

COVID-19

Legal Handbook

for Business

Introduction

The recent outbreak of Covid-19 pandemic has had grave effects on people's life as well as the economy in almost every country in the world, including Vietnam.

Apart from preventing the spread of the pandemic in the health sector, maintaining the "resistance" of the economy in general and of each enterprise in particular during and after the pandemic is also a matter of great concern. In Vietnam particularly, in order to prevent the spread of the pandemic, the Government of Vietnam has had strict policies to prevent the disease from spreading to the community, including social distancing, requesting people for not go out if not necessary, temporarily closing non-essential goods and services businesses. These actions of the Government can be considered as effective in preventing the spread of Covid-19 in Vietnam at this moment, but they also have a great impact on businesses in Vietnam.

Recognizing the negative impacts of the pandemic on the economy, as well as the considerable difficulty of businesses in solving crises arising during this period of time, Apolat Legal publishes the "A legal handbook for businesses during and after the COVID-19 pandemic" to provide a useful legal reference that businesses can apply to solve difficulties during this period.

By synthesizing critical provisions of the law related to problems arising to businesses during the pandemic, we believe that this Handbook will be a useful legal reference for the businesses to well prepare plans to handle all crisis scenario arising during and after the pandemic and have good preparation.

** **Disclaimer:** All materials have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your particular factual and legal circumstances. Apolat Legal can accept no responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate adviser.*

Contents

1 Restructuring labor of businesses	1
2 Legal notable about temporary suspension of business in the situation of covid-19 disease	5
3 New policies or regulations on tax are supported by vietnam government In the situation of covid-19 disease	9
4 New social, health and unemployment insurance policies or regulations to support companies in the situation of covid-19 disease	19
5 Bank credit policy for supporting living and businesses during covid-19 epidemic	25
6 Force majeure event: from regulations to practice in the context of covid-19 epidemic	29
7 Protecting your interllectual property assets in the coronavirus outbreak	35
8 Forms of dispute resolution need to interested in the situation of covid-19 disease	41
9 Efficient debt recovery methods in the situation of Covid-19 disease	46
10 The impact of covid-19 pandemic on M&A deals	52
11 Dissolution of enterprises due to the impacts of covid-19 disease	58
12 The bankruptcy of enterprises due to the impacts of covid-19 disease	63



Restructuring labor of businesses

The COVID-19 pandemic has negatively been affecting the economy as well as production and business activities of enterprises; it does not only "steal" revenues and profits but also pushes enterprises into the problematic situation because they still have to pay expenses such as rent, loans and interest rates, salaries... Therefore, enterprises need to change their strategies to save themselves before receiving supports from the government. One of the measures taken by many enterprises is to restructure labours to save a considerable cost and be adaptable to changes in the current situations. Accordingly, several measures to restructure the enterprises on the labour can be taken into consideration as follows:

1. Termination of Labor Contracts

To terminate the Labor Contract within the validation term, the Enterprise may consider some methods as follows:

- The Enterprise and Employee agree to terminate the Labor Contract: the termination of the Labor Contract within the validation term is made under the agreement of the parties, depends on the negotiation contents to determine the responsibilities of the parties upon termination such as the amount of salary that the Enterprise must pay, the timing for termination of the Labor Contract, e.t.c This is the most effective and safest solution for Enterprise which can avoid complaints, disputes with the Employee later.

- The Enterprise unilaterally terminates the Labor Contract due to natural disaster, fire or other force majeure reasons : the Enterprises must prove that the Covid – 19 epidemic is a force majeure event that directly affects production, business activities and Enterprises have done their best efforts to remedy, but they could not overcome, which leads to a unilateral decision to terminate the Labor Contract. For example, the Ho Chi Minh City People's Committee issued an order to suspend the operation of restaurants with a capacity of over 30 to prevent the spread out of Covid-19 epidemic, this order can be

considered as a force majeure event and has a direct impact on the Enterprises doing business on the restaurant field, which enterprises can use unilaterally terminate the labour contract. However, enterprises should pay attention to inform employees at least 45 days in advance for indefinite-term labour contracts, at least 30 days for definite-term labor contracts and pay severance allowances for the Employees .

- Termination of the Labor Contract when the Enterprise changes its structure, or reorganizes its labor or for economic reasons : at its sole discretion in response to the Covid-19 epidemic or the economic downturn, the Enterprise is entitled to restructure the departments, separate or merge different departments to streamline the operation. In addition, when the impact of the economic downturn leading to a change in the labor demand, the Enterprise needs to formulate a labor employment plan with the participation of the internal labour representative organisation . The Enterprise is only allowed to dismiss the Employees in the case can not provide job, but must also pay severance allowance to the Employee . However, the dismissal of many employees, in this case, is only carried out after consulting with the internal labour representative organisation and 30 days notice in advance to the provincial state management agency labor . The notice must be made in writing with the following main contents: Name, address and legal representative of the employer; the total number of employees; the number of employees need to dismiss; reasons and time for dismissal; the amount of money to pay for a severance allowance.

2. Suspension of Labor Contracts

The Enterprise can negotiate with the Employee to suspend the performance of the signed Labor Contract , then the Enterprise does not have to pay salaries or perform financial obligations to the Employee and otherwise, the Employee also does not have to execute the work under his/her responsibilities recorded in the Labor Contract.

Unless agreed by the parties, within 15 days from the expiry of the period of temporary suspension of the Labor Contract, the Employee must be present at the workplace and the Enterprise must take the employee back to work. In this case, if the former job cannot be arranged, the parties will agree on a new job and amend, supplement on the signed Labor Contract or sign a new labor contract.

3. Transferring the Employees to work at other positions

Due to disease outbreaks affecting production and business activities, the enterprises are entitled to transfer Employees to do other jobs temporarily but need to pay attention to:

- Notify the employee at least 03 working days in advance;
- Inform clearly about the time of temporary work and arrange work suitable for health and gender of Employees;
- The transfer term must not exceed 60 accumulated working days per year, unless agreed by the Employee;
- The Employee's salary is paid according to the new job, if the salary of the new position is lower than the former position's, the salary rate of the old position will be paid in the next 30 working days, the salary for the new job must be at least 85 percent of old one but not lower than regional minimum salary stipulated by the Government.

If the employees do not agree to be temporarily transferred to the jobs other than those in the labor contract causing to suspend their jobs, the Enterprises must pay them salary for such suspend .

Contact:

Dinh Quang Long

Senior Partner

long.dinh@apolatlegal.com

Cao Duy Khôi

Paralegal

khoi.cao@apolatlegal.com



Legal notable about temporary suspension of business in the situation of Covid-19 disease

1. What is temporary suspension of business?

Temporary suspension of business is the right of an enterprise to temporarily suspend its business activities. When temporarily suspending the business activities, enterprises are obliged to notify in writing about the time and duration of business suspension to the Business Registration Office where the enterprises are headquartered at least 15 days before the date of suspension.

According to statistics of the Ministry of Planning and Investment posted on the National Business Registration Portal, the number of businesses registered to temporarily suspend in the first three months of 2019 is 15,000. Meanwhile, the number of enterprises registered to temporarily suspend in the first three months of 2020 is 18,721 enterprises. It can be said that, due to the impact of the COVID-19 pandemic, many enterprises have chosen to temporarily suspend business activities in this period to minimize the costs of business management.

2. The term of temporary suspension of business

The enterprise may notify its temporary suspension of business for a period not exceeding one year.

After the expiry of the noticed temporary suspension of business, if the enterprise continues to suspend business, it must notify the Business Registration Office. The total duration of continuous business suspension must not exceed two years.

3. Things that enterprises have to do during the business suspension

During the time of temporary suspension of business, enterprises still have to comply:

(i) To fully pay the out-standing taxes;

(ii) To keep paying debts;

(iii) To keep executing contracts with customers and employers, unless otherwise agreed among the enterprise, its creditors, customers, and employees.

4. The procedure for noticing the temporary suspension of business

The enterprise shall send a notice of temporary suspension of business to the Business Registration Office where it is headquartered within 15 days before the temporary suspension of business.

Depending on the type of enterprise, the enterprise will enclose with the notice of temporary business suspension the following documents:

(i) For a one-member limited liability company, the enterprise must enclose the owner's decision.

(ii) For a limited liability company with two or more members, enclosed: A decision of the Members' Council and a valid copy of the meeting minutes of the Members' Council.

(iii) For a joint-stock enterprise, enclosed: The Decision of the Board of Directors and a valid copy of the meeting minutes of the Board of Directors.

(iv) For a partnership company, enclosed: The decision of the Members' Council and a valid copy of the meeting minutes of the Members' Council.

When carrying out the procedure of temporary suspension of business of an enterprise, the operation of its branches, representative offices, business locations will also be suspended.

After fully receiving valid dossiers, within 03 working days, the Business Registration Office will issue a Certificate of business suspension registration.

5. Procedure for announcing the resumption of business before the end of the temporary suspension of business

In case an enterprise temporarily suspending its business would want to resume its business activities before the notified time, the enterprise shall send a notice to the Business Registration Office at least 15 days before resuming its business.

6. Issues to be noted regarding tax and during the temporary suspension of business

6.1. Tax declaration

During the temporary suspension of business period, if the enterprise does not incur tax liabilities will not have to submit tax declaration documents of the temporary suspension period.

6.2. License tax

Enterprises that have the temporary suspension period for whole calendar year will not have to submit the license tax of the year of temporary suspension period. In case the temporary suspension period is not whole calendar year, the enterprise will have to submit the full license tax of such year.

6.3. Tax finalization

If the period which the enterprise temporarily suspends its business is not in the whole calendar year or whole fiscal year, the annual tax statement of such year must be submitted.

Contact:

Pham Hong Manh

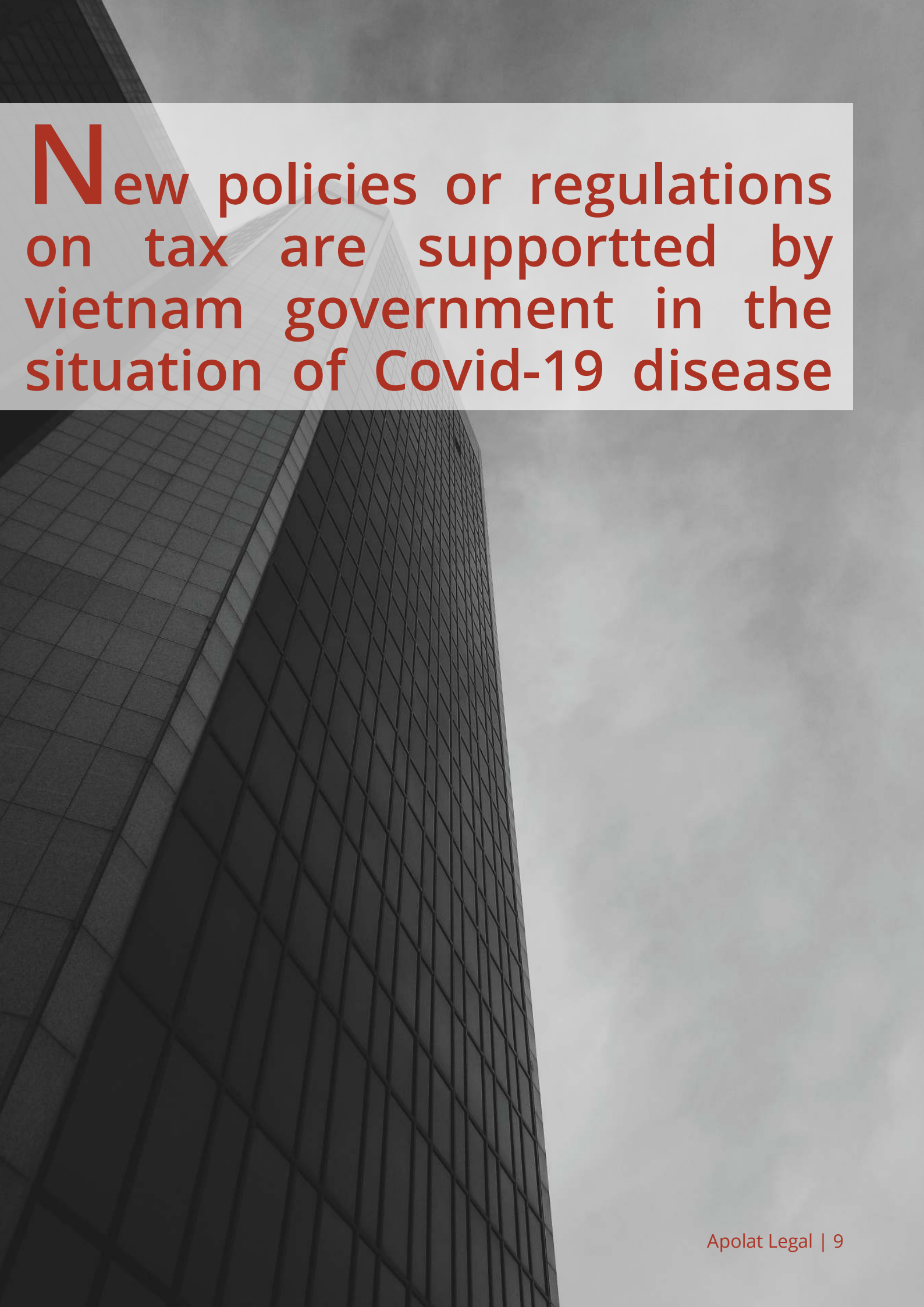
Senior Partner

manh.pham@apolatlegal.com

Đào Trung Thông

Associate

thong.dao@apolatlegal.com



New policies or regulations on tax are supported by vietnam government in the situation of Covid-19 disease

