

LEGAL NEWSLETTER



IN THIS LEGAL NEWSLETTER

NEW REGULATIONS IN THE CIRCULAR ON SANCTIONS FOR ADMINISTRATIVE VIOLATIONS IN INDUSTRIAL PROPERTY

Page 2

OUTSTANDING POINTS OF THE CIRCULAR ON QUALITY MANAGEMENT OF CONSTRUCTION MATERIALS

Page 4

SOME NEW REGULATIONS ON INFORMATION DISCLOSURE AND REPORT ON CORPORATE BOND OFFERING AND TRADING

Page 6

Appreciation Message

November 4, 2024 marks the 20th year of NHQuang&Associates' establishment and operation milestone. On this occasion, NHQuang&Associates would like to express our most sincere and deepest gratitude to our valued Clients. Your cooperation has undoubtedly contributed to NHQuang&Associates' today success.

Over the past 20 years, NHQuang&Associates has always strived to create a professional law firm with a high sense of professional responsibility, towards the community interests and meeting the specific requirements of our Clients. Developing and sending Legal Newsletters to our Clients are activities that demonstrate our sense of responsibility to the community in general and our Clients in particular. Since 2013, more than 170 issues of Newsletter have been sent to NHQuang&Associates' Clients and we are constantly improving this publication from form to content, in both Vietnamese and English.

NHQuang&Associates hopes to continue to accompany our Clients on the journey ahead and share useful legal information in our Legal Newsletter!

Sincerely,

On behalf of NHQuang&Associates,
Nguyen Hung Quang - Founder and Managing Partner

NEW REGULATIONS IN THE CIRCULAR ON SANCTIONS FOR ADMINISTRATIVE VIOLATIONS IN INDUSTRIAL PROPERTY

QUYNH NHUNG

On September 30, 2024, Circular 06/2024/TT-BKHCN (**Circular 06**) was issued by the Ministry of Science and Technology to amend and supplement Circular 11/2015/TT-BKHCN (**Circular 11**) providing guidelines for Decree 99/2013/ND-CP (**Decree 99**) on administrative sanctions in industrial property. Below are some notable new points of this Circular to be addressed by organizations and individuals:

Firstly, amending the application of preventive measures and assurance of handling administrative violations against unfair competition related to the appropriation or use of domain names. Specifically, for acts of appropriating or using domain names that are 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, or geographical indications for illegal earnings (an act of unfair competition in industrial property), the authorized administrative sanctioning officer shall consider applying the measure of *temporary seizure of the domain name* upon receiving valid documents from the entity requesting to handle unfair competition related to the appropriation or use of domain names. The petition dossier includes:

- (i) A request for application of preventive measures and assurance of handling administrative violations by "temporary seizure of domain names" (which is submitted as (a) a separate document or as (b) part of the petition for handling of unfair competition related to domain name appropriation or use);
- (ii) A power of attorney for making the request (if applicable); and
- (iii) Documentation and evidence proving the act of unfair competition related to domain name appropriation or use.

Secondly, amending and supplementing the method to



determine the amount of illegal gains obtained from administrative violations. According to Circular 06, illegal monetary gains represent the total amount of money that an organization or individual acquires from administrative violations and are calculated by the revenue earned from the transfer, consumption, provision of infringing goods or services after *deducting the direct costs constituting these goods or services*. This provision has been changed from the previous one, in which Circular 11 does not deduct the direct costs constituting goods or services as mentioned above. However, to deduct such direct costs as prescribed in Circular 06, the violating organizations and individuals must provide full records and documents to prove the legality and validity of these costs.

In addition, Circular 06 also adds more specific definitions of illegal gains as valuable papers and other objects or assets. Accordingly, illegal gains as valuable papers are all valuable papers as prescribed by the Civil Code and other types of valuable papers as prescribed by relevant regulations that are obtained by organizations or individuals from administrative violations. Illegal gains as other objects or assets obtained by organizations or individuals from administrative violations are also other objects or assets as prescribed by the Civil Code.

Thirdly, amending and supplementing regulations on violations of industrial property on the Internet. According to Circular 06, an act is considered as occurring on the Internet with the following elements: (i) it takes place on the Internet and (ii) it is carried out on a website under a Vietnamese domain name or with Vietnamese as the display language, or it aims at consumers or information users in Viet Nam. Accordingly, any commission of the above acts by individuals and organizations is

considered a violation of industrial property and will be subject to administrative sanctions according to Decree 99. Moreover, domain name registrants who *allow* other organizations or individuals to use the domain names, and *know or have reason to know* that they will be used to commit violation acts considered as occurring on the Internet, are also deemed to have engaged in an act of violation in industrial property and may be subject to administrative penalties. It can be seen that this regulation has become more binding and stricter as compared to the previous provision in Circular 11 that only owners of national domain names that hire other organizations and individuals to commit violation acts considered as occurring on the Internet would be considered a violation of the law.

