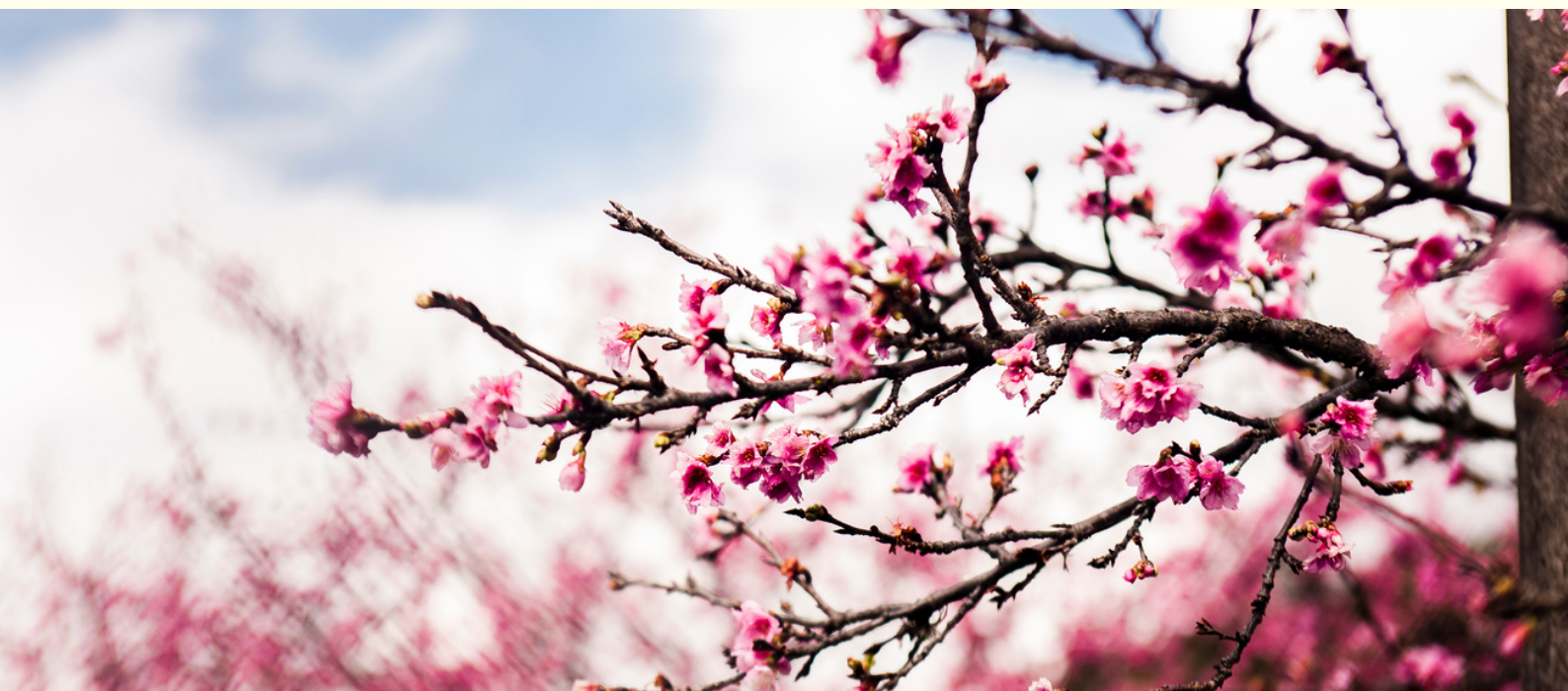


LEGAL NEWSLETTER



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Notable activity in January, 2022

On January 11, 2022, Mr. Nguyen Hung Quang, Managing Partner of NHQuang&Associates was invited to engage in the online policy dialogue on “Auction Mechanism for Sustainable Development of the Renewable Energy Market” held by independent think tank Vietnam Initiative for Energy Transition (VIETSE).

Participating the dialogue were energy experts, economists, policy specialists, lawyers, representatives of ERAVCTED - Electricity Regulatory Authority of Viet Nam (Ministry of Industry and Trade), and renewable energy project investors. Via the dialogue, speakers introduced their research results with multi-dimensional analyses on technical, socio-economic, and legal aspects related to the auction mechanism of renewable energy in Viet Nam market.

From policy and legal research perspective, Mr. Nguyen Hung Quang delivered his comments on the applicable policy, legal framework and law enforcement practice in Viet Nam relating to the employment of auction mechanism for renewables. Mr. Quang thereby drew out shortcomings and recommendations with the aim of improving the law on bidding for renewable energy projects and electricity auctions.

