

LEGAL NEWSLETTER



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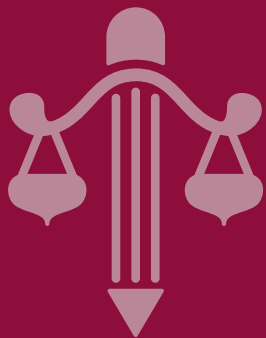
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Notable Activities in July, 2023

The ASEAN Moot is the first competition for law students from ASEAN countries organized by the ASEAN Law Association. The Vietnam Bar Association (VLA) and the Hanoi Law University are the two hosts of the ASEAN Moot National Competition to select a team representing Viet Nam to participate in the International Round. Through 5 rounds with the assumption dispute topic related to the investment of a foreigner, the national round selected the winning team.

On July 10, 2023, the semi-final round was organized at the Hanoi Law University, including 4 face-to-face competition sessions. Lawyer Nguyen Hung Quang - the Managing Partner and Lawyer Nguyen Tien Lap - Senior Executive Partner of NHQuang&Associates Law Firm attended the semi-final round of the National Competition as members of the Examination Council, scoring and giving comments to select the excellent team to enter the final round. Also participating in the Examination Council of the ASEAN Moot National Competition are representatives of the Ministry of Justice, lecturers from universities, and experts in the field of commercial mediation and arbitration.



New Partner Announcement Of NHQuang&Associates

We are delighted to announce Lawyer Nguyen Anh Minh as the new Partner at NHQuang&Associates from July 2023.

Since joining NHQuang&Associates, Lawyer Minh has proven his ability and has made significant contributions to the development of NHQuang&Associates as a Senior Associate on energy, technology, and corporate governance. Also, during more than 20 years of practice, Lawyer Minh has demonstrated his strengths in a number of other fields such as banking & finance, Fintech, digital transformation, e-commerce, dispute resolution and compliance control.

In addition to his accomplishments, Lawyer Minh concurrently holds the role of a Mediator of the Vietnam International Commercial Mediation Center (VICMC) with the Certificate of the Centre of Effective Dispute Resolution/CEDR. Lawyer Minh has provided many professional services to non-profit organizations and social enterprises as a Mediator and conducted training courses on mediation skills for various target groups.

“NHQuang&Associates is an exceptional firm that I am proud to be a part of”, says Minh. “I am absolutely delighted to join the Partnership and furthering the commitment and vision of NHQuang&Associate in providing the very highest standards of legal advice and assistance to our clients.”

NHQuang&Associates

NEW REGULATIONS RELATED TO PROPERTY AUCTION ACTIVITIES

PHUONG NAM

On July 3, 2023, the Government issued Decree 47/2023/ND-CP (**Decree 47**) to amend and supplement several articles of Decree 62/2017/ND-CP (**Decree 62**) which details some articles and provides measures for implementation of the Law on Property Auction. Decree 47 will take effect from September 1, 2023, focusing on adjusting the regulations related to online auction such as the order of online auction organization, requirements for online auction information portal, responsibilities of relevant parties, etc. The following are some notable contents of this Decree:

Firstly, amending and supplementing regulations on the form of online auction organizations. In accordance with Decree 47, property auction organizations, property auction councils, and organizations with 100% of charter capital owned by the State and established by the Government to handle bad debts of credit institutions (**auctioning organizations**) organize an auction in the form of online auction by rental and use of online auction information portal, including:

- (i) National online auction information portal (belonging to the national property auction information portal);
- (ii) Online auction information portal of the organizations with 100% of charter capital owned by the State and established by the Government to handle bad debts of credit institutions;
- (iii) Online auction information portal of property auction organizations.

Compared to the previous regulations, Decree 47 has recognized two additional entities authorized to organize online auctions besides auction organizations, namely the property auction council and the organization with 100% of charter capital owned by the State and established by the Government to handle bad debts of credit institutions. In addition, Decree 47 also specifies the online auction information portal used for online auction. It should be noted that the organizations with 100% of charter capital owned by the State and established by the Government to



handle bad debts of credit institutions *can only use their own online auction information portals* to organize an online auction.

