



GLOBAL VIETNAM
LAWYERS

LEGAL NEWSLETTER

Issue No. 03 | March 2023

MAIN CONTENTS

LATEST LEGAL UPDATE

1. Amending and supplementing regulations on corporate bond issuance.
2. Some solutions to remove difficulties for and promote safe, healthy, sustainable development of the real estate market.
3. Novelties on management of medical equipment.

LEGAL GUIDANCE

1. Tax declaration and payment for business cooperation contracts.
2. Tax declaration for foreign contractors.
3. Using e-invoices when delivering goods.
4. Tax incentives for value-added taxes and corporate incomes for computer programming activities.

GOOD READINGS FOR YOU

1. It is not increased yet when it comes to taxes on land use and second house transfer in Ho Chi Minh City.
2. The Government proposes that Vietnamese expatriates, foreign individuals and organisations have the right to own houses in Vietnam.

NEWLY ISSUED LEGAL DOCUMENTS

1. Amending and supplementing regulations on corporate bond issuance

On 05 March 2023, the Government issued Decree 08/2023/ND-CP (“**Decree 08/2023**”) amending, supplementing and ceasing the effect of, a number of articles of the Decrees on private placement of corporate bonds and trading of privately placed corporate bonds in the domestic market and offering of corporate bonds to the international market with some noteworthy key points as follows:

1.1 Bond issuers are entitled to pay bond principal and due interest with other assets according to the announced issuance plan

As for a private placement of bonds in the domestic market, if the issuer is unable to pay in full and on time the bond principal and interest in Vietnam dong according to the issuance plan announced in favour of investors, the issuer may negotiate with the bondholder to pay the principal and due interest of the bond with other assets provided that the bond issuer must follow Article 1 of Decree 08/2023:



1.2 Enterprises are allowed to change terms and conditions (including term) of issued bonds

For corporate bonds issued for private placement before 16 September 2022 (i.e. the date of Decree 65/2022/ND-CP amending and supplementing a number of articles of Decree 153/2020/ND-CP dated 31 December 2020 on private placement and trading of corporate bonds in the domestic market and the offering for sale of corporate bonds in the international market (**effective “Decree 65/2022”**)) and debt balance up to the effective date of Decree 65/2022, the issuer may change the conditions and terms of the issued bonds with the following principles/conditions:

The change of terms and conditions is approved by the competent authority of the issuing enterprise (1).

The change of terms and conditions is approved by the number of bondholders representing 65% or more of the total number of bonds of the same type in circulation (2).

Information on the change of conditions and terms of bonds must be unusually disclosed by the issuer as prescribed (3).

In case of extension of the bond's term, **the maximum time is not more than 02 years compared to the term** in the issuance plan announced to investors (4).

For condition (2), previously, according to Decree 65/2022, enterprises must not change the term of issued bonds.

For condition (3), in case the bondholder does not accept the change of the bond's terms and conditions, the issuing enterprise is responsible for:

- negotiating to ensure the interests of investors;
- fully fulfilling obligations towards bondholders according to the bond issuance plan announced to investors (even if the change in terms and conditions of bonds has been approved by bondholders representing 65% or more of the total number of bonds) in case there are bondholders who do not approve the negotiation plan.

1.3 Ceasing the effect of some provisions of Decree 65/2022 until the end of 31 December 2023

Decree 08/2023 stipulates the effect suspension of a number of provisions in Decree 65/2022 until the end of 31 December 2023, specifically as follows:

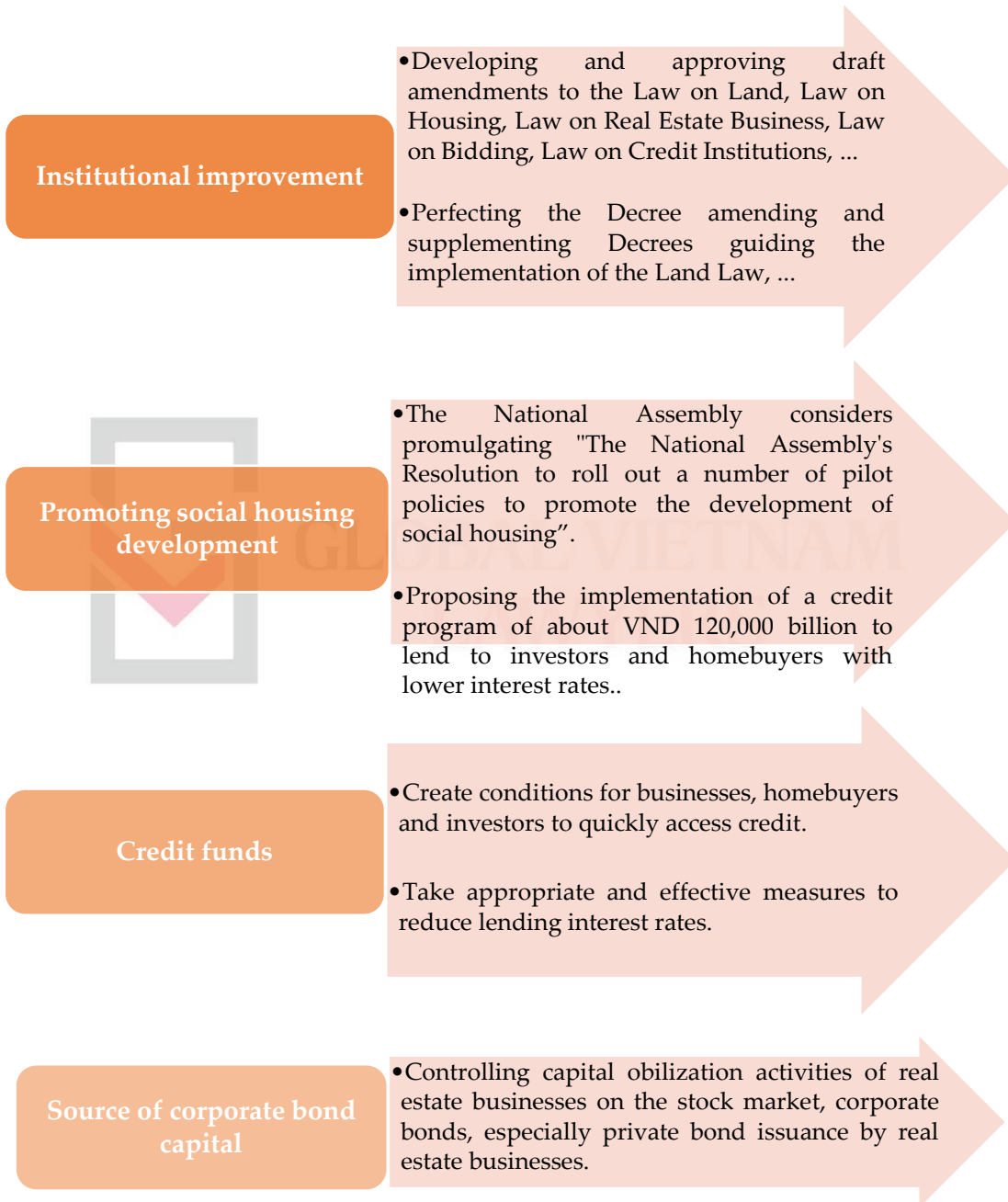
- Regulations on identifying the status of professional securities investors as individuals in Article 1.6 of Decree 65/2022.
- Regulations on bond distribution time of each issuance are in Articles 1.7 and 1.8 of Decree 65/2022. Particularly for bond offerings that have sent information disclosure content before the offering to the Stock Exchange before 05 March 2023 but have not completed the bond distribution, they will continue to comply with regulations on distribution time in Articles 1.7 and 1.8 above.
- Regulations on credit rating results for bond issuers in Article 1.9 of Decree 65/2022.

Decree 08/2023 will take effect from the date of signing, i.e. 05 March 2023.

2. Some solutions to remove difficulties for and promote safe, healthy, sustainable development of the real estate market

On 11 March 2023, the Government issued Resolution 33/NQ-CP (“Resolution 33/2023”) on a number of solutions to remove difficulties for and promote safe, healthy, sustainable development of the real estate market with 04 main groups of tasks/solutions, including the following main contents:

LATEST LEGAL UPDATE



Resolution 33/2023 will take effect from the date of signing, i.e. 11 March 2023.

3. Novelties on management of medical equipment

On 03 March 2023, the Government issued Decree 07/2023/ND-CP (“**Decree 07/2023**”) amending and supplementing a number of articles of Decree 98/2021/ND-CP on the management of medical equipment (“**Decree 98/2021**”) with some noteworthy novelties as follows:

3.1 Notes on conditions for circulation of medical equipment

Decree 07/2023 stipulates non-application cases in which the condition "Having had a circulation number, a free-sale registration number, a certificate of circulation registration, and an import license" when circulating medical equipment on the market include:

- Being liquidated in accordance with the law;
- Expiry date of the product;
- Unable to overcome the error factor that adversely affects the user's health according to regulations;
- When the competent state agency does not allow the use.

