

# LEGAL NEWSLETTER



## IN THIS LEGAL NEWS LETTER

### NEW REGULATIONS ON PRIVATE PLACEMENT AND TRADING OF PRIVATELY PLACED CORPORATE BONDS IN DOMESTIC MARKET

Page 2

### SOME NEW REGULATIONS ON CONSTRUCTION CONTRACTS

Page 4

### SOME NEW REGULATIONS ON VALUE-ADDED TAX

Page 6

## *Notable activity in March, 2023*

On March 17, 2023, the Seminar "*International experience and lessons for Vietnam in implementing anti-corruption laws*" was co-organized by the Central Committee for Internal Affairs and Japan International Cooperation Agency (JICA) in Ha Noi. Attending the Seminar were representatives from the Central Party Committee's Office, leaders of various Internal Affairs Committees of Provincial Party Committees and a number of departments and units under the Central Committee for Internal Affairs with scientists and researchers in the field of law and justice.

The Seminar has recognized the summary of the speakers' inclusive research on the experience of implementing anti-corruption laws in typical countries such as Singapore, Japan, the United Kingdom, and China. The participants also discussed and assessed the current situation of such implementation in Viet Nam, recognizing the positive points as well as Viet Nam's high determination to fight against corruption and its progress; identifying available challenges; and delving into some solutions to enhance this work on the basis of lessons learnt from the above countries.

At the Seminar, Mr. Nguyen Hung Quang presented his study on the implementation of anti-corruption laws in Australia. Accordingly, Mr. Quang proposed to apply Australia's experience in the legal review, judgment publication and expansion of the subjects for judge appointment for study and application, strengthening judicial independence and limiting corrupt practices in Viet Nam.

# NEW REGULATIONS ON PRIVATE PLACEMENT AND TRADING OF PRIVATELY PLACED CORPORATE BONDS IN DOMESTIC MARKET

THANH MAI

On May 3, 2023, the Government issued Decree 08/2023/ND-CP (**Decree 08**) amending and supplementing Decree 153/2020/ND-CP (**Decree 153**) and Decree 65/2022/ND-CP (**Decree 65**) and suspending the effectiveness of a number of articles in Decree 65 related to private placement and trading of corporate bonds in domestic market and offering of corporate bonds in international market. Decree 08 comes into force from the time of issuance with some outstanding contents as follows:



*Firstly*, supplementing the method of payment by assets for bonds placed in the domestic market upon the due date. Accordingly, in the case where an issuer is unable to make full and due payment of bond principal/interests in Viet Nam Dong according to the issue plan disclosed to investors, the issuer may make an agreement with bondholders on payment of bond principal/interests *in assets* with the following principles: (i) The payment must comply with the provisions of the civil law and relevant laws (in respect of conditional business lines); (ii) The payment must be approved by bondholders; (iii) The issuer must make extra-ordinary information disclosure and assume full responsibility for the legal status of the assets used for paying bond principal/interests in accordance with regulations of law. Previously, Decree 153 and Decree 65 only allowed payment for bonds placed in the domestic market *in Viet Nam Dong*.

*Secondly*, allowing the issuer that issues bonds before the effective date of Decree 65 and has outstanding loans until the effective date of Decree 65 (September 16, 2022) *to change the terms and conditions of bonds*. Previously, Decree 65 did not allow the issuer issuing bonds before its effective date to change the term of bonds. Decree 08, however, allows such change but requires the compliance with the following principles:

- In respect of corporate bonds placed in the domestic market, the change in terms and conditions of bonds must be approved by the issuer's competent authority and the number of bondholders that represents at least 65% of total outstanding bonds of the same type; information about any change in terms and conditions of bonds must be disclosed by the issuer as extra-ordinary information according to Article 22, Decree 153 as amended and supplemented by Decree 65;
- The initial due date of bonds, as defined in the issue plan disclosed to investors, may be extended by up to 2 years;
- In the event that any bondholder does not accept the changes in terms and conditions of the bond, the issuer shall negotiate to ensure the investor's interests. If the bondholder refuses negotiation, the issuer must perform the issue plan disclosed to investors (even if the changes in terms and conditions of bonds have been accepted by the bondholders representing at least 65% of the total bonds).