Secondly, amending and supplementing the order of online auction organizations. Accordingly, clause 2, Article 1 of Decree 47 amends and supplements the organizational order in a more detailed direction than that stipulated in Decree 62, typically:

- In addition to the requirement to publish the Auction Rules, Decree 47 requires the auctioning organizations to publicly announce the auction along with the list of properties, images, and property-related documents (if any) on the online auction information portal.
- Auction participants must register to participate in the auction on the online auction information portal. When purchasing a participation dossier, participants will be given an access account via their registered email address. They shall use such accounts to receive instructions on (i) how to submit an online auction participation application; (ii) submission of advance payments through online payment methods; (iii) how to participate in auction and bid; (iv) other necessary contents when accessing the online auction information portal and (v) direct or online view of auctioned properties depending on the Auction Rules.
- After submitting their auction dossier and making advance payment validly, participants can participate in the auction using the access accounts according to the Auction Rules. If eligible participants fail to access their accounts for bidding within the time specified in the Auction Rules, they shall be considered not to participate in the auction, except for cases of force majeure. The auction's bid time shall be agreed between the property auction organization and the property owner but must be at least 15 minutes.
- In case of a bid based on ascending price, the

auction winner is the person who makes the highest bid recorded by the auction network system. In case of descending price, the auction winner is the first person who accepts the starting price or decreased price recorded by the auction network system. Right after the auction ends and the results are determined, the auction winner will be announced on the online auction network system.

Thirdly, supplementing the provisions on responsibilities of participants of the online auction information portal, including:

- Ensure their equipment when participating in auctions; take responsibility in the case when their network systems have any problems resulting in their failure to participate in the auction and bid on the online auction information portal;
- Manage and keep confidential the granted access accounts and passwords. If detecting that their accounts are lost or being used illegally, they must immediately notify the auctioning organizations;
- Take responsibility before the law for the accuracy and truthfulness of the information registered and posted on the online auction information portal when logging in to their access accounts;
- Comply with the Law on Property Auction, other relevant laws, and Auction Rules.

In addition to the contents introduced above, Decree 47 also amends and supplements such other contents as requirements and conditions of appraisal for the online auction information portal of property auction organizations; approval of online auction information portals, cases of stopping organizing online auction; responsibilities of the Ministry of Justice and auctioning organizations in the construction, management, operation, and use of online auction information portals.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 47 has contributed to the improvement of the applicable regulations on online auctions. In particular, Decree 47 specifies that auctioning organizations are able to rent and use the national online auction information portal or online auction information portals of auctioning organizations, provided that they meet the requirements and conditions of appraisal as prescribed. In addition, the order of online auction organizations is also more specifically regulated compared to that in the previous document. Simultaneously, Decree 47 clearly defines the responsibilities for the construction, management, operation, and use of online auction information portals by relevant parties. Individuals and organizations should study the new contents in Decree 47 to ensure compliance with legal provisions during the organization of or participation in online auctions.

NEW REGULATIONS ON CONDITIONS FOR FOREIGN LOANS WITHOUT GOVERNMENT GUARANTEE

THANH MAI

On June 30, 2023, the State Bank of Viet Nam (**SBV**) issued Circular 08/2023/TT-NHNN on conditions for foreign loans not guaranteed by the Government (**Circular 08**). Taking effect from August 15, 2023 (except for the regulations on short-term foreign loan room that will take effect from January 1, 2024), Circular 08 will replace Circular 12/ 2014/TT-NHNN guiding foreign exchange management for enterprise's foreign loan borrowing and repayment (**Circular 12**). In addition to the general regulations on the principles of using foreign loan capital and foreign loans in the form of deferred payment for imported goods, foreign debt restructuring plans, etc., Circular 08 also focuses on formulating both general and specific conditions applied to 02 groups of borrowers, including (i) credit institutions, foreign bank branches and (ii) those other than credit institutions, foreign bank branches. The article will introduce the regulations of Circular 08 related to the latter borrowers mentioned in point (ii) above with the following outstanding contents:

Firstly, Circular 08 supplements the principles on using foreign loan capital and regulations applied to foreign loans in the form of deferred payment for imported goods. Accordingly, borrowers shall be fully responsible for the use of foreign loan capital in accordance with the purposes specified in Circular 08. In the case that the foreign loans have been withdrawn but have not yet been used for lawful loan purposes, the borrowers can deposit the loans at credit institutions or foreign bank branches operating in Viet Nam with a maximum deposit term of one month. It should be noted that foreign loans granted by deferral of payment for imported goods shall not be subject to the conditions specified in Circular 08. Instead, the borrowers owning these loans shall comply with the regulations guiding foreign exchange management for enterprises' foreign loan borrowing and repayment, legal provisions on commerce, foreign trade management, and other applicable provisions of relevant laws.



Secondly, Circular 08 provides regulations on foreign debt restructuring plans. Specifically, the Circular defines the foreign debt restructuring plan (**Debt restructuring plan**) as the collection of information on the use of new foreign loans for paying off lawful and existing foreign debts. Borrowers' Debt restructuring plans must be approved by competent authorities in accordance with the laws. Fundamental contents of a debt restructuring plan include (i) Information about the borrowers; (ii) Information on existing foreign loans and outstanding loan amounts; (iii) Information on new foreign loans; (iv) Authority to approve the debt restructuring plan; (v) Other contents (if any).

Thirdly, Circular 08 provides specific regulations on foreign loan purposes. Under Article 17, Circular 08, the borrowers shall only use short-term foreign loan capital for restructuring foreign debts and paying short-term debts payable in cash. In which, payable short-term debts are those incurred by the borrowers during the implementation of investment projects, business plans and/or other projects, and determined in accordance with applicable regulations guiding corporate accounting. In the case that the borrowers are required to achieve minimum levels of financial prudential indicators under dedicated laws, they are entitled to use the short-term foreign loan capital for business operations within a maximum duration of 12 months from the withdrawn day of the foreign loan capital. Regarding medium-term and long-term foreign loans, the borrowers are allowed to use these loans for (i) implementing their investment projects; (ii) executing the borrower's business plans and/or other projects; (iii) restructuring their foreign debts. In addition, the purpose of short/medium/long-term loans must be consistent with the scope of the borrower's business lines, establishment licenses or investment registration certificates, etc. Previously, Circular 12 only have general regulations that the

loan purposes are for the execution of the borrower's business plans or restructuring foreign debts without increasing loan costs.

Fourthly, Circular 08 provides regulations on foreign loan rooms. Accordingly, Article 18 of the Circular provides 03 cases of foreign loan room applied to borrowers that are not credit institutions, foreign bank branches, typically:

- In case of foreign loans for implementation of investment projects: the borrowers shall ensure to comply with 02 conditions: (i) the sum of outstanding principal debts of their medium/long-term domestic and foreign loans for investment projects (including short-term loans that are extended and overdue short-term loans that are treated as medium/long-term loans) *shall not exceed the limit on borrowed capital of the investment projects*; and (ii) the above-mentioned limit on borrowed capital of investment projects is the difference between the total investment capital of an investment project and the investors' contributed capital recorded in the investment certificate, investment registration certificate, written approval of investment policies.
- In the case of foreign loans for the execution of business plans or other projects of the borrowers: the sum of outstanding debts of their medium/long-term domestic and foreign loans for this purpose (including short-term loans that are extended and overdue short-term loans that are treated as medium/long-term loans) *shall not exceed the total demand for borrowed capital defined in its plan for the use of foreign loan capital approved by competent authorities in accordance with the laws.*
- In case of foreign loans for restructuring the borrowers' foreign debts: the maximum foreign loan amount for the purpose of restructuring foreign debts *shall not exceed the sum of outstanding principal debts, unpaid interests and expenses of the existing foreign loan, and expenses associated with the new loans determined at the time of restructuring.*

It should be noted that short-term foreign loans for the implementation of investment projects, business plans, or other projects of the borrowers are not subject to the above-mentioned regulations on foreign loan rooms.

