



GLOBAL VIETNAM
LAWYERS

LEGAL NEWSLETTER

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NEWLY ISSUED LEGAL DOCUMENTS

1. Many changes related to management of foreign workers working in Vietnam

On 18 September 2023, the Government issued Decree No. 70/2023/ND-CP (“**Decree 70/2023**”) amending and supplementing a number of articles of Decree 152/2020/ND-CP (“**Decree 152/2020**”) on management of foreign workers in Vietnam and recruitment and management of Vietnamese workers for the foreign organisations and individuals in Vietnam with some notable novelties as follow:

1.1 Change in authority to issue documents approving the use of foreign workers

Previously, the authority to approve or disapprove the use of foreign workers belonged to the Ministry of Labour, Invalids and Social Affairs (MOLISA) or the Provincial People's Committee. However, according to Article 1.2 of Decree 70/2023, the MOLISA or the Department of Labour, Invalids and Social Affairs (DOLISA) are specified as the competent agencies to issue documents approving or disapproving the use of foreign workers for each job position reported by the employer.

1.2 Easing professional conditions for foreign workers

Decree 70/2023 has adjusted the requirements for foreign workers who are experts, executives and technical workers, creating favorable conditions for foreigners to work in Vietnam. Specifically, instead of regulating that foreign workers must have a university degree in the field they wish to work as before, now they only need to have a university degree or higher or equivalent and have at least 3 years of working experience suitable for the job position they expect to assume in Vietnam.

According to the new regulations, the managing director includes not only the

head and manager of a unit under an agency, organisation or enterprise, but with a broader scope also includes:

- The head of branch, representative office or business location of the enterprise.
- The person who leads and directly operates at least 1 business section of an agency, organisation, or enterprise and works under the direction and management of the head of the agency, organisation, or enterprise.

Foreign technical workers are also exempted from the condition requiring them to work in the field they are trained, but instead they only need a training of at least 1 year and have at least 3 years of experience fit with the job position they wish to assume in Vietnam.

1.3 Shortening the time to report the need to use foreign workers

Decree 70/2023 has shortened the time to determine the need to use foreign workers to at least 15 days from the expected date of using foreign workers (instead of 30 days as prescribed in Decree 152/2020).

At least 15 days prior to the expected date of using foreign workers, employers (except contractors) are

responsible for determining the need to use foreign workers for each job position for which Vietnamese workers are not yet qualified and submit explanations to the MOLISA or the DOLISA of the locality where the foreign worker is expected to work according to Form No. 01/PLI, Appendix I of Decree 70/2023.

During the implementation process, if there is a change in the need to use foreign workers in terms of position, job title, form of work, quantity, and location, the employer must report to the MOLISA or the DOLISA according to the Form No. 02/PLI, Appendix I of Decree 70/2023 at least 15 days prior to the expected date of employing foreign workers.

1.4 Adjusting the cases where it is not required to determine the need to use foreign workers

Decree 70/2023 has eliminated 4 cases where it is not required to perform the procedure for determining the need to use foreign workers, including:

- (1) Foreigners entering Vietnam to provide professional and technical consulting services or perform other tasks serving the research, set-up, appraisal, supervision, evaluation, management and implementation of programmes or projects using ODA capital as prescribed or agreements signed between Vietnam and foreign parties;
- (2) Foreigners licenced by the Ministry of Foreign Affairs to operate information and press activities in Vietnam;

- (3) Foreigners entering Vietnam as volunteers working unpaid to implement international treaties to which Vietnam is a member and with confirmation from a foreign diplomatic mission or international organisations in Vietnam; and
- (4) Foreigners certified by the Ministry of Education and Training to enter Vietnam to do teaching and research work; or to work as a manager, executive director, principal, or vice principal of an educational institution at the proposal on its establishment by a foreign diplomatic mission or inter-governmental organisation.

Thus, from 18 September 2023, when using the above foreign workers, enterprises are required to carry out procedures to confirm the need to use foreign workers.

1.5 Notice of recruitment of Vietnamese workers to work in positions in favour of foreign workers must be posted on the Electronic Information Portal

From 1 January 2024, the notice of recruitment of Vietnamese workers for positions in favour of foreign workers must be made on the Electronic Information Portal of the MOLISA (Department of Employment: <http://doe.gov.vn/>) or the Electronic information portal of the Employment Service Center established by the Chairman of the People's Committee of the centralised province or city within at least 15 days of the expected date of submitting explanation report to the MOLISA or the DOLISA of the locality where the foreign worker is expected to work.