Covid-19, a keyword mentioned every day since the beginning of 2020, infectious disease has had significant effects on the global economy, with Vietnam no exception. Based on the current state of Vietnam, despite having full control, COVID-19 has complicatedly evolved and seriously affected many aspects of economic and social. Under Directive No. 16/CT-TTG of the Prime Minister dated March 4th, 2020 on social isolation, activities of import, export, education, production and business operations, real estate services, food and drink services, etc. are seriously affected. To prevent the spread of COVID-19, protect the life and health of the people, remove all difficulties, mitigate the potentially devastating impacts of infectious disease on businesses, and ensure social security, draft policies on support for tax, Social Insurance, Bank interest rates for businesses and residents have been issued, in which three taxes considered by the Government to support residents is personal income tax, value-added tax and land rent during the Covid-19.

The results of a survey processed by the Private Economic Development Research Board (Board IV of the Prime Minister's Administrative Reform Advisory Council) express among 1,200 surveyed businesses, about 74% of companies in Vietnam can go bankrupt since their revenues is not enough to pay operational expenses, salaries for labourers, interests on bank loans, and land rental fees of production and business activities, and other costs if this disease lengthens for six months. Based on the above situation, the Prime Minister issued Directive No.11/CT-TTG dated March 4th, 2020 directing the urgent tasks and solutions to handle the difficulties of production and business activities as well as to ensure social protection to cope with the COVID-19 disease (after this referred to as "Directive No. 11"). This Directive guides state management agencies to the offering of specific solutions to support enterprises. Accordingly, the mission of the Ministry of Finance under Directive No. 11 is to remove all difficulties and create favourable conditions for taxation.

Under Directive No. 11 issued on March 26th, 2020, the Ministry of Finance has submitted a draft Decree on the extension of submission time of tax and land rent for affected entities by COVID-19 disease to the Government (hereinafter referred to as the "Decree"). This Decree has detailed regulated and guided to support businesses in tax policies. Accordingly, if the Government approves the Decree, it will take effect after the signing date without waiting for the implementation effect. This timely feedbacks and supports enterprises and reduces the tax burden of businesses.

On April 8th, 2020, the Government officially issued Decree No. 41/2020/ND-CP on the extension of submission time of tax and land rent based on the proposals of the Ministry of Finance as mentioned above. Decree No. 41/2020/ND-CP immediately took effect since signing date on April 8th, 2020. In particular, Decree No. 41/2020/ND-CP includes provisions as follow:

I. Subjects of application

1. Enterprises, organizations, households and individuals engaged in production activities as follow:

a. Agriculture, Forestry and Fisheries;

b. Food manufacturing and processing; manufacture of textiles; costume manufacturing; leather and related products manufacturing; wood processing and wood, bamboo processing(except beds, wardrobes, tables, chairs); straw, plaiting materials processing; paper production and paper processing; rubber and plastic processing; other non-metallic minerals processing; metal production; machining machinery; treating and overlaying metal; production of electronic appliances, computers and optical products; automobiles and other motor vehicles manufacturing; beds, wardrobes, tables, and chairs manufacturing;

c. Construction industry.

2. Enterprises, organizations, households and individuals engaged in production activities as follow:

a. Warehouse transportation; accommodation and food and drink services; education and training; health and social assistance activities; real estate business;

b. Labour and employment services; activities of travel agents, tour operators and support services related to tour promotion and organization;

c. Creation, artistic and recreational activities; library activities, archives, museums and other cultural activities; sports activities, entertainment; motion picture projection service.

The list of business line mentioned in Clauses 1 and 2 of this Article is mentioned in Decision No. 27/2018/QĐ-TTg promulgating Vietnam's economic system issued on July 6th, 2018 by Prime Minister.

3. Enterprises, organizations, households and individuals engaged in the production of prioritized supporting products; key mechanical products

Industry products supporting prioritized for development are determined under Decree No. 111/2015/NĐ-CP on development of supporting industry issued on November 3rd, 2015 by Government on supporting industry development; key mechanical products are determined under Decision No. 319/QĐ-TTg approving the Strategy for development of Vietnam's mechanical engineering industry to 2025, with a vision to 2035 issued on March 15th, 2018, by the Prime Minister.

4. Small and micro enterprises are mentioned in Law on provisions of assistance for small and medium-sized enterprises No. 04/2017/QH14 and Decree No. 39/2018/NĐ-CP on guidelines for law on support for small and medium-sized enterprises issued on March 11th, 2018, by the Government.

5. Credit institutions, foreign bank branches implement solutions to support enterprises, organizations and individuals affected by COVID-19 under the regulations of the State Bank of Vietnam. The State Bank of Vietnam is responsible for announcing the list of credit institutions and branches of foreign bank branches participating in supporting for the extension of paying tax and land rents in accordance with Decree. No. 41/2020/ND-CP.

6. The business lines of enterprises, organizations, households and individuals mentioned in Clause 1, Clause 2 and Clause 3 of this Article are those taxpayers operate in and earn revenue from in 2019 or 2020.

II. Supported taxes

1. Value Added Tax (VAT) (except value added tax imposed on the import)

a. Deadlines are extended for paying value-added tax in the tax period of March, April, May and June 2020 (for declaring tax monthly) and the first and second quarter tax periods of 2020 (for declaring tax quarterly) of enterprises and organizations as specified in Article 2 of Decree No. 41/2020/ND-CP. The extension is 05 months from the ending date of the deadline for paying value-added tax under provisions of the law on tax administration.

In case a taxpayer makes a revision to the tax declaration that results in an increase in the VAT payable and submit the revised tax declaration to the tax authority by the deadline, the VAT amount eligible for deferral will include the increase in VAT payable.

Enterprises and organizations that are eligible for the extension must submit their monthly or quarterly VAT declarations under current legislation, but they must not pay value-added tax mentioned in the value-added tax declaration. The deadline for payment of monthly or quarterly VAT is extended as follows:

VAT incurred in March 2020	The deadline for payment is on September 20th, 2020
VAT incurred in April 2020	The deadline for payment is on October 20th, 2020
VAT incurred in May 2020	The deadline for payment is on November 20th, 2020
VAT incurred in June 2020	The deadline for payment is on December 20th, 2020
VAT incurred in the first quarter of 2020	The deadline for payment is on September 30th, 2020
VAT incurred in in the second quarter of 2020	The deadline for payment is on December 30th, 2020

b. If branches and affiliated units of enterprises and organizations mentioned in Article 2 of Decree No. 41/2020 / ND-CP make separate value-added tax declarations for directly managing tax agencies, branches and affiliated units will get the extension of deadlines for paying value-added tax. If branches, affiliated units of enterprises or organizations as mentioned in Clauses 1, 2 and 3, Article 2 of Decree No. 41/2020 / ND-CP do not have production and business activities in extended economic sectors, and field, the branch or affiliated unit will not get the extension of deadlines for paying value-added tax

2. Corporate Income Tax

Deadlines are extended for paying corporate income tax mentioned in the balance sheet of the tax period in 2019 and the provisional corporate income tax in the first and second quarters of 2020 of enterprises, organizations as mentioned in Article 2 of Decree No.41/2020/ND-CP. The extension is for 05 months form the deadline for corporate income tax payment prescribed by tax administration laws.

In case an enterprise or organization has already paid the corporate income tax declared in the 2019's annual statement, it may offset the corporate income tax against other unpaid taxes. In this case, the taxpayer shall complete form No. C1-11/NS enclosed with Circular No. 84/2016/TT-BTC), enclose it with the tax payment documents or relevant documents and submit them to the tax authority.

In case an enterprise or organization mentioned in Article 2 of this Decree has a branch or affiliated unit that declares corporate income tax separately to its supervisory tax authority, the branch or unit is also eligible for corporate income tax deferral. The branches and units of the enterprises and organizations mentioned in Clause 1, Clause 2 and Clause 3 Article 2 of this Decree shall not be eligible for corporate income tax deferral if none of their business lines is eligible for deferral.

3. Value-added tax and personal income tax of household and individual

Deadline is extended for payment of value-added tax and personal income tax arising in 2000 of business households and individuals engaged in the above business line specified in Clause 1, Clause 2 and Clause 3 of this Article. The deadline for payment of extended tax mentioned in this Clause is on December 31st, 2020.

4. Land rents

a. Deadline is extended for annual payment of rents that are due in beginning of 2020 of enterprises, organizations, households and individuals as mentioned in Article 2 of Decree No. 41/2020/ND-CP being directly leased land by the State under the Decision, Contract of the competent state authority in the form of annual land rent payment. The extension is within 05 months from May 31st, 2010.

b. This provision also applies for enterprises, organizations, business households and individuals that have many decisions, direct land lease contracts of the State and have many different production and business activities, including business line as specified in Clauses 1, 2, 3 and 5, Article 2 of Decree No. 41/2020/ND-CP.

5. If enterprises, organizations, households and individuals operates in multiple business lines, in which including business lines as specified in Clauses 1 and 2, Clauses 3 and 5, Article 2 of Decree No. 41/2020/ND-CP: deadlines for paying all value-added tax and corporate income tax are extended; deadlines for paying all value-added tax and personal income tax of business households and individuals also are extended under Decree No. 41/2020/ND-CP.

III. Procedures for the extension

1. A taxpayer eligible for tax deferral shall apply for tax and land rent deferral (electronically or another method) using the form enclosed herewith to the supervisory tax authority. The application shall include all payments of tax and land rent deferred and be submitted together with the monthly or quarterly tax declaration as prescribed by tax administration laws. In case the application for tax and land rent deferral is not submitted along with the monthly or quarterly tax declaration, it shall be submitted by July 30th, 2020. The tax authority still defers tax and land rent incurred before the application is submitted if eligible.

In case taxpayers rents land in many different localities, directly managing tax agencies shall make copies of applications for the extension of deadlines of paying taxes, and land rent to the tax office where the rented land is located.

2. Taxpayers are responsible for extension application for extended subjects under Decree No. 41/2020/ND-CP. If the taxpayer submits a written request for the extension of deadlines for paying the tax and

land rent to the tax authority after July 30th, 2020, it is not allowed to extend the payment of tax and land rent under Decree No. 41/2020/ND-CP.

3. Tax authorities are not required to notify taxpayers of approval the extension of deadlines for paying the tax and land rent. In case the tax authority discovers that the taxpayer is not extended subject, the tax agency shall a written notify the taxpayer of termination of the extension. The taxpayer must fulfil the tax, land rents and late tax during the period of the extension to the state budget. In case the end of the deferral period, through the inspection and examination, the tax authority discovers that the taxpayer is not subject to be extended payment for the tax and land rent under Decree No. 41/2020/ND-CP. The taxpayer shall fully pay the outstanding tax, fine and late payment interest determined by the tax authority to the state budget.

