charges of the international bond issue compared to the plan certified by the State Bank in the written certification of registration, or registration for change of the international bond issue without changing the method for determining interests and charges provided in the bond conditions and terms.
- Increase or decrease in the withdrawn amount of capital, payment of principal, interest, and fees in 100 currency units of the foreign loan currency compared to the amount stated in the written certification of registration, or registration for the change to an international bond issue.
- Change in the amount of principal payment due to the bonds being converted or swapped into stocks, for the convertible or swappable international bond issues of public companies, securities companies and securities investment fund management companies.
- Change in the withdrawn amount of capital or actual principal payment in a specific period that is less than the amount stated in the plan for capital withdrawal or debt payment in the written certification of registration, or registration for the change to an international bond issue.

Circular 10/2022 takes effect from 15 September 2022.

3. Regulations on electronic identification and authentication of enterprises

On 05 September 2022, the Government issued **Decree 59/2022/ND-CP** (“**Decree 59/2022**”) on electronic identification and authentication, especially regulations related to electronic identity, electronic identification and electronic authentication of enterprises.

3.1 Electronic identity and electronic identification

According to Decree 59/2022, the *electronic identity* means information of an individual or organization in the electronic identification and authentication system that enables the identification of a single person or organization in the electronic environment.

In which, the *electronic identity of an organization* includes: electronic identification code; names including the Vietnamese name, abbreviated name (if any) and a foreign language name (if any); date of establishment; address of head office; personal identification number or identification number of a foreigner; full name of the legal representative of the organization.

And *electronic identification* (EI) means the registration, comparison, creation and attachment of the electronic identities to their subjects. To be registered for an EI account, an enterprise must be established or registered to operate in Vietnam.

3.2 Registration and authentication an electronic identification account

a. Registration of an electronic identification account

According to Articles 16, 17 and 18 of Decree 59/2022, the registration of EI accounts by enterprises will be done as follows:

- The legal representative of an enterprise (who has a level-2 EI account) will log into the application VNeID to register an EI account for

the enterprise; provide the information according to the instructions on the application VNeID and send a request for issuance of an EI account to the agency managing electronic identification and authentication via VNeID.

- The public security agency will grant an EI account for the enterprise.
- After that, the enterprise will activate EI accounts on the application VNeID within 7 days from the date of receiving the results of application for EI accounts

b. Electronic authentication

Electronic authentication means the verification and confirmation of the information attached to the electronic subjects by way of exploiting and comparing information in the National Databases, and the electronic authentication of the EI accounts to confirm the use value of such accounts.

EI accounts of enterprises are authenticated thanks to the electronic identification and authentication system created by organizations providing electronic authentication services, to authenticate that such accounts are created by the electronic identification and authentication system and are valid for use in administrative procedures, public administrative services and other transactions in the electronic environment.

The authentication of EI accounts at the request of enterprises will be performed under the service provision contracts

with organizations providing electronic authentication services. The authentication of EI accounts must be conducted upon the approval of the legal representative.

Note, enterprises are not required to pay fees for registration of EI accounts and costs for the use of EI accounts created by the electronic identification and authentication system. However, if they use the electronic authentication service, enterprises must pay fees to the organization providing electronic authentication services.

3.3 Use of electronic identification accounts

- Enterprises may use EI accounts to log in and use the features and utilities on the application VNelD and the EI websites.
- Use EI accounts to carry out administrative procedures, public administrative services in the electronic environment and other activities.
- Enterprises may create accounts to serve their activities and will take responsibility for authentication and

ensuring the accuracy of the accounts, deciding the level and use value of each account.

- EI accounts created by the electronic identification and authentication system must be used by the legal representative or his/her authorized person. The use of this account is as valid to prove the electronic identity of the enterprise when carrying out transactions in which the validity of information about such enterprise needs to be proved. Such use is as valid to provide information in the enterprise's documents that have been synchronized into its EI account for comparison by competent agencies and organizations when carrying out transactions in which these documents must be presented.
- When the enterprises use EI accounts in electronic activities or transactions, such accounts will be as valid as the presentation of papers and documents to prove the information has been integrated into the EI account.

Decree 59/2022 takes effect from 20 October 2022.

GV Lawyers would like to introduce our valued readers an article by **Lawyer Do Duc Anh** titled **“What is large and small when it comes to the charter capital?”** was published in Saigon Economic Times No. 27-2021 (1,594) on 01 July 2021.