The recruitment notice includes the following contents: position and job title, job description, quantity, qualifications, experience requirements, salary, working time and location. If Vietnamese workers cannot be recruited into positions in favour of foreign workers, the employer must carry out procedures to determine the need to use foreign workers.

entering Vietnam to perform the following jobs: teachers, researchers; managers, managing directors, principals, or vice principals of educational institutions proposed for establishment in Vietnam by a foreign diplomatic mission or inter-governmental organisation.

1.6 Supplementing regulations related to work permits

- **Re-issuance of work permits:** Article 1.7 of Decree 70/2023 adds the case where the enterprise name is changed without changing the enterprise code recorded in the valid work permits, then the work permits will be re-issued.

- **Not required to apply for a work permit:** Article 1.7 of Decree 70/2023 also adds cases where foreign workers entering Vietnam to work do not have to apply for a work permit, including:

- (1) Foreigners sent to Vietnam by competent foreign agencies or organisations to teach or work as managers or managing director at educational establishments at the proposal on their establishment in Vietnam by foreign diplomatic missions or inter-governmental organisations; establishments and organisations established under international treaties in which Vietnam is a member; and

- (2) Foreigners certified by the Ministry of Education and Training as foreign workers

- **Accepting previous work permits to prove working experience:**

Decree 70/2023 allows foreign workers who are experts and technical workers to use previously issued work permits or confirmation letters on exemption from work permits to prove their working experience. This new regulation addresses many employer complaints and assists foreign workers with proving work experience.

- **Allowing issuance of electronic work permits:**

In addition to paper work permits in the current form, Decree 70/2023 allows issuance of electronic work permits but requires compliance with relevant legal regulations and the content of the work permit form.

1.7 Foreign workers married to Vietnamese people must apply for confirmation letters on exemption from work permits

Before the issuance of Decree 70/2023, foreign workers married to Vietnamese people and living in Vietnam were exempted from work permits. In this case, since the employer does not have to carry out procedures to confirm that foreign workers are not those who must

apply for a work permit, there is no confirmation or certification of work permit exemption (just need to report to the labour management agency where the foreign worker works). But since the issuance of Decree 70/2023, employers must apply for confirmation letters on exemption from work permits for foreign employees married to Vietnamese people. Given this confirmation letter, the employer can assist foreign workers in applying for a visa/temporary residence card based on employment status.

1.8 Reporting regime for foreign employees working in several provinces and cities

According to Article 1.3 of Decree 70/2023, in case of a foreign employee working for an employer in several centralised provinces and cities, within 3 working days of the date the foreign employee starts working, the employer must report (online form) to the MOLISA and the DOLISA of the locality where the foreign employee comes to work according to Form No. 17/PLI, Appendix I of Decree 70/2023.

1.9 The management board of industrial parks and economic zones stops

receiving documents related to foreign workers

Article 2 of Decree 70/2023 abolished a number of regulations of Decree 35/2022/ND-CP on management of industrial parks and economic zones. Therefore, from 18 September 2023, the Industrial Park and Economic Zone Management Board will stop receiving documents related to foreign workers in the following cases:

- Issuing, re-issuing, extending, revoking work permits and confirming foreign workers are not those who need to apply for work permits to work in industrial parks or economic zones;
- Receiving reports on the use of foreign workers; and
- Receiving explanatory reports from businesses in industrial parks and economic zones about the need to employ foreigners for each job position for which Vietnamese people are not yet qualified.

Decree 70/2023 takes effect from the date of signing, i.e. 18 September 2023.

2. Reduction of land rental in 2023

On 3 October 2023, the Prime Minister issued Decision 25/2023/QĐ-TTg (“**Decision 25/2023**”) on reduction of land rental in 2023, specifically as follows:

2.1 Applicable subjects

Organisations, units, enterprises, households and individuals that are leasing land directly from the State under a Decision or Contract or Certificate of land use rights, ownership

of houses and other land-attached assets issued by competent state agencies in the form of annual land rental payments (hereinafter referred to as tenants), including tenants who are not eligible for land rent exemption or reduction, or whose land rent

exemption or reduction terms have expired, and those who are enjoying a reduction in land rental in accordance with the land law (Law on Land and its guiding documents) and other relevant laws

2.2 Land rental reduction rate

The reduction rate is 30% of land rental payable (receivables generated) in 2023 for tenants who are eligible for reduction.

