

# LEGAL UPDATES

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**January**  
ISSUE NO.1

**2022**  
EDITION



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## 1. Resolution No. 33/2021/QH15 on organizing online courts, takes effect as of January 01<sup>st</sup>, 2022

On November 12<sup>th</sup>, 2021, National Assembly promulgated Resolution No. 33/2021/QH15 on organizing online courts (“**Resolution 33/2021/QH15**”).

Currently, Vietnamese procedural laws (including Civil procedure Code, Criminal procedure Code and Law on Administrative procedure) only stipulate the procedures of direct trials, not online trials. However, from January 01<sup>st</sup>, 2022, in addition to the above method, online trial is also a new method, which is conducted according to Resolution 33/2021/QH15.

### *What is the online court?*

Accordingly, an online court is a court held in a courtroom, using electronic devices connected to each other via a network, allowing the accused, victims, litigants and other participants to participate in the court session at a location outside the courtroom decided by the court, but still ensuring participants to follow directly and fully images and sounds; and to attend the court procedures by verbalizing, continuously and publicly proceeding behaviors at the same time.

### *Which cases will the court conduct online?*

Pursuant to Resolution 33/2021/QH15, the People’s Courts can organize the first-instance trial or appellate trial of criminal, civil, administrative cases with simple facts and clear evidences by online, except for the following circumstances:

- (i) criminal, civil and administrative cases relating to state secrets;
- (ii) criminal cases for one of the crimes of infringing upon national security specified in Chapter XIII of the Criminal Code; and
- (iii) criminal cases for one of the crimes of undermining peace, against humanity and war crimes specified in Chapter XXVI of the Criminal Code.

However, an online court must comply with the law, keep the security, network safety information, the physical and technical facilities and ensure the respectability in a trial.



## **2. Decree No. 85/2021/ND-CP amending Decree No. 52/2013/ND-CP on E-commerce, takes effect as of January 01<sup>st</sup>, 2022**

On September 25<sup>th</sup>, 2021, the Government promulgated Decree No. 85/2021/ND-CP amending and supplementing Decree No. 52/2013/ND-CP on E-commerce (“**Decree 85/2021/ND-CP**”). Decree 85/2021/ND-CP takes effect as of January 01<sup>st</sup>, 2022.

### *Goods and services information on websites*

Pursuant to the current law, for goods and services introduced on websites, the traders, organizations or individuals (sellers) shall provide information so that customers can accurately identify the features of these goods or services in order to avoid misunderstanding when making an offer.

In addition to the above provision, Decree 85/2021/ND-CP also adds new provision. Accordingly, the goods information on websites must include some required contents pursuant to the law on labeling of goods (these required contents must be shown on the label of goods), except for separated information of the products such as: date of manufacture, expiry date, lot number, chassis number and engine number.

Moreover, the sellers must also meet the investment and business conditions on the list of conditional investment and business lines as well as announce the number, issued date and issued place of the license, certificate of eligibility, written certificate or other forms of document as prescribed by law on business condition of such professions.

### *General trading conditions for goods and services*

According to Decree 52/2013/ND-CP, the sellers must publish the general trading conditions for goods and services introduced on the website, including:

- (i) conditions or restrictions on providing goods and services, comprising limits on time or geographic scope (if any);
- (ii) return policies, including the time limit and methods for returning or exchanging of goods, method of getting refunds and refunds fee;
- (iii) warranty policy (if any);



- (iv) service standards, the process of providing the services, the tariff and other payment relating to the providing of services, including conditions and restrictions, if any; and
- (v) the seller's obligations and customer's obligations in each transaction.

From January 01<sup>st</sup>, 2022, in addition to the above information, the sellers must publish the inspection policies of goods and services introduced on website.

### *Adding goods shipment and delivery conditions*

According to the current law, the sellers must announce the conditions for shipment and delivery of goods and services, including:

- (i) method of goods delivery or services providing;
- (ii) estimated time limit for goods delivery or services providing, taking into account the geographical distance and method of delivery; and
- (iii) geographical limit of goods delivery and services providing, if any.

Currently, Decree 85/2021/ND-CP also supplements new provisions. Accordingly, in addition to the above information, the sellers must assign the logistics service providers' responsibilities on providing licenses during the goods delivery process.

