

# LEGAL NEWSLETTER



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## *Notable Activities in August, 2023*

Foreign Direct Investment International Arbitration Moot (FDI Moot) is a well-known competition held annually by prestigious overseas universities for law students from all over the world. In Viet Nam, FDI Moot has been organized since 2018 by the Viet Nam Society of International Law (VSIL), in collaboration with many universities teaching law fields. FDI Moot 2023 was implemented by VSIL in collaboration with the Foreign Trade University (FTU). The National Round Champion and Runner-up Team will represent Vietnamese law students in competing at regional and global scales.

With the desire to support Vietnamese law students in global legal knowledge integration, NHQuang&Associates has participated in FDI Moot sponsorship over the years and engaged as a Gold Sponsor for FDI Moot 2023. Several of our lawyers, namely Mr. Nguyen Hung Quang - Managing Partner, Nguyen Tien Lap - Senior Executive Partner, and Nguyen Anh Minh - Partner are distinguished judges for FDI Moot 2023. In particular, during the closing ceremony of FDI Moot 2023 and announcing the winning teams, Mr. Quang gave the closing speech of the competition.

# NEW REGULATIONS ON APPRAISAL FEE OF ENVIRONMENTAL IMPACT ASSESSMENT REPORT

PHUONG ANH

On June 8, 2023, the Ministry of Finance promulgated Circular 38/2023/TT-BTC stipulating the collection rate, regime of collection, payment, management and use of the fees for appraisal of environmental impact assessment reports by central agencies (**Circular 38**) to replace Circular 56/2018/TT-BTC. Circular 38 takes effect from August 1, 2023 with some notable contents as follows:

*Firstly, regulation on fee payers.* Circular 38 stipulates that fee payers are project owners who request competent agencies at the central level to appraise environmental impact assessment reports. The appraisal fee of environmental impact assessment will be paid to the Ministry of Natural Resources and Environment, the Ministry of Public Security, the Ministry of Defence or state agencies of three ministries assigned to appraise environmental impact assessment reports.

*Secondly, regulation on fee declaration and payment.* Pursuant to Circular 38, fee payers shall pay fees to the collection organization during the period from the time of submitting the application for appraisal until the time before the Appraisal council meeting. The payment of appraisal fees shall comply with Circular 74/2022/TT-BTC on forms and deadline for the collection, payment, and declaration of fees and charges under the authority of stipulation of the Ministry of Finance.

*Thirdly, regulation on appraisal fees of environmental impact assessment reports.* Accordingly, the appraisal fee will comply with the Schedule of appraisal fees of environmental impact assessment reports enclosed with Circular 38, in which, the payable fee is determined based on the total investment capital of the project and 6 project groups, including:

- Group 1: Civil construction projects
- Group 2: Technical infrastructure projects (except transportation projects)

- Group 3: Agriculture, forestry, fishery and irrigation projects
- Group 4: Transportation projects
- Group 5: Industrial projects
- Group 6: Waste treatment and environmental improvement projects and others

For example, as for any project in the group of Civil construction projects which has a total investment capital of 10 billion Viet Nam dong, the appraisal fee of environmental impact assessment reports under the Schedule shall be 8 million Viet Nam dong. If a project belongs to 2 groups or more, the payable fee of the group with the highest fee will be applied.

## COMMENTS AND RECOMMENDATIONS

The promulgation of Circular 38 aims at strengthening the legal framework related to appraisal fees of environmental impact assessment reports done by central agencies. This will annul the regulations stipulated in Circular 56/2018/TT-BTC and Article 2 of Circular 91/2021/TT-BTC (amending Circular 56/2018/TT-BTC). The regulations related to collection, payment, management, use, receipt voucher, and publicity of the regime for appraisal fee of environmental impact assessment reports implemented by central agencies, which are not mentioned in Circular 38, shall comply with the applicable laws. Therefore, organizations and individuals paying appraisal fees of environmental impact assessment reports should update and take into consideration the provisions of Circular 38 to ensure compliance with the regulations of the laws.



