



ClientAlert

Issue No. 10.1 & 10.2 | April & May 2020

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Introduction

Dear Reader,

This month saw a handful of new regulations that affect business in Vietnam. We've briefed them and outlined the most important changes from each new regulation. They cover numerous topics concerning Covid-19 relief, plans to shorten the commercial housing project development process, returning to work after social distancing, golf courses, education, and criminal judgment enforcement.

As always, we hope you find this month's Client Alert helpful and wish you a rapid economic recovery from the ravages of Covid-19. We look forward to working with you.

Kind regards,
Indochine Counsel

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City Government Plans to Shorten the Commercial Housing Project Development Process

On 7 May 2020, the Department of Construction of Ho Chi Minh City (the “**HCMC DOC**”) issued Official Letter No. 4801/SXD-PTDT (the “**OL 4801**”) seeking opinions on the draft report to the People’s Committee of Ho Chi Minh City (the “**HCMC PC**”) on the proposed procedures for development of commercial housing projects in Ho Chi Minh City as directed by the Vice Chairman of the HCMC PC in Official Letter No. 2837/VP-DT (the “**OL 2837**”).

Currently, in Ho Chi Minh City, to develop a commercial housing project that has not obtained lawful residential use rights, developers are required to perform a five or six step procedure (depending on specifics of the case) to lawfully implement the project. A developer is required to complete the financial obligations including payment of land use fees before being eligible to perform the process to be recognized as the developer of the project and to obtain investment approval. Only upon receipt of such approval may the developer apply for appraisal of the basic design and technical design for the construction permit. This procedure is extremely time-consuming in practice.

According to the Real Estate Association of Ho Chi Minh City, commercial housing projects need huge investment and usually take five to seven years to implement and complete the preparation for investment and construction of infrastructures and foundations of the projects. All of this must happen before the developer can proceed with the mobilization of capital. In addition, the time period for evaluation and calculation of the land use fee by the relevant authorities in Ho Chi Minh City is quite lengthy, and usually takes from two to three years. Only after paying in full the land use fee may the developer start the procedure to obtain necessary approvals and appraisal to implement the project. This results in increased investment cost and eventually increased purchase prices for housing units¹. To ameliorate these difficulties, the Vice Chairman of the HCMC PC issued Official Letter No. 1578/VP-DT dated 3 March 2020 and subsequently OL 2837 directing the HCMC DOC to propose a revised plan for development of commercial housing projects in Ho Chi Minh City.

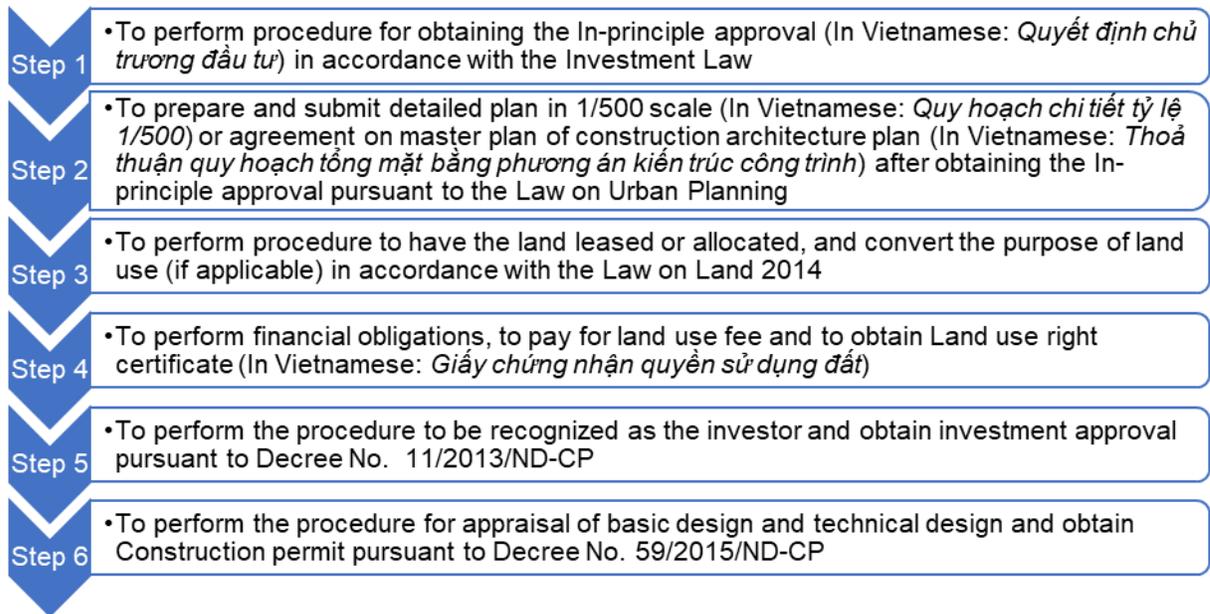
Under OL 4801, the HCMC DOC proposes a newly reduced procedure in its draft report to the HCMC PC. For projects which have not obtained lawful residential land use rights, the current six step procedure will be reduced to four steps by merging the fourth, fifth and sixth steps. This will permit developers to simultaneously perform the tasks of applying for recognition as the developer of the project, obtaining investment approval, and submitting the appraisal of basic design and technical design to obtain the construction permit. For projects which have obtained lawful residential land use rights, the current five step procedure will be reduced to four steps by permitting the developer to simultaneously apply for investment approval, appraisal of basic design and technical design, obtain the construction permit, and to perform additional financial obligations in case the architectural planning criteria is changed after the developer obtains land use rights certificates.

