

LEGAL NEWSLETTER



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INTRODUCTION TO THE MANUAL ON EVALUATION OF POLICY IMPACT ASSESSMENT REPORTS

The “**Manual on Evaluation of Policy Impact Assessment Reports**” (hereinafter referred to as “Manual”) is the guideline developed by Ministry of Justice with the technical support of the ASEAN Economic Reform programme of Foreign, Commonwealth & Development Office (FCDO) represented by the British Embassy, and Department for Business, Energy and Industrial Strategy (BEIS) in order to support the evaluation of the Policy Impact Assessment (PIA) Reports.

The Manual focuses on developing a system of evaluation criteria of the PIA Reports to assist officials of the Ministry of Justice in reviewing and evaluating the quality of the PIA Reports in the appraisal process of the proposal for legal normative document formulation and legal normative document drafts. Other agencies responsible for the evaluation of PIA Reports (including legal affair organisations under the ministerial, ministerial-level agencies and Departments of Justice) may also use the Manual in the appraisal process. Other subjects such as researchers, lecturers can also use this Manual for professional purposes, if appropriate.

Mr. Nguyen Hung Quang – Managing Partner of NHQuang&Associates is proud to be one of the consultants in contributing this document.

If you are interested in the Manual, please visit the link:
<https://moj.gov.vn/qt/tintuc/Pages/thong-tin-khac.aspx?ItemID=3568>

SOME NEW POINTS OF THE DECREE GUIDING CYBERSECURITY LAW

HUNG THINH

On August 15, 2022, the Government issued Decree 53/2022/ND-CP elaborating a number of articles of the Law on Cybersecurity 2018 of Viet Nam (**Decree 53**). Decree 53 includes 2 groups of regulations namely: (i) Regulations applicable to state agencies, addressing such issues as the order and procedure for applying cybersecurity protection measures; coordination between relevant functional Ministries and central authorities in appraising, assessing, inspecting, supervising, responding to, and remedying cybersecurity incidents regarding significant national security information system; and (ii) Regulations applicable to domestic and foreign enterprises: domestic enterprises' data storage obligation; foreign enterprises' obligation to establish branches or representative offices and store data in Viet Nam. In this article, NHQuang will focus on introducing the group of regulations applicable to enterprises.

Firstly, regulations on the kinds of data to be stored in Viet Nam, including:

(i) Data on personal information of service users in Viet Nam (data on information in the form of symbols, letters, numbers, images, sounds, or equivalences to identify an individual);

(ii) Data created by service users in Viet Nam (data on information in the form of symbols, letters, numbers, images, sounds, or equivalences reflecting the process of participating, operating, and using cyberspace of service users and information on devices and network services used for connection with cyberspace in the territory of the Socialist Republic of Viet Nam), including: account names, service use time, information on credit cards, emails, IP addresses of the last login or logout session, and registered phone numbers in association with accounts or data;

(iii) Data on relationships of service users in Viet Nam (data on information in the form of symbols, letters, numbers, images, sounds, or equivalences reflecting and identifying relationships of service users with other people in cyberspace): friends and groups that such users have connected or interacted with.



Secondly, regulations on the entities who are obliged to store data, establish branches or representative offices in Viet Nam:

(i) Domestic enterprises providing telecommunications, internet and value-added services in Viet Nam's cyberspace that collect, exploit, analyze or process data on personal information, relationships of their service users or data created by their service users in Viet Nam shall store such data in Viet Nam.

(ii) Foreign enterprises conducting business in Viet Nam in one of the fields as stipulated in Point a Clause 3, Article 26 of Decree 53, for example: telecommunications services; storage and sharing of data in cyberspace; provision of national or international domain names for service users in Viet Nam; e-commerce; online payment; payment intermediaries; connection and transportation services in cyberspace; social media and social communication; etc. shall store data and establish branches or representative offices in Viet Nam in the case where services provided by such foreign enterprises are used to serve violations of cybersecurity law, which has been notified and requested for cooperation, prevention, investigation, and handling in writing by the Department of Cyber Security and Hi-tech Crime Prevention of the Ministry of Public Security of Viet Nam but the doers fail to comply, incompletely comply or prevent, obstruct, disable, or nullify the effect of cybersecurity protection measures performed by cybersecurity protection forces.

