

LEGAL NEWSLETTER



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Notable Activities in October 2024

On October 11, 2024, the Hanoi Party Committee held the **Meeting to disseminate the Law on the Capital** at the headquarters of the Hanoi People's Committee, which was connected online with departments, units, and sectors as well as 30 districts/towns and 579 communes/wards/townships, with the participation of various leaders. At the Meeting, **NHQuang&Associates** and **Mr. Nguyen Hung Quang, Managing Partner of the Law firm**, were recognized and awarded Certificates of Merit by the Hanoi People's Committee to collectives and individuals with outstanding achievements in developing and promulgating the Law on the Capital in 2024.

Developing the Law on the Capital is a non-profit social activity (pro bono) of NHQuang&Associates and Mr. Quang in 2021 - 2024. NHQuang&Associates focuses on policies and regulations related to urban railway development, transport infrastructure, land, environmental improvement, culture, and sports and some new issues such as TOD (Transit-Oriented Development), BID (Business Improvement District), LEZ (Low Emission Zone).

NEW REGULATIONS ON SANCTIONS FOR ADMINISTRATIVE VIOLATIONS IN THE LAND SECTOR

HUYEN THU

On October 4, 2024, the Government issued Decree 123/2024/ND-CP regulating sanctions for administrative violations in the land sector (**Decree 123**). This Decree is issued to ensure consistency with several provisions of the Law on Land 2024 and to overcome several difficulties and obstacles in the implementation of Decree 91/2019/ND-CP on sanctions for administrative violations in the land sector (**Decree 91**). Below are some highlights of Decree 123:

Firstly, amending the provision on the scope of governance of the Decree. In general, the governance scope of Decree 123 inherits almost the regulation of the previous decree. However, Decree 123 further clarifies administrative violation acts in the land sector, which include administrative violation acts that have ended and those that are ongoing instead of the general provisions in Decree 91. Accordingly, it should be noted that even violations committed in the past can still be handled once they are detected.

Secondly, supplementing and specifying some remedial measures. Compared to Decree 91, Decree 123 supplements some new remedial measures to comply with the Law on Land 2024, such as:

- Forcing the implementation of procedures to get approval for large-scale animal husbandry projects;
- Forcing the development of agricultural land use plans for organizations receiving agricultural land use right transfer;
- Forcing individuals not directly engaged in agricultural production who receive land use right transfer beyond the given limit to establish economic organizations and develop plans for the use of rice lands.

In addition, *some measures in Decree 91 are also specified in the new decree*. Typically, instead of compulsory measures to implement administrative procedures on land as in Decree 91, Decree 123 stipulates some more specific measures such as

(i) forcing land registration; (ii) forcing the full implementation of financial obligations and procedures to hand over land; (iii) forcing the submission of documents to apply for approval from the Provincial People's Committee regarding the agreement on receiving land use rights to implement projects.

Thirdly, amending and supplementing some groups of violation acts and adjusting the fine levels. In general, many violation act groups identified in Decree 91 are still inherited in Decree 123, such as using land in the non-agricultural land group for other purposes without the competent State agency's permission; encroaching and occupying land; causing obstacles and difficulties (damage) to the use of land by others. However, some specific acts in each group have been adjusted, and the fine levels have been amended to be higher for consistency with current practices and laws. For example, with the violation act group of encroaching or occupying land, Decree 123 replaces the act of "encroaching or occupying unused land in rural areas" with the act of "encroaching or occupying land managed by State agencies and organizations, shown in the cadastral records within the communal administrative boundaries or documents allocating land for management". The fine for this violation is from VND 3,000,000 to VND 200,000,000, depending on the area of land violated (for individual violators).



Comments and recommendations

Decree 123 replaces Decree 91 from the effective date of October 4, 2024. Individuals and organizations should have a plan to study this document to ensure compliance with the applicable laws. It should be noted that for decisions on administrative sanctions in the land sector that were issued or fully enforced before the effective date of Decree 123, but the individuals and organizations that are subjects to administrative sanction still have complaints, the provisions on administrative sanctions in the land sector at the time of issuance of the sanction decision shall be applied for resolution.