The following flow charts summarize the proposed steps to be taken by developers should this revision of local regulations be approved:

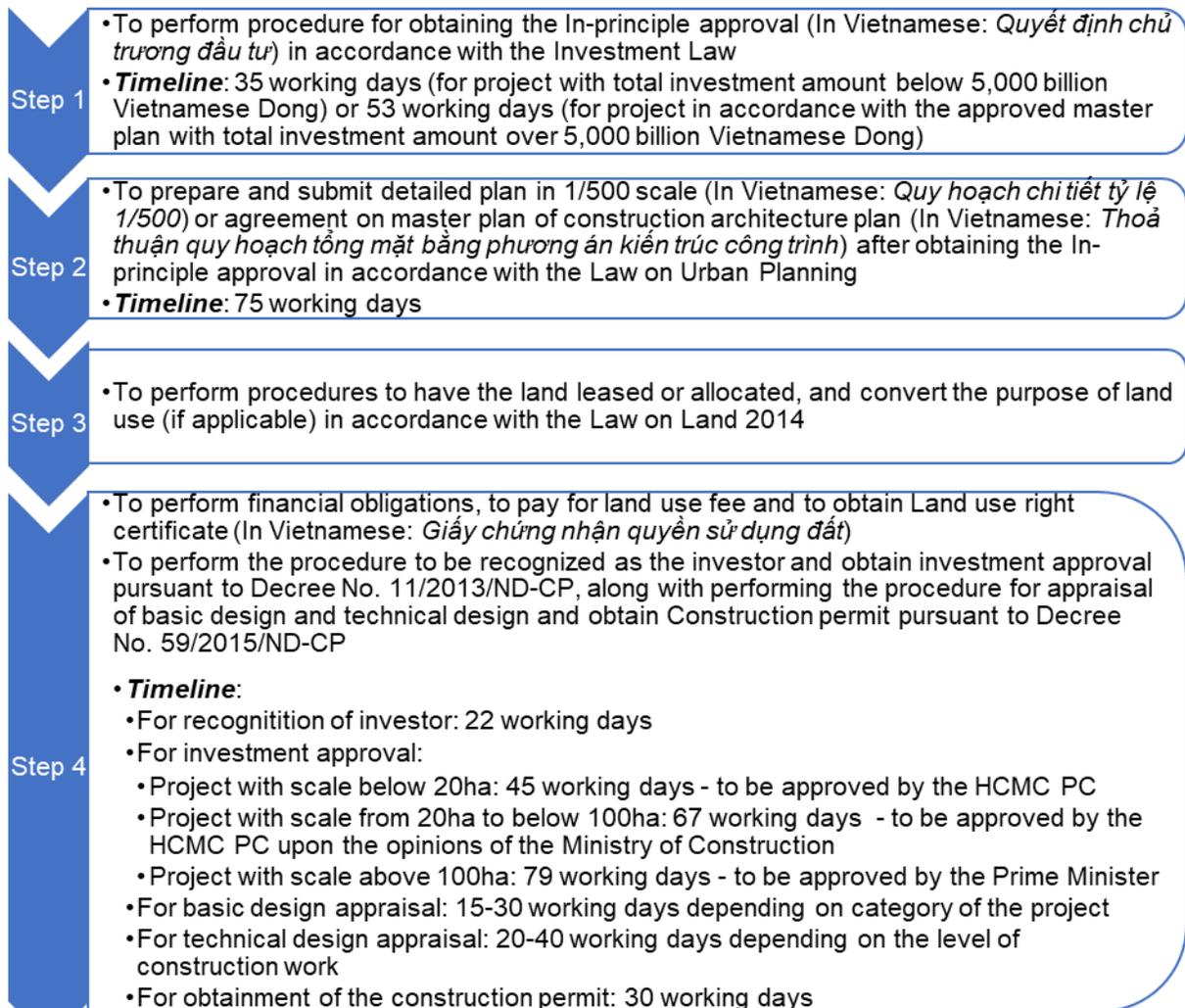
Projects for which the developer has not obtained lawful residential land use rights

