LEGAL NEWSLETTER

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Notable Activities in May, 2024

The capital of Hanoi is the leading locality in Vietnam regarding the number of cultural and historical relics (nearly 6,000 relics) and craft villages (1,350 villages). However, there has witnessed a gradual deterioration of relics (1,617 relics), among which 30% need to be restored. The number of craft villages is decreasing with only more than 800 villages. This is a topical issue, which receives much attention in the Draft Law on Capital (amended).

Mr. Nguyen Hung Quang, the founder of NHQuang&Associates, is a guest on the program "**Today Issue**" broadcast on the VTV1 channel on May 14, 2024. During the program, Mr. Quang shared new points in the Draft Law on Capital (amended), focusing on mechanisms and solutions to improve the quality of duplicating relics, protect public and cultural spaces, support mechanisms for the development of craft villages, craftsmen, night economy, night cultural spaces, and cultural industry. Mr. Quang also opined about applying the commercial and cultural development zone (BID) model in Hanoi to bring cultural vitality to its typical cultural spaces.

See the full program at: https://vtv.vn/video/van-de-hom-nay-14-52024-676167.htm

NEW REGULATIONS ON FIRE PREVENTION AND FIGHTING

TRANG NHUNG

On May 10, 2024, the Government issued Decree 50/2024/ND-CP amending Decree 136/2020/ND-CP guiding the Law on Fire prevention and fighting and the amended Law on Fire prevention and fighting (**Decree 136**) and Decree 83/2017/ND-CP regulating the rescue work of fire prevention and fighting forces (**Decree 50**). Decree 50 takes effect from May 15, 2024 with some outstanding contents as follows:

Firstly, supplementing regulations for establishments subject to fire prevention and fighting management. Accordingly, inheriting the provisions of Article 4 Decree 136, Clause 1 Article 1 Decree 50 supplements the regulations for establishments subject to fire prevention and fighting management as follows:

(i) Specifying the criteria applied to establishments subject to fire prevention and fighting management (the establishments that are places for production or business, public works, working offices, apartment buildings, and other independent works according to the list prescribed by the Government) namely "*operating, is being temporarily suspended, suspended from operations*". Previously, Decree 136 did not stipulate this content.

(ii) Amending and supplementing the list of establishments subject to fire prevention and fighting management (Appendix I, Decree 136), for example (i) detailing the area of establishments for services and catering business, specifically: having a total business area from 100m2 or a total volume of 500m3 and more; establishments doing business of flammable and explosive goods with a total business area of at least 50m2 or a total volume of building blocks serving business of 200m3 or more; (ii) amending the object of "working offices of enterprises, political and social organizations" to "buildings used as office headquarters of enterprises, political and social organizations", etc.

Secondly, amending regulations on subjects subjected to fire prevention and fighting design approval. Under Decree 50, these subjects are stipulated as follows:

(i) A number of subjects for which fire prevention and fighting design must be approved approval are omitted, including Construction planning plans or adjustments to construction planning of urban areas, economic zones, industrial parks, industrial clusters, export processing zones, high-tech parks, and other functional areas according to the Law on Planning.

(ii) For projects or works, Decree 50 supplements regulations by listing cases of new construction, cases of renovating or changing the nature of use subject to design approval for fire prevention and fighting, including:

- Increasing the scope in the number of floors or fire compartment area;
- Changing the type and position of escape stairs; reducing the number of emergency exits of floors, fire compartments, and structures;
- Installing a new fire alarm system or making a replacement;
- Installing a new fire extinguishing system or making a replacement;
- Changing the functions, which upgrades fire safety requirements for floors, fire compartments and buildings.

Thirdly, amending and supplementing regulations on inspection contents of fire prevention and fighting. Point a clause 8 Article 1 of Decree 50 amends regulations on inspection contents for (i) construction works under construction process; (ii) establishments providing fire prevention and fighting services, and (iii) urban areas, economic zones, industrial parks, industrial clusters, export processing zones and hi-tech parks. Specially:

(i) For construction works under construction process, Decree 50 has omitted the inspection of the Certificate of Design Appraisal or the document of design approval for fire prevention and fighting for works included in the list specified in Appendix V (List of projects, works, and motor vehicles subject to design approval for fire prevention and fighting);

(ii) For establishments providing fire prevention and fighting services, Decree 50 has added inspection over their implementation of fire prevention and fighting service provision activities according to industries granted by a competent Police authority.