Note:

- The outstanding land rental of the years before 2023 and late payment interest (if any) will not be reduced.
- The 30% reduction rate is calculated on the payable land rental (receivables generated) after being reduced or/and deducted as prescribed by law in case of the tenant enjoying a reduction in land

rental or/and deduction of compensation for site clearance.

2.3 Applying for reduction of land rental

Tenants will submit a dossier requesting reduction of land rental (by one of the following methods: in person, electronic or postal service) to the tax authority, the Economic Zone Authority, the Hi-Tech Park Management Board, other agencies as prescribed by the law on tax administration.

Application deadline: From 20 November 2023 to 31 March 2024.

Note: if the dossier is submitted after 31 March 2024, tenants will not be given a reduction in land rental.

Decision 25/2023 takes effect from the date of signing, i.e. 20 November 2023.

GV Lawyers would like to introduce our valued readers to an article by **Lawyer Do Duc Anh** titled **"Should you choose to resolve disputes through commercial arbitration?"** published on The Saigon Times on 12 October 2023.

Multiple businesses are prone to choose to resolve disputes through commercial arbitration as the procedures are quick and not as time-consuming as through a court. But reality, in fact, is at times not that simple.

Arbitration is a method of resolving disputes without recourse to the court. Commercial arbitration is a method of resolving commercial disputes[1]. Upon commenting on this method of dispute resolution, there is an opinion that "the procedures are simpler (only through one arbitration hearing rather than many levels: first instance, appeal, cassation, retrial); the arbitral award takes immediate[2] effect."

Nonetheless, any method has its advantages and disadvantages. To optimize efficiency, it is necessary to learn about both aspects.

Does the arbitral award really take immediate effect?

Article 69 of the Law on Commercial Arbitration 2010 provides for within 30 days of receiving the arbitral

award, either party has the right to apply to a competent court to request cancellation of this award if such party secures sufficient grounds to prove that the award falls into the cases of cancellation under the Law on Commercial Arbitration.

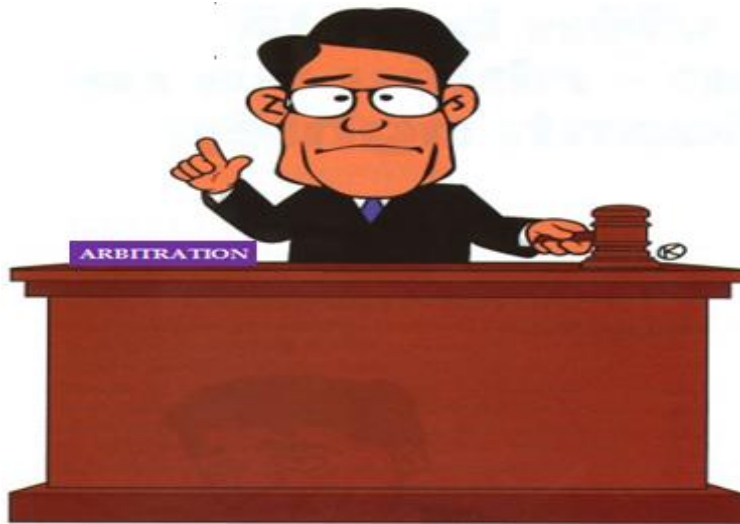
In fact, there are many cases where either party requests the court to cancel an arbitral award and the court accepts the request. A canceled arbitral award amounts to the fact that the dispute resolution process must kick off from the beginning: that is, the parties can agree to bring the dispute to arbitration or either party may sue in court and the dispute will go through the first instance trial process, then potentially an appeal.

Arbitration fees

To initiate an arbitration case, the parties need to submit a petition to an arbitration center (if choosing to resolve the dispute at the arbitration center), then pay arbitration fees there. After receiving arbitration fees, the arbitration center notifies the respondent and conducts the procedures for establishing an Arbitral Tribunal.