SOME NEW REGULATIONS ON REAL ESTATE BUSINESS ACTIVITIES

KIM ANH

On January 6, 2022, the Government issued Decree 02/2022/ND-CP providing details for the implementation of some articles of the Law on Real Estate Business (**Decree 02**), replacing Decree 76/2015/ND-CP (**Decree 76**). Some notable contents of this Decree are as follows:

Firstly, supplementing regulations on the obligation of real estate businesses to disclose information. One of the fundamental principles of real estate business under the Law on Real Estate Business 2014 is to be "conducted honestly, publicly and transparently". Based on this principle, Decree 02 stipulates that in addition to the obligation to publicize information about the real estate products put into market in Article 6 of the Law on Real Estate Business 2014, real estate businesses must also disclose information about their businesses (including name, head office address, contact phone number, names of legal representatives); information on mortgage of houses, construction works, real estate projects put into market (if any); information on the quantity and type of real estate products being traded, the quantity and type of real estate products sold, transferred, lease-purchased and the remaining quantity and types of products that are still being traded.

Secondly, amending and supplementing regulations on the mandatory application of real estate model contracts and on the change of model contract types. Decree 76 and Decree 02 both provide a number of real estate model contracts in their Appendix. However, while Decree 76 only stipulates that these model contracts "are for the parties' reference in the process of negotiating and signing a real estate contract", Decree 02 requests the parties to apply the model contracts in compliance with Article 6, Decree 02. Thus, the parties will have to apply the model contracts without modifying or supplementing the contract terms. At the same time, Decree 02 also provides separate model contracts based on the type of real estate instead of



transaction types as in Decree 76.

Thirdly, supplementing the Model Contract for purchase, sale and lease purchase of condotels, officetels. The model contract has a number of notable contents such as detailed provisions on "Shared ownership", "Separate ownership", "Maintenance expenses", "Warranty", "Features of the condotel/officetel purchased, sold/lease-purchased", "Rights and obligations of the parties", etc.

COMMENTS AND RECOMMENDATIONS

It is found that the new regulations of Decree 02 are issued with the aim of building a more information-transparent real estate market. In addition, the regulation on mandatory application of model contracts will create a remarkable shift to the way the parties enter into contracts in the current situation of real estate transactions where real estate project owners are less inclined to use statutory model contracts than their custom-made contracts, which in some cases are unfavorable to real estate buyers and users, especially controversial products such as condotels or officetels.

Real estate businesses need to publicize information within 6 months from March 1, 2022 (the time Decree 02 takes effect) to avoid interruption in their business activities. In addition, businesses also need to update and carefully study the terms of the Model Contracts issued under Decree 02 to ensure the legal validity of contracts and transactions with their customers.

DETERMINING THE STATUTE OF LIMITATIONS FOR COUNTERCLAIMS IN CIVIL PROCEDURES

HAI LINH

To overcome the obstacles in adjudication, on December 31, 2021, the Chief Justice of the Supreme People's Court issued Decision 594/QD-CA in 2021 on publication of precedents. Civil and criminal areas cover the 9 precedents published in this Decision. Among these precedents is Precedent 44/2021/AL on determining the statute of limitations for initiating lawsuits of counterclaims.

The precedent comes from Cassation Decision 10/2021/KDTM-GDT dated September 14, 2021 of the Superior People's Court in Ha Noi on the commercial case "Dispute on design consultancy contract", between H Joint Stock Company (plaintiff) (hereinafter referred to as Company H) with P Design and Construction Company Limited (defendant) (hereinafter referred to as Company P), in which Company P filed a counterclaim against Company H. Regarding the statute of limitations for the counterclaim, the Court of Appeal stated that the counterclaim was not limited by the statute of limitations for initiating a lawsuit. However, when conducting the cassation trial, the Economic Court of the Supreme People's Court stated that the Court of Appeal's judgment was incorrect, reasoning that pursuant to Civil Procedure Code 2004 and Civil Procedure Code 2015, a counterclaim is a request that is not included in the plaintiff's petition and can be resolved in an independent case; however, the settlement of counterclaims in the same case with the plaintiff's petition helps to settle the case more accurate and faster. Therefore, it is necessary to determine that a counterclaim is also a petition to initiate a lawsuit, so it must comply with the provisions on the statute of limitations for initiating a lawsuit. Consequently, in the case that there is a counterclaim and a litigant in the case proposes to apply the statute of limitations for initiating a lawsuit, the first-instance court, the court of appeal must determine whether the statute of limitations for initiating a lawsuit of the counterclaim has expired or not in accordance with the laws.

COMMENTS AND RECOMMENDATIONS

Civil Procedure Code 2004 and Civil Procedure Code 2015 both have no clear regulation on the statute of limitations for counterclaims. Therefore, before promulgation of this precedent, there have been many different opinions and interpretations on whether or not the statute of limitations for counterclaims should be determined. One opinion states that counterclaims are also considered as lawsuit petitions; thus they must be applied with the same statute of limitations as that for lawsuit petitions. On the contrary, there is another point of view that counterclaims are always filed after lawsuit petitions, only when there is a petition to initiate a lawsuit will a counterclaim arise. Additionally, no provision in Article 200 of Civil Procedure Code 2015 on the defendant's right to request counterclaim stipulates that counterclaims should be applied with the statute of limitations for petitions. Thus, the promulgation of Precedent 44/2021/AL has solved the problem and unified the point of views of the courts on the statute of limitations for counterclaims.

