

LEGAL NEWSLETTER



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Notable activity in October, 2022

On October 14, 2022, in Hoa Binh, the Office of the National Assembly (NA) in collaboration with the Standing NA Legal Committee, NA Economic Committee and the Hanns Seidel in Vietnam held the Workshop "Ensuring the consistency of the Draft Law on Land (Amendment) (the Draft Law) with relevant laws" with the participation of several representatives from relevant Ministries, Departments, and experts to discuss and contribute ideas for revising the Draft Law. The workshop emphasized that comprehensive amendment to the applicable Land Law is not only an event of particularly important political and legal significance but also a key legislative task in the law-and-ordinance-making program of the 15th National Assembly.

Attending the workshop, Mr. Nguyen Hung Quang, Managing Partner of NHQuang&Associates delivered a speech on the traffic-oriented development (TOD) model under the Land Law and related laws (i.e. the Law on Public – Private Partnership Investment, the Law on Bidding, the Law on Investment, the Law on Urban Planning).

Excerpt from the presentation by Lawyer Nguyen Hung Quang on National Assembly television from minute 1:45: <https://www.quochoitv.vn/dam-bao-tinh-thong-nhat-cua-du-thao-luat-dat-dai-sua-doi-voi-cac-luat-co-lien-quan?fbclid=IwAR2rzgY8-pO3K1BxBK9szY1cymL1wD4B3TOAs5AG5uOJGJkp0jvZw0gFKiM>

OUTSTANDING REGULATIONS ON REGISTRATION AND OPERATION MANAGEMENT OF FOREIGN NON-GOVERNMENTAL ORGANIZATIONS IN VIET NAM

QUYNH NHUNG

On August 31, 2022, Decree 58/2022/ND-CP (**Decree 58**) was issued by the Government on the registration and operation management of foreign non-governmental organizations (Hereinafter referred to as **INGOs**) in Viet Nam. This Decree replaces Decree 12/2012/ND-CP (**Decree 12**) and will take effect from November 1, 2022. Here are some of the new highlights:

Firstly, abolishing the form of Project Office of INGOs in Viet Nam. Previously, Decree 12 provided three forms of registration for INGOs operating in Viet Nam, including: (i) Operational Registration Certificate, (ii) Project Office Establishment Registration Certificate and (iii) Representative Office Establishment Registration Certificate. However, Decree 58 has removed the Project Office Establishment Registration Certificate. Accordingly, INGOs can only choose to register in one of two forms, namely Operational Registration Certificate or Representative Office Establishment Registration Certificate, depending on their scale and needs.

INGOs that have registered to operate under the form of a Project Office under Decree 12 in the past can still continue to amend, supplement and apply for reissuance of their Registration Certificate under Decree 12 until its expiration and consider converting to one of the two forms mentioned above afterward.

Secondly, amending and supplementing a number of regulations on the order and procedures for granting, renewing, amending and supplementing Registration Certificates. For example, Decree 58 has shortened the time limit for granting a Registration Certificate from 45 business days to 30 business days from the date when the full and valid application documents of INGOs is submitted; the time limit for supplementing, amending and re-granting a

Registration Certificate is reduced from 30 business days to 25 business days. At the same time, additional documents are required in composition of the application documents for a Registration Certificate such as the detailed statistics of programs and projects expected to be implemented in Viet Nam in the next 3-5 years and the application for Representative/Head of Office approval, as specified in Article 11 and 15 of the Decree.

Thirdly, clearly regulating cases of suspension and termination of INGOs' operations. Decree 12 only provided a general provision on cases in which a INGO with an operation registration certificate is partially or completely suspended, or must terminate its operation and has its registration certificate revoked under the Ministry of Foreign Affairs' decision. This regulation makes it difficult for competent state agencies to decide which sanction to apply for violations of INGOs. At the same time, this regulation also causes confusion for INGOs in understanding legal regulations and considering decisions from competent state agencies. In order to overcome those difficulties, Articles 18 and 19 of Decree 58 have clarified the cases of suspension or termination of operation of INGOs operating in Viet Nam. Specifically, INGOs shall be suspended from operation in the following cases: (i) Continuing to operate when the Registration Certificate expires; (ii) Failing to operate in the sectors or areas specified in the Registration Certificate; (iii) Using or notifying information on transaction account that is not the registered transaction account. 3 cases where INGOs are forced to terminate their operations and have their Registration Certificate withdrawn include: (i) Committing one of the prohibited acts specified in Article 5 of Decree 58; (ii) Having no activities in 12 consecutive months after obtaining the Registration Certificate; and (iii) Failing to remedy the violations mentioned in the decision on suspension of operation within 30 business days from the date of receipt of the decision.