*Thirdly*, suspending the effectiveness of a number of provisions on (i) Determination of professional investors that are individuals under Decree 153 and Decree 65; (ii) Time limits for distribution of bonds of each issuance; (iii) Reports on credit rating of issuers. Accordingly, these provisions will be suspended until the end of December 31, 2023.

## Comments and recommendations

The provisions of Decree 08 are believed to have positive impacts on the current economy, lessen liquidity pressure and reduce non-performing loans for enterprises. Issuers are entitled to use their assets for payment of bonds and are entitled to extend the bonds' due date up to 2 years. They are also entitled to negotiate with bondholders to change terms and conditions of the bonds placed. In addition, Decree 08 supports issuers with temporary suspension from credit ratings until the end of the year so that they can improve themselves and increase their own value. The issuers can take advantage of these provisions to change their financial structure, assets, and business strategies to recreate financial flows, meet liquidity for the avoidance of risk of insolvency and bankruptcy, and improve the level of credibility. Therefore, the issuers need to update and study the provisions of Decree 08 to ensure their compliance with the private placement and trading of bonds in the future.

# SOME NEW REGULATIONS ON CONSTRUCTION CONTRACTS

KIEU TRINH

On March 3, 2023, the Ministry of Construction issued Circular 02/2023/TT-BXD guiding some contents of construction contracts (**Circular 02**), replacing Circular 07/2016/TT-BXD, Circular 08/2016/TT-BXD, Circular 09/2016/TT-BXD and Circular 30/2016/TT-BXD. Circular 02 will take effect from April 20, 2023 with some notable contents as follows:

*Firstly*, regulating adjustments to unit prices and prices of construction contracts. Accordingly, the adjustments to unit prices of construction contracts shall comply with Article 38 Decree 37/2015/ND-CP amended and supplemented by clause 14 Article 1 Decree 50/2021/ND-CP. If the adjustments to prices of construction contracts result in amendment and supplement to contracts, appendices must be signed as the basis for adjusting the prices of such contracts. Simultaneously, investors shall be responsible for approving or submitting for approval of amended and incurred estimates pursuant to the regulations of management of work construction investment expenses and construction contracts so as to create the basis for signing appendices to such contracts. In addition, adjustments to prices of construction contracts shall comply with the methods for adjusting prices as prescribed in Appendix I, Circular 02.

*Secondly*, regulating adjustments to construction contract performance progress. Accordingly, the adjustments to construction contract performance progress shall comply with Article 39 Decree 37/2015/ND-CP. Specifically, in case of adjusting construction contract performance progress as a consequence of any earthquake, storm, flood, tsunami, conflagration, enemy-caused disaster or other force majeure events, contracting parties and contractors shall be responsible for evaluating the impacts of these force majeure events on the construction contract performance for determining and deciding adjustments accordingly. When there are requests for suspension from contract performance by competent authorities without the contracting parties' fault, some tasks must be performed as follows:

i. Contracting parties and contractors, on the basis of the competent authorities' requests, shall evaluate the



impacts on the construction contract performance to determine and reach agreements on adjusting the schedule of such contracts.

ii. If there are incurred expenses due to an extension of contract period, the contracting parties and contractors shall, based on the terms of their contracts and instructions by competent authorities regarding the events resulting in suspension from construction contract performance, reasonably determine and agree on the incurred expenses.

*Thirdly*, regulating some details of payment and temporary payment for construction contracts. Accordingly, in addition to the guidance on payments for construction contracts pursuant to Article 19 Decree 37/2015/ND-CP, Circular 02 also stipulates the payment in specific cases. For example, in the case that production of structural elements and semi-finished products with great values and building materials reserved by season is advanced for contract performance as prescribed in clause 7 Article 18 Decree 37/2015/ND-CP, upon payment, the value of the completed work volume which is inspected and accepted must be deducted by an amount corresponding to the value advanced under the contract. With regard to temporary payment, there are some specific cases of temporary payment as follows: (i) For contracts with adjusted unit prices, when the payment period is due but data on adjustments to unit prices and contract prices are not yet available, the unit prices stated in the contract shall be used for temporary payment; (ii) For products, works or tasks which are in progress or unfinished as agreed in the contract, temporary payment shall be made depending on the proportion of completion in particular case and detailed unit prices of such products, works and tasks as specified in the contract.