Registering a charter capital of VND500,000 billion is suspected, so is it possible to register the one worth VND1 million?

Recently, there has been a lot of buzzing public opinion about an enterprise registered for establishment with a charter capital of VND500,000 billion (about USD21.7 billion) in Ho Chi Minh City. Actually, the charter capital of USD21.7 billion is not reported in our country.

In contrast, will the business registration agency accept a registered enterprise with its charter capital worth only VND1 million? This question leads to another more important question: what is charter capital?

Pursuant to the Law on Enterprises 2020, charter capital is the total value of assets committed by founding members or shareholders to contribute upon establishing a company. Thus, charter capital has two meanings: (1) initial capital for the company to operate, and (2) limited liability of members/shareholders of the company.

Charter capital: initial capital but not all

Charter capital indicates the initial capital of the enterprise that the company uses for business. In the course of business, the company may generate profits, then the company’s assets will be greater than the initial charter capital. But if the company suffers a loss, the company’s assets will reduce, then the actual remaining assets may be smaller than the charter capital. In such cases, the value of charter capital may not accurately represent the current financial position of the company.

Therefore, upon dealing with companies, instead of just paying attention to the charter capital, we should take note of with the current asset value of the company, more specifically its net asset value (i.e. take assets less liabilities of the company) because a net asset value is the economic basis to secure the company’s obligations. A company with a charter capital of VND100 billion but owing VND150 billion cannot be considered financially healthy compared to a company

with charter capital of VND20 billion and no debt.

Charter capital: limited liability of members or shareholders

For limited liability companies and joint stock companies, the charter capital is the limited liability of members or shareholders for the debts of the company. After fully contributing the charter capital, members or shareholders will not have to bear any additional property obligations towards the company. In other words, regardless of the company’s profits or losses, the members or shareholders have no additional liability to the third party.

From investors’ point of view, they always want their liability to be as low as possible to the extent permitted by law. But the next question is to what extent may member or shareholder liability be lowered? The reality of investment around the world shows that many companies are established with a charter capital of 1 or 2 dollars (i.e. VND20,000 – VND50,000).

Hence a question is raised: if the company only has a charter capital of 1 or 2 dollars, how does it operate? The answer is absolutely likely. A commonly used option is that after the establishment of a company, members or shareholders will lend the company a loan lies in that a member or shareholder, as a lender, can withdraw the loan at any time under the loan agreement without waiting until the company earns profits to distribute as per capital contribution plan. In addition, the loan recovery does not generate income for the lender (member or shareholder), so the member or shareholder does not have to pay income taxes on the income or dividends received.

At the same time, it should be mentioned that it is always easier to contribute less capital than to contribute a lot, especially when the current Law on Enterprises stipulates a period of 90 days of establishment of the enterprise for members or shareholders to contribute enough capital.

Expecting an open view from the licensing authority

As for the case of setting up a company with a charter capital of VND500,000 billion, the reaction of the licensing agency was another surprise for those who are interested in. The licensing agency sent an official dispatch to the Ministry of Public Security and Police of Ho Chi Minh City, saying that the founder was “unconscious” upon “deliberately playing with the law”.

The fact that the licensing authority issues business registration certificate to the company has shown that excessive capital registration may be unusual but not illegal. Therefore, the fact that the licensing agency sends an official letter to the police is difficult to understand and cannot help but make many people feel like the licensing agency wants to “forewarn” the enterprises to set an example for other enterprises.

On the other hand, setting up a company with a low charter capital (VND20 million, VND10 million or less) is not a violation of the Law on Enterprises when an enterprise registers a business line that does not require legal capital and the Law on Enterprises and the implementation documents also do not limit the minimum charter capital upon establishing the company. However, enterprises have been repeatedly asked by the licensing agency to increase the amount of charter capital because their registered capital is too low.

The aforesaid fact shows that the current licensing authorities do not like what is too unusual in the licensing process. However, today’s business reality changes very quickly and perhaps more openness from the licensing authorities is expected if the requests of the enterprise are unusual but not illegal, for example, its simple decision on the charter capital value when registering.

1. Proposing to remove legal obstacles from condotels and beach villas

The Vietnam Confederation of Commerce and Industry (VCCI) has just commented on the draft of Land Law (amended) sent to the Ministry of Justice. According to VCCI, the Land Law has regulations closely related to other business laws such as Investment Law, Construction Law, Housing Law, Real Estate Business Law, Urban Planning Law, Planning Law, Civil Code... Currently, the draft has a number of regulations that do not ensure consistency, which may cause difficulties for enterprises when carrying out investment activities.