Return to the situation where the arbitral award is canceled as aforesaid. There are many reasons for the arbitral award to be canceled[3], but among them is the reason that "the composition of the Arbitral Tribunal and the arbitration procedures are inconsistent with the agreement of the parties or contrary to the Law on Commercial Arbitration 2010" – this

WHETHER COMMERCIAL ARBITRATION SHOULD BE CHOSEN TO RESOLVE DISPUTES NEEDS TO BE CONSIDERED CAREFULLY, DEPENDING ON THE SUBJECT MATTER OF THE SIGNED CONTRACT AND THE ROLES OF THE PARTIES INVOLVED IN THE CONTRACT. AND BESIDES, PREPARING ARBITRATION ARTICLES ALSO REQUIRES AN ANTICIPATION OF THE DEVELOPMENTS THAT MIGHT BE ON THE HORIZON.



party and the counter-claiming party (if any) will be refunded a portion of the arbitration fees paid, according to the specific regulations of the arbitration center.

But in some cases, determining what constitutes an arbitration agreement is not easy. For example, Company A signs two separate contracts with Company B and Company C, whereby Company B and Company C will perform two different tasks, although within the framework of a common project. In each contract, Company A has an arbitration agreement with Company B, and Company A also has an arbitration agreement with Company C. The project then generates damages against A, and Company A states that both Company B and Company C are at fault. So it might be considered an arbitration agreement reached among all three parties A, B, C, and on that basis, does Company A have the right to claim both Company B and Company C in the same dispute to be resolved by arbitration? Or must Company A claim each party in a separate dispute?

The answer is difficult to fully analyze within the

reason partly stems from the Arbitral Tribunal.

So in case the arbitral award is canceled, might the paid arbitration fees be refunded? The answer shows that such refund depends on the regulations of each arbitration center, but mostly no. That is, if the arbitral award is canceled, it is likely that the claimant will not receive back the arbitration fees paid.

This is different from a dispute resolution in court. As a court decision is annulled, upon retrial, the court will reconsider the obligation to pay legal fees; that is, the claimant still has the opportunity to receive back the court fee advance if it is declared the winning party.

Whether commercial arbitration should be chosen to resolve disputes needs to be considered carefully,

depending on the subject matter of the signed contract and the roles of the parties involved therein. And in addition, drafting arbitration articles also requires an anticipation of the developments that might occur in the future.

When the dispute involves multiple parties

It should be noted that a precondition for dispute resolution by commercial arbitration is that the parties must have an arbitration agreement. That is, in case of reaching no arbitration agreement, even if you file an arbitral petition pay arbitration fees, the result you will receive will be merely a decision of the arbitration tribunal stating that it does not have the authority to resolve the dispute and decide to suspend dispute resolution. In this case, the claiming

framework of an article. The example is given only to expressly state that as there are more than two parties involved in a dispute, the option to resolve the dispute by arbitration must be seriously considered and fully agreed upon.

But there is an opinion that we simply cannot resolve the dispute by arbitration anymore, Company A can claim both Company B and Company C in the same court case and that's it. So please see below.

“The court refuses to accept the case in case of an arbitration agreement reached”

This is the principle set forth in Article 6 of the Law on Commercial Arbitration, specifically: “In case the disputing parties have an arbitration agreement and one party initiates a lawsuit in court, the court must refuse to accept the case.”

except where the arbitration agreement is invalid or unenforceable.

Thus, if you have an arbitration agreement and still want to claim in court, you must fall into “a case where the arbitration agreement is invalid or unenforceable”.

But to know whether you are in a “case of invalid or unenforceable arbitration agreement”, sometimes it will cost you a time consumption and arbitration fees to seek an arbitral award that recognizes such a reality.

It can be seen that just one dispute resolution article might greatly affect the protection of the rights and interests of the parties in case of a dispute. Whether commercial arbitration should be chosen to resolve disputes needs to be considered carefully, depending on the subject

matter of the signed contract and the roles of the parties involved in the contract. And besides, preparing arbitration articles also requires an anticipation of the developments that might be on the horizon.

[1] According to the definition in the Law on Commercial Arbitration 2010, a commercial dispute is the one between parties arising (i) from commercial activities; and (ii) in which at least one party has commercial activities.

[2] <https://tuoitre.vn/khi-co-tranh-chap-doanh-nghiep-nen-chon-trong-tai-hay-toa-an-de-giai-quyet-20210424153327492.htm>

[3] There are 5 cases where the arbitral award is canceled according to Article 68.2 of the Law on Commercial Arbitration 2010.

1. Land rental exemption policy

The recovery of the exempted land rental as prescribed in Article 3.6 of Decree 123/2017/ND-CP only applies to the case where the competent state agency detects that the land user has been exempted or reduced from land rental or water surface rent but not meeting the conditions for exemption or reduction of land rental due to reasons from the land user or failure to use the land for the right purpose as stated in the land lease decision, land lease contract. Land users do not have to repay the amount exempted or reduced according to the investment incentive area.

