

LEGAL NEWSLETTER



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Notable Activities in September, 2023

The Law on Capital 2012 is an important legal document stipulating the position, roles, responsibilities, and policies of building, developing, and protecting the Capital. However, after more than 9 years of implementation, the Law on Capital 2012 has difficulties that need to be early amended to be more suitable with practices and meet the development requirements of the Capital. In particular, decentralization of power and increasing specific policies are among the issues that are focused on.

On September 15, 2023, the special discussion program on the amended Law on Capital with the topic "Decentralization for Ha Noi to break through" was conducted by Hanoi Radio Television and broadcast online on several channels of Hanoi Radio Television. The discussion had the participation of Lawyer Nguyen Hung Quang - Managing Partner of NHQuang & Associates Law Firm, Mr. Tran Anh Tuan - Chairman of the Vietnam Association of Administrative Sciences (Former Deputy Minister of Home Affairs), Mr. Nguyen Chi Doan - Deputy Director of the Department of Internal Affairs of Ha Noi. At the discussion, Mr. Quang and the experts shared about the Project of Law on Capital (amended).

See more about the Discussion at:

<https://www.youtube.com/watch?v=BAwn7sk67ok>

NEW REGULATIONS ON COMPULSORY INSURANCE IN CONSTRUCTION INVESTMENT ACTIVITIES

TRANG NHUNG

On September 6, 2023, the Government promulgated Decree 67/2023/ND-CP on compulsory civil liability insurance of motor vehicle owners, compulsory fire and explosion insurance, compulsory insurance in construction investment activities (**Decree 67**). Basically, Decree 65 has inherited most of the regulations related to compulsory insurance for construction investment activities in Decree 119/2015/ND-CP on compulsory insurance in construction investment activities (amended and supplemented by Decree 20/22022/ND-CP), and Circular 50/2022/TT-BTC providing guidelines for Decree 119/2015/ND-CP and Decree 20/22022/ND-CP. Below are some notable contents on compulsory insurance in construction investment activities in Decree 67:

First, regulating in detail four types of compulsory insurance in construction investment activities. Previously, each type of compulsory insurance in this sector was only specifically guided in circulars. However, Decree 67 has provided regulations and guidelines for each type of compulsory insurance obligated to be covered by investors and contractors in construction investment activities, including: (i) Compulsory insurance for construction work in progress; (ii) Compulsory professional liability insurance for construction investment consultancy; (iii) Compulsory insurance for workers on construction site; (iv) Compulsory civil liability insurance for third parties (See Chapter IV, Decree 67 for details).

Second, supplementing insurance liability exclusions for each type of compulsory insurance. Decree 67 has inherited the regulations on insurance liability exclusions in previous legal documents. General exclusion circumstances (Article 5, Circular 50/2022/TT-BTC) shall still be applied to all of the four types of compulsory insurance mentioned above. In addition to the cases inherited from Circular 50/2022/TT-BTC, Decree 67 has supplemented a number of insurance liability exclusions for four types



of compulsory insurance in construction investment activities, specifically:

- Compulsory insurance for construction work in progress: Decree 67 has supplemented a number of cases in which insurers' liability is excluded, such as (i) Losses or damage of policyholders and the insured named in the list of entities subject to the embargo; (ii) Losses or damage relating to diseases as announced by competent authorities.
- Compulsory professional liability insurance for construction investment consultancy: Decree 67 has supplemented one case in which insurers are not required to provide indemnities, namely, losses incurred as a result of a consultancy contractor's intentional in compliance with construction regulations on the application of technical standards and regulations of law on construction, and use of construction materials causing harm to public health and environment.
- Compulsory insurance for workers on construction site: Decree 67 has supplemented a variety of cases in which insurers are excluded from insurance indemnities such as (i) Losses incurred as a result of contradictions between an employee and the person causing the accident but not related to the work on the construction sites; (ii) Losses incurred by an employee's deliberate self-harm. (iii) Losses incurred by an employee's use of narcotics or drugs against the law (where the drugs are prescribed for treatment by licensed doctors); etc.
- Compulsory civil liability insurance for third parties: Decree 67 has supplemented one case of liability exclusion for insurers, which is damage incurred due to vibrations; movement or decline of seismic-resistant and load-bearing components; or injury or damage to life or properties caused by any of the above losses (unless otherwise agreed with amended provisions).