### *Amending operation forms of e-commerce trading floors*

According to Decree 52/2013/ND-CP, operation forms of e-commerce trading floors include:

- (i) a website allowing participants to open booth to display and introduce their goods and services;
- (ii) a website allowing participants to set up branch websites to display and introduce goods and services;
- (iii) a website that has trading section allowing participants to post news of trading of goods and services; and
- (iv) other types of websites as prescribed by the Ministry of Industry and Trade.



However, Decree 85/2021/ND-CP currently replaces the operation forms of e-commerce trading floors mentioned at point (ii) and (iv) with others. Therefore, from January 01<sup>st</sup>, 2022, operation forms of e-commerce trading floors shall consist of:

- (i) a website allowing participants to open booth to display and introduce their goods and services;
- (ii) a website allowing participants to open account to carry out the conclusion of contracts with customer;
- (iii) a website that has trading section permitting participants to post news of trading goods and services; and
- (iv) a social network operating in one of the above forms in point (i), (ii) and (iii) and the participants directly or indirectly pay fees when conducting such activities.

### **3. Law No.69/2020/QH14 on Vietnamese employees working abroad and Decree No. 112/2021/ND-CP guiding the Law on Vietnamese employees working abroad, which take effect as of January 01<sup>st</sup>, 2022**

The XIV National Assembly, 10<sup>th</sup> session on November 13<sup>th</sup>, 2020 ratified the Law No.69/2020/QH14 on Vietnamese employees working abroad (“**Law 69/2020/QH14**”). At the same time, in order to specifically guide Law 69/2020/QH14, the Government also issued Decree No. 112/2021/ND-CP guiding the Law on Vietnamese employees working abroad (“**Decree 112/2021/ND-CP**”).

#### *Adding forms of working abroad of Vietnamese employees*

According to Law 69/2020/QH14, Vietnamese employees’ forms of working abroad under the contract, including:

1. contracts for sending employees to work abroad signed with non-business units to implement international treaties or agreements;
2. written contracts or agreements signed with below enterprises, organizations and individuals:
  - (i) Vietnamese enterprises providing services of sending Vietnamese employees to work abroad under contracts;
  - (ii) Vietnamese enterprises winning bids or accepting contracts for works and projects abroad;



- (iii) Vietnamese enterprises sending employees abroad for training and skill improvement; and
  - (iv) Vietnamese organizations and individuals investing abroad.
3. labor contracts signed directly by the Vietnamese employees and the overseas employers.

Thus, in addition to the previous forms of working abroad of Vietnamese employees, Law 69/2020/QH14 also adds new form of working abroad through employment contracts signed by Vietnamese and non-business units to implement international treaties and agreements.

*Amendment of business investment conditions of sending Vietnamese employees to work abroad services*

Law 69/2020/QH14 provides that enterprises may be granted a license of providing the services of sending employees to work abroad when they satisfy the following conditions:

- (i) enterprises must “have a charter capital of VND 5 billion or more; whose owners, all members and shareholders are domestic investors in accordance with the Law on Investment”;
- (ii) Article 23 of Decree 112/2021/ND-CP has raised the deposit amount of service enterprises from VND 1,000,000,000 under Decree 38/2020/ND-CP to VND 2,000,000,000. At the same time, Decree 112/2021/ND-CP also adds that in case a service enterprise assigns a branch to perform service activities of sending Vietnamese employees to work abroad under contracts, it must submit an additional deposit amount of 500,000,000 VND for each assigned branch;
- (iii) while Law 72/2006/QH11 only sets the requirements for minimum education and years of experience, Point c Clause 1 Article 10 of Law 69/2020/QH14 has expanded the requirement for legal representatives of the enterprises providing overseas employment service. Specifically, they must not be subject to criminal prosecution and have no previous convictions for certain crimes specified in the Criminal Code;





- (iv) enterprises must have enough number of professional staff to perform the service activities of sending Vietnamese employees to work abroad under the contracts; and
- (v) enterprises must have their own website.

In addition, Law 69/2020/QH14 stipulates that the enterprises must maintain the operating conditions for sending Vietnamese employees to work abroad under contracts throughout their operation. This regulation aims to ensure that the legitimate rights and interests of employees are protected while working abroad.