# NOTABLE NEW PROVISIONS ON LENDING ACTIVITIES OF CREDIT INSTITUTIONS, FOREIGN BANK BRANCHES

HOANG HAI

On June 28, 2023, Circular 06/2023/TT-NHNN (**Circular 06**) was issued to amend and supplement several provisions of Circular 39/2016/TT-NHNN (**Circular 39**) which stipulates lending activities of credit institutions and foreign bank branches. After that, on August 23, 2023, the State Bank issued Circular 10/2023/TT-NHNN (**Circular 10**) suspending the implementation of some provisions in Circular 39. Circular 06 and Circular 10 both take effect from September 1, 2023 with the following notable contents:

*Firstly*, amending and supplementing several provisions related to the need for borrowing capital. Previously, credit institutions and foreign bank branches were not allowed to grant loans to clients demanding capital to repay foreign loans. Currently, under Circular 06, if a client applies for a loan to repay a foreign loan in the form of deferred payment for goods purchase, it will be considered a demand for capital, which is eligible for consideration to grant the loan. In addition, in the case of lending to repay debts before maturity, to be considered as an eligible capital demand, the loan only needs to meet 02 conditions, including (i) the term of the loan does not exceed the remaining term of the old loan; and (ii) the loan has not undergone repayment term restructure. Therefore, compared to Circular 39, Circular 06 has eliminated the condition that “the loan must serve business activities”. Furthermore, Circular 06 also adds borrowing capital “for deposit” as one of the capital demands rejected for lending. It should be noted that other capital needs that are not allowed to lend added in Circular 06 such as “for making capital contribution, purchasing capital contribution, and receiving the transfer of capital contribution of limited liability companies and partnerships”, “for financial offsetting” have had their effectiveness suspended under the provisions of Circular 10.

*Secondly*, supplementing some regulations related to debt repayment activities. Specifically, Circular 06 supplements regulations on debt repayment currency

in the case where a debt is repaid in a currency different from the lending currency of the loan, whereby the debt repayment currency can be based on the agreement between the credit institution and the client in accordance with relevant legal regulations. In addition, regarding the collection order of loan principal and interest if a loan has one or multiple overdue repayment terms, the credit institutions shall collect debts in the order of overdue principals, interest on overdue principals that remain unpaid, due principals, and interest on outstanding principals as due.

*Thirdly*, supplementing the guidelines related to lending activities by electronic means. Accordingly, the lending balance for an individual client must not exceed 100 million Viet Nam dong at a credit institution for those who borrow money to serve their daily needs and whose client identification information is identified and verified under regulations of laws. At the same time, when there is a need to borrow capital, clients shall send the relevant credit institutions the documents and data proving their eligibility for loans in accordance with Article 7 of Circular 39 and other documents and data according to the instruction of the credit institutions.

Besides the new regulations mentioned above, Circular 06 also introduces a number of professional instructions related to the lending and supervision process of credit institutions in the procedures for appraisal, approval, lending decision-making and the process of checking and monitoring capital borrowing, loan capital use and debt repayment by clients.



## Comments and recommendations

Circular 06 is issued to improve the legal regulations on lending activities of credit institutions, thereby ensuring safety and efficiency as well as reducing any risks that may arise during credit institutions' lending activities to clients, controlling clients' use of loans for the right purposes, improving credit quality and aligning with practical requirements. With the goal of alleviating difficulties in the current credit relationship and promoting economic growth, the State Bank of Viet Nam has promptly issued Circular 10 to suspend the application of regulations in some cases where credit loans are not allowed in Circular 06. Apart from some adjustments on loan conditions and more specific regulations on debt repayment, Circular 06 also supplements the form of lending by electronic means to facilitate banks and borrowers. Therefore, businesses and individuals should update new regulations of Circular 06 and Circular 10 to appropriately apply in the process of borrowing capital from credit institutions.

# NEW REGULATIONS OF THE LAW ON E-TRANSACTIONS

HAI LINH

After 17 years of implementation, the provisions of the Law on E-Transactions 2005 have revealed certain shortcomings and limitations when implemented in practice, and are no longer suitable for economic and social development. In order to overcome such limitations and improve the regulations on e-transactions, the Law on E-Transactions 2023 was promulgated by the National Assembly on June 22, 2023, and will take effect from July 1, 2024. In this Legal Newsletter, NHQuang&Associates will analyze some new regulations of the Law on E-Transactions 2023.

## Amending and supplementing regulations related to data messages

Previously, the Law on E-Transactions 2005 regulates that the forms showing data messages include *“the forms of exchanges of e-data, e-documents, e-mails, telegram, telegraphy, faxes, and other similar forms”*. Article 7, Law on E-Transactions 2023 amends and expands the scope of forms showing data messages as follows:

- (i) Data messages are shown in the form of exchanges of e-texts, e-papers, e-certificates, e-documents, e-contracts, e-mails, telegrams, telegraphy, faxes, and other forms of electronic data exchange according to the legal provisions.
- (ii) Data messages are created, generated during transactions, or converted from paper documents.