Comments and recommendations

Decree 67 is issued and takes effect from September 6, 2023, contributing to completing and consolidating the applicable legal framework on compulsory insurance. For example, instead of general regulations on compulsory insurance in construction investment activities in circulars as before, Decree 67 has further specified the types of compulsory insurance in construction investment and supplemented insurance liability exclusion cases, thereby helping insurance enterprises as well as related organizations and individuals look up and apply legal provisions more conveniently. It is noted that Decree 67 will replace Decree 119/2015/ND-CP and Decree 20/2022/ND-CP amending and supplementing a number of articles of Decree 119/2015/ND-CP. Therefore, individuals and organizations need to study the regulations of Decree 67 to ensure legal compliance during the implementation of construction investment activities.

OUTSTANDING POINTS OF DECREE 65/2023/ND-CP ON PROCEDURES FOR ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS

HAI LONG

On August 23, 2023, the Government promulgated Decree 65/2023/ND-CP providing details for several provisions and measures for implementation of the Law on Intellectual Property on industrial property, protection of industrial property rights, rights to plant varieties, and state management of intellectual property (**Decree 65**). This Decree replaces Decree 103/2006/ND-CP providing details and guidelines for implementation of a number of articles of the Law on Intellectual Property on industrial property and a part of Decree 105/2006/ND-CP providing details and guidelines for implementation of some articles of the Law on Intellectual Property on protection of intellectual property rights and state management of intellectual property (amended and supplemented). Decree 65 takes effect from the date of signing with the following highlights on procedures for the establishment of industrial property rights (**IPR**):

First, amending and supplementing regulations related to registration application forms. Accordingly, the registration application forms for trademarks, inventions, industrial designs, and layout designs have been changed under the provisions in Appendix I, II, and IV of this Decree. In particular, Decree 65 has added the forms of "Application for confirmation of delayed registration of initial marketing authorization for pharmaceutical products" and "Declaration for requesting compensation due to delay in granting initial marketing authorization for pharmaceutical products manufactured under exclusive patent" so that a patent owner could request the competent state agency to consider compensation for any delay in granting marketing authorization for pharmaceutical products as prescribed in the Law on Intellectual Property 2005, amended and supplemented in 2022. Simultaneously, the trademark registration application form also recognizes sound trademark, a type of



non-traditional trademark first protected as a trademark under the Law on Intellectual Property 2005, amended and supplemented in 2022. Furthermore, Part IV Appendix I of Decree 65 also inherits previous regulations of Circular 16/2016/TT-BKHHCN on specific requirements for some other documents needed when registering trademarks, inventions, and industrial designs such as invention description; invention abstract; industrial design description; trademark sample; etc.

Second, amending and supplementing the registration application form for IPR establishment. Decree 65 facilitates applicants to amend and supplement their application before the state management agency in charge of IPR issues a decision to refuse the application, a decision to grant or refuse to grant a protection certificate, accordingly:

- (i) An applicant may modify and supplement documents in its application provided that the modification and supplement do not expand the scope (volume) of protection recorded in the description and must not change the nature of the subject stated in the application.
- (ii) An applicant may change its name, address, country code; name, nationality, address of the author of the patent, layout design, industrial design; and modify the intellectual property representative.

The modification and supplement to the registration application form for IPR establishment is implemented under the procedures detailed in Clause 2, Article 16 of this Decree.

Third, splitting applications for IPR establishment. Clause 1, Article 17 of Decree 65 establishes a process allowing applicants to split the IPR application. Accordingly, before the state management agency in charge of IPR issues a decision to refuse an application, a decision to grant or refuse to grant a protection certificate, the applicant can split one or several technical solutions

in the invention application, one or several industrial designs in the industrial design application, part of the list of goods and services in the trademark application to one or more new applications (referred to as split applications). For each split application, the applicant must pay the application fee and any other fees and charges for the procedures to be conducted independently from those for the original application (except the procedures that have been implemented in the original application that are no longer needed to be performed in the split application) but do not have to pay the appraisal fee for requesting priority rights (except for cases of splitting industrial design application due to lack of uniformity). It is noted that when carrying out the procedure for splitting an industrial property registration application, the applicant must submit an explanation of the subject requested for protection and the content of changes compared to the original application.