COMMENTS AND RECOMMENDATIONS

Besides inheriting some contents of Circular 12, Circular 08 has amended and supplemented many contents related to the conditions for foreign loans not guaranteed by the Government. In order to increase the flexibility for enterprises, Circular 08 supplements such regulations as allowing enterprises to deposit in banks the loans that have been withdrawn but not yet been used for lawful foreign borrowing purposes. In addition, Circular 08 also limits the loan room and activities related to short-term loans of enterprises by only permitting enterprises to use short-term foreign loans to restructure foreign debts, etc. Enterprises should update and study the regulations of Circular 08 in order to proactively develop financial plans suitable to their operation situation as well as to ensure compliance with SBV's regulations.

NEW REGULATIONS ON DETERMINATION OF ORIGIN OF IMPORTS AND EXPORTS

QUYNH NHUNG

On May 31, 2023, Circular 33/2023/TT-BTC (**Circular 33**) on determining the origin of imports and exports was issued by the Ministry of Finance. This Circular comes into force from July 15, 2023, replacing Circular 38/2018/TT-BTC (**Circular 38**) and other related Circulars. Below are some notable new points of this Circular to be addressed by organizations and individuals:

Firstly, changing the dossier component for pre-determination of exports and imports' origin. Accordingly, before conducting customs procedures for imported or exported consignment, organizations or individuals requesting for pre-determination of origin shall submit the relevant application dossier. Generally, the component of the application under Circular 33 is quite similar to the regulations stipulated in Circular 38. However, the Declaration of materials and supplies for goods production has been replaced by the Statement of production costs and the Origin declaration made by the domestic producer/supplier of materials or supplies which shall be used in the production of other products. Organizations and individuals must submit their application for pre-determination of origin to the General Department of Customs at least 60 days before exporting or importing the consignment. If necessary, these entities will have to discuss with the customs authority to clarify the application contents at the request of this agency.

Secondly, regulating the time limit to submit the proof for origin of imports. For imported goods eligible for a special preferential tariff under point a, clause 1, Article 10 of Circular 33, such proof must be submitted upon conducting customs procedures. However, Circular 33 allows the customs declarants to additionally declare and submit the proof of origin within one year from the date of registering customs declaration if the proof is not available at the time of conducting customs procedures. In addition, the customs declarants can submit the proof of origin at the time of conducting customs procedures or within 30 days from the date of registering the customs



declaration for the goods included in the Minister of Industry and Trade's list of goods subject to anti-dumping duty, countervailing duty, safeguard measures, tariff quotas, measures against evasion of trade remedies or limits on the quantity of goods. Furthermore, it should be noted that for the goods that must be accompanied with proof of origin to prove that they are imported from a country, group of countries, or territory excluded from the Consolidated List enclosed with the Resolution of the United Nations Security Council, or to prove that the goods are not imported from countries that pose a risk of causing harm to the social safety, community health or environmental hygiene, the declarants have to submit the proof of origin at the time of conducting customs procedures, otherwise, the goods will not be granted customs clearance and the declarants might be dealt with by provisions of the law.

Thirdly, adding the provision on handling harmonized system code (HS code) differences between proof of origin and customs declaration in specific circumstances. To resolve practical issues, Circular 33 adds specific regulations on a resolution where there is a difference between the HS codes on the proof of the imported goods' origin and the HS codes on customs declaration in certain cases. For instance, in the case that the goods have different HS codes on the proof of origin and on the customs declaration, but both have the criteria of origin from a specific procedure (SP), the customs authority shall accept this proof of origin if there is no other doubt about the accuracy of the information declared on this document. However, in case of different specific procedures, the customs authority shall verify the validity of the proof of origin under Article 19 of Circular 33.

Comments and recommendations

In general, Circular 33 provides specific and clear regulations, helping a more convenient approach to legal issues. The issuance of this Circular is to address the remaining inadequacies of the previous Circulars, particularly Circular 38, by amending and supplementing them in order to be aligned with the current practical situation in determining the origin of exports and imports. Organizations and individuals should update and study new regulations in Circular 33 to conduct related activities smoothly and ensure compliance with regulations of laws.

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