

LEGAL NEWSLETTER

NHQuang&Associates



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Notable activity in September 2021

On October 14, 2021, the Asian Law Centre (ALC) and the Obligations Group at Melbourne Law School, The University of Melbourne and the Centre for Commercial Law in Asia at Singapore Management University will hold an event to launch the book 'Asia-Pacific Trusts Law: Theory and Practice in Context', co-edited by Associate Professor Ying Khai Liew and Professor Matthew Harding. This is the first work that systematically explores trusts law across the region and provides both an academic and practitioner perspective on the significant impact of the integration and development of trusts model in 17 Asian-Pacific jurisdictions.

Mr. Nguyen Hung Quang - Managing Partner and Ms. Nguyen Thuy Duong - Senior Associate of NHQuang&Associates are proud to contribute the Chapter of Property Management Relationships and 'Trusts' in Vietnam in the book 'Asia-Pacific Trusts Law: Theory and Practice in Context'.

The book launch will be held from 3.30pm to 5.30pm, October 14, 2021 via Zoom app. If you are interested in the book launch, please access the following link to register: <https://events.unimelb.edu.au/ALC/event/10945-1>

NEW POINTS ON LOAN RESCHEDULING, EXEMPTION OR REDUCTION OF INTERESTS AND FEES, RETENTION OF LOAN CATEGORIES TO ASSIST BORROWERS AFFECTED BY COVID-19 PANDEMIC

PHUONG UYEN

On September 7, 2021, the State Bank of Viet Nam (**the SBV**) issued Circular 14/2021/TT-NHNN to amend and supplement a number of articles of Circular 01/2020/TT-NHNN providing instructions for credit institutions and branches of foreign banks on loan rescheduling, exemption or reduction of interests and fees, retention of loan categories to assist the borrowers affected by Covid-19 pandemic (**Circular 14**). Previously, Circular 01 was amended and supplemented by Circular 03/2021/TT-NHNN (**Circular 03**); however, some provisions of Circular 03 related to loan rescheduling, exemption or reduction of interest and fees are no longer relevant at the present time. Therefore, Circular 14 has been issued to overcome the above problems. This Circular takes effect from the date of issuance, including 2 notable points:

Firstly, amendments and supplements to the conditions of loan rescheduling. Accordingly, a loan including the principal and/or interest may be rescheduled for repayment by credit institutions and branches of foreign banks (**credit institutions**) when the 8 following conditions are fully satisfied:

- (i) The loan arises from financial lending or lease before August 1, 2021.
- (ii) The obligation of principal and/or interest repayment occurs during the period from January 23, 2020 to June 30, 2022.
- (iii) The outstanding balance of the rescheduled loan is subject to one of the following cases:



- a) The outstanding balance being undue or overdue up to 10 days from the due date of payment or the loan repayment term as specified in the concluded contract or agreement, except for cases (b), (c) and (d).
- b) The outstanding balance of loans occurring before January 23, 2020 and becoming overdue during the period from January 23, 2020 to June 30, 2020.
- c) The outstanding balance of loans occurring during the period from January 23, 2020 to the day before June 10, 2020 and becoming overdue before May 17, 2021.
- d) The outstanding balance of loan occurring during the period from June 10, 2020 to the day before August 1, 2021 and becoming overdue during the period from July 17, 2021 to the day before September 7, 2021.

(iv) The borrower is assessed by credit institutions as incapable of paying the principal and/or interest on schedule under the relevant contract or agreement due to decrease in revenue or income caused by Covid-19 pandemic.

(v) The borrower applies for rescheduling loan repayment term and is assessed by credit institutions as capable of paying the full principal and/or interest under the rescheduled repayment term.

(vi) The credit institutions shall not reschedule any loans that violate regulations of law.

(vii) The rescheduling period (including loan extension) shall correspond to the impacts of the Covid-19 pandemic on the borrower and shall not exceed 12 months from the date when the credit institutions reschedule the repayment term, or from the due date of each outstanding balance with repayment term rescheduled.

(viii) Loan rescheduling shall be carried out until June 30, 2022.