Fourth, detailing the conditions for restricting the transfer of trademark rights under Clause 4, Article 139, Law on Intellectual Property 2005, amended and supplemented in 2022. Specifically, the transfer of trademarks is not accepted if it confuses the characteristics and origin of goods or services bearing the trademark in the following cases:

- The transferred trademark is identical or confusingly similar to another trademark protected under the Trademark Registration Certificate or international trademark registration owned by the transferor.
- A part of the goods and services bearing the transferred trademark is similar to the remaining goods and services in the list of goods and services owned by the transferor and the use of the trademark along with the goods or services of the transferee may confuse the commercial origin of the goods or services (in cases where the scope of transfer is part of the list of goods and services).
- The transferred trademark contains elements being signals that causes consumers to confuse or misunderstand the origin, quality, value, etc. of the goods and services within the scope of the transfer.

COMMENTS AND RECOMMENDATIONS

Decree 65 has amended and supplemented several significant contents in establishing IPS, thereby ensuring consistent application and effective enforcement of intellectual property regulations. The amendments of Decree 65 are also judged as bringing more flexibility and convenience for individuals and organizations to carry out procedures related to IPR establishment. Therefore, IPR holders should pay attention to updating the provisions of this Decree, for example, using registration application forms or identifying cases where applications for IPR establishment can be amended, cases where the transfer of trademark rights is restricted, etc. to ensure their rights and interests as well as to comply with the law when establishing IPR.

NEW REGULATIONS OF THE LAW ON PROTECTION OF CONSUMER RIGHTS (AMENDED)

QUOC DUNG

After 12 years of implementation, the Law on Protection of Consumer Rights (LPCR) 2010 has significantly strengthened consumer rights protection and established a legal framework for this field in Viet Nam. However, the provisions of LPCR 2010 have revealed numerous limitations and challenges during its enforcement. Therefore, in order to adapt to the changing economic and social context and address the shortcomings of LPCR 2010, the National Assembly promulgated LPCR 2023 on June 20, 2023. In this Legal Newsletter, NHQuang&Associates will introduce some noteworthy provisions of the new LPCR 2023 that are likely to affect the business activities of enterprises so that Clients can have an overview of this document.

Supplementing the responsibilities of business organizations and individuals toward consumers in specific transactions

In accordance with Clause 8, Article 3 LPCR 2023, specific transactions include (i) remote transactions, (ii) transactions involving continuous supply of services, and (iii) direct sales between business organizations, individuals, and consumers. These are new provisions in Chapter III of LPCR 2023 with the aim of improving the legal provisions on new transactions to align with societal developments.

Firstly, supplementing regulations on remote transactions. LPCR 2023 defines remote transactions as transactions conducted online, by electronic means, or other means, in which consumers cannot physically check or have direct contact with products, goods, or services before making a transaction. LPCR 2023 stipulates the responsibilities of business organizations and individuals in remote transactions, such as providing accurate and complete information about such organizations and individuals, information on payment methods and deadlines; time, place, method



of sale, and supply of products, goods, and services; conditions and methods of exchange and return of products, goods, services, etc. Furthermore, LPCR 2023 also addresses the conclusion of contracts in remote transactions such as contract contents, consumers' rights in the cases where business organizations and individuals provide incorrect or incomplete information in the contract, and so on.

Secondly, supplementing regulations on a continuous supply of services (it means a supply of services for three months or more or for an indefinite term). Accordingly, business organizations and individuals providing continuous supply of services within Vietnamese territory are subject to publicly announce their legal representatives in Viet Nam; are not permitted to require upfront payments from consumers before providing services; are not permitted to unilaterally terminate contracts or suspend service provision against contracts or legal regulations and must regularly inspect the quality of the services they provide, ensure the service quality as committed to consumers. Contracts for a continuous supply of services shall meet the conditions related to contract forms and contents specified in Article 42 LPCR 2023.

Thirdly, supplementing regulations on direct selling. In LPCR 2023, direct selling encompasses three forms: (i) door-to-door sales, (ii) multi-level sales and (iii) sales at locations other than regular transaction locations. For each of these forms, the corresponding responsibilities of the selling organizations or individuals, and requirements for the contracts are specified. For example, in case of multi-level selling, LPCR 2023 stipulates (a) responsibilities of multi-level selling organizations such as adhering to operational rules, reward plans, and issuing invoices for each sales transaction; (b) responsibilities of participants in multi-level selling such as complying with the contract for participation in multi-level selling and operational

rules; (c) forms of contract between a multi-level selling organization and multi-level selling individual, and fundamental contents of a multi-level selling contract.