1. *Current six step procedure*

¹ Official Letter No. 42/2020/CV-HoREA dated 10 April 2020.

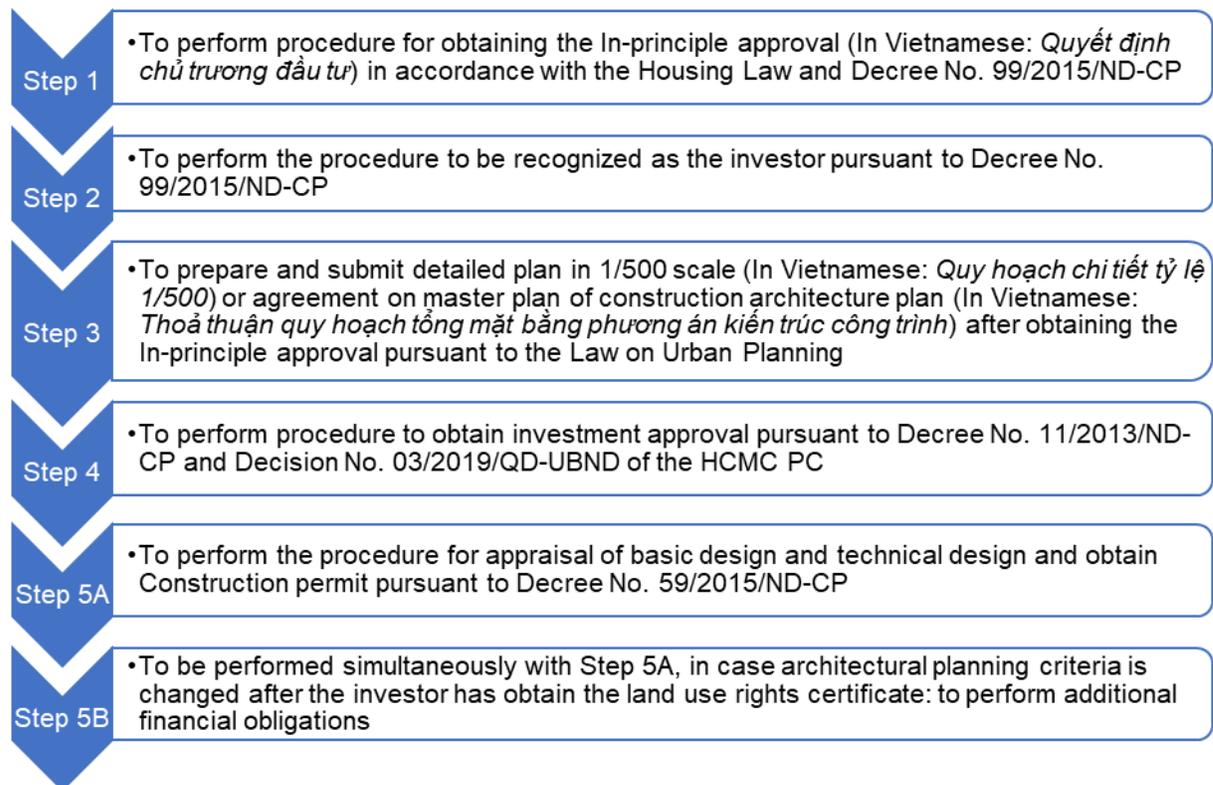


2. Proposed four step procedure under OL 4801 (Item II, Article 1)

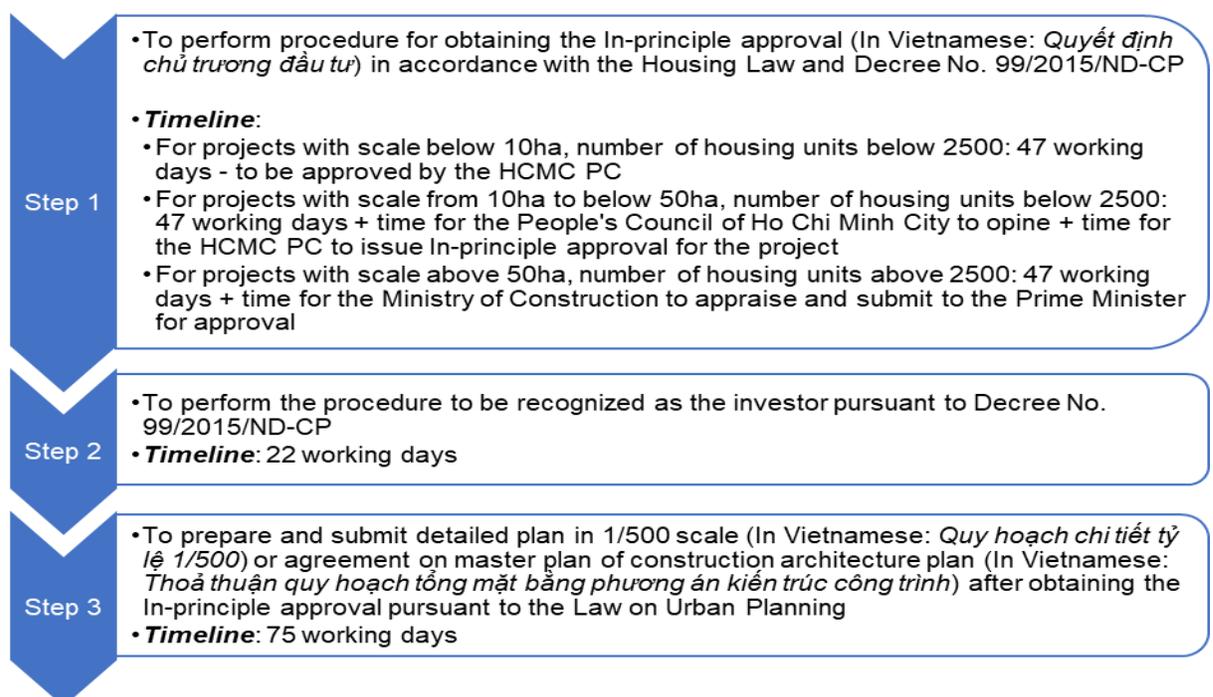


Projects for which the developer has obtained lawful residential land use rights

1. Current five step procedure



2. Proposed four step procedure under OL 4801 (Item II, Article 2)



Step 4

- To perform the procedure to obtain investment approval pursuant to Decree No. 11/2013/ND-CP, along with performing the procedure for appraisal of basic design and technical design and obtain Construction permit simultaneously pursuant to Decree No. 59/2015/ND-CP
- To perform additional financial obligations in case architectural planning criteria is changed after the investor has obtain the land use rights certificate
- **Timeline:**
 - For investment approval:
 - Project with scale below 20ha: 45 working days - to be approved by the HCMC PC
 - Project with scale from 20ha to below 100ha: 67 working days - to be approved by the HCMC PC upon the opinions of the Ministry of Construction
 - Project with scale above 100ha: 79 working days - to be approved by the Prime Minister
 - For basic design appraisal: 15-30 working days depending on category of the project
 - For technical design appraisal: 20-40 working days depending on the level of construction work
 - For obtainment of the construction permit: 30 working days

The departments who have been asked to submit their opinions on the proposed changes are scheduled to submit their opinions to the HCMC DOC by 11 May 2020. After that the HCMC DOC will consolidate and report on the results to the HCMC PC. Official approval will occur sometime after that. If the proposed changes are enacted, they should help deal with the outstanding obstacles and difficulties in implementation of commercial projects currently experienced by developers. Hopefully, they will also increase the transparency of the property market in Ho Chi Minh City.