3.2 Having prices of medical equipment on display

Decree 07/2023 stipulates that organisations and individuals manufacturing and trading in medical equipment will affix prices of medical equipment at places such as:

- Production and business establishments (with counters for transaction and product sales);
- Supermarkets, trade centres, markets as prescribed by law, shops, kiosks, stalls, transaction places for sale of goods and provision of services;
- Trade fairs and exhibitions that sell goods and provide services; and (iv) Other locations as required by law; or
- Electronic portal of the Ministry of Health. In this case, the following minimum information must be posted: Name, type of medical equipment; Manufacturer, country of manufacture; firm, owner country; Unit; Configuration and technical features of medical equipment; and Affixed prices of medical equipment.

3.3 It is not mandatory to apply the regulation not to buy and sell medical equipment without the declared price or to buy and sell it higher than the declared price

Article 1.18 of Decree 07/2023 does not require the application of the regulation "*medical equipment may not be purchased or sold without the declared price and must not be*

purchased or sold at a higher price than the public price on the website of the Ministry of Health at the time of purchase” for bidding packages opened before 01 April 2022.

Previously, in Article 44.4 of Decree 98/2021 stipulating that *“medical equipment may not be purchased or sold without a declared price and must not be traded higher than the declared price on the website of the Ministry of Health at the time of purchase”.*

3.4 Transitional regulations on the value of free-sale registration numbers, circulation registration certificates, circulation registration numbers, and import permits

- Import permits for medical devices other than in vitro diagnostic biological products that were issued from 01 January 2018 to 31 December 2021 can continue to be used until the end of 31 December 2024;
- Import permits for medical devices that are in vitro diagnostic biological products issued from 01 January 2018 to 31 December 2021 can continue to be used until 31 December 2024 with an unlimited quantity of imports;
- For medical equipment that is not on the list of required import permits (except for chemicals, insecticidal and germicidal preparations used in the household and medical fields with only one purpose of sterilizing the equipment). medical equipment) and has a classification as a medical device of categories C, D which is published on the website of the Ministry of Health, importation can be continued until the end of 31 December 2024 without limitation quantity, without a written certification from the Ministry of Health that it is a medical device and regardless of the time of information disclosure on the website of the Ministry of Health when carrying out the approval procedures;
- The circulation number issued in accordance with Decree No. 36/2016/ND-CP before 01 January 2022 is valid for an indefinite period;
- The certificate of circulation registration for domestically produced medical equipment that has been issued before 01 January 2022 is valid until the end of the time indicated on the certificate of circulation registration;
- The circulation registration number for medical devices that are in vitro diagnostic biological products issued from 01 January 2014 to 31 December 2019 can continue to be used until the end of 31 December 2024;
- For medical device as an in vitro diagnostic biological product that has been granted a circulation registration number from 01 January 2020 to 31 December 2021, this circulation registration number is valid until the end of its validity period indicated on the circulation registration paper.

Decree 07/2023 will take effect from the date of signing, i.e. 03 March 2023.

1. Tax declaration and payment for business cooperation contracts

The declaration and payment of corporate income tax will comply with Article 8.6 of Decree 126/2020/ND-CP (amended and supplemented in Article 1.3 of Decree 91/2022/ND-CP), and the deadline for tax payment will observe Article 55 of the Law on Tax Administration. The Company must determine by itself the amount of corporate income tax temporarily paid on a quarterly basis and the temporarily paid tax amount will be deducted from the payable amount according to the annual tax finalisation. The total amount of temporarily paid corporate income tax of 4 quarters must not be less than 80% of the payable corporate income tax according to the annual tax finalisation.

The revenue from business cooperation contracts is determined according to the guidance in Article 7 of Circular 78/2014/TT-BTC.

In case the Company discovers that the tax declaration dossiers submitted to the tax authorities are incorrect, additional declarations will be made as prescribed in Article 47 of the Law on Tax Administration and Article 7.4 of Decree 126/2020/ND-CP.

Ha Noi City Tax Department replies to the question of Machines and Industrial Equipment Corporation – JSC in Official Letter No. 9579/CTHN-TTHT dated 07/03/2023.