Enterprises should study and update the court's opinions on adjudication in the precedents issued under Decision 594/QD-CA to ensure their legitimate rights and interests and minimize unnecessary legal risks.



SOME NOTABLE PROVISIONS IN THE DRAFT LAW ON PROTECTION OF CONSUMERS' RIGHTS (AMENDED)

KHANH QUYNH

After almost 11 years of implementation, several provisions of the Law on Protection of Consumers' Rights 2010 have been no longer consistent with the reality, causing many problems and inadequacies as many new Laws related to transactions between consumers and business organizations and individuals have been promulgated or amended; besides, the economic and social development as well as the Covid-19 pandemic have created and promoted many new forms of business and consumption, especially transactions in digital environment, cross-border transactions, shared services on digital technology platform, etc. Therefore, in order to ensure the interests of consumers in the changing economic and social context, the Draft Law on Protection of Consumers' Rights (**the Draft Law**) has been drafted and is now in the process of collecting opinions. In this Legal Newsletter of January 2022, NHQuang&Associates would like to review some key points of the Draft Law (Draft 2) posted on the Government Portal.

Regulations on responsibilities of business organizations and individuals towards consumers

In addition to the stipulations on main responsibilities of business organizations and individuals in ensuring the safety and quality of products and services provided to consumers, the Draft Law has made a notable change in the regulations on the responsibility to protect personal information of consumers.

Currently, in the Law on Protection of Consumers' Rights 2010, the stipulations on the responsibilities of business individuals and organizations in protecting consumer information are not specific, only focus on the obligations of ensuring information safety and confidentiality when engaging in transactions, utilizing goods and services, performing other obligations such as



informing, ensuring the safety and accuracy when collecting, exploiting and transferring consumers' information. The Draft Law has detailed the issues related to personal information privacy through particular articles from Article 7 to Article 12. Specifically, the Draft Law stipulates the protection responsibility and policy; notification when collecting information; use of information; safety and security assurance; the check, update, adjustment, transference or cancellation of consumers' personal information. In addition, the obligation of protecting consumers' personal information is not only limited to the scope of the Law on Consumer Protection as before, but also subject to other legal provisions related to the protection of personal information.

The changes in the Draft Law are consistent with the appearance of new forms of business and consumption as well as the general spirit of relevant legal documents such as the Law on Cyberinformation Security, the Draft Decree on personal data protection. This shall contribute to protect the interests of consumers in the context where science, technology, and economy develop rapidly. However, on the side of business individuals and organizations, especially the third parties engaging in transactions, they will face more challenges and responsibilities in building a professional system to protect consumers' personal information as well as in clearly defining the scope and responsibilities of the parties engaging in transactions for information security.

Regulations on prohibited practices for intermediary platforms

In addition to complying with the prohibitions for business organizations and individuals generally under Clause 1, Article 16 of the Draft Law, intermediary platforms should pay more attention to

the prohibited acts that the Draft Law specifically regulates for them, including:

(i) Performing acts to force or prevent consumers from registering or using other online intermediary platforms as a mandatory condition for using the service.

(ii) Limiting consumers' choices through unreasonable prioritization of product selection among organizations and individuals providing business on the platform; using measures to prevent

from displaying or dishonestly displaying the results of customers' feedbacks and evaluation about products and services; about organizations and individuals doing business on the platform.

(iii) Preventing consumers from removing pre-installed software and applications or forcing users to install software and applications with online intermediary platform services.



In the case where organizations violate the laws on protection of consumers' interests, depending on the nature and seriousness of their violations, they will be administratively sanctioned accordingly. If they cause damage, they must pay compensation in accordance with legal provisions. In the current context of digital technology development, purchasing and selling on intermediary platforms is highly increasing, and there are many potential risks when the subject directly transacting with the customers and the seller are different parties. Therefore, prescribing the prohibited acts for intermediary platforms can contribute to raising awareness of these organizations about protecting legitimate interests of consumers, since it is the business ethics of any subject participating in commercial transactions, not the sole responsibility of organizations and individuals trading goods and services.

Regulations on selection of dispute settlement methods

In Article 52 stipulating the methods of settling disputes between consumers and business organizations and individuals, the Draft Law adds Clause 3: "In the cases where it is required by law, consumers and business organizations, individuals can choose to settle disputes directly or online".

The above addition aims to meet practical requirements, simultaneously, it is in line with the trend of online dispute resolution strongly applied in the development period of information technology and international trade, especially in the context of the unpredictable Covid-19 pandemic. Such provision also allows the involved parties to apply appropriate methods to settle disputes, especially in cases of geographical distance or pandemic, health problem, etc. that results in the inability to attend the trial in person. Moreover, the National Assembly has also passed a Resolution on the organization of online trial, hence the addition of this content to the Draft Law also contributes to approach and conform to the reality and development trend of protecting consumers' interests domestically and internationally.

Currently, the Draft Law is still undergoing consultation and may have other significant amendments. Enterprises should frequently update the relevant information and follow up the drafting process to ensure that their activities as well as policies comply with provisions of laws. We shall continue with further update once the Draft Law officially takes effect.

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