NEW REGULATIONS ON TRADE PROMOTION ACTIVITIES

HOANG HAI

On October 10, 2024, the Government issued Decree 128/2024/ND-CP (**Decree 128**) amending and supplementing some articles of Decree 81/2018/ND-CP (**Decree 81**) which provides details for the Commercial Law on trade promotion activities. Decree 128 shall take effect on December 1, 2024 with some notable regulations as follows:

Firstly, amending the regulation on the maximum limit of the value of goods and services for promotion. Decree 128 clarifies the value of goods and services for promotion by changing the phrase “not exceed 50% of the price of the promoted goods or services unit before the promotion period” to “not exceed 50% of the selling price right before the promotion period of the promoted goods or services unit”. This amendment aims to specify that the basis for calculating the maximum limit on the value of goods and services for promotion is the selling price right before the promotion period, limiting varied understandings regarding the basis for calculating this maximum limit.

Secondly, amending some regulations related to the registration of promotion activities, specifically:

(i) Amending cases that promotion activities must be notified. Compared to Decree 81, Decree 128 has reduced some cases that promotion activity notification procedures are not required, including:

- Organizing for customers to participate in cultural, artistic, entertainment programs and other events for promotional purposes (clause 8 Article 92 of the Commercial Law);
- Providing free samples of goods or services to customers for testing (Article 8 of Decree 81);
- Gifting goods, providing services without collecting money (Article 9 of Decree 81);
- Selling goods and providing services at prices lower than the previous selling prices of goods and service provision, applied during the notified promotion period (promotion in the form of discount) (Article 10 of Decree 81);
- Selling goods and providing services with gift vouchers for procurement or services (Article 11 of Decree 81).



(ii) Adjusting registration dossier for promotional programs. According to Decree 81, when registering for a promotional program, merchants are required to submit an uncertified copy of documents proving the quality of promotional goods as per legal requirements. In practice, such merchants as electronics supermarkets, shopping centers, general retail stores, etc. that run promotional programs for all products and goods they sell would face difficulties in submitting these documents due to the large volume and wide variety of promoted items. Therefore, Decree 128 has abolished the requirement to provide these documents when merchants submit their registration dossier for promotional programs.

(iii) Amending the Forms of notification, registration, and report on the implementation of promotion activities and the organization of trade fairs and exhibitions. According to the Forms in the Appendix issued with Decree 81 (such as the Form of Promotion Implementation Notice, Registration of Promotion), only the legal representative of a merchant has the right to sign the Forms submitted to state management authorities. This regulation has caused some difficulties for merchants when carrying out administrative procedures related to promotion activities, organization of trade fairs and exhibitions, as currently most merchants' legal representatives have authorized other representatives in their activities for convenience in production and business operation. Therefore, Decree 128 has amended the signatory on the Forms from “*Legal representative of the merchant*” to “*Representative of the merchant*”.

Thirdly, amending the method of notifying promotion activities to state management authorities. Previously, under Decree 81, the methods of notifying promotion activities or notifying amendments and supplements to a Promotional Program's content include submission via “*email with an electronic signature or with a scanned copy*”

of the Promotion Implementation Notice with the signature and seal of the merchant to the email address announced by Departments of Industry and Trade". The application of a scanned copy with signature and seal is not consistent with the form of electronic dossier stipulated in point c clause 1 Article 9 of Decree 45/2020/ND-CP on the implementation of administrative procedures in the electronic environment. At the same time, the method of submitting dossiers to an email address to perform administrative procedures is not among the submission methods prescribed in Article 16 of Decree 61/2018/ND-CP on implementing the one-stop shop mechanism and interlinked one-stop shop mechanism for handling administrative procedures. Therefore, Decree 128 abolishes this submission method. Besides, Decree 128 replaces the dossier submission method via *"the online public service system provided by the Department of Industry and Trade"* with *"the National Public Service Portal or the Provincial Administrative Procedure Information System"* to comply with the applicable regulations on handling administrative procedures.