Secondly, extension of the time limit for reduction and exemption of interests and/or fees and retention of loan categories. Specifically, the SBV allows credit institutions to reduce and exempt the interests and/or fees for borrowers until June 30, 2022 for outstanding balances of loans arising before August 1, 2021 for which the obligation to repay the principal and/or interest are due during the period from January 23, 2020 and June 30, 2022; at the same time, stipulates the retention of classified categories of loans arising from January 23, 2020 to the day before August 1, 2021.



SOME COMMENTS AND RECOMMENDATIONS

Compared with the provisions of Circular 01 and Circular 03, Circular 14 allows credit institutions to extend the loan rescheduling period by 6 months and clearly specifies the extended timelines. This amendment and supplement is reasonable, especially in the context that the current Covid-19 pandemic is relatively complicated and greatly affects the business and production situation of enterprises; thereby creating a legal corridor for lending and leasing activities, ensuring safety for the financial-banking system. This helps businesses and banks themselves reduce the pressure on loan repayment, temporarily avoiding being transferred to a worse loan category. On the other hand, enterprises can also take advantage of loan rescheduling opportunities to gain more resources and time to continue production and business recovery, especially for those negatively affected by Covid-19 pandemic.

It should be noted that, in order to reschedule loans, the credit institutions will assess the capability to fully repay the principal and/or interest according to the rescheduled repayment term based on enterprises' request. Therefore, enterprises need to understand the above specific conditions of Circular 14, compare them with their actual situation and relevant regulations of the credit institutions to prepare a suitable application for loan rescheduling, ensuring feasibility to be soon approved by credit institutions. Enterprises also need to constantly update new policies to take advantage of the best opportunities for production and business in the current context of the Covid-19 pandemic.

SOME OUTSTANDING CONTENTS OF THE DECREE GUIDING THE LAW ON SUPPORT FOR SMALL- AND MEDIUM-SIZED ENTERPRISES

HUYEN THU

On August 26, 2021, the Government issued Decree 80/2021/ND-CP detailing and guiding the implementation of some articles of the Law on Support for Small- and Medium-sized Enterprises (**SMEs**) (**Decree 80**), replacing Decree 39/2018/ND-CP (**Decree 39**). Inheriting several regulations of Decree 39, Decree 80 has also amended and supplemented many other contents of the previous document, which are no longer appropriate, including the regulations on supporting specific SMEs such as SMEs transformed from household businesses, start-up SMEs, SMEs joining business clusters and value chains. However, this article will only focus on introducing the criteria for determining the supported subjects and the specific support for SMEs in general under Decree 80. The followings are some typical contents:

Firstly, stipulating the criteria for determining SMEs. Basically, the determination criteria under Article 5, Decree 80 have inherited the regulations of Decree 39, accordingly, SMEs are determined through 2 major criteria as follows:

- (i) Size of enterprises: determining micro-, small- or medium-sized enterprises based on the average annual number of employees participating in social insurance, the total annual revenue or capital of enterprises.
- (ii) Operation areas of enterprises: including SMEs operating in agriculture, forestry, aquaculture, industry and construction, or commerce and services.

The criteria for determining SMEs mentioned above are specifically guided from Article 6 to Article 9 of Decree 80. Thus, enterprises can determine and assess by themselves whether they are eligible to receive support under Decree 80 or not with their business scale.



Secondly, amending and supplementing the regulations on supporting SMEs. Under Decree 80, SMEs are entitled to 4 support contents including:

(i) Technological support: Regulation on technological support for SMEs is one of the highlights of Decree 80 compared to Decree 39. Accordingly, Decree 39 does not have any specific regulation on this content, although the Law on Support for SMEs 2017 has addressed the support for technology, incubators, technical facilities, and co-working spaces. This leads to the fact that specific policies have not been practically implemented to SMEs. The followings are few contents on supporting technology-related SMEs as detailed in Article 11, Decree 80:

- Supporting the value of the contracts advising digital transformation solutions for enterprises on business processes, administration processes, manufacturing processes, technological processes, and business model transformation;
- Supporting the cost of renting, purchasing digital transformation solutions for enterprises;
- Supporting the value of the contracts advising establishment of intellectual property rights; management and development of products and services with protected intellectual property rights of enterprises;
- Supporting the value of technology transfer advising contracts;
- Supporting SMEs through new construction investment projects of incubation facilities, technical facilities, co-working spaces; upgrading infrastructure, purchasing and installing equipment, machineries, information technology systems for incubation facilities, technical facilities, co-working spaces.