If the Company does not meet the conditions for exemption or reduction of land rental due to reasons from the land user or not using the land for the purpose stated in the land lease decision or contract, the exempted land rental amount will not be revoked as prescribed in Article 3.6 of Decree 123/2017/ND-CP.

The General Department of Taxation replies to the question of Mai Thanh Co., Ltd. in Official Letter No. 4034/TCT-CS dated 13/9/2023.

2. Register for family deductions for the dependents whose tax codes have changed their status to taxpayers

In case the employee's child is studying at a university, college, vocational high school, or vocational training university and has no income or has an average monthly income of the year from all sources of income, not exceeding VND 1 million, he will be determined as a dependent so that the taxpayer can

register for family deductions as prescribed in Article 9.1(d.1.3) of Circular 111/2013/TT-BTC.

In case the employee has not yet completed the procedure to reduce dependents, he/she will continue to calculate family deductions for the dependents who meet the said conditions and are identified as so.

Ha Noi City Tax Department replies to the question of BIDV MetLife Life Insurance Co., Ltd. in Official Letter No. 69625/CTHN-TTHT dated 27/9/2023.

3. Transferring profits abroad by foreign organisations and individuals who gain profits from direct investment in Vietnam

Korean investors are allowed to transfer profits abroad at the end of the fiscal year or at the close of direct investment activities in Vietnam after the enterprise in which the foreign investor invested has fulfilled its financial obligations to the State of Vietnam as prescribed by the law, submitting the audited financial statements and corporate income tax finalisation declaration to the direct tax administration agency, and fully implementing obligations as prescribed by the Law on Tax Administration and its guiding documents.

The confirmation on fulfillment of tax obligations is carried out as prescribed in Article 70 of Circular 80/2021/TT-BTC.

The General Department of Taxation replies to the question of the Embassy of the Republic of Korea in Official Letter No. 4480/TCT-CS dated 10/10/2023.

4. Identify related-party transactions

In case the Company generates a loan amounting to at least 25% of the owner's capital contribution and accounting for more than 50% of the total value of the Company's medium and long-term debts, the Company will be governed by Decree 132/2020/ND-CP.

In case Company A participates directly or indirectly in operating, controlling,

contributing capital or investing in the Company, the relationship between Company A and the Company will be determined to be an affiliate relationship as instructed by Article 5.1 of Decree 132/2020/ND-CP.

Ha Noi City Tax Department replies to the question of Alpha Nam Real Estate JSC. in Official Letter No. 69112/CTHN-TTHT dated 25/9/2023.



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1. Proposal to reduce VAT by 2% in the first half of next year

In order to promptly respond to the developments in the socio-economic situation while considering and calculating in accordance with actual conditions, the Ministry of Finance believes that it is necessary to drastically and effectively deploy solutions to support the economic issues such as taxes, fees, charges and land rental that have been issued in 2023 and research and propose a number of solutions to reduce taxes, fees and charges for 2024.

Accordingly, the Ministry of Finance recommends continuing to consider reducing VAT by 2% in the first 6 months of 2024 as it has applied to support enterprises and residents.

Specifically, 2% reduction in VAT applicable to the groups of goods and services currently applying the 10% tax rate (to 8%). Except for some groups of goods and services including telecommunications, information technology, financial activities, banking, securities, insurance, real estate business, metal production and metal product manufacturing prefabrication, mining industry (excluding coal mining), coke production, refined petroleum, chemical and chemical product manufacturing, goods and services subject to special consumption tax are outside this policy.



The Ministry of Finance proposes reducing VAT by 2% in the first 6 months of 2024 for some groups of goods and services. Photo: QUANG DINH

The application period is from 1 January 2024 to 30 June 2024.

And puts the National Assembly Standing Committee at the forefront of considering and deciding on continuing to reduce VAT after 30 June 2024; if the economic situation, enterprises and residents are still difficult, it is in need of reporting to the National Assembly at the latest session.

According to the Ministry of Finance, the implementation of 2% VAT reduction policy in the first six months of 2024 is expected to reduce state budget revenue by about VND 25,000 billion. In particular, the monthly reduction for domestic revenue is about VND 2,700 billion; reducing import revenue by about VND 1,475 billion.