2. Tax declaration for foreign contractors

In case a foreign organisation as foreign contractor, without having its head

office in Vietnam gains any income generated in Vietnam on the basis of securities transfer transaction (corresponding to shares in a joint stock company) on the Hanoi Stock Exchange under the law on securities, it will be subject to the application of Circular 103/2014/TT-BTC, specifically:

- Value added taxes: Securities transfer activities are not subject to value added taxes as prescribed in Article 4.8.d of Circular 219/2013/TT-BTC.
- Corporate income taxes: Income from securities transfer will comply with Articles 4 and 13 of Circular 103/2014/TT-BTC.

In case the foreign contractor fails to satisfy one of the conditions mentioned in Article 8 of Circular 103/2014/TT-BTC, the Vietnamese party (the securities company, the securities issuer or the foreign foreign investors with securities accounts) will pay taxes on behalf of foreign contractors as prescribed in Circular 103/2024/TT-BTC.

Ha Noi City Tax Department replies to the question of Guotai Junan Securities (Vietnam) Corporation – JSC in Official Letter No. 9302/CTHN-TTHT dated 06/03/2023.

3. Using e-invoices when delivering goods

In case the Company exports goods for mobile sales to customers, it will use the stock-out/ internal transportation slip as prescribed, issuing an electronic invoice as prescribed in Article 13.3 of

Decree 123/2020/ND-CP when selling goods.

To look up information on e-invoices to serve the inspection of goods circulating on the market, the Company will comply with Article 45 of Decree 123/2020/ND-CP.

Ha Noi City Tax Department replies to the question of Oriflame Vietnam Co., Ltd. in Official Letter No. 9300/CTHN-TTHT dated 06/03/2023.

4. Tax incentives for value-added taxes and corporate incomes for computer programming activities

- Regarding value-added taxes: In case the Company conducts activities of manufacturing software products and software services as prescribed by law, it is not subject to value-added taxes as prescribed in Article 4.21 of Circular 219/2013/TT-BTC.
- Regarding corporate income taxes: In case the Company implements a project that meets the requirements of new investment projects in Article 1.18 of Decree 12/2015/ND-CP and generates income from software product manufacturing operations as prescribed by law, the corporate income tax incentives for investment projects are determined as follows:
 - Tax incentives: Apply the preferential tax rate of 10% for a

period of 15 years as prescribed in Article 15.1 of Decree 218/2013/ND-CP. The period of application of the preferential tax rate is calculated continuously from the first year the Company gains revenue from the new investment project entitled to tax incentives.

- Incentives on tax exemption and reduction period: Corporate income tax exemption for 4 years, 50% reduction of payable corporate income taxes for the next 9 years as prescribed in Article 16.1 of Decree 218/2013/ND-CP. The tax exemption and reduction period is calculated continuously from the first year the Company gains taxable income from the new investment project entitled to tax incentives, if the Company has no taxable income for the first 3 years, counting from the first year of gaining revenue from a new investment project, the tax exemption or reduction period is counted from the fourth year the new investment project generates revenue as prescribed in Article 16.4 of Decree 218/2013/ND-CP.

Ha Noi City Tax Department replies to the question of Uptempo Vietnam Co., Ltd. in Official Letter No. 8441/CTHN-TTHT dated 01/03/2023.

1. It is not increased yet when it comes to taxes on land use and second house transfer in Ho Chi Minh city

In response to the recommendations made at the end of 2022 and the beginning of 2023 to amend Resolution 54 on a number of specific mechanisms, Ho Chi Minh City proposes a collection of second house and land tax; an increase in non-agricultural land use tax on residential land; an increase in personal income taxes when transferring second or more real estate. But as per the latest draft that has just been submitted by the Ministry of Planning and Investment to the Ministry of Justice for appraisal, these policies are left on the shelf.

Specifically, after removing the pilot tax mechanism for the second house and residential land in Ho Chi Minh City, the new updated draft also removes the proposal to increase the non-agricultural land use taxes on residential land, the personal income tax rate when transferring the second house or more.

Previously, the Ho Chi Minh City of Real Estate Association (HoREA) when consulting with the city also suggested not to implement these two pilot policies in the next two years. The reason is that the implementation at this time can put more burden on people in the context of economic difficulties, and shrinkage in the income of households and individuals.

The Ministry of Finance also opposes taxing second houses and residential land for fear of not ensuring fairness in many cases. In fact, the value of houses and residential land has a very large difference, if taxed, there will be cases where real estate of not great value is subject to taxes, and vice versa. Therefore, if the application does not meet the objective of tax policy, it is necessary to give reasonable regulation on adjusting the income of people who own many houses and land.