Comments and recommendations

The promulgation of Decree 58 with specific regulations aims to improve the shortcomings of Decree 12 as well as to suit the current practical situation. However, the provisions of Decree 58 are also somewhat stricter in managing the activities of INGOs. Therefore, these organizations need to update and analyze new points in this Decree to ensure compliance with the law during their operation in Viet Nam.

NEW PROVISIONS ON OFFER AND TRADING OF PRIVATELY PLACED CORPORATE BONDS

THUY MAI

On September 16, 2022, the Government promulgated Decree 65/2022/ND-CP (**Decree 65**) amending and supplementing some articles of Decree 153/2020/ND-CP on offer and trading of privately placed corporate bonds in the domestic market and offer of corporate bonds to the international market (**Decree 153**). The following demonstrates several noteworthy contents in Decree 65:

Firstly, amending regulations on bond issuance purposes. Decree 65 has added "restructuring of corporate debts" as one of the purposes to issue privately placed corporate bonds, replacing the purpose of "increasing operating capital or restructure capital sources of issuing enterprises" in Decree 153.

Secondly, supplementing the principles for offering privately placed corporate bonds as follows:

- For bonds issued in the domestic market, enterprises may only change the terms and conditions of bonds specified in Article 6 of Decree 65 when satisfying the following provisions: (i) being approved by the competent authority of the issuing enterprises; and (ii) being approved by the number of bondholders representing at least 65% of the total outstanding bonds of the same type.
- Information on the change of terms and conditions of bonds must be disclosed as extraordinary information by the issuing enterprise in accordance with Article 22 of Decree 65.

Thirdly, changing par value of privately placed corporate bonds. Under Decree 153, the par value of privately placed corporate bonds is VND 100,000 or multiple of VND 100,000; however, under Decree 65, the par value of privately placed corporate bonds has increased to a par value of VND 100,000,000 or multiple of VND 100,000,000.



Fourthly, amending the bond distribution period of each privately placed corporate bond offering. In detail, in the case where an enterprise offers bonds in multiple offerings, the bond distribution period of each offering must not exceed 30 days from the date of information disclosure prior to the offering. The total period of multiple privately placed corporate bond offerings must not exceed 06 months from the issuance date of the first offering.

Fifthly, supplementing the cases of premature redemption of bonds as follows:

- Premature redemption of bonds under agreements between the issuing enterprises and bondholders;
- Compulsory redemption at investors' request, including: (i) The issuing enterprises violate the law on offer and trading of corporate bonds under decisions of the competent authority, which cannot be remedied or the remedy is not approved by the number of bondholders representing at least 65% of the total outstanding bonds of the same type; (ii) The issuing enterprises violate bond issuance plans, which cannot be remedied or the remedy is not approved by the number of bondholders representing from at least 65% of the total number of outstanding bonds of the same type; and (iii) Other cases specified in the bond issuance plans (if any).

Sixthly, supplementing the responsibility of issuing enterprises in identifying professional securities investors, especially for individual professional securities investors. Accordingly, professional securities investors must meet the conditions on financial capacity or professional qualifications in securities as prescribed by the Law on Securities. At the same time, professional securities investors being individuals must ensure to hold a portfolio of securities listed and registered for trading with the

value of at least VND 2,000,000,000, which is determined by the daily average market value of the securities portfolio in at least 180 consecutive days prior to the date of determining the professional securities investor status.

The value of this securities portfolio does not include the value of loans for margin trading and the value of securities for redemption. The determination of individual professional securities investors is valid within 3 months from the date of confirmation.