Besides, Circular 02 also addresses other contents such as components of the dossier for temporary payment of construction contracts, adjustments to

workload in construction contracts, instructions for using and applying contract templates. The Circular also promulgates some new templates of construction contracts, namely: (i) Consulting contract (applied to consulting contracts for preparation of feasibility study reports, construction surveys, construction designs and construction supervision), (ii) Construction commissioning contract and (iii) Engineering - Procurement - Construction contract (applied to lump-sum contracts), etc.

## **COMMENTS AND RECOMMENDATIONS**

The promulgation of Circular 02 aims at reducing the number of circulars guiding construction contracts, thereby facilitating the parties in the progress of researching, signing and implementing such contracts. For construction contracts signed and executed before the effective date of this Circular (April 20, 2023), the regulations on construction contracts applicable before that date shall apply. For construction contracts that are under negotiation and have not been signed, any provisions that are not conformable with this Circular should be reported to the competent persons making investment decision for consideration and decision on the principle of ensuring the quality, progress and efficiency of construction investment projects without any prejudice over legitimate rights and interests of the parties. In addition, contents of construction contracts in bidding invitations and documents of request which are approved but not issued must be adjusted to conform to the contents of this Circular. If these bidding invitations or documents of request have been issued, any adjustments to these contracts must be notified to all contractors who have purchased the bidding invitation dossier and documents of request to adjust such documents. Given the complexity and difficulty of formulating, signing and implementing construction contracts, organizations and individuals should take into consideration the provisions of Circular 02 and develop implementation plans in order to ensure compliance as soon as possible.

# SOME NEW REGULATIONS ON VALUE-ADDED TAX

HAI LINH

On February 28, 2023, Circular 13/2023/TT-BTC (**Circular 13**) was promulgated to guide Decree 49/2022/ND-CP amending Decree 209/2013/ND-CP guiding the Law on Value Added Tax which is amended under Decree 12/2015/ND-CP, Decree 100/2016/ND-CP and Decree 146/2017/ND-CP (**Decree 49**) and to amend Circular 80/2021/TT-BTC. Circular 13/2023/TT-BTC shall take effect from April 14, 2023 with some new points as follows:

*Firstly*, amending some regulations on Value Added Tax (**VAT**) in Circular 219/2013/TT-BTC amended and supplemented by Circular 26/2015/TT-BTC, Circular 130/2016/TT-BTC (**Circular 219**). Because Decree 49 amends a number of main contents in Decree 209/2013/ND-CP (which is one of the legal bases for promulgating Circular 219) such as (i) the land price permitted to be deducted for VAT calculation in real estate transfer; (ii) the VAT refund for investment projects, in order to ensure the consistency between relevant applicable regulations in Circular 219/2013/TT-BTC, Circular 13/2023/TT-BTC amends these regulations towards referring to the corresponding regulations in Decree 49, accordingly:

(i) Regarding land price permitted to be deducted for VAT calculation in real estate transfer: Circular 13 stipulates that the tax calculation shall comply with the provisions of clause 1, Article 1, Decree 49. Detailedly, Decree 49 regulates that in the case where business establishments acquire land use rights from organizations or individuals, the land price permitted to be deducted for VAT calculation is the land price at the time of transfer, exclusive of the infrastructure value. Business establishments may declare and credit the input VAT on infrastructure (if any). If it is impossible to separate the infrastructure value at the time of transfer, the land price to be deducted for VAT calculation will be the land price set by the provincial People's Committee at the time of signing the transfer contract. Decree 49 also better clarifies the expenses for compensation and ground clearance in the land price permitted to be deducted for VAT calculation. Accordingly, expenses for compensation and ground clearance are the compensation and ground clearance payment



according to the plan approved by the competent State agencies, and shall be deducted from the land use levy and land rental payable as prescribed in the regulations on collection of land use levy, land rental and water surface rental.