By tuoitre.vn

1. Expected to reduce environmental tax on gasoline and oil by 50% until the end of 2024

The policy of reducing environmental protection taxes on gasoline and oil will be applied from April 2022. Currently,

this tax rate is still being reduced by 50%, equivalent to VND 2,000 per litre of gasoline (except ethanol) and VND

1,000 per litre of diesel oil. However, this policy expires at the end of this year, resulting in the environmental protection tax on gasoline returning to the ceiling level from the beginning of next year.



If applied as proposed by the Ministry of Finance, it is expected that the environmental protection tax revenue in 2024 will decrease by about VND 38,929 billion. Photo: NGOC THAN

To avoid affecting the psychology, daily life, and production of residents and enterprises, the Ministry of Finance is consulting with ministries, branches, local levels... to extend this policy until the end of 2024.

Accordingly, the plan to reduce environmental protection tax in 2024 proposed by the Ministry of Finance is similar to Resolution 30/2022 of the National Assembly Standing Committee. The environmental protection tax on gasoline, except

ethanol, is expected to be still VND 2,000 per litre in 2024; aviation fuel, diesel oil, fuel oil, and lubricant oil are VND 1,000 per litre; grease VND 1,000 per kilogram; kerosene VND 600 per litre.

From 2025, the environmental protection tax is expected to return to the ceiling level, according to regulations, gasoline, except ethanol, is VND 4,000 per litre; aviation fuel is VND 3,000 per liter; diesel oil, fuel oil, and lubricant oil is VND 2,000 per litre; kerosene VND 1,000 per litre; grease is VND 2,000 per kilogram.

According to the Ministry of Finance, petroleum is an essential commodity and an input for many production industries, affecting many subjects in the economy. The tax reduction will directly impact domestic retail gasoline prices, contributing to reducing production costs for enterprises, especially those in transportation, shipping, fishing, and gas services... Besides, reducing gasoline prices also contributes to controlling inflation and stabilising the macroeconomy.

By vnexpress.net

No.	Document title	Issuance date	Effective date
GOVERNMENT			
1	Decree 74/2023/ND-CP amending and supplementing a number of articles of Decrees related to the decentralisation of administrative procedures in the maritime sector.	11/10/2023	27/11/2023
2	Decree 70/2023/ND-CP amending and supplementing a number of articles of Decree 152/2020/ND-CP on the foreign workers in Vietnam and recruitment and management of Vietnamese workers working for the foreign organisations and individuals in Vietnam.	18/09/2023	18/09/2023
3	Decree 69/2023/ND-CP amending and supplementing a number of articles of Decree 159/2020/ND-CP on the management of title holders, positions and representatives of State capital at enterprises.	14/9/2023	14/9/2023
4	Resolution 165/NQ-CP on the thematic meeting on lawmaking in September 2023.	6/10/2023	6/10/2023
5	Resolution 164/NQ-CP on the regular Government meeting in September 2023 and the Government's online conference with local levels.	4/10/2023	4/10/2023
PRIME MINISTER			
1	Decision 25/2023/QĐ-TTg on the reduction of land rental for 2023.	3/10/2023	20/11/2023
MINISTRY OF FINANCE			
1	Circular 62/2023/TT-BTC amending and supplementing a number of articles of Circular 25/2021/TT-BTC prescribing the rates and collection, remittance, management and use of charges and fees related to exit from, entry into, transit through and residence in Vietnam.	3/10/2023	3/10/2023
2	Circular 61/2023/TT-BTC providing for the rates and collection, remittance, management and use of charges in registration of secured transactions.	28/9/2023	15/11/2023
SUPREME PEOPLE'S COURT			
1	Precedent 70/2023/AL on the termination of the employment contract for a trade union officer who is not a professional trade union officer.	1/10/2023	1/10/2023
2	Precedent No. 69/2023/AL on the competence of Commercial Arbitration in disputes over non-disclosure and non-compete agreements.	1/10/2023	1/10/2023
3	Precedent 68/2023/AL on the right to inherit a house as a material object of the inheritance of a Vietnamese expatriate.	1/10/2023	1/10/2023
4	Precedent 67/2023/AL on the person who is entitled to receive the property when dividing the common property.	1/10/2023	1/10/2023
VIETNAM GENERAL CONFEDERATION OF LABOUR			
1	Guidance 92/HD-TLĐ on the Trade Unions initiating lawsuits and participating in civil proceedings to resolve labour cases and labour matters at Court.	31/8/2023	31/8/2023



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