4. Over the deferral period, under the written request for extension of deadlines for paying the tax and land rent, tax agencies shall not charge late tax for the extended tax or land rent (even if the application for deferral is submitted after submission of the monthly or quarterly tax declaration but not later than July 30th , 2020).

IV. For subjects who are not mentioned in Decree No. 41/2020/ND-CP

1. An entity who is not mentioned Decree No. 41/2020/ ND-CP suffers difficulties or damage caused by epidemics, and it may apply provisions appropriately for its specific case under based on the current provisions of law.

2. Another document as a reference for enterprises is Official Letter No. 897/TCT/QLN issued by the General Department of Taxation on March 03rd 2020 guiding the extension of deadlines for paying tax, exemption of late tax by effect of COVID-19.



Contact:

Pham Hong Manh

Senior Partner

manh.pham@apolatlegal.com

Tran Thi Ngoc Hoa

Paralegal

hoa.tran@apolatlegal.com

New social, health and unemployment insurance policies or regulations to support companies in the situation of Covid-19 disease



Due to the impact of Coronavirus disease 2019 (Covid-19) today, many Vietnamese companies have chosen a different range of solutions such as: (i) negotiating with employee to suspend a labor contract according to paragraph 5, Article 32 of the Labor Code 2012 (“Labor Code”), (ii) work suspension of the employee due to the influence of natural disasters and dangerous epidemics as prescribed in paragraph 3, Article 98 Labor Code, (iii) temporarily assigning the employee to another job than the labor contract as stipulated in Article 31 Labor Code, (iv) the employer has to scale down production and cut jobs due to the influence of force majeure events according to point c, paragraph 1, Article 38 Labor Code, and (v) dismissing employees in case of structural change, technological or economic reasons under Article 44 Labor Code. Depending on the specific type of policies, companies must comply with the regulations on Social insurance, Health insurance, or Unemployment insurance in cases of work suspension, inability to pay the insurance, as follows:

(1) Case 1: For companies suspending operation leads to be not required to pay social insurance for employees

According to Law on Social Insurance 2014 (“Social Insurance Law”), in case an employee who neither works nor receives salary for 14 working days or more in a month, both the employer and employee are not required to pay social insurance premiums in that month, and this period shall not be counted for enjoyment of social insurance regimes. Accordingly, if the employee has the non-working period in a month less than 14 working days, both the employer and employee are required to pay the social insurance for the employee. In this case, the law only regulates the payment of social insurance, but it has not specified whether it includes health and unemployment insurances. Therefore, there is no solid basis for the situation that employers are not required to make health and unemployment insurance payments for the employees in case they neither work nor receive salary for 14 working days or more in a month.

The employers should send a dispatch to the social insurance collection manager where the head office of employers is located to explain clearly on each case. It is known that the current social insurance contribution amount is 4.5% (in which, employers contribute 3%), unemployment insurance 2% (in which employers contribute 1%).

In addition, a non-working employee who is entitled to sick leave benefits from 14 working days or more in a month under the law on social insurance shall not be required to contribute the social insurance, health insurance and unemployment insurance, but that employee is still entitled to health insurance benefits. However, according to the Dispatch No. 422/BHXH-CSXH of Vietnam Social Security, Article 25 Social Insurance Law on conditions for an employee who is contributing the social insurance to enjoy the sick leave benefits stipulates that the employee suffering from illnesses or accidents which are not labor accidents must take leave and grant a certification of a competent health establishment under the Ministry of Health's regulations. Therefore, for the employee being medical isolation without any infectious disease neither fall in an illness's case nor suffer treatment but forced leave to prevent the disease, the benefits of social insurance are also affected. However, the Ministry of Labor, War Invalids and Social Affairs does not have a specific policy; therefore, the employee is subject to medical isolation to prevent diseases according to the competent authority's decision shall not be entitled to the sick leave benefits as prescribed during the medical isolation. Therefore, the employer is not required to declare procedures on sick leave allowance entitlement to the employee in this case.

In addition, in case the employer faces difficulties in suspending its production and business, so that the employer and employee are unable to contribute the social insurance, they may suspend the pension and mortality allowance payments for a period not exceeding 12 months in the following cases: (*) Failing to provide works for employees, in which there are 50% or more of total employees

determined before the business suspension that are subject to social insurance, or (**) Suffering damage of 50% of total assets' value due to natural disasters, conflagration, epidemic diseases, or bad harvest (excluding land value). Please note, in this case, the employers are required to contribute the sick and maternity leave, allowances for work-related accidents, occupational diseases, health insurance allowance, and unemployment allowance.

When not falling into the case of social insurance payment or receiving the social insurance benefits (pension and mortality allowance) aforementioned, the employer must submit a temporary suspension of social insurance dossier to the district-level social insurance agency to request to suspend payment of social insurance. Also, while not declare the social insurance for the employee, the employer must inform adjustments to reduce labor contributing to social insurance from the non-working time of the employee in the form of leave without pay and suspend the performance of contract and register to increase the number of employees contributing to social insurance when receiving employees to work again.

(2) Case 2: Enterprises which temporally suspended operation but still perform payment of social insurance for labours

Under Law on Social Insurance and Official Letter No. 4064/LDT-BXH-QHLDTL issued by Ministry Of Labor, War Invalid And Social Affairs on March 25th, 2020 on guidelines for payment of wages and benefits for employees during work suspension due to Covid-19 pandemic. If employees suspended due to direct impacts of Covid-19 Pandemic, such as: (i) the foreign worker has not been returned to work at the request of the competent authority; (ii) The employee has suspended from work during the quarantine at the request of the competent authority; (iii) the employee who is suspended from work because their employer is being quarantined or other employees in the same enterprise or department are being quarantined or not allowed to return to work.

In these cases, the salary during the suspension due to objective reasons such as a disease (Covid-19 Pandemic) will be agreed upon by the employer and the employee but not lower than the regional-based minimum wage issued by the Government. (Ho Chi Minh City falls within in Region 1 and the application minimum regional wage is VND 4,420,000 per month, employees who have had vocational training must be paid 7 percent higher than the minimum salary level). If an employee has suspended from work under the law on labour and the decision of the employer and still receives the above wage, the employee and the employer must pay social insurance, health insurance and unemployment insurance premium in accordance with the wage that the employee is entitled during the suspension. In this case, the employer must notify the competent social insurance authority that the payment of social insurance, health insurance and unemployment insurance premium is adjusted from the current payment to the agreed wage.

(3) Case 3: Enterprises must reduce 50% or more of employees because of the reduction in the production and business activities

At present, the Government issued Resolution No. 42/NQ-CP on April 10th, 2020, on measures to directly support people who have difficulties due to Covid-19. Accordingly, in Section III of the Resolution issued by Government also mentioned that:

If the employer who is severely impacted by the Covid-19 pandemic must reduce 50% or more of the employees participating in social insurance after the competent state agency declared the disease, including employees who suspended from work, temporarily postponed the performance of the labour contract, or have kept taking unpaid leave (as mentioned in the Case 2 above), the employees and employers will be temporarily suspended contribution to the retirement and survivorship fund for no exceeded 12 months. The dossier and procedures are similar to the analysis in Section (1).

Besides, the Resolution also stipulates that employees are send the dossier on unemployment benefit by Post, the Notice of monthly job search by form of indirectly announcing such as email, fax, post, ... from April 1st, 2020 until the announcement of ceasing the epidemic without requiring confirmation on the disease in the locality of the People's Committee of the commune, ward or town.

Despite the general provisions mentioned above, enterprises should notice that all policies related to social insurance, health insurance and unemployment insurance are implemented are different and appropriate for the situation in each locality. Therefore, in order to ensure implementation of procedures properly and save time, businesses should consult the social insurance authorities or the directly managing Division/the Department of Labor - Invalids and Social Affairs about further details.

Contact:

Pham Hong Manh

Senior Partner

manh.pham@apolatlegal.com

Nguyen Thi Tra My

Paralegal

my.nguyen@apolatlegal.com

Bank credit policy for supporting living and businesses during Covid-19 epidemic

//

At present, the disease situation is happening very complicatedly, seriously affecting the world economy in general and Vietnam in particular. Obviously, Vietnamese enterprises are no exception, many businesses are closed, and their revenue declines severely. Therefore, the financial support policy for businesses is a significant issue and needs to be implemented promptly.

Right from the epidemic stage which has not been severely affected as currently, the Prime Minister issued Directive No.11/CT-TTg dated 04 March 2020 on urgent objectives and solutions for assisting businesses facing difficulties and assurance of social welfare amid Covid-19 pandemic. Accordingly, the Government assigns the State Bank of Vietnam to promptly provide instructions for credit institutions on balancing and providing adequate capital for businesses; simplify formalities, reduce the time needed to process loan applications; improve the accessibility of capital; promptly assist such as debt restructuring, reduction or exemption of loan interest, retention of loan category, fee reduction, etc. for enterprises facing difficulties caused by Covid-19 pandemic (first from the credit assistance package of about 250.000 billion VND). This is not a credit package using concessional capital from the state budget but balancing by commercial banks to provide sufficient capital for production and

business activities of enterprises in the affected fields from the plague, with credit assistance package for enterprises to borrow with low interest rates.

In addition, the State Bank has also issued decisions to reduce a series of operating interest rates since 17 March 2020, in which the ceiling of short-term lending interest rates in Vietnam Dong at banks decreased to only 5.5%/year; refinance rates reduced to 5%/year; and rediscount rate decreased to 3.5%/year ... to strongly support, remove difficulties for enterprises, to cope with the Covid-19 epidemic.

On 13 March 2020, the State Bank of Vietnam issued Circular No.01/2020/TT-NHNN providing for debt rescheduling, exemption or reduction of interest and fees, retention of debt category to assist borrowers affected by Covid-19 pandemic ("Circular No.01/2020"), effective from 13 March 2020, in which:

a. The enterprise can debt rescheduling

An outstanding debt, including the principal and/or interest may be rescheduled if it fully satisfies the following conditions:

(i) The debt is a loan or finance lease;

(ii) The principal and/or interest arises during the period from 23 January 2020 to the day after 03 months from the date on which the Prime Minister declares the end of the Covid-19 outbreak;

(iii) The enterprise is unable to repay the principal and/or interest under the loan/finance lease agreement due to a decrease in revenue caused by Covid-19 pandemic.

The debts shall be rescheduled in the following cases:

(i) The unpaid debt is undue or up to 10 (ten) days overdue according to the loan/finance lease agreement signed;

(ii) The debt is overdue (except for the cases in Point (i) above) during the period from 23 January 2020 to 29 March 2020.

Credit institutions and foreign banks' branches shall decide the rescheduling of debts cases in consideration of the enterprises' request and ability to fully repay the principal and/or interest after the debt is rescheduled. The rescheduling shall be suitable for the impacts of Covid-19 and follow these rules:

(i) Debts that violate regulations of law shall not be rescheduled;

(ii) The debt shall not be deferred for more than 12 months from the initial repayment deadline according to the loan/finance lease agreement (when the enterprise has to pay all the principal and interest arises under contracts, lending or financial leasing agreements signed);

b. The enterprise is reduced and exempted interest and/or fees

Credit institutions and foreign banks' branches shall, according to their own rules and regulations, decide reduction and exemption of interest and/or fees on extension of the debts (except purchases of corporate bonds) that are due during the period from 23 January 2020 to the day after 03 months from the date on which the Prime Minister declares the end of the Covid-19 outbreak and the enterprises are not able to repay the principal and/or interest by the deadline specified in the original agreement due to decrease in revenue caused by Covid-19.

c. The enterprise can be retained its debt category

Credit institutions and foreign banks' branches may retain the categories of the following debts if they have been categorized in accordance with regulations of the State Bank of Vietnam before 23 January 2020, without having to put them into a higher-risk category:

- (i) The debts that are rescheduled;
- (ii) The outstanding debts on which interest is exempted or reduced;
- (iii) The outstanding debts mentioned in Point (i) and Point (ii) above, including the debts that are rescheduled, have interest reduced or exempt, or re-categorized as prescribed by State Bank of Vietnam during the period from 23 January 2020 to 29 March 2020.

Therefore, consideration of debt rescheduling and retention of debt category with enterprises affected by Covid - 19 is a favorable condition when they are not converted into bad debts. Since then, enterprises have better opportunities to access credit policy with competitive interest rates and reduced loan costs due to the absence of bad credit history in banking operations, facilitating business recovery.