COMMENTS AND RECOMMENDATIONS

In general, compared with Circular 11, Circular 06 has regulated administrative sanctions in industrial property more strictly and in more detail. This Circular is issued to improve the state management in industrial property, one of the popular fields in modern society, and to unify with other legal documents in the same field. Circular 06 took effect on November 15, 2024; therefore, individuals and organizations should study and comprehend the provisions in this Circular to ensure compliance with the legal regulations and to adopt measures to protect their legitimate rights when necessary.

OUTSTANDING POINTS OF THE CIRCULAR ON QUALITY MANAGEMENT OF CONSTRUCTION MATERIALS

HAI LONG

On November 1, 2024, the Ministry of Construction issued Circular 10/2024/TT-BXD (**Circular 10**) providing regulations on quality management over construction material (**CM**) products and commodities. Circular 10 takes effect from December 16, 2024, with several notable points that organizations and individuals should pay attention to.

Firstly, the Circular details the regulations on CM products and commodities, in which CM product and commodity groups listed in Annex I of Circular 10, including typical groups such as cement and clinker; tiles; paving stones; sanitary ceramics; construction glass; lime; gypsum; refractory materials; construction stones; construction sand and gravel; masonry materials, and classified into the following categories:

(i) CM products and commodities without potential safety risks are those that, under reasonable conditions of transportation, storage, preservation, and use with the correct purpose, do not cause harm to humans, animals, plants, properties, or the environment (CM product and commodity group 1).

(ii) CM products and commodities with potential safety risks are those that, under reasonable conditions of transportation, storage, preservation, and use with the correct purpose, still carry the potential to cause harm to humans, animals, plants, properties, or the environment (CM product and commodity group 2). These products fall under the management responsibility of the Ministry of Construction and are listed in Annex II of Circular 10.

Additionally, for exported, imported CM commodities that have not yet been listed and identified with HS codes (exported, imported commodity classification codes in the List of Vietnamese imported and exported commodities) or with differences in classification and HS code determination, their HS codes shall be determined according to customs law regulations.



After customs clearance, exporting and importing organizations and individuals shall submit documents to the Ministry of Construction to serve as a basis for coordination with the Ministry of Finance to review, update, and supplement the HS code list.

Secondly, the Circular details the regulations on general quality management requirements for CM products and commodities. Circular 10 explicitly states that the quality of CM products and commodities must be ensured as specified in clause 1, Article 7, and Article 10, Chapter III of Decree 09/2021/ND-CP on CM management; applicable standards according to product and commodity quality regulations must be published; and traceability regulations must be implemented in accordance with Circular 02/2024/TT-BKHCN on product and commodity traceability management. Furthermore, each CM product and commodity group must meet the following specific requirements:

(i) For CM product and commodity group 1:

- A quality management system must be applied to ensure the product quality is consistent with corresponding technical standards. The products must be labeled according to Article 4 of Circular 10 before market circulation.
- Product conformity with corresponding standards shall be declared voluntarily, which must be implemented under Chapter II of Circular 28/2012/TT-BKHCN concerning standard conformity declaration, technical regulation conformity declaration, and methods of assessing conformity with standards and technical regulations; Circular 02/2017/TT-BKHCN amending and supplementing certain provisions of Circular 28/2012/TT-BKHCN; and Article 11 of Circular 10.

(ii) For CM product and commodity group 2:

- A quality management system must be applied to ensure product quality is consistent with corresponding technical regulations, and the products must be labeled according to Article 4 of Circular 10 before market circulation.
- Product conformity with corresponding technical regulations shall be declared mandatorily, which must be implemented under Chapter II of Circular 28/2012/TT-BKHCN, Circular 02/2017/TT-BKHCN, and Article 12 of Circular 10.

Thirdly, the Circular also details the regulations on standard conformity declaration, technical regulation conformity declaration activities for CM products and commodities as follows:

(i) Standard conformity declaration: Organizations and individuals shall declare CM products and commodities as conformed to corresponding standards based on Conformity certification results from a conformity assessment organization or based on self-conformity assessment results and must register the standard conformity declaration with the Inspection Agency.