(ii) Information support: In accordance with Decree 80, SMEs are free to access the information on the National SME Support Portal (access address: www.business.gov.vn) and websites of ministries, ministerial-level agencies, governmental agencies, the Provincial People's Committee, including: Information about plans, programs, projects and activities related to SME support; Information about business guidelines, credit, market, products, technologies and enterprise incubation; Other information requested by SMEs in accordance with regulations of laws.



(iii) Consultancy support: In accordance with clause 2, Article 13, Decree 80, SMEs can access to a network of consultants to receive advice on human resources, finance, production, sales, market, internal management and other contents related to enterprises' production - business activities (excluding advice on administrative and legal procedures of specialized laws). Specially, Decree 80 has adjusted the support level and the value rate of consulting contracts that SMEs are supported through the consultant network to be higher than that of Decree 39 for consistency with the value of consulting contracts in current market and also to attract SMEs to use this support. Moreover, the regulations on consultancy support for women-owned SMEs, SMEs with high rate of female employment, and social enterprises are also supplemented in Decree 80. The addition of the application subjects in Decree 80 aims to solve one of the limited issues of Decree 39, when this document is assessed as lacking provisions to support women-owned SMEs and SMEs with high female employment rate.

(iv) Human resource development support: SMEs will receive support related to training for starting a business and business administration, direct training at SMEs in the manufacturing and processing fields, and vocational training. Decree 80 also specifies the support method of online training in starting a business and business administration. Specifically, SMEs will be free to access and participate in online lectures available on the online training system of the Ministry of Planning and Investment and the Provincial People's Committee and also to participate in online training courses, interact directly with other SMEs through online training tools available on smart electronic devices (Zoom Cloud Meeting, Microsoft Teams, Google Classroom and others). Additionally, compared to Decree 39, the supported subjects in this regulation of Decree 80 are supplemented with social enterprises, and the preferential level of support is higher than that in the previous regulation.

COMMENTS AND RECOMMENDATIONS

It can be seen that Decree 80 has surmounted most of the limitations and obstacles in the regulations of Decree 39. The new regulations of Decree 80 also open more larger opportunities and incentives for SMEs to develop business and production. Decree 80 will officially take effect from October 15, 2021; thus, SMEs need to study and specifically determine the support contents, support levels, and their need for support to ensure their optimal rights. In addition, SMEs should notice the preparation of documents to apply for support in accordance with the regulations of Decree 80, including: (i) Declaration form on determining micro, small- or medium-sized enterprises and proposal of needs for support, which is provided in the Appendix of the Decree; (ii) Documents related to the proposed support requests (if any). Also, to receive the latest support from the government, SMEs should regularly follow and update the information on support and incentives from the National SME Support Portal and other portals and websites of agencies and organizations supporting SMEs.

COMMENTS ON THE DRAFT DECREE ON PENALTIES FOR ADMINISTRATIVE VIOLATIONS IN ENVIRONMENTAL PROTECTION

KIM ANH

In order to provide the penalties compatible with the provisions of the Law on Environmental Protection (LEP) 2020 and the Decree guiding the LEP 2020 (currently in the drafting stage), the Government has published a Draft Decree on penalties for administrative violations in the field of environmental protection (**the Draft Decree**), and is currently consulting relevant individuals, organizations and agencies on the Draft. Compared to Decree 155/2016/ND-CP, amended by Decree 51/2020/ND-CP (**Decree 155**), the applicable document governing this issue, the Draft Decree supplements the penalties for new violations of LEP, and at the same time increases the level of penalties significantly for existing violations which cause great harm to the environment. In this Legal Newsletter, NHQuang&Associates will analyze some new regulations of the Draft Decree that may affect business operations of enterprises.

Additional regulation on statute of limitations for handling administrative violations in environmental protection

Currently, the issues related to the statute of limitations for handling administrative violations are not regulated separately in Decree 155 but governed by the Law on Handling of Administrative Violations 2012, amended in 2020. Accordingly, the statute of limitations for handling administrative violations is 2 years, and the starting time to calculate the above statute of limitations is (i) the time when the violation ceases, for the terminated administrative



violations, or (ii) the time when the violation is detected, for the ongoing administrative violations.