Contact:

Le Tien Dat

Managing Partner

dat.le@apolatlegal.com

Le Thi Anh Thu

Senior Paralegal

thu.le@apolatlegal.com



*“Force majeure event:
from regulations to
practice in the context
of Covid-19 epidemic”*

The epidemic considerably impacts the contractual performance of a party/a company. The term “force majeure events” is referred to by contractual parties for exemption of obligations to limit potential damages to which they are exposed. The implementation of the term in legal practice, however, remains a difficult issue even for experienced lawyers.

How is force majeure event provision governed?

Pursuant to Article 156.1 of the Civil Code 2015, a force majeure event is a situation which occurs beyond the reasonable control of any party in a transaction and unpredictable. Its consequences are irreparable although all permissible and necessary remedies are applied. Accordingly, there are three conditions that an event shall meet to be considered as a force majeure event, which are:

- (i) The event must be objective;
- (ii) The event must be unforeseeable; and
- (iii) All permissible and necessary remedies are applied but cannot repair damages.

In general, force majeure provision is left open for free negotiation by parties rather than being regulated in detail. Therefore, the interpretation and application of this rule are significantly depended on the contractual context case-by-case, and on the base of goodwill and faith.

Condition 1: The event must be objective

The Civil Code 2015 does not provide criteria to determine an event to be objective. To the most common interpretation, an event occurs objectively if it happens without intents of any involved parties of a

contract. In other words, parties of a contract do not deliberately make such event or let it be. Clearly, things that beyond the subjective will of a person are various and numerous, legislators cannot specify criteria to shape how an objective event shall be.

Condition 2: The event must be unforeseeable

Similar to Condition 1, the Civil Code 2015 does not regulate specific criteria to decide whether an event is unforeseeable. In common sense, an unforeseeable event can be interpreted that it is unable to be predicted by any sides within their ability.

The matter is how to assess the ability of the contractual parties in foreseeing an event which is possible to happen in future. To be objective and rational, it is agreed by a majority of lawyers that the assessment must be based on a fact that whether or not a normal person in the same situation can predict the event. This means if an ordinary individual in the same contractual context is able to foresee the event, the parties of the contract are not allowed to apply the force majeure provision to exempt their obligations.

An equally important issue is a reasonable time that parties have to anticipate the occurrence of an event which may obstruct their contractual performance. Obviously, representations and warranties of parties are provided under objective elements, conditions and background at the time a contract is signed. So, any unforeseeable situation at that time is accepted to be a force majeure event. However, if an event which is not forecasted at the time entering the contract, but predictable during the execution of the contract, such event shall not be considered as force majeure.

Condition 3: All permissible and necessary remedies are applied but cannot repair damages

In case of a force majeure event, contractual parties are required to remedy consequences by all acceptable and necessary measures. This condition is appropriate the principle of goodwill and honesty in attempts to perform obligations under an agreement, which is a conventional rule in the contractual norm.

The Vietnamese law once again let it open for the parties to discuss and agree on the degree that such remedies are proper. Yet, according to most legal experts, the remedies should not be purely viewed on the economic perspective. This means other factors should be additionally considered such as experience, personnel and other available facilities which are able to be used for remedy.

What are legal consequences in a force majeure event?

Article 584.2 of the Civil Code 2015 prescribes that breaching parties, in case of a force majeure event, is not obligated to compensate parties who are damaged. Nevertheless, the law does not mention about the exemption of other types of obligation such as penalty, paying interests or being forced to comply with contracts. In contrast, Article 294.1.b of Commercial Law 2005 specifies that breaching parties are exempted from contractual obligations in case of force majeure events. As can be seen, the regulation does not limit types of obligation which are exempted, thus, it can be interpreted as all duties under contracts are relieved. In practice, before signing contracts, contractual parties may clearly agree on specific obligations which can be exempted in case of a force majeure event, and this is totally appropriate with the principle of freedom to enter in an agreement.

Overall, there are following common types of relief:

- (i) Exemption from damages and/or penalty;
- (ii) Extension of due dates or deadlines;

(iii) Suspension of contractual obligations such as delivery, storage, etc.

(iv) Exemption from liabilities due to delay or non-performance;

(v) Termination of contracts;

(vi) Re-negotiating terms and conditions of contracts.

Is Covid-19 considered as a force majeure event?

The Covid-19 pandemic itself and orders of State's bodies to provisionally lockdown and suspend most activities nationwide may be considered as force majeure events. The occurrence of the outbreak is beyond the intent of anyone (Condition 1) and its widespread as well as adverse impacts are unforeseeable (Condition 2). The cure for Covid-19 is certainly beyond the capacity of contractual parties and the orders of governmental bodies are compulsory that they can do differently (Condition 3).

Are all contracts and obligations applied relief measures?

Except for being mutually agreed otherwise, unfortunately, not all contracts and obligations can be exempted. As the above analysis, it seems that only contracts signed before 01 February 2020, the date on which the Prime Minister officially declared the emergency of the outbreak of COVID-19, can be reasonably acceptable to be applied the force majeure clause. Agreements entered after that cannot be considered similarly because it violates the unforeseeable condition of a force majeure event. Any individual must be aware of the seriousness and the impact of the declaration of the Prime Minister.

Moreover, not all activities are suspended. Banking and necessities supplying services are allowed to sustain their operation to serve residents.

Therefore, obligations which are not considerably affected such as payment, debt repayment, provision of necessities, etc. cannot be exempted or delayed for too long.

Conclusion and recommendations for enterprises

The implementation of force majeure event provision is eventually depended on the negotiation and consensus of contractual parties on the basis of the specific contractual context. The analysis hereof is based on theory and general view, and should only be referred as a basis for rational consideration.

Enterprises can refer and apply the following doings:

(i) Reviewing contracts which are in progress to find out which ones can apply force majeure clauses to suspend impractical obligations at the moment.

(ii) Be aware of forms and deadlines required for making notifications about the force majeure events as well as the suspension of contractual performance where applicable.

(iii) Preparing a set of evidence to prove the suspension of obligations or termination of contracts is reasonable and factual proof.

(iv) Contacting partners or clients to negotiate on upcoming obligations and set forth proper resolutions for both sides.

Contact:

Le Tien Dat

Managing Partner

dat.le@apolatlegal.com

Tran Chau Hoai Han

Associate

han.tran@apolatlegal.com

Nguyen Vu Hoang Long

Paralegal

long.nguyen@apolatlegal.com

Protecting your intellectual property assets in the Covid-19



The coronavirus outbreak is impacting ton the world of intellectual property (IP) as courts and IP offices around the world generally and Vietnamese one particularly. Thus, applicants wishing to register or renew intellectual property rights or that are involved in legal disputes involving those or other IP rights, such as copyright, should understand how the new and significant approaches being taken will impact them.

VietNam

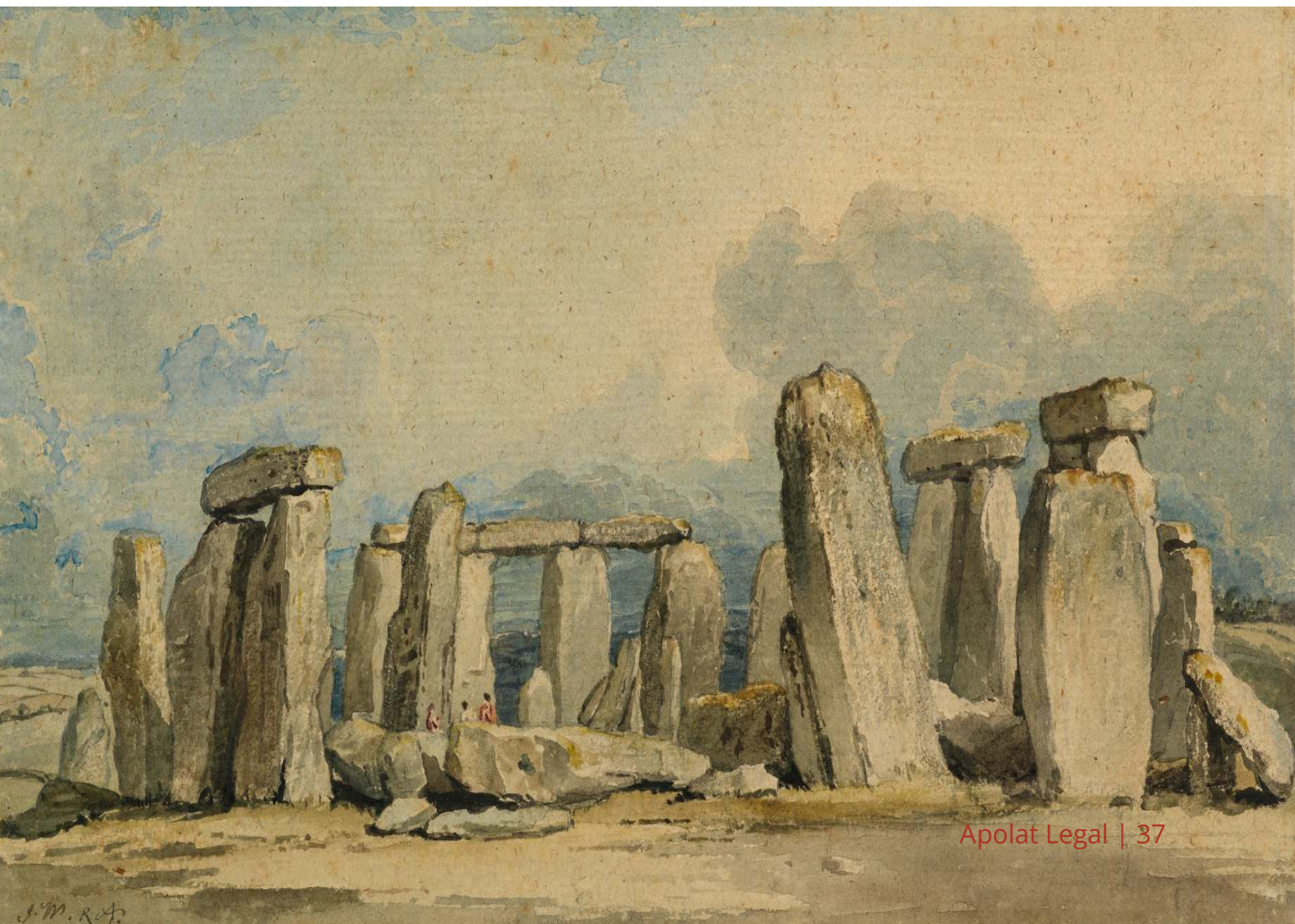
On 31 March 2020, the Intellectual Property Office of Vietnam (VNIPO) issued urgent Notice No. 5277/TB-SHTT ("Notice No. 5277"), adopting measures in relation to the deadline extension for establishment procedures of industrial property rights affected by the global COVID-19 outbreak, and laying down guidance on transaction procedures between the VNIPO and the Applicants over this period, in particular:

- All deadlines that relate to procedures for establishment of industrial property rights and fall within the period from 30 March 2020 to 30 April 2020 will now be automatically extended until 30 May 2020. The VNIPO has further elaborated on the procedures in this regard, including requests for claiming priority rights, submission of the required documents, submission of responses to the VNIPO's notices/decisions, maintaining the validity of patents, renewal of certificates of trademark registration, fees payment, and submission of appeal petitions.
- The VNIPO will begin to receive the requests for fast-track examination of patent applications filed under the PPH Program, pursuant to the agreement between the VNIPO and the Japan Patent Office, on 4 May 2020, instead of the previously announced date of 1 April 2020.

- From 1 April 2020 until further notice, all transactions between the VNIPO (including its representative offices in Da Nang and Ho Chi Minh City) and applicants will only be performed through post-office services or the VNIPO's online filling system. The applicants' payment of the fees to the VNIPO will be made through post or by bank transfer to the VNIPO's account at The State Treasury of Vietnam until further notice.

Extension of deadlines for trademarks and designs matters in South-East Asia

In order to keep track, full details of the current situation in South-East Asia countries are listed in the table below which is updated on a regular basis in view of the rapidly evolving global pandemic.