Thirdly, regulations on the obligation to store data, establish branches or representative offices in Viet Nam of domestic and foreign enterprises:

- The form of data storage in Viet Nam shall be decided by enterprises;
- The time for data storage starts when enterprises receive the request for data storage until the end of the time prescribed in such request. The mandatory storage time is 24 months;
- The time for establishment of branches or

- representative offices in Viet Nam in accordance with Article 26, Decree 53 shall start when the enterprises receive the request for establishment of branches or representative offices in Viet Nam until such enterprises terminate their operation in Viet Nam or the prescribed service is no longer available in Viet Nam;
- The order and procedures to request for data storage, establishment of foreign enterprises' branches or representative offices in Viet Nam:
 - (i)** The Minister of Public Security of Viet Nam shall issue a decision requesting for data storage and establishment of branches or representative offices in Viet Nam;
 - (ii)** The Department of Cyber Security and Hi-tech Crime Prevention of the Ministry of Public Security of Viet Nam shall provide notifications and guidelines, monitor, supervise, and urge enterprises to implement the request for data storage and establishment of branches or representative offices in Viet Nam;
 - (iii)** Within 12 months from the date of the decision by the Minister of Public Security of Viet Nam, foreign enterprises shall complete the data storage and establishment of branches or representative offices in Viet Nam.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 53 aims to provide more specific guidance for the obligation to store data, and establish branches or representative offices in Viet Nam as stipulated in the Law on Cybersecurity 2018. Decree 53 comes into force as of October 1, 2022. Enterprises need to update and study the provisions of this Decree to determine if the scope of their services is subject to the cases requested to store data, establish branches or representative offices in Viet Nam then develop a plan to implement such requirements accordingly. At the same time, they shall perform the responsibilities for ensuring information security in cyberspace as specified in Clause 2, Article 26 of the Law on Cybersecurity 2018, ensuring compliance with legal obligations. It should also be noted that, according to the Draft Decree on penalties for administrative violations against regulations on cybersecurity, the act of "Failing to store data, establish branches or representative offices in Viet Nam as prescribed in Clause 3 Article 26 of the Law on Cybersecurity" may result in a fine of between 80 and 100 million Viet Nam dong and withdrawal of business license in Vietnamese market.

NEW CONTENTS OF THE CIRCULAR GUIDING COMPULSORY INSURANCE IN CONSTRUCTION INVESTMENT

TUE DANG

On August 11, 2022, the Ministry of Finance promulgated Circular 50/2022/TT-BTC guiding Decree 119/2015/ND-CP on compulsory insurance in construction investment and Decree 20/2022/ND-CP amending Decree 119/2015/ND-CP regulating compulsory insurance in construction investment (**Circular 50**). This Circular takes effect from October 1, 2022 and replaces Circular 329/2016/TT-BTC guiding the implementation of Decree 119/2015/ND-CP regulating compulsory insurance in construction investment activities (**Circular 329**). Here are some remarkable contents of Circular 50:

Firstly, amending the provisions on exclusions of insurance liability. Circular 50 revises and restructures the cases of general and specific insurance liability exclusions for each type of compulsory insurance in construction activities as follows:

- Circular 50 stipulates **7 general insurance liability exclusions** including:
 - i.** Loss arising from wars, riots, strikes, acts of hostile forces, rebellions, malicious acts on behalf of or in connection with political organizations, confiscation, escheat, requisition, expropriation or destruction or damage by order of a competent governmental authority;
 - ii.** Loss arising from acts of terrorism;
 - iii.** Loss arising from nuclear reaction, nuclear radiation, radioactive contamination;
 - iv.** Loss arising from the willful violation act of the law of the policy owner or the insured;
 - v.** Loss arising in the event that the policy owner does not have an insurable interest;
 - vi.** Loss arising from cessation of construction work or loss resulting from such cessation construction work (whether partial or complete cessation of construction work); and
 - vii.** Loss to data, software and computer programs.