The Draft Decree has supplemented a provision on this issue; accordingly, the statute of limitations is 2 years and the starting time to calculate the statute of limitations applies provisions of the Law on Handling of Administrative Violations. At the same time, the Draft Decree also specifies the starting time for calculating the statute of limitations for 3 particular cases as follows:

- (i) The time when the violation is detected: applicable to some nonaction acts, such as failure to construct and install environmental protection works, failure to prepare or submit reports on test operation results, etc.;
- (ii) The time when organizations and individuals are supposed to conduct periodical environment monitoring, publish information or submit reports as prescribed: applicable to violations in conducting periodical environmental monitoring, publishing results of waste monitoring, reporting on environmental protection, etc.;
- (iii) The time when organizations and individuals receive analysis results of waste samples corresponding to violation acts: applicable to violations of wastewater discharge, exhaust emission, noise, and vibration.

The Draft Decree's supplement of the method to determine the starting time of the statute of limitations for some specific violations in environmental protection will make the determination of the statute of limitation easier and more accurate. At the same time, the clearer regulation on determining the statute of limitations for handling administrative violations also aims to enhance the responsibility of competent state agencies in handling violations in the field of environment protection,

preventing promptly the consequences caused by these acts.

Additional regulations on penalties related to environmental license

Environmental license is a new type of license specified in the LEP 2020, which has the function of replacing the component licenses specified in the LEP 2014 such as: Certificate of environmental protection work completion, License for wastewater discharge into water sources; License for exhaust emission; License for hazardous waste treatment, etc. Currently, for each component license, violation acts are regulated in various documents with different penalty levels. For example, under Decree 155, acts of not having the certificate of environmental protection work completion can be sanctioned with the lowest penalty of VND 140,000,000, the highest penalty of VND 180,000,000, depending on the agency authorized to issue the license; under Decree 36/2020/ND-CP on sanctioning of administrative violations in water and mineral resources, the act of discharging wastewater without the license for wastewater discharge into water sources shall be fined from VND 30,000,000 up to VND 250,000,000, depending on wastewater discharge volume.

However, because environmental license is an alternative to these component licenses, the regulations on administrative penalties for violations related to environmental license should be unified. In accordance with the Draft Decree, the act of not having an environmental license shall be subject to a penalty ranging from VND 30,000,000 to VND 250,000,000, divided into 3 levels, corresponding to the agency authorized to issue the environmental license: District People's Committee, Provincial People's Committee and the Ministry of Natural Resources and Environment. The unified regulation on penalty for violations related to environmental license in the Draft Decree will help businesses determine the penalty

levels easily, avoiding the current situation of scattered regulations in various documents.

Additional regulations on penalties related to environmental safety distance

Environmentally safe distance is the minimum distance from the emission source in normal operating conditions of a production facility or a warehouse to the nearest legal housing boundary of the concentrated rural residential area, inner area of urban centers to meet national technical regulations on environment. LEP 2014 already stipulates that businesses, service facilities and warehouse establishments must ensure an environmentally safe distance from residential areas, however Decree 155 does not prescribe any sanctions for violations in this regard.

The Draft Decree guiding the LEP 2020 has supplemented a new regulation on the responsibility of the provincial People's Committee in providing a relocation plan for establishment owners to ensure an environmentally safe distance. Accordingly, the Draft Decree also supplements a new penalty frame for the act of not relocating to ensure an environmentally safe distance from residential areas in conformity with the relocation plan prescribed by competent state agencies, with a penalty ranging from VND 200,000,000 to VND 250,000,000. The supplement of regulations on administrative penalty for this violation aims to comply with the LEP 2020, and at the same time to solve the actual needs of enhancing environmental protection responsibilities in residential area.

Enterprises need to update the drafting process of this Draft Decree to ensure that the implementation and operation of their projects are in line with the law. In particular, it is necessary to pay attention to the transition clause of the Draft Decree if their projects are in the process of preparing and finalizing dossiers to carry out environmental related procedures in accordance with previous legal regulations.



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