(iii) Decree 50 supplements regulations on inspection contents for technical infrastructure related to fire prevention and fighting of urban areas, economic zones, industrial parks, industrial clusters, export processing zones, and hi-tech parks, accordingly recognizing provisions, and requirements in Article 10 (requirements on fire prevention and fighting when formulating or adjusting construction plannings of urban areas, economic zones, industrial parks, industrial clusters, export processing zones, hi-tech parks, and other functional zones according to the Law on Planning) and Article 31 (establishment, management and assurance of operating conditions of grassroots and professional fire prevention and fighting forces) of Decree 136. This content is supplemented to unify legal regulations and ensure compliance in fire prevention and fighting activities for investors developing urban areas, economic zones, industrial parks, industrial clusters, export processing zones, and hi-tech parks.

COMMENTS AND RECOMMENDATIONS

It is found that Decree 50 has amended and supplemented a number of provisions in Decree 136, thereby clarifying and guiding authorities and enterprises to resolve difficulties and problems related to fire prevention and fighting in recent years. In addition to the outstanding contents mentioned above, Decree 50 also supplements and amends regulations on procedures, contents, results, competence in design and design approval of fire prevention and fighting; procedures for acceptance and inspection of acceptance results on fire prevention and fighting, thereby ensuring consistency and improving efficiency in implementation of Administrative Reform process. Therefore, enterprises need to update and study the contents of Decree 50 to ensure compliance with new regulations related to fire prevention and fighting, including annexes of Decree 136 that have been amended and supplemented in Decree 50.

NEW REGULATIONS ON SANCTIONING ADMINISTRATIVE VIOLATIONS IN INDUSTRIAL PROPERTY

HOANG HAI

On May 4, 2024, Decree 46/2024/ND-CP (**Decree 46**) on amending and supplementing some articles of Decree 99/2013/ND-CP (**Decree 99**) on sanctions of administrative violations in industrial property was issued by the Government, which shall take effect on July 1, 2024. The following are some notable regulations of Decree 46:

Firstly, amending and supplementing regulations related to domain name infringement, specifically as follows:

(i) *The preventive measure of "temporary seizure of domain names" is supplemented*. Accordingly, authorities and persons authorized to handle administrative violations may request the Vietnam Internet Network Information Center (VNNIC) under the Ministry of Information and Communications, and the Domain Name Registrars to coordinate, provide professional opinions, and maintain the status quo of the domain names before implementing measures to temporarily seize the exhibits and means used for the administrative violation.

(ii) *Domain name registration is no longer considered an administrative violation*. In accordance with Decree 46, the acts sanctioned for administrative violations are only appropriating or using domain names identical or confusingly similar to others' protected trademarks, trade names, or geographical indications not entitled to use for bad faith, or taking advantage of the prestige and reputation of the corresponding trademarks, trade names and geographical indications for illegal earnings. This amendment aims to comply with the applicable intellectual property laws. In particular, under clause 50 of Article 1 of the Law on the amendment to some articles of the Law on Intellectual Property 2022, registering domain names identical or confusingly similar to others' protected trademarks, trade names, or geographical indications not entitled to use for the purpose of possessing, taking advantage of, or damaging the prestige and reputation of the corresponding trademarks, trade names, and geographical indications, is not considered an act of unfair competition.

(iii) *The remedial measure of changing domain name information is removed*. Accordingly, the only remedial measure for domain name infringement stated in Decree 46 is to force the domain names to be returned to the Domain Name Management Authority within 30 days from the effective date of the decision on the administrative sanction or application of the remedial measure. After such time limit, if the violating organizations or individuals fail to comply, the Domain Name Management Authority shall enforce the domain name revocation, and the Domain Name Registrar shall notify the domain name holder of the revocation, perform domain name revocation, and send a written report to the Domain Name Management Authority after completing the revocation.