Previously, Circular 329/2016/TT-BTC classified **insurance liability exclusion into 5 groups** including: (i) loss arising from willful acts, (ii) non-random loss, (iii) loss that cannot be quantified as an amount of money, (iv) catastrophic loss, and (v) loss incurred in the case that the policy holder has no insurable interest. Except for the case of "Loss arising in the case where the policy holder has no insurable interest", Circular 50 has a different classification from Circular 329 by listing the detailed exclusions of insurance liability instead of classifying them into 5 insurance liability exclusion groups as in Circular 329.

- Circular 50 details the individual exclusions of liability insurance for each type of compulsory insurance in construction activities. Accordingly, in addition to the application of general insurance liability exclusions as mentioned above, each insurance type will have its individual exclusions in accordance with its characteristics:
 - *Compulsory insurance of works during construction period* excludes insurance liability in some cases such as: loss arising due to the consulting contractor's design faults for construction works; such phenomenon as corrosion, abrasion, oxidation; decay that takes place under normal temperature and pressure conditions, etc.;
 - *Compulsory professional liability insurance for construction investment consultancy* excludes insurance liability in some cases such as: loss due to the consulting contractor's intentional selection of methods of construction, calculation, measurement, design, use of untested materials, loss caused by mold, related to asbestos or any material containing asbestos, loss arising from infringement of intellectual property rights, etc.;

- *Compulsory insurance for construction workers on site* excludes insurance liability in case of loss related to asbestos or any material containing asbestos;

- *Compulsory third-party civil liability insurance* excludes insurance liability in some cases such as: loss arising from pollution or contamination; loss to property on the ground, health or life caused by displacement or weakening of load-bearing parts and geology of works; loss resulted from an accident caused by motor vehicle or vessel, barge or aircraft for which civil liability insurance of the vehicle owner to a third party has been covered, etc.

Secondly, amending and supplementing several regulations on fees, principles of compulsory civil liability insurance compensation for third party, and parties' responsibilities when a third-party claim arises, specifically:

- Amending the regulations on premiums of compulsory civil liability insurance for third party. Accordingly, this fee equals 5% of compulsory insurance premium for works during the construction period, instead of basing on the premium schedule actively developed by the insurance company as specified in Circular 329. Based on the risk level of the subject matter insured, the insurance company may increase or decrease the premium by up to 25%.
- Supplementing the principle of insurance compensation related to the compensation amount paid to policy holders and the coordination mechanism in settlement of insurance claims. When a third party suffers non-contractual damage in terms of health, life, property directly arising during construction process under the insurance liability, the insurance company will be responsible for paying the policy holder the compensation for health/life and property/accident damage and related legal costs (if any).
- Supplementing the regulations on policy holders and insurance companies' liabilities when there is a third-party claim, in which the policy holder and the insurance company are obliged to coordinate as follows:
 - The policy holder (i) immediately notifies the insurance company by means of communication; then notifies the insurance company in writing within 14 days from the date of receipt of the third party's claim, (ii) takes all measures within its capacity to limit the losses at the lowest

level, (iii) provides the insurance company with the insurance claim file as specified in Article 34 of Circular 50 and facilitates the insurance company in verifying such documents, (iv) carries out, coordinates, permits the insurance company to take the necessary actions and measures or as required by the insurance company to protect the insurance company's interests after paying the damages under the insurance policy.

- The insurance company (i) assesses the damage in accordance with the law and makes a survey report of the cause and extent of the damage, (ii) guides, coordinates with the policy holder and other relevant agencies, organizations and individuals to collect all documents to prepare the claim file, (ii) coordinate with the policy holder to settle the third party's claim under the insurance liability scope when the insured event occurs, and (iv) issues a written notice of insurance compensation if the insurance claim is accepted or a written explanation of the reasons for refusal of the insurance claim.