(ii) Technical regulation conformity declaration: Organizations and individuals shall declare technical regulation conformity for CM product and commodity group 2 specified in national technical regulations issued by the Ministry of Construction and Annex II of Circular 10. Accordingly, the declaration is based on: (i) Certification results from a registered or legally recognized certification organization; or (ii) Certification or inspection results from certification or inspection organizations designated by the Ministry of Construction. In the case of using the conformity assessment results by foreign conformity certification organizations and testing organizations, such organizations must be recognized according to Vietnamese law or designated by a competent state management agency. It is noted that domestically produced CM products and commodities must be declared for technical regulation conformity at the Inspection Agency in the relevant place of business registration, based on certification results from a registered certification organization, or an organization recognized or designated according to legal provisions.

COMMENTS AND RECOMMENDATIONS

Overall, Circular 10 provides a more detailed and comprehensive framework for the quality management of CM products and commodities. This Circular categorizes groups of CM products and commodities and outlines appropriate quality management requirements for each group. The distinction between Group 1 (without potential safety risks) and Group 2 (with potential safety risks) enhances management effectiveness and ensures user safety. To ensure effective compliance, organizations, and enterprises should thoroughly examine and comprehend the contents of this Circular to guarantee adherence to legal management requirements and implementation of necessary legal procedures.

SOME NEW REGULATIONS ON INFORMATION DISCLOSURE AND REPORT ON CORPORATE BOND OFFERING AND TRADING

HAI LINH

On November 6, 2024, the Minister of Finance issued Circular 76/2024/TT-BTC guiding the information disclosure and report on offering and trading privately-placed corporate bonds in the domestic market and offering corporate bonds to the international market (**Circular 76**). This Circular replaces Circular 122/2020/TT-BTC guiding the information disclosure and report according to Decree 153/2020/ND-CP (**Circular 122**) and takes effect from December 25, 2024. The following are some new points of Circular 76 on the information disclosure and reporting on the offering and trading of corporate bonds are as follows:

Firstly, amending the regulations on the methods of information disclosure by bond-issuing enterprises. According to Circular 76, bond-issuing enterprises may choose one or several method(s) for disclosing information to bond investors as prescribed in clause 1, Article 6, Circular 76 instead of mandatorily performing all information disclosure methods under clause 1, Article 6, Circular 122. In addition, Circular 76 also abolishes the method of “Posting on the Corporate Bond Information Portal of Hanoi Stock Exchange”. Thus, there are now only 3 methods of information disclosure, including:

- (i) Issuing paper-based documents;
- (ii) Issuing electronic documents;
- (iii) Posting on the website of the issuing enterprises.

Secondly, amending the form for information disclosure on offering privately-placed bonds in the domestic market/offering bonds to the international market. Compared to Annex I of Circular 122, Circular 76 amends and supplements more detailed contents in this form. For example, Annex I, Circular 76 supplements the following contents: (i) Expected duration of the bond offering and bank account number to receive proceeds from the bond offering (Section II. Information on the offering, Part 1);



(ii) Practice of the issuance and use of capital for outstanding bonds (specific to each type of bonds) and auditors/reviewers’ opinions on financial statements according to legal provisions (Section I. Information on the issuing enterprise, Part 3); (iii) Criteria to select strategic investors for the issuance of convertible bonds and bonds with warrants, Responsibilities of bond-issuing enterprises (Section II. Information on the bond offering, Part 3).

Thirdly, supplementing the forms in Annex III related to periodic information disclosure of issuing enterprises. Accordingly, Circular 76 supplements 2 forms: (i) Form No. 3.4 - Report on the use of proceeds from bond issuance for outstanding bonds and (ii) Form No. 3.5 - Information disclosure on the implementation of commitments to bond investors. In which, Form No. 3.4 includes such main contents as information on the use purpose of the proceeds from the bond issuance, the situation of using the proceeds from the bond issuance, and the progress of disbursing proceeds from the issuance of outstanding corporate bonds. Form No. 3.5 covers information on the actual implementation of information disclosure obligations and other commitments along with specific explanations, applied for each outstanding bond code.

COMMENTS AND RECOMMENDATIONS

The promulgation of Circular 76 aims to specify the provisions on information disclosure and report on corporate bond offerings and transactions in Decree 153/2020/ND-CP and Decree 65/2022/ND-CP, control corporate bond trading activities more strictly, enhance transparency in bond transactions as well as support competent organizations and agencies in state management of bond transactions through expanding the scope of subjects required to disclose and report information and regulating the disclosure and report contents more specifically. Enterprises need to update and study the provisions of Circular 76 to conduct corporate bond offerings and transactions in accordance with the provisions of the law.

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