COMMENTS AND RECOMMENDATIONS

Being issued to perfect the legal framework for trade promotion activities, Decree 128 has reduced and simplified some administrative procedures and processes for merchants and resolved some problems and difficulties arising during the implementation of Decree 81 related to promotion activities and the organization of trade fairs and exhibitions. In addition to some amendments related to the maximum limit on the value of goods and services for promotion, registration dossier for implementing promotional programs, and methods of notifying promotion activities, Decree 128 also revises several contents on the deadline for announcing results and awarding prizes when implementing promotional programs, adds some forms for merchants when implementing promotion activities, etc. Therefore, enterprises and individuals should update new regulations of Decree 128 to ensure compliance with the laws when implementing trade promotion activities.

NOTABLE CONTENTS IN THE DRAFT LAW ON PERSONAL DATA PROTECTION

PHUONG UYEN

The issue of personal data protection is currently regulated by Decree 13/2023/ND-CP issued by the Government on April 17, 2023 on personal data protection (**Decree 13**). However, the implementation of this Decree has revealed a need for a specialized law on personal data protection to ensure consistency with domestic laws as well as compatibility with international laws and practices. The new law will aim not only to protect personal data rights but also to enhance the responsibility of relevant parties and prevent data violations. Importantly, the law's provisions must comply with the Constitution 2013 and international commitments to which Viet Nam is a party. To meet these requirements, the Ministry of Public Security has developed a Proposal for a Law on Personal Data Protection (**Draft Law**) with a number of notable points as follows:

Regulations on subjects of application and definition of personal data

As stipulated in the Draft Law, the subjects of application of the law include (i) Vietnamese agencies, organizations and individuals; (ii) Foreign agencies, organizations and individuals in Viet Nam; (iii) Vietnamese agencies, organizations and individuals that operate in foreign countries; (iv) Foreign agencies, organizations and individuals that directly process or are involved in processing personal data in Viet Nam; (v) Agencies, organizations and individuals collecting and processing personal data of foreigners within the territory of Viet Nam. Subject (v) mentioned above has been supplemented as compared to Decree 13, which reflects an emphasis on the protection of personal data not only for Vietnamese citizens but also for foreigners who live, work or engage in activities in Viet Nam.

In addition, some definitions in Decree 13, such as personal data, basic personal data and sensitive personal data, have been recorded in the Draft Law. The Draft Law also adds an information field about land users, and land data containing information on land users is classified as a type of sensitive personal data. These definitions are stipulated to be consistent



with the legal documents related to personal data, such as the Civil Code 2015, the Law on Identification 2023, the Law on Medical Examination and Treatment 2023, etc., as well as the importance of each type of personal data.

Regulations on the principle of personal data protection

In addition to inheriting the principles from Decree 13, the Draft Law emphasizes the principle that “*Personal data shall not be bought or sold in any form*” in Clause 1, Article 3, which creates the legal basis for preventing and applying sanctions against acts of buying and selling personal data, especially sensitive personal data, in practice. Moreover, the Draft Law supplements the principle that “*Personal data collected must be appropriate and limited to the scope and purpose of processing. Any parent company, subsidiary companies, and each company within an economic group and corporation are responsible for independently protecting personal data in accordance with legal provisions. The consent of the data subject for one company to process his/her personal data does not mean the consent for all companies in the same economic group and corporation*” in Clause 4, Article 3 of the Draft Law. This principle ensures transparency and separate accountability for each company within a corporate ecosystem, preventing any misuse of personal data through unauthorized sharing. However, this principle also poses significant challenges in data management for large corporations, where internal data sharing often plays an important role in business operations and

development. Therefore, enterprises need to consider establishing a data management mechanism along with optimizing related compliance procedures in the event that this principle is adopted and comes into effect.

Regulations on personal data protection in labor monitoring and recruitment, social media services, and communication services

Firstly, in labor monitoring and recruitment

Article 26 of the Draft Law stipulates several employers' obligations related to personal data as follows:

- (i)** Employers can only request applicants to provide information in the list of publicly available recruitment content or employee profiles;
- (ii)** Information provided in employee profiles is processed in accordance with the provisions of law and must be consented to by the data subject;
- (iii)** Employee profiles are stored for a period of time as prescribed by law and must be deleted when they are no longer required or when the prescribed period has expired;
- (iv)** When employee personal data is updated in the global employee data system:
 - The legal entity collecting and processing personal data must prove that the collection and processing of data is legal;
 - The data subject is responsible for the legality of the information provided by him/her.
- (v)** In addition, foreign companies that recruit and process personal data of Vietnamese employees living and working in Viet Nam must:
 - Complying with the laws on personal data protection as required by Vietnamese law;
 - Having a written agreement or contract with the investment company in Viet Nam on the processing of personal data of employees;
 - Providing the investment company in Viet Nam with a copy of the data on Vietnamese employees living and working in Viet Nam to comply with the provisions of the law when necessary.