By vnexpress.net

2. The Government proposes that Vietnamese expatriates, foreign individuals and organisations have the right to own houses in Vietnam

According to the Government, the Land Law currently neither allow Vietnamese expatriates to receive the transfer of land use rights outside the project to build houses, nor stipulates that foreign individuals and organisations are eligible for the use of land. Meanwhile, the Law on Housing or the Law on Real Estate Business allows foreign individuals and organisations to buy and own land-attached houses. Conflicts among legislations make it difficult to recognise foreigners' home ownership in Vietnam.

Therefore, in the draft Law on Housing (amended) submitted this time, Vietnamese expatriates are entitled to own houses when building houses on inherited or donated land; buy and rent commercial housing. Foreigners are allowed to own houses in commercial

housing projects and urban areas, except for projects in the areas that need to ensure security and defense.

When owning houses, foreign individuals and organisations can only buy, rent-purchase, inherit and own up to 30% of the number of apartments in an apartment building. For individual houses in an area with a population equivalent to a ward-level administrative unit, they can only own a maximum of 250 houses.

The term of house ownership for foreigners must not exceed 50 years and may be extended if needed in case of purchase, sale, lease purchase, donation or inheritance.

By vnexpress.net

No.	Document title	Issuance date	Effective date
GOVERNMENT			
1	Resolution 33/NQ-CP on a number of solutions to remove difficulties for and promote safe, healthy, sustainable development of the real estate market.	11/03/2023	11/03/2023
2	Decree 08/2023/ND-CP amending, supplementing, and ceasing the effect of, a number of articles of the Decrees on private placement of corporate bonds and trading of privately placed corporate bonds on the domestic market and offering of corporate bonds to the international market.	05/03/2023	05/03/2023
3	Resolution 30/NQ-CP on continuing the implementation of measures to guarantee drugs and medical devices.	04/03/2023	04/03/2023
4	Decree 07/2023/ND-CP amending and supplementing a number of articles of Decree 98/2021/ND-CP on the management of medical equipment.	03/03/2023	03/03/2023
5	Decree 4/2023/ND-CP amending and supplementing a number of articles of Decrees providing business investment conditions and administrative procedures under the state management of the Ministry of Labour, Invalids and Social Affairs.	13/02/2023	13/02/2023
MINISTRY OF INDUSTRY AND TRADE			
1	Circular 03/2023/TT-BCT amending and supplementing a number of articles of Circular 22/2016/TT-BCT on implementation of rules of goods origin in the ASEAN Trade in Goods Agreement.	14/02/2023	01/04/2023
MINISTRY OF FINANCE			
1	Circular 13/2023/TT-BTC guiding the implementation of Decree 49/2022/ND-CP amending and supplementing a number of articles of Decree 209/2013/ND-CP detailing and guiding the implementation of a number of articles of the Law on Value-Added Tax, which had a number of articles amended and supplemented under Decree 12/2015/ND-CP, Decree 100/2016/ND-CP and Decree 146/2017/ND-CP, and amending and supplementing Circular 80/2021/TT-BTC.	28/02/2023	14/04/2023
2	Circular 08/2023/TT-BTC on the annulment of Circular 86/2016/TT-BTC guiding a number of contents on the risk reserve fund and compensation for environmental damage in accordance with Decree 19/2015/ND-CP detailing the implementation of the Law on Environmental Protection.	07/02/2023	24/03/2023
MINISTRY OF CONSTRUCTION			
1	Circular 02/2023/TT-BXD guiding a number of contents on construction contracts.	03/03/2023	20/04/2023



**GLOBAL VIETNAM
LAWYERS**

CONTACT US

info@gvlawyers.com.vn

HCMC - Head Office

8/F, Centec Tower,
72 – 74 Nguyen Thi Minh Khai,
Vo Thi Sau Ward, 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

The contents of the newsletter neither constitute legal advice nor necessarily reflect the opinions of our firm or any of our attorneys or consultants. The newsletter provides general information, which may or may not be complete or up to date at the time of reading. The content is not intended to be used as a substitute for specific legal advice or opinions. Please seek appropriate legal advice or other professional counselling for any specific issues you may have. We, GV Lawyers, expressly disclaim all liabilities relating to actions whether taken or untaken based on any or all contents of the newsletter.

www.gvlawyers.com.vn