VCCI proposes to clearly prescribe the land use regime for condotels and beach villas. (Dinh Son)

Particularly for condotels, VCCI said that the Draft stipulates the types of land and the respective land use regime. However, it is difficult to determine what type of land is used for construction of resort properties, condotels, beach villas, ... and what is the land use regime? In fact, there are many resort projects to build condotels and tourist villas that have been

approved by state agencies for investors to implement in the form of the residential land that does not residential units. However, at present, according to the reflection of enterprises, the land registration offices in the localities have stopped processing and issued certificates to customers who buy resort properties on residential land without forming units for the reason that there is no legal mechanism. This affects the interests of customers and investors as well as the real estate market.

To solve this case, VCCI proposes that the Land Law (amended) clearly stipulates the land use regime for types of real estate above, and at the same time provides for transitional application for relevant real estate projects before the time the Land Law (amended) takes effect.

By thanhnien.vn

2. Re-proposing definite-term ownership of a building apartment

For the 2nd draft of the Housing Law (amended), the Ministry of Construction offers two options: Or add a new regulation on the term of house ownership determined according to the useful life of the works; Or maintain the shelf life as per the current regulations – i.e. no term specified.

Option 1, as rolled out by the Ministry of Construction, adds new regulations on the building apartment (BA) ownership term, which is determined on the basis of the building's useful life as prescribed by the construction law. Accordingly, the BA ownership term applies to all types of BAs, including: commercial BAs, social BAs, resettled BAs, and official-duty BAs. The term of

BA ownership is determined according to the useful life of the works stated in the design documents of the BAs appraised by the competent authority and is counted from the time of acceptance of all BAs put into use as prescribed by the construction law. When appraising the BAs design dossier, the appraising agency must clearly specify the use term of BAs in the design dossier. The term of BA ownership must be clearly stated in the apartment purchase and sale contract. The term of BA ownership only applies to BA projects that are granted a construction permit or have a written appraisal of the design implemented after the basic design (in case of exemption from construction permits) after the effective date of this Law. For BAs before the effective date of this law, residents can own indefinitely as per the previous regulations.

In addition, the Ministry of Construction also stated a plan to handle BAs that have not yet expired or have already expired. If the BA has an existing term of ownership but is damaged due to an incident, natural disaster, enemy sabotage, fire or explosion, ... which is not safe, it will have to be urgently demolished. If the BA expires but is still eligible for use, the owner will request the competent

authority to issue a certificate to extend the ownership term. If the inspection results show that the home must be demolished, the owner's ownership rights will end. In case at the previous location, the State still approves the planning to rebuild the BA, the BAs will be demolished and rebuilt. If the new planning does not continue to rebuild the BAs, the owner will be compensated for the land and arranged for resettlement as prescribed by the land law.

Thus, option 1 in this draft is similar to the view that the Ministry of Construction introduced 4 months ago and many times before. There is a common result that the majority of residents and experts object to this regulation because they think that the proposal to supplement regulations on the term of BA ownership is not suitable for the case that the BA is built on stable and long-term residential land. Owners of BAs have the right to use stable and long-term residential land for the area of land for construction of the apartments as prescribed by the land law.

By thanhnien.vn



According to experts, definite-term ownership of a condominium unit is a new definition in Vietnam, so it is very important to discuss it carefully, and propose a reasonable roadmap. (Nhat Think)

1. Determining the price as a basis for calculating the value-added tax on real estate transfer

In case the Company receives the transfer of land use rights from organizations and individuals, the price as a basis for calculating value-added tax (VAT) is the real estate transfer price minus (-) the deductible land price for VAT calculation. The land price deducted for VAT calculation will comply with Article 4.3 of Decree 209/2013/ND-CP and Article 7.10.a.4 of Circular 219/2013/TT-BTC.

As from 12 September, 2022, if the Company receives the transfer of land use rights from organizations and individuals, the land price deductible for calculating VAT will comply with Article 1.1 of Decree 49/2022/ND-CP amending and supplementing Article 4.3 of Decree 209/2013/ND-CP.

Ha Noi City Tax Department replies to the question of Cau Duong Joint Stock Company in Official Letter No. 43725/CTHN-TTHT dated 06/9/2022.