Secondly, in social media services and communication services

Organizations and individuals providing social media services and over-the-top media services (OTT) are responsible for:

- (i)** Protecting the personal data of Vietnamese citizens when operating in the Vietnamese market or when they appear on mobile application stores provided to the Vietnamese market;

- (ii)** Clearly disclosing the content of personal data collected when data subjects install and use social media, OTT services. Not collecting personal data unlawfully and beyond the scope of the agreement with customers;

- (iii)** Not being permitted to request to take photos of citizen identification cards, or identity cards as a factor for account authentication;

- (iv)** Providing users with options to reject the collection and sharing of cookies;

- (v)** Providing a "No tracking" option or tracking social media and OTT service usage only with the users' consent;

- (vi)** Giving specific, clear, written notices of the sharing of personal data as well as the application of security measures when conducting advertising and marketing activities based on customers' personal data;

- (vii)** Any engagement in eavesdropping, wiretapping, or recording calls and reading text messages without the consent of the data subject is a violation of the law.

The above provisions are all new points recorded in the Draft Law compared to Decree 13, emphasizing strict control over the processing of personal data. In particular, foreign companies that recruit and process the personal data of Vietnamese employees living and working in Viet Nam must have an agreement with domestic investment companies on the processing of personal data and provide copies of data related to Vietnamese employees. For international platforms such as Meta, YouTube, and TikTok, compliance with regulations when operating or appearing on the app store in Viet Nam is mandatory, all account authentication methods that require taking photos of citizen identification cards or identity cards are also prohibited.

In general, these regulations aim to protect the privacy of individuals, enhance transparency in data collection and processing process, prevent data abuse and ensure compliance with Vietnamese law, even for foreign companies operating in Viet Nam.

Transfer of personal data abroad

Compared to Decree 13, the Draft Law supplements regulations on cases of transferring personal data abroad, including:

- (i)** Sharing personal data with recipients outside the territory of Viet Nam;

- (ii)** Sharing personal data at conferences, seminars,

meetings, or discussions held abroad;

- (iii) Sending documents or emails containing personal data to recipients outside the territory of Viet Nam;
- (iv) Publishing personal data on cyberspace so that people outside the territory of Viet Nam can receive it;
- (v) Providing personal data to other organizations, businesses, individuals to carry out business activities;
- (vi) Providing personal data to fulfill legal obligations abroad or in accordance with the laws of the host country.

The Draft Law also inherits the requirements for transferring personal data abroad, including: (i) making a Dossier on the impact assessment of the outbound transfer of personal data (**Impact Assessment Dossier**); (ii) submitting the Impact Assessment Dossier to the Personal Data Protection Authority within 60 days from the date of personal data processing; (iii) always having the Impact Assessment Dossier available for inspection and assessment by the Personal Data Protection Authority; (iv) inspecting the transfer of personal data abroad once a year.

It can be seen that such cases as sharing data at conferences, sending documents via email, or publishing data on cyberspace have reflected the practical operations in today's global environment. Specifying the cases for transferring personal data abroad will help organizations and individuals easily perceive and comply with the regulations. However, strict procedural requirements and annual inspections can create challenges for organizations and businesses. To ensure feasibility in practice, flexibility and detailed guidance are essential for organizations and businesses during the implementation process.

With notable new points, the Draft Law not only meets the requirements for protecting individual rights but also conforms to the global trend in protecting personal data towards a safe and sustainable digital environment in Viet Nam. Currently, the Draft Law is in the stage of collecting comments from agencies, organizations and individuals, and is expected to be approved by the National Assembly at the 9th National Assembly Session in May 2025. Enterprises, organizations and individuals can contribute their comments and need to monitor the process of the Draft Law completion to promptly update and comply with the new regulations when the Law on Personal Data Protection comes into effect.

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