Returning to work in Ho Chi Minh City after social distancing

With social distancing over, Vietnam has started to move towards the “new normal” of post-COVID-19. This alert will hopefully help Vietnamese enterprises to prepare for recovery in this “new normal” and in taking the necessary steps to transition workforces back to work safely.

Earlier this month, Ho Chi Minh City launched an online app to evaluate COVID-19 safety levels for businesses. This application is a tool for evaluating infection risk indices promulgated under Decision No. 1203/QD-UBND issued by the People’s Committee of Ho Chi Minh City on 6 April 2020 (“**Decision 1203**”). According to Decision 1203, enterprises located in Ho Chi Minh City can access the app to make a self-evaluation on COVID-19 infection risks. Only enterprises having total infection risk indices of less than 10% are permitted to continue business operations. Enterprises having total infection risk indices ranging from 20% to 80% may maintain business operation if they show a regular reduction in their index if they are already operating or must reduce their rates prior to recommencement of business operations. Enterprises having infection risk indices from 80% must stop operations.

Following are recommended methods to reduce an enterprise's infection risk index and to ensure occupational safety and hygiene at the workplace for employees:

- For office environments, keep a safe distance of at least two meters, move workstations apart to ensure this safe distance or install physical barriers between workstations;
- Check employees' body temperature and Covid-19 symptoms upon arrival each day;
- Reduce employees' contact with high risk contact points, i.e., fingerprint scanners; open windows where possible or adjust air conditioning for more ventilation; regularly clean and disinfect surfaces, equipment and other elements of the workplace;
- Provide adequate means to employees for prevention and control of COVID-19, such as: (i) wipes and cleaning products so that employees can clean their desks prior to and on completion of their work; (ii) hand gel, soap and clean washing facilities and (iii) personal protective equipment, i.e., gloves and face masks;
- Install signs to remind employees to keep workplaces clean and disinfect their hands regularly;
- Provide training on how to communicate with customers and what to do if the customers refuse to adhere;
- Limit food handling and sharing in the workplace;
- Consider cancelling non-essential meetings or hold meetings via video conferencing / phone call and instruct employees to reduce the meeting attendees and only have meetings in small groups (2-3 people);
- Ask employees experiencing any cold or flu symptoms to stay or work at home and declare medical information;
- Conduct remote recruitment by online assessments, conducting video interviews, etc.; and
- Consider issuing COVID-19 guidance handbooks for the workplace and training employees in new rules.

These prevention measures will help employers to ensure their obligation to keep workplace safety requirements. Accordingly, enterprises can begin the process of restoring operations smoothly and prevent disruption of business due to COVID-19 in the future.

On building and operating golf courses

On 27 April 2020, the Government promulgated Decree No. 52/2020/ND-CP on investment in construction and commercial operation of golf courses ("**Decree 52**").

Golf course projects will be managed as a conditional business line instead of as previously categorized under planning management (as set out under Decision No. 1946/QD-TTg dated 26 November 2009 on approving the planning on Vietnam's golf courses until 2020 and Decision No. 795/QD-TTg dated 25 May 2014 on amendment of planning on Vietnam's golf courses until 2020). The change from planning management enables investors to explore available land areas and build if they satisfy the conditions set out in Decree 52.

Conditions applicable for investors to implement golf course projects

To implement a golf course project, an investor must satisfy the following conditions:

- (a) The investors must have financial capacity and satisfy the conditions on land lease and permission to convert land use purpose for implementing a golf course project in accordance

- with the law on land;
- (b) The investor must pay an escrow deposit to guarantee contractual performance (if required) in accordance with the law on investment;
 - (c) The investor must put in place solutions and plan(s) to provide assistance for resettlement, and to provide training and appropriate employment for current land users of the area proposed for the golf project and for other workers in the locality; and
 - (d) The investor must ensure the necessary requirements and conditions on transport, electricity and water infrastructure; on waste water treatment and on environmental protection.