The Law on E-Transactions 2023 also supplements regulations on requirements for converting the forms between paper documents and data messages in Article 12. Accordingly, the conversion from the form of paper documents into the form of data messages must meet certain requirements such as (i) the information in the data messages must be intact as shown in paper documents, (ii) the contents of the data messages are accessible and usable for reference. Similarly, the conversion from the form of data messages into the form of paper documents also must meet the following conditions (i) there must be information to identify the information system and the agency managing the information



system that creates, sends, receives, stores the original data message for lookup, (ii) the e-document must contain the signature, seal (if any) of the agency or organization performing the conversion in accordance with legal regulations, etc.

According to the assessment of the Ministry of Information and Communications, the regulations of the Law on E-Transactions 2005 related to the validity of data messages are still unclear. Therefore, the amendments and supplements of regulations related to data messages in the Law on E-Transactions 2023 have overcome the above limitations, ensuring the validity and non-repudiation of data messages, thereby affirming the validity of e-transactions.

## Amending and supplementing regulations on e-signatures

The Law on E-Transactions 2023 provides a new definition of e-signature as *“a signature created in the form of e-data logically attached with or associated with a data message to certify the signer and affirm the approval of such person to the data message”*, replacing the definition in the Law on E-Transactions 2005 which is *“An e-signature is established in the form of words, letters, numbers, symbols, sound or other forms by electronic means, logically attached with or associated with a data message, which has the ability to certify the data message signer and the approval of such person to the content of the signed data message”*. The Law on E-Transactions 2023 also classifies e-signatures into 3 types according to the scope of use as follows:

- (i) Specialized e-signature – e-signature created by an agency or organization and used exclusively for the operation of that agency or organization in accordance with its functions and tasks;
- (ii) Public digital signature – digital signature used in

public activities and secured by a public digital signature certificate;

(iii) Specialized digital signature for official use – digital signature is used in activities of public service and secured by the specialized digital signature certificate for official use.

In which, specialized e-signatures must meet all requirements such as data to create specialized e-signatures are only associated with the contents of the approved data message, and the validity of specialized e-signatures can be verified according to the conditions agreed upon by the involved parties.

In addition, the Law on E-Transactions 2023 also supplements regulations on conditions for foreign e-signature authentication service providers to be recognized in Viet Nam in Article 26. For example, foreign e-signature authentication service providers must (a) be legally established and operate in the country of operation registration, (b) have a technical audit report of the system providing e-signature authentication services by an auditing organization that operates legally in the country of operation registration, (c) have a representative office in Viet Nam.

Compared to the provisions of the Law on E-Transactions 2005, the Law on E-Transactions 2023 supplements many new contents to meet current economic and social development conditions such as regulations on the classification of e-signatures, recognition of foreign e-signature authentication service providers in Viet Nam. In addition, the amendments and supplements to regulations related to e-signatures aim to specify the levels of validity of e-signatures so that e-signatures can match the diverse needs of e-transactions. This is the basis to ensure the efficiency of applying e-signatures in practice and a prerequisite for implementing secure e-transactions.

### **Supplementing regulations related to trust services**

Trust services are conditional business investments, including 3 services:

(i) *Timestamp service* is the service to attach information on time to data messages. The timestamp is created as a digital signature. The time attached to a data message is the time when the data message is received by the timestamp service

provider and authenticated by the timestamp service provider;

(ii) *Data message authentication service* includes 2 services: (a) Storing and confirming the integrity of data messages and (b) Sending and receiving secured data messages;

(iii) *Public digital signature authentication service* is the public digital signature authentication service provided by a public digital signature authentication service provider.

To be entitled to provide the above-mentioned trust services, a trust service provider must obtain a business license issued by the Ministry of Information and Communications with a term of 10 years and meet the following conditions such as (i) the provider must be an enterprise legally established and operates in Viet Nam, (ii) the provider's finance, managing personnel and technical personnel must meet the conditions of each type of trust service, and (iii) the provider must have a technical plan for service provision suitable for each type of trust service.

Regulations on trust services are new ones supplemented in the Law on E-Transactions 2023 to ensure the trust of agencies and organizations in e-transactions, to meet the needs of applying e-transactions in practice, conforming to development trends. It is also an important factor in ensuring the validity, service quality, safety, and security of e-transactions and the consistency with the applicable legal regulations.

The Law on E-Transactions 2023 plays an important role in creating the basic legal framework for e-transactions. Enterprises should update and study the regulations of the Law to apply appropriately in transactions related to production and business activities. NHQuang will update the guiding documents of the Law so that Clients can quickly have information for practical implementation.



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