Country	Extension of deadlines
Singapore	The registry is closed but the online filing system continues to be fully operational. All deadlines between 7 April 2020 and 7 May 2020 are extended to 8 May 2020.
Malaysia	All manual filings are suspended until 15 April 2020. Responses to office actions and all deadlines related to appeals, objections, oppositions and any applicable payment are extended till 30 April 2020. Renewals of industrial designs and trademark registrations are extended to 15th and 30th April 2020 respectively.
Indonesia	All manual filings are suspended, and all deadlines related to formality requirements falling between 23 March 2020 and 21 April 2020 are extended until further notice.
Philippines	All the deadlines due between 16 March and 14 April 2020, related to papers, payments, pleadings and documents, are now deemed extended for a period of 45-calendar days.
Thailand	Any filing deadlines that are missed can be extended if it can be established that the deadlines have been missed as an effect of the COVID-19 situation and if the extension requests, along with the supporting evidence, are filed within 15 days after the COVID-19 related cause of delays has ceased.
Vietnam	All deadlines between 30 March 2020 and 30 April 2020 will be automatically extended to 30 May 2020.
Cambodia	No change for now
Laos	The registry will be closed from 1 April 2020 until 19th April 2020, with all deadlines postponed until 20 April 2020.
Myanmar	No change for now
Brunei	No change for now

The European Union Intellectual Property Office

The EUIPO deals with the registration, renewal and challenges to the validity of EU IP rights, including the unitary EU trademark. It has issued a Covid-19 announcement and published a decision concerning the extension of time limits.

The EUIPO has said that given the "exceptional occurrence" of the coronavirus outbreak, which has disrupted "proper communication" between parties worldwide and the EUIPO, "all time limits expiring between 9 March 2020 and 30 April 2020 inclusive that affect all parties in proceedings before the Office are extended until 1 May 2020". This means an extension of all-time limits for all proceedings before the EUIPO including payment of fees, priority claims, opposition periods, opposition fees, renewals, appeals, conversion and deferment of publication in respect of Community designs.

The World Intellectual Property Organisation (WIPO)

The WIPO is the global forum for IP services, policy, information and cooperation. It is responsible for administering, among other things, global systems for the registration of patents, trademarks and industrial designs, and it also provides arbitration services in relation to disputes over rights in domain names.

Like other IP authorities, the WIPO has shut its various offices around the world for non-essential staff. Despite its office closures, the WIPO has said that its operations under the Patent Cooperation Treaty, the Madrid System for the International Registration of Marks, the Hague System for the International Registration of Industrial Designs, the Lisbon System for the International Registration of Geographical Indications as well as administering other intellectual property (IP) and related systems are continuing during the current crisis. Its Arbitration and Mediation Center (AMC) is also continuing to process domain name disputes under the Uniform Domain Name Dispute Resolution Policy (UDRP) and other alternative dispute resolution cases.

Proactively protecting your IP assets

In social distancing climate, with remote and distant working recommended, it's important to protect your business's intellectual property. Work-from-home policy presents new and wide-ranging concerns for the protection of trade secrets. In this "temporary" working remotely environment, employees will have considerable opportunity to access, download, or store sensitive information from company systems and databases. Thus, remote work during this Coronavirus pandemic may leave your document and data systems vulnerable. Hereunder are some approaches you may take to protect you IP assets in this exceptional circumstance.

- Make sure your company has key policies covering confidentiality, document marking, document sharing, privacy protection, device and server security;
- Communicate current obligations and requirements in the remote working environment;
- Provide employee training, communicate best practices, and remind your policies;
- Remind your contracting parties who have access to your own trade secrets of their confidentiality obligations;
- Limit messaging on unsafe platform or third-party applications;
- Limit distribution of confidential messages to a group;
- Mark confidential and/or privileged messages/emails as such;
- Implement IT security systems to detect, stop unauthorized access and prevent documents being unauthorizedly downloaded;

Contact:

Tran Chau Hoai Han

Associate

han.tran@apolatlegal.com



Forms of dispute resolution need to interested in the situation of Covid-19

1. The role of Dispute resolution during and after the Corona epidemic

The Covid-19 epidemic caused the global supply chain to fall down, goods were blocked at the border gates, construction has stopped because of the pandemic, contract is breached for many direct or indirect reasons from Covid- 19. Accordingly, disputes will arise more and more complex at the present time. Dispute resolution takes an important role in solving conflicts between parties in civil transactions, commercial business, creating a fair society and regulating social relations in accordance with the law.

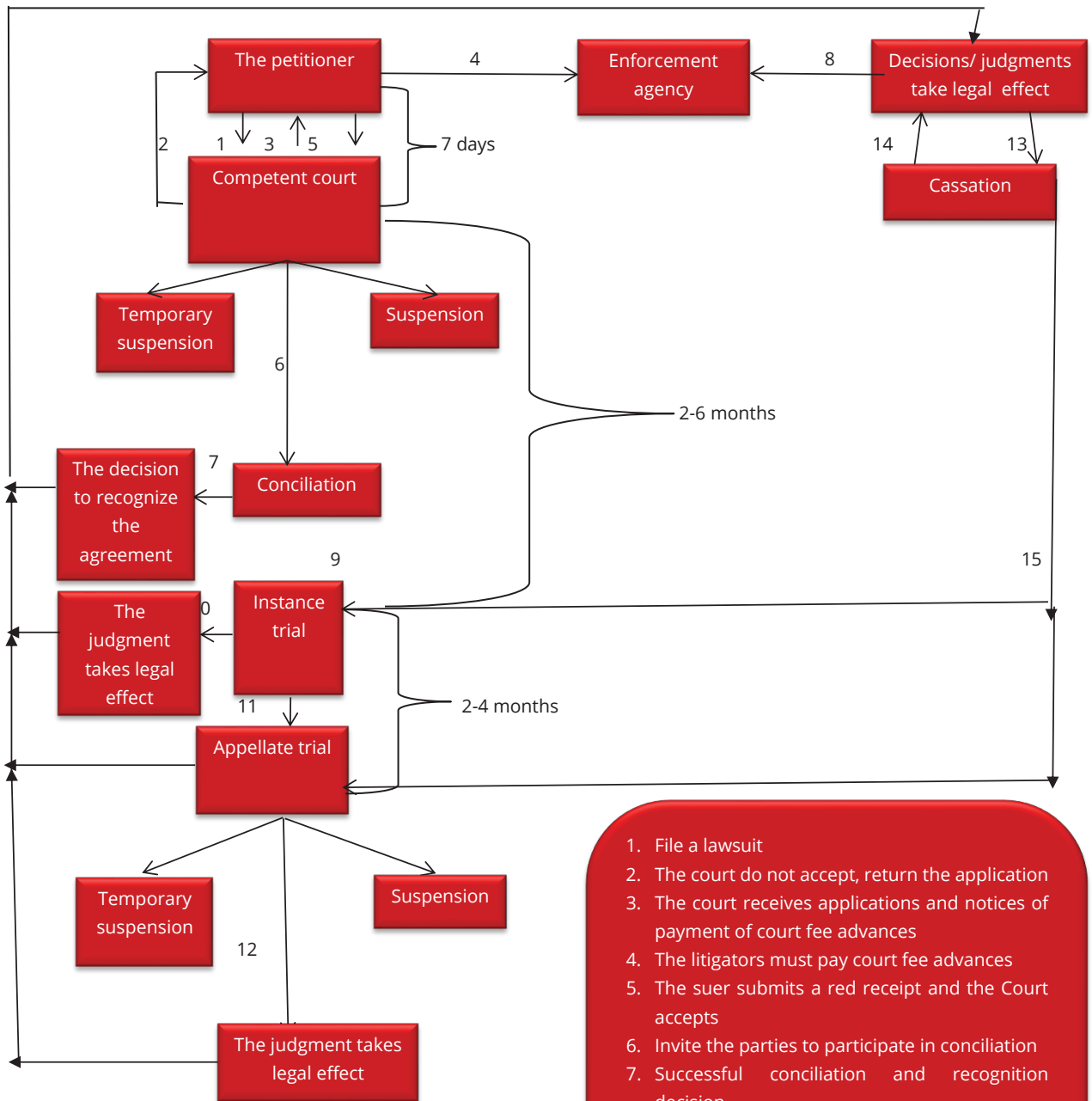
Vietnamese law recognizes the following three common methods of resolving civil disputes: (i) Negotiation; (ii) Conciliation; and (iii) Dispute resolution at a People's Court (hereinafter referred to as "the Court") or Commercial Arbitration (hereinafter referred to as "Arbitration"). Depending on the nature of transactions and disputes, businesses can choose the appropriate method based on the following detailed analysis.

2. Forms of dispute resolution and Advantages - Disadvantages

Forms of dispute resolution	Overview	Advantages	Disadvantages
Negotiation	A method of resolving disputes through the parties meeting to discuss and agree to resolve disputes by themselves without the presence of a third party.	<ul style="list-style-type: none"> - The parties are free to agree without being bound by the law on the order and procedures for implementation. - The parties can protect business secrets and reputation, save costs as well as preserve long-term cooperation. 	The outcome of the negotiation is not guaranteed by any mandatory legal mechanism. Thus, the implementation of negotiation results depends entirely on the willingness of each party to the dispute.
Conciliation	<ul style="list-style-type: none"> - A method of resolving disputes with the participation of third parties in order to support and persuade the parties to seek solutions to resolve disputes. A third party is an individual or organization agreed by the parties to the dispute and has an independent position with the parties and has absolutely no interest in the dispute. - The parties to a dispute may choose to conduct conciliation at the Court (Mediation and Dialogue Centers), Trade Mediation Centers or Commercial Arbitration Centers. 	<ul style="list-style-type: none"> - The procedure is simple, fast, and the costs are lower than dispute resolution in Court or Arbitration. - The order and procedures for conciliation shall be agreed by the disputing parties. For commercial conciliation, in addition to self-agreement, the parties may choose the mediation rules of the commercial conciliation organization to conduct conciliation. - Without affecting the reputation and the cooperation between the parties, business secrets are also kept confidential. - The results of the mediation may be recognized by the Court in accordance with civil procedure law if one or both parties have a petition to the Court for recognition. The decision to recognize the results of successful conciliation outside the Court is enforced in accordance with the law on civil judgment execution. 	If the conciliation results are not recognized by the Court, then the implementation will also depend on the willingness and voluntary of each party to cooperate.