In addition, issuing enterprises should note that the time for disclosing information on bond offering results has been shortened by Decree 65 from 10 days to 5 business days.

COMMENTS AND RECOMMENDATIONS

The issuance of Decree 65 with amendments and supplements related to information disclosure, verification of professional securities investors, etc., will contribute to the establishment of an organized corporate bond trading market and support the development of a transparent and sustainable corporate bond market, protecting the interests of both issuing enterprises and investors. Decree 65 takes effect from September 16, 2022. Enterprises and individuals involved in offering and trading privately placed corporate bonds need to pay attention to updating the provisions of Decree 65 and other relevant legal documents to carry out their relevant activities in accordance with the law.

SOME NEW POINTS RELATED TO BANK GUARANTEE

HAI LINH

Circular 11/2022/TT-NHNN regulating the bank guarantee (**Circular 11**) has been issued to replace Circular 07/2015/TT-NHNN stipulating the bank guarantee and Circular 13/2017/TT-NHNN amending and supplementing a number of articles of Circular 07/2015/TT-NHNN. Circular 11 will take effect from April 1, 2023. The following are some new points of Circular 11 that may affect the operation of enterprises:

Firstly, supplementing the form of electronic guarantee. Accordingly, customers and credit institutions, foreign bank branches can choose to carry out bank guarantee activities via electronic means. In case of identifying and verifying customer identification information via electronic means, the value of each guarantee commitment for institutional customers must not exceed 45 billion Viet Nam dong, except for some cases where: (i) customer identification information is authenticated by a competent state agency or electronically authenticated by an organization providing electronic authentication services in accordance with the laws on electronic identification and authentication; (ii) customer information and guaranteed obligations are the same as the information in the Customs e-payment portal or the national bidding network system; (iii) customers use legitimate digital signatures as prescribed by law when applying for guarantee grant or signing guarantee agreements with credit institutions, foreign bank branches.

Secondly, providing specific guidance on cases where it is permitted to use a foreign language as the language of a guarantee agreement or guarantee commitment, including:

- (i) Guarantee transactions in cases of civil relations involving foreign elements as prescribed in the Civil Code;
- (ii) Guaranteed obligations arising when implementing projects funded from international financial institutions (The list of international financial institutions is specified in the regulations of the State Bank of Viet Nam);
- (iii) Guaranteed obligations arising when customers participate in international bidding packages.

It should be noted that in the case of using foreign languages, the Vietnamese translation version of documents or data messages *can be notarized or authenticated, enclosed with the foreign language version* in addition to obtaining the certification by the lawful representative of credit institutions, foreign bank branches.

Thirdly, amending and supplementing a number of specific regulations when conducting guarantee activities, including:

- (i) Supplementing the regulation not to apply bank guarantee to bond payment obligation of issuing enterprises for the purpose of: restructuring debts of the issuing enterprises; contributing capital, buying shares at other enterprises; and increasing the size of working capital;
- (ii) Specifying that in the case where no applicable law is specified in a guarantee agreement, guarantee commitment, it automatically means that the parties agree to apply Vietnamese law;
- (iii) Specifying that the termination of guarantee obligation in the case where the guarantee is canceled or replaced by another security interest shall comply with the agreement of the obligee and the guarantor, other related parties (if any);
- (iv) Supplementing the provision that an obligee could lodge a complaint against the guarantor or the party confirming guarantee within 5 business days after the date of receiving the refusal notice from the guarantor or the party confirming guarantee if the reasons for the parties' refusal to perform the guarantee obligations are not consistent with the conditions for performance of guarantee obligations in the guarantee commitment.



Comments and recommendations

Circular 11 is promulgated to complete the legal framework, ensuring the compliance with international practices as well as complying with relevant applicable legal provisions, overcoming shortcomings and meeting practical requirements. It should be noted that the agreements to grant guarantee and guarantee commitments signed and taking effect before the effective date of Circular 11 will continue to be performed according to the signed agreements and commitments until the guarantee obligations are terminated. Any amendment or supplement to the above-mentioned guarantee agreements, commitments could only be done if their contents are consistent with the provisions of Circular 11. Enterprises should update and research the provisions of Circular 11 for their possible engagement in bank guarantee in the future.

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