2. Value-added tax policy for the rental of the erection positions for billboards and advertising equipment

When providing the services related to the activities of leasing positions to erect company signs and advertising equipment and renting out advertising equipment as prescribed by law, the Company shall apply the VAT rate of 10% as prescribed in Article 11 of Circular 219/2013/TT-BTC.

In case the Company calculates VAT by the credit method and provides goods and services (currently applying the

VAT rate of 10%) that are out of the list of goods and services as prescribed in Appendix I, II and III issued together with Decree 15/2022/ND-CP, the VAT rate of 8% will be applied from 01 February, 2022 until end of 31 December, 2022 as prescribed in Article 1.2 of Decree 15/2022/ND-CP.

In case the Company has position rental services for placing company signs and advertising equipment in front of the building involving a real estate business service as prescribed by law in Appendix I issued together with Decree 15/2022/ND-CP, this service is not eligible for VAT reduction as prescribed in Article 1.1 of Decree 15/2022/ND-CP.

Ha Noi City Tax Department replies to the question of TWIN-PEAKS Joint Stock Company in Official Letter No. 42530/CTHN-TTHT dated 29/8/2022.

3. Personal income tax of the individuals who sign service contracts with the company

In case the Company pays wages, remunerations and other expenses to residents without signing labour contracts or signing labour contracts of less than 3 months with the company but have a total income from 2 million VND once or more, tax must be deducted at the rate of 10% of the income before paying to individuals as prescribed in Article 25.1.i of Circular 111/2013/TT-BTC.

Actual expenses incurred related to the company's production and business activities will be included in deductible expenses when meeting Article 4 of Circular 96/2015/TT-BTC.

Ha Noi City Tax Department replies to the question of Lotte Shopping Plaza Vietnam Co., Ltd. in Official Letter No. 42227/CTHN-TTHT dated 26/8/2022.

4. Corporate income tax on capital transfer activities

In case a foreign organization generates income originated from capital transfer activities in Vietnam, it will be subject to corporate income tax in Vietnam.

In case the capital transferee is also a foreign organization that does not

operate under the Investment Law or the Enterprise Law, the enterprise established under the law of Vietnam where the foreign organization invests its capital will declare and pay taxes instead of corporate income tax payable from capital transfer activities of foreign organizations.

Ha Noi City Tax Department replies to the question of Ferrolí Asean Co., Ltd in Official Letter No. 39624/CTHN-TTHT dated 11/8/2022.

No.	Document title	Issuance date	Effective date
NATIONAL ASSEMBLY STANDING COMMITTEE			
1	Ordinance 02/2022/UBTVQH15 on sanctioning administrative violations for acts of obstructing procedural activities.	18/08/2022	01/09/2022
GOVERNMENT			
1	Decree 59/2022/ND-CP prescribing the electronic identification and authentication	05/09/2022	20/10/2022
2	Decree 58/2022/ND-CP on registration and management of the activities of foreign non-governmental organizations in Vietnam.	31/08/2022	01/11/2022
3	Decree 55/2022/ND-CP prescribing the national database on reception of citizens, settlement of complaints, denunciations, petitions and reports.	23/08/2022	10/10/2022
4	Decree 53/2022/ND-CP detailing certain articles of the Law on Cybersecurity.	15/08/2022	01/10/2022
PRIME MINISTER			
1	Directive 13/CT-TTg on a number of solutions to promote the safe, healthy and sustainable development of the real estate market.	29/8/2022	29/8/2022
MINISTRY OF FINANCE			
1	Circular 50/2022/TT-BTC guiding the implementation of a number of articles of Decree 119/2015/ND-CP prescribing compulsory insurance in construction investment activities and Decree 20/2022/ND-CP amending and supplementing a number of articles of Decree 119/2015/ND-CP, prescribing compulsory insurance in construction investment activities.	11/08/2022	01/10/2022
2	Circular 48/2022/TT-BTC prescribing the rates, collection, remittance, management and use of charges for exploitation and use of information in the national demographic database.	03/08/2022	17/09/2022
MINISTRY OF HEALTH			
1	Circular 08/2022/TT-BYT prescribing the registration for circulation of drugs and medicinal ingredients.	05/09/2022	20/10/2022
STATE BANK OF VIETNAM			
1	Circular 10/2022/TT-NHNN guiding the foreign exchange management regarding the issuance of bonds to international market by enterprises not entitled to government guarantee.	29/07/2022	15/09/2022



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