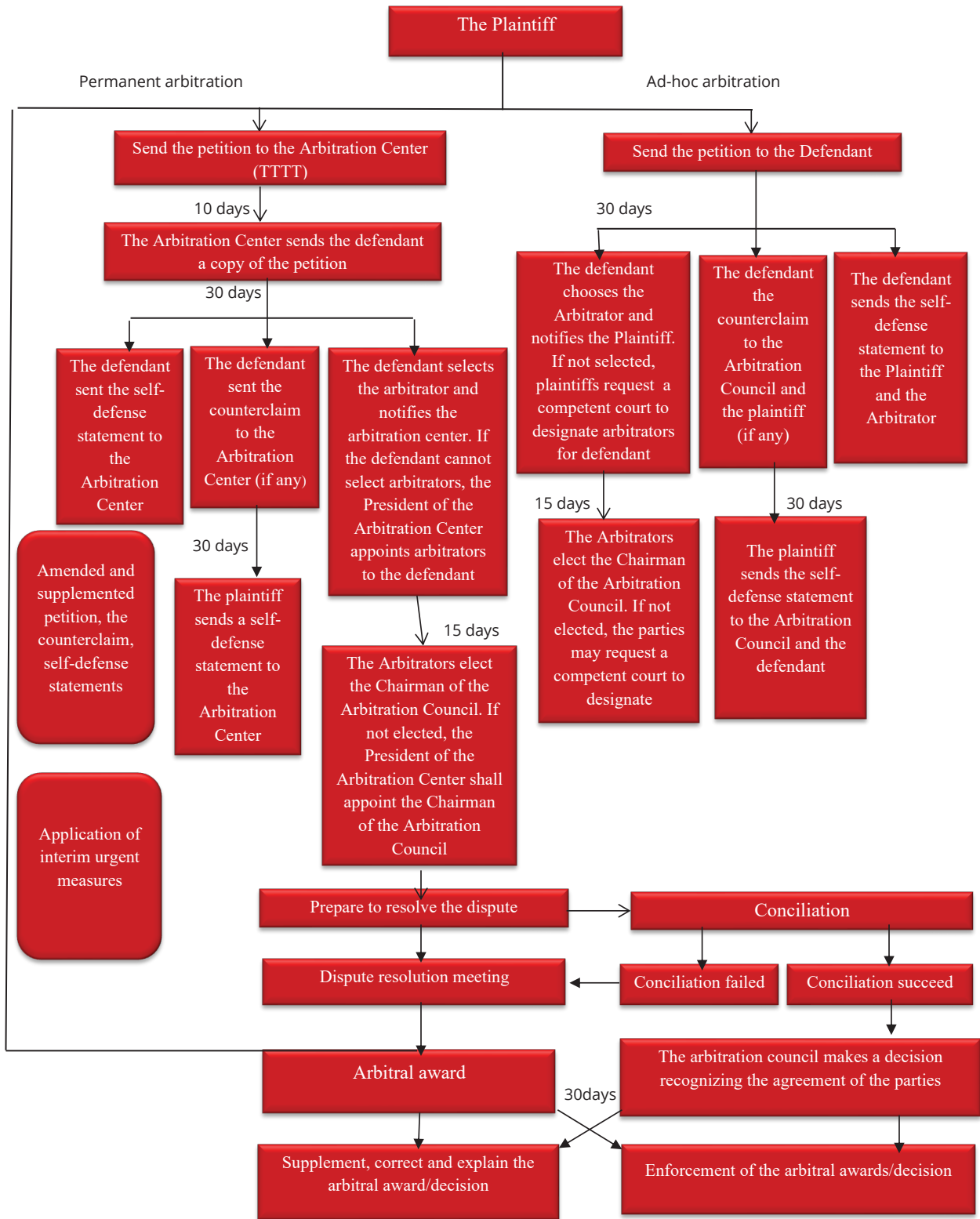
<p>Court</p>	<p>A method of resolving disputes at a judicial agency in the name of the state power and conducted in strict order and procedures.</p>	<ul style="list-style-type: none"> - The order and procedures for resolving disputes at the Court are clearly and strictly prescribed by law. - Judgment of the Court is guaranteed to be enforced by the State's coercive force. 	<ul style="list-style-type: none"> - Court publicly adjudicated. Therefore, it may reveal business secrets and adversely affect the reputation of the parties in the dispute; - The processing time is long; - Court judgments may be appealed or protested against.
<p>Arbitration</p>	<ul style="list-style-type: none"> - A method of resolving disputes as agreed by the parties and conducted in accordance with the Law on Commercial Arbitration 2010. In addition, enterprises operating in international trade may choose arbitration or foreign law to resolve disputes depends on the agreement of the parties. - The arbitration has two forms: <ul style="list-style-type: none"> + Permanent arbitration : is a form of dispute settlement at an arbitration center under the provisions of the Commercial Arbitration Law 2010 and the rules of procedure of that arbitration center. + Ad-hoc arbitration is a form of dispute settlement in accordance with the 	<ul style="list-style-type: none"> - The parties have agreed to apply the arbitration and the arbitration agreement can be made before or after the dispute but must be established in writing. - The content of the dispute must be related to commercial activities or disputes arising between the parties in which at least one party has commercial activities or other disputes between the parties that are prescribed by law to be resolved by arbitration. - Do not go through many levels of trial. The decision of the arbitrator is final if there is no request to cancel the arbitral awards. - All information secrets of the parties are kept confidential during the process of dispute settlement and after the final decision. - The procedure is simple, flexible so the parties can take the initiative in the time and place of dispute resolution. 	<ul style="list-style-type: none"> - The cost of dispute resolution is higher than the Court. - Dispute resolution at Arbitration only when agreed upon in writing by the parties. - The arbitral award may be canceled by the competent Court if it violates the conditions of law and the parties must conduct the proceedings again.

3. Order of dispute resolution in court



1. File a lawsuit
2. The court do not accept, return the application
3. The court receives applications and notices of payment of court fee advances
4. The litigators must pay court fee advances
5. The suer submits a red receipt and the Court accepts
6. Invite the parties to participate in conciliation
7. Successful conciliation and recognition decision
8. Transfer to the judgment enforcement agencies
9. Mediation does not result in a first-instance trial decision
10. There are no appeals , the judgments has legal effect
11. There are appellate appeals
12. Appellate judgment, the judgments has legal effect
13. Effective judgment decisions will be appealed and protested against
14. Decision on cassation / retrial to keeping the judgment
15. Assignment to Instance trial or Appellate trial

4. The order of dispute resolution by arbitration



Contact:

Pham Thi Thoa

Senior Partner

thoa.pham@apolatlegal.com

Bui Bich Phuong

Associate

phuong.bui@apolatlegal.com

Ma Thai Tran

Member

Efficient debt recovery methods in the situation of Covid-19 disease

1. Roles of Debt Recovery during and after the Covid-19 disease

Several blockade isolations measures of governments during the outbreak of Covid-19 disease have forced many companies to temporarily stop operations – in sectors such as tourism, transportation, hotels, restaurants, and certain other activities. Due to the stopping operations, reduction in consumer demands, and the disruption of the global food supply chain, companies will have no cash flow to cover their operating costs, for example, ground rents, wages paid to employees, loan interests, supplier debts, etc. This company will collect debts from other companies; therefore, the debt recovery issue at this stage takes a higher urgent priority. It seems that the debt collection activity has the following roles:

- Ensuring rights of creditors in business activities of companies: Debt collection helps creditors to recover the due/ overdue money/ property that debtors must pay to them under their contracts or decisions from the authority. Such unpaid debts directly affect the cash flow and financial safety level of the company. Also, they help to carry out the operational structure effectively and avoid risks arising in business activities. Depending on the nature of debt and the type of debtor, the company can consider different measures to recover debts.
- Protecting public order: how the lender collects debts and flexibly use among debt recovery measures will help them to overcome the

difficult circumstances and create the clarity and fairness in the transactions between the lender and its debtors. This also minimizes The situation when debtors delay and exploit the lender's ignorance to avoid their obligation and cause financial losses to the lender.

2. Forms of debt recovery

2.1. Negotiation

- A debt collection method whereby a creditor will directly negotiate, persuade, and propose the debtor to jointly accept to a repayment plan.
- Advantages: This method is both flexible, saving-money, time consuming and able to collect the debt, but still maintain the business relationship between the parties.
- Drawbacks: the negotiation method is only effective when the debtor repay the money they owe with goodwill and has the financial capacity, by providing its specific and precise payment schedule.

2.2. Third-party debt collection service

A creditor can recover debts using a third party such as Lawyers, law firms, or debt collection agencies. The debt recovery service (or the request to perform correctly the contractual obligations/ settle with consequences of the act of contractual breach) which is performed by the law firm is often confused with the debt collection service – a conditional business line prescribed in Decree No. 104/2007/NĐ-CP on detailing and guiding debt collection services.

The main features of each definition are considered in the following table.

DEBT RECOVERY LEGAL SERVICE	DEBT COLLECTION SERVICE
<ul style="list-style-type: none"> - It is usually a fixed charge and a percentage of the amount collected (this percentage is often low because there was an initial fixed charge). - A legal service of the Law Firm, Law Office. - Common debt recovery measures are negotiation, settlement, and legal action. - Having a specific plan, the client follows debt recovery details easier. - It is usually chosen when the debtor has solvency and assets. 	<ul style="list-style-type: none"> - It excludes the initial fixed charge or only having a minor debt survey charge and the extremely high percentage of the amount collected. - A conditional business line according to Decree 104/2007/ND-CP. - Implementation of all measures to collect clients' debts. - No specific details, the client usually does not know any information and work progress. - It is usually chosen when the debtor is insolvent, has no assets and evades.

2.3. Court, Arbitration

- Debt recovery through the Court, Commercial Arbitration is the measure applied when a creditor fails to seek a negotiation, the debtor is unwilling to cooperate, intentionally evades the responsibility, or has a repayment plan, but such payment is late, lengthy, and "dripping."

- The use of the Court/ Arbitration will put debtors under pressure and accelerate the debt repayment proceeding.

Please see details of the pros and cons and litigation proceedings in Court/Arbitration to recover debts in the Forms Of Dispute Resolution Need To Interested In The Situation Of Covid-19 Disease Section.

2.4. Insolvent liquidation

Reasons for insolvency proceedings can be a measure to recover debts:

The Bankruptcy Law allows an unsecured creditor or partly secured creditor the right to submit a bankruptcy petition upon the expiry of three months from the due date of a debt which the enterprise or cooperative has failed to repay.

Within 03 working days from the day on which the People's Court receives the valid bankruptcy petition, the insolvent enterprise and creditors may submit a written request to the Court for permission to negotiate withdrawing of such petition. The Court shall decide the negotiation duration which is not longer than 20 days from of the receipt of the valid bankruptcy petition.

Therefore, before accepting petition, the Court gives the creditors and debtor the change to negotiate with each other. For the solvent debtor being submitted the bankruptcy petition, this will cause a certain psychological pressure on the debtor. Such debtor must understand that if the negotiation fails, the consequences of the decision to initiate bankruptcy proceedings will seriously affect to the autonomy of the company owner.

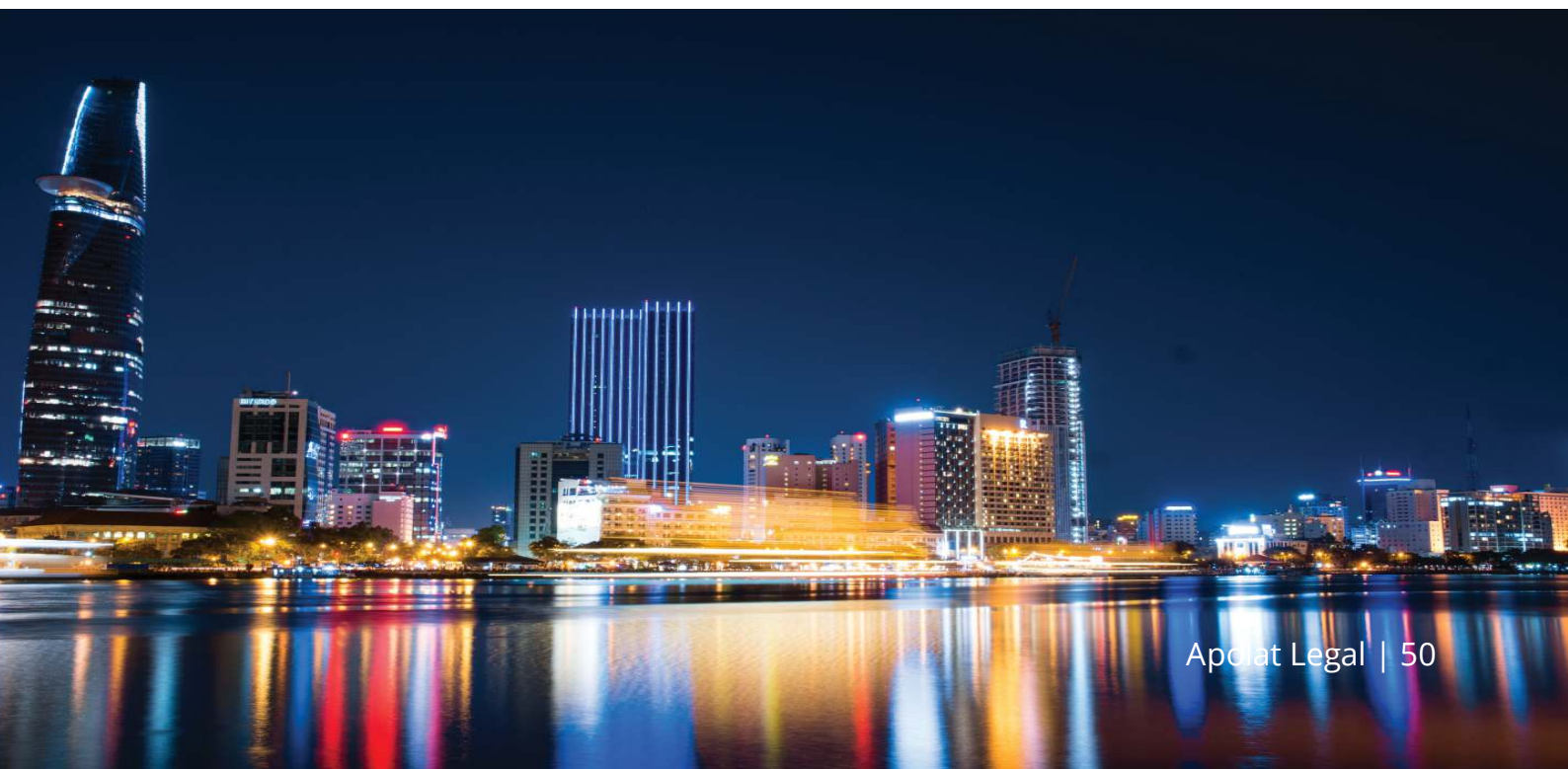
Accordingly, after having the decision to initiate the bankruptcy proceedings, an enterprise still continue their business operation, but they are supervised by judges, property management officers, and property management, liquidation enterprise; such enterprise is not entitled to repay an unsecured debt, supervised the activities relating to loan, pledge, mortgage, guarantee, sale, transfer or lease of assets; sale or exchange of shares; transfer the ownership of property, applied one or more of temporary emergency measures to preserve the enterprise's assets.