Conditions applicable for the building and extension of golf courses and auxiliary works serving commercial operation of the golf courses

Decree 52 provides requirements for the maximum area, construction density and construction time for the building and extension of golf courses and auxiliary works as follows:

- (a) The area of a standard golf course (18 holes) must not exceed 90 hectares (on average, not more than 5 hectares per hole);
- (b) The area of a golf course project being built for the first time must not exceed 270 hectares (equivalent to 54 holes);
- (c) Investors must complete construction of the golf course within 36 months (for an 18-hole course) or within 48 months (for any other course) as from the date of land lease decision; and
- (d) The total construction density of an area for the construction of a golf course and for auxiliary works serving commercial operation of the golf course must comply with the national technical regulations on construction master planning issued by the Ministry of Construction.

Decree 52 also requires that investors may only extend their golf course after the completion of construction, its commissioning for use, satisfaction of the conditions regarding location and land use rights, and selection of investors for the golf course project.

Conditions applicable for land use in order to build a golf course

The following types of land are not permitted to be used for construction of golf courses and auxiliary works:

- (a) Land used for purposes of defense and security;
- (b) Forest land and rice cultivation land unless otherwise prescribed in Decree 52;
- (c) Land within areas with constituent elements being a classified historical site or classified scenic spot, or a cultural site on the inventory list of a provincial People's Committee unless otherwise prescribed in Decree 52;
- (d) Land for construction of industrial zones, industrial clusters, concentrated information technology and hi-tech zones; and
- (e) Protected land surrounding dikes and coastal corridors in accordance with the Law on Dikes, Law on Natural Resources, Environment and Islands.

Decree 52 takes effect on 15 June 2020.

On foreign cooperation and investment in the education sector

On 18 March 2020, the Ministry of Education and Training promulgated Circular No. 04/2020/TT-BGDDT providing detailed regulations on Decree No. 86/2018/ND-CP dated 6 June 2018 (“**Decree 86**”) on foreign cooperation and investment in the education sector (“**Circular 04**”). Below are key contents of Circular 04:

Integrated education programs

Circular 04 requires an integrated education program be subject to regulations regarding entities permitted to conduct integrated education; educational program, material facilities and teaching staff; and assessment of study results, testing, exams, recognition of graduation and award of graduation certificates prescribed in Decree 86. Circular 04 sets out principles for integrated education programs as follows:

- (a) The integrated education program must be scientific, reasonable, feasible and suitable for the implementation conditions of Vietnam;
- (b) The contents and duration of an integrated program must be appropriate for the physiology of the students’ age and must conform with the fine traditions and customs of Vietnam; there must be no social prejudice regarding gender, ethnicity, religion or social status;
- (c) An integrated program must be oriented towards educational methods and forms and towards evaluation of educational results, and provide the basis for formulating the schools’ education plan; and
- (d) An integrated program must specify implementation conditions comprising organizing and managing implementation of the program, managerial staff, lecturers and other staff, and material facilities and educational equipment/devices.

In addition to the above principles, Circular 04 also provides conditions on integrated programs for pre-school and general educational school and procedures for evaluation and approval of the integrated program.

Compulsory curriculum which must be taught to Vietnamese students studying at a pre-school, general educational school or university with foreign invested capital

Students being Vietnamese citizens studying a foreign educational curriculum at a pre-school or school with foreign invested capital (“**FOC**”), must study educational content being development of the Vietnamese language, a Vietnamese language program and a Vietnamese study program with the study contents and duration as follows:

- (a) For children at a pre-school, they must study the Vietnamese language not less than twice per week with 25 to 35 minutes each time;
- (b) For primary school students, they must study a Vietnamese language program not less than 140 minutes per week (in all school grades) and a Vietnamese study program not less than

- 70 minutes per week (for students of Grade 4 and 5);
- (c) For middle level and high school students (in all classes), they must study a Vietnamese study program not less than 90 minutes per week; and
- (d) For Vietnamese students studying in a degree-granting program at a university with FOC, they must study compulsory subjects in accordance with the general regulations applicable to universities of Vietnam.

Circular 04 came into effect 5 May 2020.

Measures of coercive judgment enforcement against commercial legal entities

The current Criminal Code specifies certain crimes for which a “commercial legal entity”² may be held responsible. Any sentenced commercial legal entity who fails to serve or has incompletely served the effective court judgment or decision shall be liable for a coercive judgment enforcement. The principles, measures and procedures for applying coercive judgment enforcement against commercial legal entities (“**Company**”) shall be governed by the newly-issued Decree No. 44/2020/ND-CP (“**Decree 44**”) dated 8 April 2020.