Amending and supplementing regulations on dispute resolution methods

During the implementation of LPCR 2010, according to statistics from the Ministry of Industry and Trade, the number of consumer complaints resolved each year ranges from 1,000 to 1,500 cases, which is significantly lower than the actual number of disputes. This reflects the inadequacy of consumer dispute resolution between consumers and business organizations and individuals. Therefore, to improve these provisions, LPCR 2023 has introduced several notable amendments namely:

- (i)** Supplementing provisions on allowing consumers to choose dispute resolution methods either directly or online when permitted by law.
- (ii)** For negotiation, LPCR 2023 supplements detailed regulations on procedures for negotiation, rights and responsibilities of the parties involved in the negotiation process as well as required contents of negotiation outcomes, etc.
- (iii)** For mediation, LPCR 2023 supplements regulations on procedures for mediation, regulations on mediators as well as amendments to provisions related to mediation results, recognition, and implementation of successful mediation outcomes.
- (iv)** For court-annexed dispute resolution, LPCR 2023 amends the provisions on conditions for settling civil cases on the protection of consumers' rights under summary procedures of the Civil Procedure Code. Accordingly, civil cases on protection of consumers' rights with a transaction value below 100 million Viet Nam dong shall be resolved through the summary procedures, while cases with a value exceeding 100 million Viet Nam dong will be resolved through the summary procedures when they meet the specific conditions stipulated in Clause 1, Article 317 Civil Procedure Code (e.g. the case has straightforward details, relevant legal relationships are clear, the involved parties acknowledge their obligations; documents and evidence are sufficient, ensuring sufficient grounds to resolve the case and the Court does not have to collect documents, evidence).

As can be observed, LPCR 2023 has added numerous new contents aiming at addressing the limitations and shortcomings of the LPCR 2010 while also

enhancing the effectiveness of dispute resolution methods. In addition, the clear stipulation on procedures and processes for dispute resolution methods helps consumers have a basis for demanding business organizations and individuals to comply with the regulations and also fosters a sense of responsibility among business organizations and individuals engaged in business towards consumers.

Supplementing regulations on standard-form contracts, general transaction conditions

According to the assessment by the Ministry of Industry and Trade, the provisions of LPCR 2010 that relate to contracts concluded with consumers, standard-form contracts, and general transaction conditions were not sufficiently precise, comprehensive, or clear, leading to difficulties and complications in enforcement. In order to overcome these hurdles, and enhance consumer protection, LPCR 2023 has amended and supplemented the regulations on standard-form contracts. Accordingly, the form of a standard-form contract shall comply with the provisions of civil law and other relevant laws, especially, the language and form of written contracts must be clearly and understandably expressed. It is worth noting that the standard-form contract must ensure eleven basic contents in accordance with Clause 3, Article 23 LPCR 2023. These additional provisions are intended to provide businesses with a legal basis for constructing contracts, ensuring legal compliance, better-safeguarding consumers' rights, and meeting practical requirements of law enforcement.

Furthermore, LPCR 2023 also amends and supplements clauses that are not allowed in contracts signed with consumers, standard-form contracts, and general transaction conditions; for instance those with the following contents:

- Allowing business organizations and individuals to unilaterally change the provisions of contracts that have been entered into with consumers;
- Allowing business organizations and individuals to change prices during the continuous supply of services without stipulating the consumer's right to terminate the contract;
- Specifying sanctions that are disadvantageous to consumers due to breach or termination of contract performance;
- Allowing business organizations and individuals to extend contracts agreed upon with consumers

without stipulating the obligation to provide prior notice or providing consumers with the option to extend or terminate the contract;

- Stipulating that consumers must agree for business organizations and individuals to collect, store, and use consumer information as a condition for entering into contracts and general transaction conditions, except otherwise provided for by law;
- Contravening the principle of good faith as prescribed by civil law, leading to an imbalance in the parties' rights and obligations, which is unfavorable for consumers.

Overall, LPCR 2023 has introduced progressive provisions that align with the economic and social realities in Viet Nam, enhancing the quality of consumer rights protection in various transactions. This Law shall officially take effect on July 1, 2024. Enterprises should update and study the provisions of LPCR 2023 to apply them effectively in production and business, especially transitional provisions related to the registration and amendment of standard-form contracts and general transaction conditions before the effective date of LPCR 2023. NHQuang will continue updating the guiding documents related to LPCR 2023 to help our Clients quickly understand and apply these provisions in practice.

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