*Payers for service enterprises are the foreign party receiving the labor and the employees*

Law 69/2020/QH14 defines “service charge is a payment received by services enterprises from a foreign party receiving labor and employees to cover costs, search and develop markets, negotiate and sign labor supply contracts, and manage employees while working abroad”. Meanwhile, the definition of “service charge” under Law 72/2006/QH11 is an expense that only the employees must pay to the enterprises to perform the contract of sending employees to work abroad. Thus, Law 69/2020/QH14 has expanded the subjects who can make service payments to services enterprises, including foreign parties receiving labor and employees.

In case an employee who has paid the service charge for the whole working time under the contract but has to return home ahead of time for reasons beyond his/her control, service enterprises must refund to that employee an amount equivalent to the proportion of the service charge and interest corresponding to the remaining duration of the contract. Compared to Law 72/2006/QH11, Law 69/2020/QH14 adds the obligation to refund interest besides service charge.

*Brokerage contract and remuneration of brokerage contract*

Regarding brokerage contracts and remuneration of brokerage contracts, Law 69/2020/QH14 has added the definition of “brokerage contract” as a written agreement between a service enterprise and an intermediary organization, individual about introducing foreign parties to receive Vietnamese employees to conclude labor supply contracts. Besides, Law 69/2020/QH14 does not use the concept of “brokerage commission” but replaces it with the concept of “remuneration under the brokerage contract” and abolishes the provision of employee’s obligation of



refunding a part of brokerage charge for service enterprises to reduce their cost burden while working abroad.

In addition to the above new points, Law 69/2020/QH14 also stipulates that Vietnamese employees working abroad under contracts do not have to pay social insurance or personal income tax twice if Vietnam and that country have signed an agreement/treaty on social insurance or avoiding double taxation, supplements the provision on labor preparation as well as provisions on management of Vietnamese employees working abroad under contracts by code, integrated on the database system to create a legal corridor to promote the application of information technology, digitize data in the state management of employees working abroad under contracts.

#### **4. Decree No. 02/2022/ND-CP detailing the implementation of a number of articles of the Law on Real estate trading, takes effect as of March 01<sup>st</sup>, 2022**

On November 06<sup>th</sup>, 2022, the Government issued Decree No. 02/2022/ND-CP detailing the implementation of a number of articles of the Law on Real estate trading (“**Decree 02/2022/ND-CP**”). This Decree takes effect from March 01<sup>st</sup>, 2022 and replaces Decree No. 76/2015/ND-CP detailing the implementation of a number of articles of the Law on Real estate trading (“**Decree 76/2015/ND-CP**”).

#### ***Amendment and supplementation of conditions for real estate business***

Decree 02/2022/ND-CP amending and supplementing regulations on real estate business conditions of organizations and individuals. Accordingly, organizations and individuals doing real estate trading (except for organizations, households and individuals that sell, transfer, lease, lease-purchase real estate on a small scale, infrequently) must meet the following requirements:

- (i) must establish an enterprise in accordance with the law on enterprises or a cooperative in accordance with the law on cooperatives, have a business line of real estate;
- (ii) must publicize on the website of enterprise, at the head office of the Project Management Board (for real estate investment projects), at the real estate trading floor (for business through the real estate exchange) information about the business (including name, head office address, contact phone number, name of the legal representative), inform about





real estate put into business as prescribed in Clause 2, Article 6 of the Law on real estate trading, inform about mortgage of houses, construction works, real estate projects put into business (if any), inform on the quantity and type of real estate products being traded, the quantity and type of real estate products sold, transferred, leased and purchased and the remaining quantity and types of products that are still being traded. Business. For the above information that has been publicly disclosed and then changes, it must be promptly updated as soon as there is a change; and

- (iii) Only trade in real estate that fully meets the conditions specified in Article 9, Article 55 of the Law on real estate trading.

Compared to Decree 76/2015/ND-CP, according to the above provisions, condition (i) remains the same; condition (ii) is added in order to concretize the regulations on publicizing information on real estate put into business as prescribed in Article 6 of the Law on real estate trading; and condition (iii) is added to be consistent with the provisions of the law and previous guiding documents.

In addition, Decree 02/2022/ND-CP also abolishes the legal capital requirement of 20 billion VND for real estate trading.

### *Equity level for investors selected to be the investor of real estate projects*

Decree 02/2022/ND-CP has added regulations on the equity level for investors selected as investors in real estate projects based on the size of land use and showed how to determine the equity level.