In addition to the problems mentioned above, the decision to initiate bankruptcy proceedings is enacted, all the creditors of the business will simultaneously pull to to request their rights. This will cause tremendous pressure for the repayment of the debtor, instead of one creditor requesting payment, now would be all creditors including employees, tax obligations...

Therefore, if the creditor can flexibly apply the provisions of the Bankruptcy Law, the creditor will either bring the debtor to the situation or choose to pay his debt or deal with a lot of creditors, and the whole business operation is under control and blockade. For solvent enterprises but deliberately "wrongfully misappropriated capital", the Bankruptcy Law is a tool to negotiate with creditors who have clear debts.

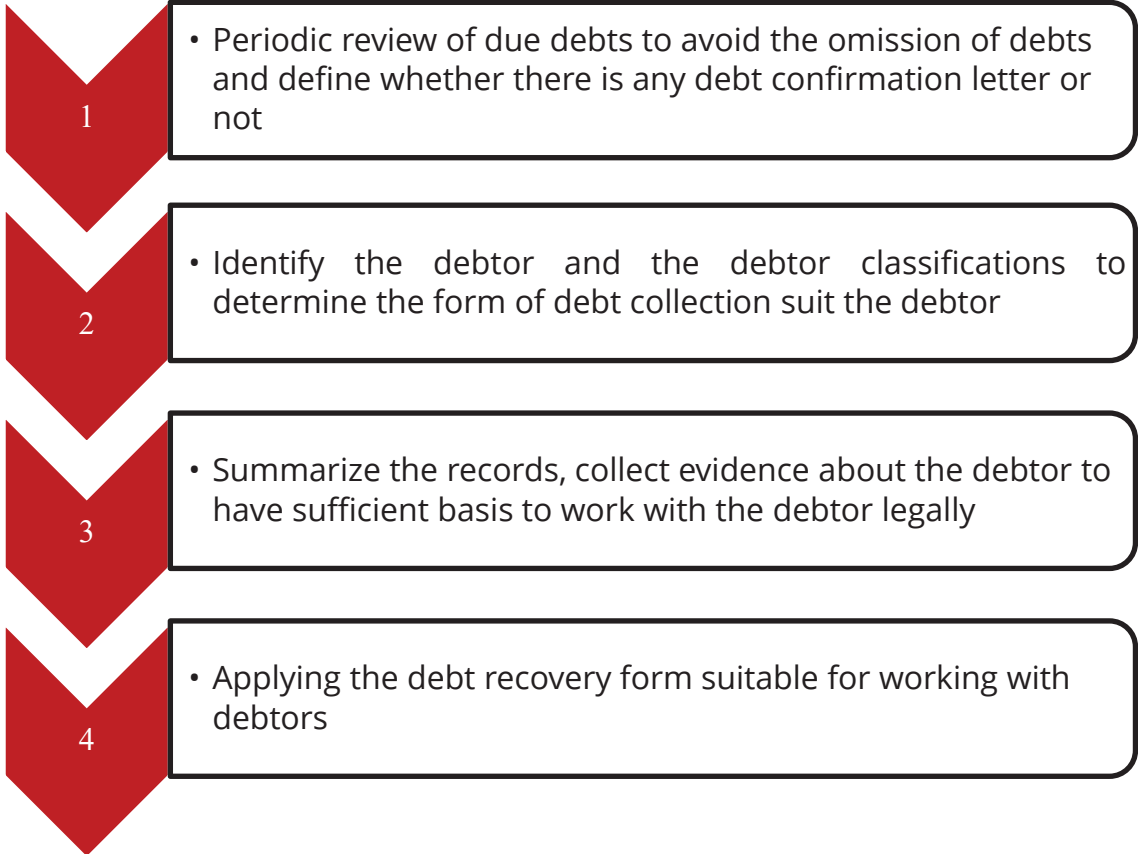
In cases where an enterprise is truly insolvent, the Bankruptcy Law will help the creditor to preserve the assets of the enterprise so that the creditor can recover a certain part of the property, avoiding the case that the enterprise proceeds to disperse and hide their property.

Please see the details of the overview of bankruptcy and the bankruptcy proceedings initiation in the [The Bankruptcy Of Enterprises Due To The Impacts Of Covid-19 Disease, Legal Issues Which Should Be Aware? Section](#)



3. Debt recovery proceedings

For the creditor to have sufficient basis to require the repayment of debt, and choose the appropriated forms of debt recovery, creditors should implement the following steps:



Contact:

Pham Thi Thoa
Senior Partner
thoa.pham@apolatlegal.com

Bui Bich Phuong
Associate
phuong.bui@apolatlegal.com

Bui Nhu Quynh
Member



The impact of Covid-19 pandemic on M&A deals

The outbreak of Covid-19 pandemic has caused difficulties and delays to on-going as well as intended mergers and acquisitions especially cross-border deals (both value and quantity) because of social distancing policies and lockdown measures being implemented in many countries governments. Below are some considerations for parties who are contemplating or involved in a M&A deal in this unpredictable climate.

Due diligence

For due diligence being carried out over the target company, buyers should take into account the aspects in relation to the impact of pandemic on the target company. These aspects may make up of:

- The ability of the occurrence of material adverse changes that may be considered a reason for buyers to terminate the deals;
- The financial affect on the target company;
- The risk of a contractual breach being triggered in any major agreements of which the target company is a contractual party;
- The possibility for other parties to terminate signed agreements with the target company, may base on the ground of force majeure events or hardship clauses, etc.
- The consequences if the lender of the target company exercises its rights;
- The efficacy of provided business plan;
- The nature and extent of insurance agreements the target company has obtained; and
- The labor policies or internal labor regulations to safeguard employees, deal with the work-from-home (WFH) requirements, self-isolation or even the termination of labor contracts and its consequences in current context.

The possibility and the extent to which the target company may benefit the suspension or decrease of financial obligations to governmental agencies, for example taxation obligations, social insurance, other state fees, etc.

Condition precedents or conditions to completion

If the M&A agreements set forth condition precedents or conditions to completion that depend on the regulatory approvals or certain results from state authorities, the parties should consider whether the timeline to achieve these results is possible in this time and, and if there is announcement from competent agency about the changes in their working schedules. Where an extension is needed, it should be noted that this change will lead to greater risk for both parties. Also, the long stop date stated in the M&A agreements should be carefully considered again to ensure that this period of time is still workable.

Gap controls

In M&A contracts, sellers often agree to undertakings that the target company will be run materially in the ordinary course of business. Nonetheless, the outbreak of Covid-19 and the strict social distancing applied may challenge the stability of the business and, thus, make running business in its ordinary course more difficult. In this context, the buyer should provide the seller with flexible room or exceptions to adapt to the rapidly changing environment. The room will provide the seller with a degree of flexibility and the ability to quickly act in the best interests of the company as well as complying with the regulations of governments.

Notwithstanding the above, in most cases, buyers should oversight the decisions of sellers during the period to make sure that these will not adversely impact to the signed agreements or the deal in general. To do so, the consultation rights and information provision must be designed to protect to interest of buyers and the target company even when the pandemic is over. Another option is that the parties may establish a joint committee including representatives of both parties where important decision in respect of the target company may be collaboratively discussed to safeguard the parties.

Warranties and disclosure letter

In the rapidly changing climate due to the spread of coronavirus may make the warranties between parties hotter again. On the one hand, seller may want to amend some warranties to reflect the actual changes or to protect them from breaching some warranties that are hard to complete in the pandemic. On the other hand, buyers may want to keep negotiated warranties intact and find more aggressive to seek the repetition of certain warranties which constitute the core value of the target company and its potential development.

Sellers should also reflect on whether additional disclosures are needed against the warranties. New specific disclosures could be required as a result of recent events, particularly against warranties covering events since the last accounts date, customer/supplier contracts, compliance with law and regulation – including in jurisdictions where new laws have been introduced, communications with regulators, the resilience of IT systems, any temporary relaxation of IT security standards and employees' working arrangements.

Material adverse change

In the unprecedented environment caused by Covid-19 outbreak, parties should also consider "material adverse change" clauses when reassessing their M&A deals. Generally, a material adverse change is a contractual provision usually present in most of merger and acquisition agreements that provides buyers or sellers with the right to withdraw from the agreements, or modify the terms and conditions of such agreements when there is a substantial adverse change in the target company or its prospects or business condition affecting the parties to the agreement.



Under Vietnamese laws, "material adverse changes" clause is similar to regulation on the "performance of contract in the event of a basic change of circumstances" in Article 420 of the 2015 Civil Code. Accordingly, an affected party is allowed to request other party to re-negotiate contractual clauses within a reasonable timeline if there is a basic change in the circumstance after contract execution. In the case that the parties are unable to agree on the new terms off contracts, either party may requests the court to (i) terminate the contract at a specific time; or (ii) amend the contract to balance out the lawful rights/interests of the parties under the contract, in response to the basic change of circumstances.

Contact:

Tran Chau Hoai Han

Associate

han.tran@apolatlegal.com



Dissolution of enterprises due to the impacts of Covid-19 disease

In the present time, many enterprises are trying so hard to keep the company's operation at the lowest workload during the period of the epidemic and wait for it to cease and the economy is revived; while others have suspended their business operations. According to the recorded data, in the first quarter of 2020, 18,596 enterprises have registered for temporary suspension, increasing 26% over the same period of 2019, this is the highest growth in the period from 2015 to 2020 due to the direct influence of Covid - 19.

Remarkably, in the first quarter of 2020, 4,115 enterprises have completed the procedures for dissolution, and 12,178 enterprises are waiting for proceeding the dissolution (according to data published by the Department of Enterprise Registration Management). Businesses that have a high dissolution rate are real estate, education and training, wholesale, processing and manufacturing, e.t.c. Although this is an undesirable choice of any shareholder or capital-contributing members or company owner, they are required to make this decision to maintain a part or all of the invested capital. However, when conducting dissolution, enterprises must pay attention to the following issues:

1. The decision on dissolution of the enterprise

Under the provisions of Law on Enterprise 2014, depending on the types of the enterprises, the dissolution shall be decided by:

Types of enterprise	Issued by	Conditions
Joint Stock Company	The General Meeting of Shareholders	The dissolution decision is approved by the number of shareholders representing at least 65% of the total number of voting slips of all attending shareholders
Multi-member limited liability company	The Board of Members	the dissolution Decision is approved by at least 75% of the total capital of all attending members
Single-member limited liability company or private enterprise	The owner	The dissolution decision of the owner of Single-member limited liability company or private enterprise
Partnership company	The Board of members	This Decision is approved by three-fourths of the total number of partners

Within 07 working days after the approval, the decision on dissolution and minutes of the meeting must be sent to the business registration authority, tax authority, and all employees of the enterprise. The decision on dissolution must also be published on the National Business Registration Portal and at the enterprise's headquarter, branches, and representative offices.