Secondly, amending the scope of administrative violation sanctions against transit goods infringing upon industrial property rights. Previously, Decree 99 applied the measure of mandatorily taking the goods out of the Vietnamese territory as an additional sanction for transit goods. However, Decree 46 currently only applies the measure of mandatorily taking the goods out of the Vietnamese territory or mandatorily re-exporting the goods bearing counterfeit marks or geographical indications, including ingredients, means, and materials substantially used for producing and trading those goods (after removing the infringing elements on the exhibits). Thus, transit goods infringing upon patents, utility solutions, layout designs, or products manufactured from procedures infringing patents and utility solutions are no longer subject to administrative sanctions as stipulated in Decree 99.

Thirdly, amending and supplementing some regulations related to remedial measures of compulsory change of enterprise name or removal of infringing elements in enterprise name. In accordance with Decree 99, if an enterprise forced to change or remove the infringing elements in their names fails to comply within the given time limit, the authority issuing the decision on administrative violation sanction shall request the business registration authority to revoke its Certificate of Enterprise Registration. Currently, under Decree 46, violating enterprises will be subject to forced execution if they fail to carry out the procedure to change their names or remove the infringing elements in their names. Accordingly, within 10 working days from the expiry of the period for implementing the relevant decision, the competent authority handling violations will notify the business registration authority to coordinate in addressing the issue.

COMMENTS AND RECOMMENDATIONS

Decree 46 was issued to perfect the legal framework for administrative sanction in industrial property in the context that the Law on Intellectual Property has significant changes. Additionally, Decree 46 also contributes to addressing several challenges and difficulties arising during the implementation of Decree 99, particularly those related to sanction measures, method of supplementary sanctions, and remedial measures that are no longer relevant to the current practices. Besides some amendments related to the infringement of domain names or enterprise names and transit goods infringing industrial property rights, Decree 46 also revises several provisions on transferring the use rights of industrial property objects, adjusting the basis for determining fines and the authority to impose sanctions, etc. Therefore, enterprises and individuals should update Decree 46's new regulations to ensure compliance with the laws in carrying out activities related to industrial property.

SOME NEW POINTS OF THE DRAFT LAW ON VALUE-ADDED TAX (AMENDED)

QUOC DUNG

The Law on Value-Added Tax 2008 was passed on June 3, 2008 at the third session of the XII National Assembly, and subsequently amended and supplemented in 2013, 2014, and 2016 (**Law on VAT 2008**). After more than 15 years since its official effective date (January 1, 2009), the Law on VAT 2008 has significantly contributed positive results to the state budget and the economy, however, this Law has also revealed certain inadequacies, making it incompatible with current socio-economic development. Therefore, the Ministry of Finance is drafting the Law on VAT (Amended) (the **Draft**) to refine the regulations on VAT policy, codify issues that have been empirically validated, and ensure the consistency of the legal system, aiming at international economic integration.

The Draft substantially inherits the Law on VAT 2008 but amends and supplements many provisions, closely following the requirements of the Tax System Reform Strategy to 2030 by the Prime Minister. In this Legal Newsletter, NHQuang&Associates would like to introduce some important new points of the Draft that could affect business activities, focusing on several aspects related to non-VAT taxable objects and VAT refund.

Amendment and supplementation of regulations on non-VAT taxable objects

The Draft has amended and supplemented 22 items related to non-VAT taxable objects, such as issues related to credit provision services, capital transfer, sale of secured assets to handle bad debts by Vietnamese credit institutions, the threshold of annual revenue for sale or service provision by business households and individuals not subject to VAT, etc. Inter alia, the regulation on capital transfer as a non-VAT taxable object will directly impact the operations of businesses.

Accordingly, capital transfers in businesses are typically large-value transactions leading to tax obligations that businesses need to pay attention to. The Law on VAT 2008 currently stipulates three forms

of capital transfer not subject to VAT, including (i) transfer of part or the whole of invested capital, including selling enterprises to other enterprises for conducting production and business (ii) transfer of securities, and (iii) other forms of capital transfer as prescribed by law.