(ii) Regarding the VAT refund for investment projects: Circular 13 stipulates that the VAT refund shall comply with clause 3, Article 1, Decree 49. Accordingly, Decree 49 has amended and supplemented the regulations on VAT refund for investment projects in general and investment projects with conditional business lines in particular. Regarding the VAT refund for investment projects in general, the notable amendment is that Decree 49 permits VAT refund for business establishments which register to pay VAT by tax credit method and have new investment projects divided into many investment stages or investment items with at least 300 million Viet Nam Dong of input VAT amount of goods and services arising in the accumulated investment stage, which have not yet been deducted in full. Moreover, the Decree also abolishes the regulation of no VAT refund permitted for investment period of less than 1 year and allows business establishments to get VAT refund for projects located in areas other than the province or city where their headquarters is located.

In addition, regarding the VAT refund application documents for investment projects currently prescribed in Circular 80, besides referring to regulations of Decree 49, Circular 13 revises the component of the application documents towards only submitting a copy of "either the License, the certificate, or the written confirmation/approval of engagement in conditional business lines" instead of all 3 documents according to the applicable regulations.

*Secondly*, guiding in detail the adjustment of VAT, late payment amount, and fines for tax administrative violations (if any) in the event that business establishment is subject to the application of the above-mentioned amounts when there is an adjustment in the regulations on VAT refund for investment projects specified in Decree 49, including:

(i) In the case that the tax authority has issued a decision to recover the amount of tax refund, late payment amount and fines for tax administrative violations, the tax authority shall issue a decision on adjustment thereof (according to Form No. 38 issued together with Decree 118). If the business establishment has additionally declared the recovered VAT refund, the business establishment and the tax authority shall explain and supplement information, documents (according to Form No. 02/KTT issued together with Circular 80) to adjust the amount of the recovered VAT refund, late payment amount.

(ii) The amount of the recovered VAT refund (including the case where the establishment has not yet cleared the amount of the recovered VAT refund against the payable VAT amount incurring from its business and production operations, and the case where the establishment has cleared the same), the late payment amount, and fines for tax administrative violations (if any) already paid into the state budget before the date of effectiveness of Circular 13 shall be handled in accordance with the provisions of Article 25 and Section 2, Chapter V of Circular 80.

## **COMMENTS AND RECOMMENDATIONS**

The effectiveness of Decree 49 has led to many changes related to VAT policy, thus confirming the necessity in promulgation of Circular 13 to ensure the uniformity and consistency in the implementation of VAT policy. Concurrently, the amendments and supplements of Circular 13 are aimed to reduce compliance costs for businesses (for example, simplifying the component of VAT refund application documents). Enterprises need to update and study the provisions of Circular 13 in the case of acquiring land use rights or implementing investment projects to ensure compliance with the law.

## AUTHOR TEAM



**NGUYEN THI THANH MAI**

*Legal Consultant*



**NGUYEN THI KIEU TRINH**

*Legal Consultant*



**LE HAI LINH**

*Legal Consultant*



**DANG HUYEN THU**

*Legal Consultant*



**NGUYEN THUY DUONG**

*Senior Associate*

## DESIGNER



**NGUYEN HOANG AN**

*Please visit us at:*



**Ha Noi Office:**  
Villa B23, Trung Hoa - Nhan Chinh  
Nguyen Thi Dinh Street, Nhan Chinh Ward  
Thanh Xuan District, Ha Noi, Viet Nam  
Tel: 84 24 3537 6939  
Fax: 84 24 3537 6941  
Web: [www.nhquang.com](http://www.nhquang.com)

**Ho Chi Minh City Branch:**  
First floor, Harmony Tower, No. 47-49-51  
Phung Khắc Khoan Street, Da Kao Ward  
District 1, Ho Chi Minh City, Viet Nam  
Tel: 84 28 3822 6290  
Fax: 84 28 3822 6290  
Email: [contact@nhquang.com](mailto:contact@nhquang.com)