Thirdly, stipulating that the payment of compulsory insurance premiums will comply with the provisions of Circular 50/2017/TT-BTC instead of the payment deadlines/procedures in Circular 329/2016/TT-BTC. With regard to (i) insurance contracts for construction works and (ii) civil liability insurance contracts for third parties under construction investment projects specified in Decree 50/2021/ND-CP, the insurance company and policy holder shall agree on the time limit for premium payment stated in the insurance contract, being not later than the payment schedule of the construction contract. In no event shall the premium payment term exceed the period of insurance.



Comments and recommendations

Circular 50 is promulgated to (i) overcome some difficulties when applying the law in insurance (such as stipulating general exclusions and specific exclusions for each type of compulsory insurance liability in construction investment), (ii) ensure the consistency with the provisions of other insurance-related legal documents (i.e. stipulating that insurance premium payment is implemented in accordance with Circular 50/2017/TT-BTC), (iii) ensure that the regulations on insurance premium payment are consistent with the actual insurance implementation in construction works using public investment capital, state-owned capital out of public investment and construction contracts between PPP project enterprises and construction contractors implementing bidding packages under public-private partnership investment projects. Enterprises should pay attention to update and study the provisions of Circular 50 to ensure the implementation of compulsory insurance-related activities in construction investment in accordance with the law.

NOTABLE CONTENTS OF THE ORDINANCE ON SANCTIONS OF ADMINISTRATIVE VIOLATIONS FOR ACTS OF OBSTRUCTING PROCEDURAL ACTIVITIES

HAI LINH

To create a legal basis to strictly handle the acts that obstruct procedural activities of competent agencies and persons, on August 18, 2022, the National Assembly Standing Committee promulgated the Ordinance on sanctions of administrative violations for acts of obstructing procedural activities (the **Ordinance**). The Ordinance regulates acts of obstructing procedural activities subject to sanctions for administrative violations; forms and levels of penalties; remedial measures; measures to prevent and ensure the handling of administrative violations; competence, procedures in sanctioning, enforcement of sanctioning decisions and coercive enforcement of decisions on sanctioning administrative violations for acts of obstructing procedural activities. It should be noted that the penalties specified in the Ordinance is applicable to individuals, the penalties for organizations with similar violations will double the ones for individuals. In this Legal Newsletter, NHQuang&Associates will introduce some notable contents of the Ordinance, which focuses on procedural obstructing acts to be sanctioned in criminal, civil, administrative areas.

First, stipulating acts that obstruct criminal proceedings. In criminal procedures, the Ordinance stipulates **7** acts which are considered to obstruct criminal procedures, including:

- (i) Acts of denouncing or reporting crimes untruthfully;
- (ii) Acts of disclosing investigation confidentiality;
- (iii) Acts of violating regulations on attendance under summons;
- (iv) Acts of obstructing representatives of agencies, organizations, or individuals from participating in



proceedings;

- (v) Acts of obstructing evidence verification and collection;
- (vi) Acts of preventing the issuance, delivery, receipt, notification, or failure to perform the responsibility to issue, deliver, transfer, send, post or notify procedural documents;
- (vii) Acts of offending the honor, dignity, reputation, or health of procedure-conducting persons.

Depending on the subject, nature and consequences of the acts, individual offenders shall be subject to a warning or a fine from 100,000 Viet Nam dong to a maximum of 40 million Viet Nam dong. For example, the act of untruthful denouncing and false reporting is subject to 3 penalty frames: (i) a fine within the range of 1 million Viet Nam dong to 5 million Viet Nam dong for an individual's act of intentionally denouncing or reporting crimes untruthfully ; (ii) a fine ranging from 5 million Viet Nam dong to 15 million Viet Nam dong for an individual's acts such as intentionally denouncing or reporting crimes untruthfully, affecting the reputation of competent agencies and persons; (iii) a fine from 15 million Viet Nam dong to 30 million Viet Nam dong for lawyers who intentionally denouncing or reporting crimes untruthfully, affecting the reputation of competent agencies and persons. In addition, exhibits, means used for violations of the individual or organization denouncing or reporting untruthful crimes may be confiscated.