Circular 219/2013/TT-BTC guiding VAT implementation has detailed these forms of capital transfer. Practice has shown the suitability and effectiveness of these provisions, thus the Ministry of Finance proposes to codify them into the Draft. Specifically, the forms of capital transfer stipulated in the Draft include: (i) transfer of part or the whole of capital amounts invested in other economic organizations (regardless of whether a new legal entity is established), (ii) transfer of securities, (iii) transfer of capital contribution rights, and (iv) other forms of capital transfer as prescribed by law (including selling enterprises to other enterprises for production and business in which the purchasers inherit all rights and obligations of the sold enterprises in accordance with law). Additionally, the Draft supplements cases that are not subject to non-VAT taxable objects, which include (i) transfer of investment projects and (ii) sale of assets. Therefore, businesses should note that transactions involving mergers and acquisitions in the form of investment project transfer or asset sale are likely to be subject to VAT in the future.

Amendment and supplementation of regulations on VAT refund

Firstly, amending and supplementing regulations on VAT refund for investment projects.
Under the Law on VAT 2008, a business establishment that has registered to pay VAT according to the tax credit method shall be entitled to tax refund if it has a *new project* undergoing investment phase and with an amount of VAT on purchased goods or services used for investment not yet credited and the remaining tax amount of three hundred million Viet Nam dong or more.

In order to ensure consistency with investment laws, the Draft supplements regulations to specifically identify investment projects eligible for VAT refund for enterprises registered to pay VAT by the credit method. Eligible investment projects are identified as follows: (i) "*investment projects*" (including new investment projects and expanded investment projects) as defined by investment laws (including investment projects divided into multiple stages or multiple investment categories, except for those that do not form fixed assets) undergoing investment phase, and (ii) "*oil and gas exploration, development projects under investment phase*" of businesses registering to pay VAT according to the tax credit method. Additionally, the Draft also supplements the procedure for offsetting input VAT incurred during the investment phase (not yet refunded) against the VAT payable from ongoing production and business activities (if any) before considering VAT refund.

Moreover, the Draft adds the VAT refund deadline for investment projects that have been completed but the business has not yet processed the refund of VAT incurred in the investment phase, which is one year from the completion date of the investment project or the completion date of the investment phase or category. In which, the completion date of the investment project is the first date of revenue generation from the investment project or the first date of revenue generation from the investment phase or category (for investment projects divided into multiple phases or categories).

Secondly, abolishing regulations on VAT refund for ownership conversion, enterprise conversion, merger, consolidation, division, separation, and operation termination.

Currently, under the Law on Enterprises 2020, after reorganization or conversion of business type, enterprises automatically inherit all legitimate rights and interests of the reorganized or converted enterprises (including the right to declare and deduct undeducted input VAT). However, under the Law on VAT 2008, some enterprises have filed for VAT refund for undeducted input VAT through reorganization or conversion of business type. According to tax authorities' statistics, in the period from 2018 to 2023, the average annual VAT refund for cases of ownership conversion, enterprise conversion, merger, consolidation, division, separation, and operation termination was approximately VND 412,000,000,000.

Therefore, to ensure consistency with the Law on Enterprises and minimize inappropriate VAT refund, the Draft removes the content on VAT refund for cases of ownership conversion, enterprise conversion, merger, consolidation, division, separation, and operation termination in Clause 4, Article 14 of the Draft.

Additionally, the Draft also adheres to five policy groups in the proposal for developing the Law on VAT (Amended) project approved by the Standing Committee of the National Assembly, including (1) Completing regulations on non-VAT taxable objects; (2) Completing regulations on VAT calculation prices; (3) Completing regulations on VAT rates; (4) Completing regulations on input VAT deduction; (5) Completing regulations on VAT refund.

In general, the Draft has refined the policies, and codified regulations empirically tested, ensuring the consistency of the VAT legal regulations in line with international tax reforms. In the upcoming period, the Ministry of Finance will continue to refine the Draft before submitting to the National Assembly for approval at the 8th session (which is expected to take place in October 2024). Businesses should update and study the amended and supplemented VAT policies in the Draft and keep track of the legislative process to promptly apply new regulations in production and business activities once the amended VAT Law officially takes effect.

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