Accordingly, investors must have equity not less than 20% of total investment capital for projects with a land use scale of less than 20 hectares, not less than 15% of the total investment capital for projects with a land use scale of 20 hectares or more.

The determination of equity is based on the results of the most recent audited financial statements or the results of independent audit reports of the operating enterprise (made in the year or the preceding year); in the case of a newly established enterprise, the equity capital shall be determined according to the actual contributed charter capital as prescribed by law.

### *Using a general contract form when doing real estate business*



Previously, Decree 76/2015/ND-CP also introduced contract forms in real estate trading such as contracts for sale, lease, rent-purchase of houses, existing construction works (or future construction); contract for the transfer, lease (sublease) of land use rights; contract to transfer the whole project (or part of the project). This Decree also clearly states that the above contract forms are for reference by the parties and the parties can amend and supplement the terms of the model contract.

However, according to Decree 02/2022/ND-CP, from March 01<sup>st</sup>, 2022, the parties are required to use the model contracts issued together with this Decree in real estate trading. Accordingly, Decree 02/2022/ND-CP stipulates the following model contracts: contract of sale/lease-purchase of apartments, tourist apartments, office apartments combined with accommodation, houses, construction works; contract to rent houses, construction works; contract for transfer, lease/sublease of land use rights; contract to transfer the whole (or part) of the real estate project.

### *Conditions for transfer of contracts for purchase and sale of future houses and for transfer of lease-purchase contracts for existing houses and construction works*

According to the provisions of Decree 02/2022/ND-CP, the transfer of contracts for purchase and sale, lease-purchase of houses and construction works (except for contracts of sale, purchase and lease-purchase of social housing) must satisfy the following conditions:

- (i) have a sale, purchase or hire purchase contract made according to the provisions of Article 6 of this Decree; in case the parties have signed the contract before March 01<sup>st</sup>, 2022, the signed contract must be present;
- (ii) have not submitted an application for a certificate of land use rights and ownership of houses and other land-attached assets;
- (iii) contracts for sale, purchase, lease-purchase of houses and construction works must be free of disputes or lawsuits; and
- (iv) houses and construction work under purchase and sale or hire-purchase contracts are not subject to distraint or mortgage, unless otherwise agreed by the mortgagee.

### *Project transfer*

According to Decree 02/2022/ND-CP, for real estate projects approved by investors or granted an Investment Registration Certificate under the Law on Investment, the



transfer will be conducted pursuant to the investment law. For the remaining real estate projects, the transfer will be carried out in accordance with the Law on Real state trading and Decree 02/2022/ND-CP.



**DOCUMENTS ISSUED IN JANUARY 2022**

DATE OF ISSUANCE	NO.	TYPE OF DOCUMENT	ISSUED BY	MAIN ISSUE
06/01/2022	02/2022/ND-CP	Decree	Government	detailing and guiding a number of articles of law on real estate trading
10/01/2022	08/2022/ND-CP	Decree	Government	detailing and guiding a number of articles of law on environmental protection
10/01/2022	07/2022/ND-CP	Decree	Government	Amending and supplementing a number of articles of the decrees on sanctioning of administrative violations in the fields of forestry, plant protection and quarantine, veterinary medicine, animal husbandry
15/01/2022	10/2022/ND-CP	Decree	Government	Regulations on registration fees
18/01/2022	450/VPCP-QHQT	Official dispatch	Office of the Government	Immigration settlement for foreigners, Vietnamese residing abroad with



				their relatives
18/01/2022	01/2022/TT-BCT	Circular	Ministry of industry and trade	Amending and supplementing a number of articles of Circular 47/2014/TT-BCT regulating the management of e-commerce websites and Circular No. 59/2015/TT-BCT regulating the management of e-commerce activities via mobile app
21/01/2022	13/2022/ND-CP	Decree	Government	Amending and supplementing a number of articles of Decree No. 132/2008/ND-CP, Decree No. 74/2018/ND-CP detailing the implementation of a number of articles of Law on Product and Goods Quality, and Decree No. 86/2012/ND-CP detailing and guiding the implementation of a number of articles of the Law on



				Measurement
21/01/2022	16/2022/ND-CP	Decree	Government	Regulations on sanctioning of administrative violations on construction