Second, stipulating acts of obstructing civil and administrative proceedings, the consideration, and decision to apply administrative handling measures at the people's courts, the consignment of drug addicts from full 12 years old to under 18 years old to

compulsory detoxification establishments. Specifically, there are **7** acts as follows:

- (i) Acts of willful absence under the summons of the Court;
- (ii) Acts of obstructing representatives of agencies, organizations, or persons from participating in proceedings at the Court's request;
- (iii) Acts of obstructing evidence verification and collection of competent agencies or persons;
- (iv) Acts of obstructing the issuance, delivery, receipt, service, or notification of procedural documents of the Court;
- (v) Acts of interfering the settlement of cases;
- (vi) Acts of offending, infringing the sanctity and prestige of the Court; offending the honor, dignity, reputation, infringing the health of competent persons or other persons performing their duties at the Court's request;
- (vii) Acts of spreading disinformation.

Individuals who commit the above violations, depending on the subjects, the level of danger and consequences of the acts caused, shall be subject to a warning or a fine with a minimum of 100,000 Viet Nam dong to a maximum of 40 million Viet Nam dong together with corresponding additional sanctions (if any). For example, individuals who threaten, assault, or abuse any dependence to obstruct representatives of agencies, organizations, or individuals from participating in procedural activities at the Court's request will be fined from 1 million Viet Nam dong to 5 million Viet Nam dong, and may be subject to the additional sanction of confiscating exhibits, means used for violations.

Third, stipulating acts of violating the court rules, rules of meetings, and other acts that obstruct procedural activities. Accordingly, the Ordinance specifically stipulates the following **2** groups of acts:

(i) *The group of acts violating the court rules* such as causing disorder behaviors in the courtroom (a fine of from 500,000 Viet Nam dong to 1 million Viet Nam dong for individuals, and application of additional penalties such as confiscating exhibits and means used for violations), failing to present summons, invitations and other relevant papers at the Court's despite being reminded (a fine from 500,000 Viet Nam dong to 1 million Viet Nam dong for individuals).

(ii) *The group of other acts obstructing procedural activities* including (i) Distributing documents or spreading account information to log in the online adjudication system and (ii) Destroying transmission lines and network gear, sound system (speakers, microphones, amplifiers, sound mixers), etc. These acts will be fined from 1 million Viet Nam dong to 7 million Viet Nam dong for individuals with additional penalty of confiscating exhibits, means used for violations.

COMMENTS AND RECOMMENDATIONS

The above regulation on the above-mentioned acts that obstruct the proceedings in criminal, civil and administrative fields is to overcome practical problems when the obstruction of procedural activities tends to increase, causing difficulties in case settlement, significantly affecting the quality of case settlement of competent agencies and persons, the solemnness and authority of the judiciary. Meanwhile, there used to be no systematic document on the sanctioning of acts obstructing procedural activities but only some general and unclear provisions on handling acts of obstructing procedural activities are regulated in the Criminal Procedure Code, the Civil Procedure Code, and the Law on Administrative Procedure. Types of acts, sanctioning forms, competence, order, and procedures for sanctioning acts obstructing procedural activities have not been specified, leading to many difficulties and obstacles in sanctioning violations. The promulgation of a unified and detailed legal document shall create a legal basis for strictly handling acts that obstruct procedural activities of competent agencies and persons; preventing potential violations. The Ordinance takes effect from September 1, 2022. Individuals and organizations should update and research the provisions of the Ordinance to ensure proper performance of obligations during proceedings and avoid unnecessary legal risks.

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