Decree 44 shall not govern the coercive judgment enforcement related to monetary fines and some certain judicial measures imposed on Companies as prescribed in the Criminal Code 2015.

Decree 44 takes effect from 1 June 2020.

Applicable rules for coercive judgment enforcement against Companies

- (a) Enforcement is only carried out after receipt of the written decisions from competent bodies of criminal judgment enforcement;
- (b) The decision to apply coercive enforcement measures must be made subject to the punishment and judicial measures imposed on Companies; contents, nature, level and conditions for execution of coercive enforcement decisions and the actual situation in the locality;
- (c) The time limit for application of a coercive enforcement measure must not exceed the sentence-serving duration;
- (d) A company may be subject to one or more enforcement measures concurrently; and
- (e) Legitimate rights and benefits of companies, relevant organizations and individuals are protected upon coercive judgment enforcement.

Measures of coercive judgment enforcement

² The Civil Code 2015 defines a “commercial legal entity” as a legal entity, including enterprises and other economic organizations, having the main objective of seeking profit to distribute to its members.

(a) Account freeze

Upon a proper decision to freeze an account the credit institutions, state treasuries, securities companies and Vietnam Securities Depository where the Company opened their account shall be responsible to freeze / block the account. The deduction of account balance and transfer of such to the competent criminal judgment enforcement body can be requested to realize the judicial measure. Once the company has completely served with the court's judgment or decision or the account balance has been deducted as request, the competent enforcement agency shall terminate the account freeze.

(b) Distraint of assets of which value is equivalent to the sum to guarantee the execution of judicial measures ("property distraint")

Decree 44 governs in details the provisions on distraintment of specific assets, such as mortgaged assets, equity stake, transport vehicles, intellectual rights and land use rights, etc. Upon a proper decision to distraint assets, the Company's assets which are not listed as those not allowed to be distrainted shall be seized, preserved and valued. Value of distrainted assets sold in the form of auction shall be deducted to the amount used for enforcing judicial measures and coercive enforcement costs. The buyer's ownership of the distrainted assets shall be legally recognized and protected.

(c) Temporary seizure of records, documents or devices containing electronic data; temporary seizure or withdrawal of seals of commercial legal entities

Only records, documents or devices containing electronic data related to the business operation of the concerned company may be temporarily seized. The company's seal shall be withdrawn in case the coercive enforcement serves the court's decision of permanent shutdown.

The commercial legal entity must bear all expenses incurred in coercive judgment enforcement.

Financial relief from the Government given to Covid-19 affected employees and employers

On 9 April 2020, the Government of Vietnam issued Resolution No. 42/NQ-CP on financial bailout to support citizens who are suffering hardships due to the COVID-19 pandemic ("**Resolution 42**").

Under Resolution 42, financial support will be given to employees and employers suffering difficulties as follows:

- (a) VND1,800,000 per month will be given to employees working under labor contracts who have come to an agreement with their employers to suspend their contracts or take unpaid leave for at least one month. The period for the support will be calculated from 1 April 2020, but shall not exceed three months.

- (b) VND1,000,000 per month will be given to (i) employees who have their labor contracts terminated and are ineligible for unemployment allowances, and (ii) employees who have no labor contract and lose jobs. The period for support will not exceed three months, calculated from April to June 2020.
- (c) Employers in financial privation who have paid their employees at least 50% of the salaries in advance of work suspension, i.e., from April to June 2020, will be allowed to borrow money from the Vietnam Bank for Social Policies with zero interest to settle the outstanding salaries to the suspended employees. The term of the loans shall not exceed 12 months.
- (d) VND1,000,000 will be given to business households whose revenue is less than VND100 million per year and must temporarily suspend operations as from 1 April 2020.
- (e) VND500,000 will be given in lump-sum to people who are beneficiaries of the State incentive and social protection policies for the period from April to June 2020.
- (f) VND250,000 per month will be given in lump-sum to poor and near-poor households for the period from April to June 2020.
- (g) Other incentives: In case an employer is affected by the Covid-19 outbreak which results in a reduction of its workforce by 50% or more, both the employer and its employees will be permitted to suspend their contributions to the pension and survivor funds of the employees for a maximum of 12 months.

Resolution 42 took effect as of the date of issuance.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

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