2. Conditions for dissolving the enterprise

It should be acknowledged that the establishment procedure of an enterprise has become much easier, in many cases which online registration is applicable, the founder does not even have to spend a little time and effort. However, in contrast, the dissolution or termination of the existence of an enterprise need to be carefully considered and resolved, due to the obligations of the business that have arisen during the operation. To be dissolved, enterprises must meet the following conditions:

2.1. Ensure all debts and other property obligations are fully settled

Before the dissolution, enterprises need to fully pay all debts and other financial obligations in the following priority order:

- (i) The outstanding salaries, severance allowances, social insurance under the law and other benefits of employees under the signed collective labor agreement and labor contracts;
- (ii) Tax debts;
- (iii) The other debts.

In order to settle the financial obligations fully and accurately, the enterprise needs to review all agreements signed with employees, clients, suppliers, partners or obligations to tax agencies, other competent state agencies. Depending on specific cases and the agreement between the parties, the enterprise can determine its responsibilities to the contractors and vice versa, to have suitable resolving solutions, particularly financial obligations enclosed thereto.

Besides using the financial resource with available cash or recovering client's debts, the enterprise can also liquidate tangible assets such as machinery, equipment or intangible assets such as intellectual property rights and copyrights... After all debts and dissolution expenses are paid, the remaining amount will be returned to the sole proprietorship's owner, members, shareholders, or owner of the company according to their holding ratio of stakes or shares in the company .

2.2. The enterprise is not involved in any dispute at a court or arbitral tribunal

In order to prevent enterprises from avoiding performing their obligations and protect the lawful benefits of the parties in the dispute heard in the Court/ the arbitration, the laws do not allow enterprises to be plaintiffs, defendants, the persons with related lawful benefits and obligations or any attendants in the proceedings to dissolve. Therefore, unless the dispute has been entirely resolved by the Court/ the arbitration and the enterprise have fulfilled the obligations specified in the judgment or decision of the Court or arbitration agency can proceed, the enterprise shall not be permitted to conduct the procedure for the dissolution.

3. Activities are prohibited since the dissolution decision has been issued

For the purpose of protecting the lawful benefits of related parties, as well as shareholders and capital-contributing members when enterprises engaging the dissolution procedure, from the issuance of the decision on dissolution, the enterprises and the enterprise's manager are prohibited performing the following acts:

- (i) Distributing or hiding assets in any forms;
- (ii) Renouncing or reducing the right to claim debts;

(iii) Converting unsecured debts into secured debts by assets of the enterprise;

(iv) Signing a new contract which is not a contract to dissolve the enterprise;

(v) Pledging, mortgaging, donating or leasing assets;

(vi) Terminating of effective contracts;

(vii) Raising capital in any other forms.

Depending on the nature and seriousness of the violation, a person implementing acts listed above shall be subjected to administrative punishment or even criminal prosecution, besides, if their actions cause any damage, they must compensate .

Contact:

Dinh Quang Long

Senior Partner

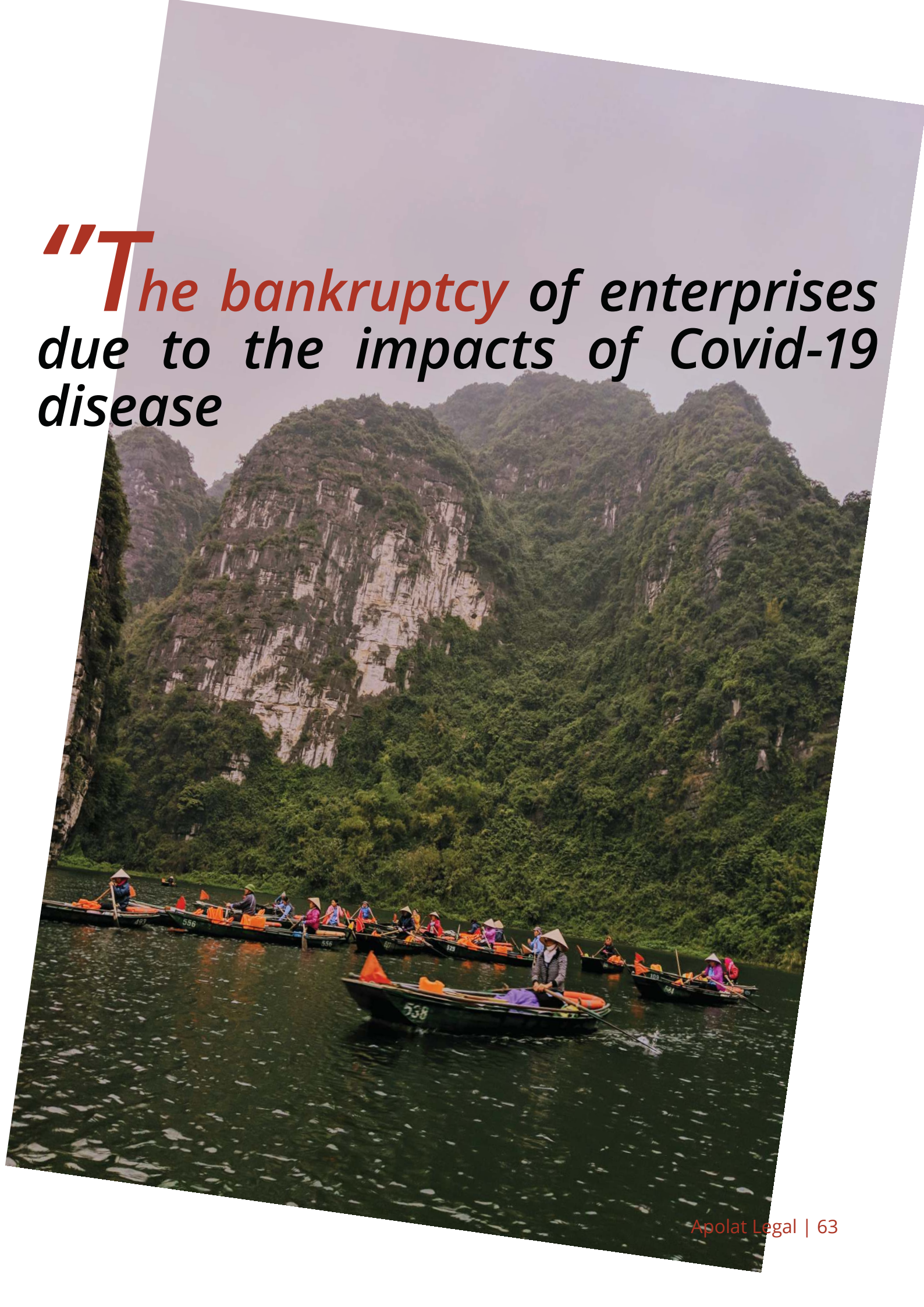
long.dinh@apolatlegal.com

Cao Duy Khoi

Paralegal

khoi.cao@apolatlegal.com

"The bankruptcy of enterprises due to the impacts of Covid-19 disease



1. The role of the provisions of the law on bankruptcy during and after the Coronavirus disease 2019 (Covid-19)

- Protecting the legitimate rights and interests of creditors

The provisions of the law on bankruptcy gives the creditor the right to request for initiating bankruptcy process when the debtor is insolvent and measures to prohibit the transfer of the debtor's assets to prevent the debtor's assets from being dispersed. Besides, bankruptcy law gives fairness and equality among creditors. Creditors do not have the right over debt claim individually, and their rights are resolved in the bankruptcy case, and debtor's assets are distributed under the in a legitimate order.

- Protecting the rights of debtors (enterprises and co-operatives going into bankruptcy)

In the process of bankruptcy resolution, in Chapter VII of the Bankruptcy Law 2014, an enterprise is entitled to propose plans to resume business operations and persuade creditors through this resume plans. Therefore, it will help debtor find the last chance of "survival".

The plan to resume the business operation of an insolvent enterprise or cooperative must specify measures to resume the business operation; requirements, deadline, and plan to pay the debts. The measures to resume business operation include: Mobilizing capital; Debt reduction, debt exemption, postponement; Changing products and goods; Innovating technology; Reorganization of management, merger or separation of production divisions; Selling share to creditors and others; Saling or leasing the assets; Other measures under the regulations of the law.

If the debtor “dies”, the creditor will likely lose the debt. Therefore, instead of forcing the debtor to reach an impasse and losing everything, the creditor will consider a business plan so that their debtor has a chance to survive. This is also a way to wait for your debt to be paid in the future. Therefore, if the enterprise is insolvent and the enterprise owner cannot negotiate with each creditor, the opening of bankruptcy procedures, bringing the case to the Court and presenting the plan to resume business operations in the creditors’ meeting at the Court is a feasible measure and has a higher success rate.

- Protecting the legitimate rights and interests of workers

Bankruptcy law gives priority to employees the right to request for initiation of bankruptcy, the right to receive salaries before other creditors of unsecured debts, and so on.

- Restructuring businesses and restructuring the economy

Bankruptcy law creates natural elimination of weak businesses from the economy. The purposes are to avoid the negative impact of this weak business on other efficient businesses, eliminate the loss-making businesses, and create a healthy investment environment. Besides, business owners must make efforts in operating and managing the business. Otherwise, they will face business restrictions.

- Protecting the social discipline

Bankruptcy law addresses the cases of the scramble for debtor's property, the dispute between creditors, the conflict between creditors and the debtor to prevent confusion and disorganization. Bankruptcy law helps keep the peace, reduce the tension and conflict between the parties, and make everything happen under the law.

2. Legal issues about business bankruptcy procedures

2.1. Enterprises and co-operatives which go into bankruptcy

Bankruptcy is a legal status of an insolvent enterprise or co-operative is declared bankrupt by the People's Court. An enterprise or co-operative that has failed to meet the debt liability within three months from the maturity date of payment is considered insolvent and is required to open bankruptcy procedures.

2.2. Eligibility and liability to submit written requests for initiation of bankruptcy process

The following subjects are entitled to request initiation of bankruptcy procedures for insolvent enterprises or cooperatives :

2.2.1 Any creditor of unsecured debts or partly secured debts is entitled to submit a written request for initiation of bankruptcy process after three months from the payment due date for the debts which the enterprise or co-operative does not pay.

2.2.2 Any employee, internal Trade Union or the superior Trade Union if the internal Trade Union is not established is entitled to submit a written request for initiation of bankruptcy process after three months from the day on which the enterprise or co-operative has to pay salaries and other debts to the employees.

2.2.3 The legal representative of each enterprise or co-operative is liable to submit a written request for initiation of the bankruptcy process when the enterprise or co-operative is insolvent.

2.2.4 The owner of any private enterprise, the President of the Board of Directors of any joint-stock company, President of the Member assembly of any multi-member limited liability company, the owner of any single limited liability company or any general partner of any partnership is liable to submit a written request for initiation of bankruptcy process when the enterprise is insolvent.

2.2.5 Any shareholder or any group of shareholders owning at least 20% of ordinary shares for at least 06 consecutive months is entitled to submit a written request for initiation of the bankruptcy process when the joint-stock company is insolvent. Any shareholder or any group of shareholders owning less than 20% of ordinary shares for at least 06 consecutive months is entitled to submit a written request for initiation of bankruptcy process when the joint-stock company is insolvent if it is mentioned in the company's charter.

2.2.6 Any member of any co-operative or any legal representative of any co-operative which is a member of the co-operative union is entitled to submit a written request for initiation of the bankruptcy process when the co-operative or the co-operative union is insolvent.

2.3. Sanctions against managers of enterprises and cooperatives declared bankrupt

For enterprises and co-operatives declared bankrupt, the law also provides sanctions for managers of enterprises and co-operatives as follows:

2.3.1 Any President, General Director, Director, member of the Board of Directors of a wholly state-owned enterprise declared bankrupt shall not hold such position in any other state-owned enterprise after such declaration of bankruptcy.

2.3.2 Any representative of the capital holding of the State in a State-invested enterprise which is declared bankrupt must not hold the management post in any other State-invested enterprise.

2.3.3 Any manager of enterprises or co-operatives declared bankrupt may be considered and decided by judges about the prohibition of the establishment of the enterprise or co-operative or working as a manager of the enterprise or cooperative within three years from the

date that the People's Court issues a decision to declare bankruptcy because of intentionally violating against following provisions:

i. Do not comply with the requests of the Judge, the asset management officers, the asset management enterprises and civil execution authorities according to the regulations of Law on bankruptcy;

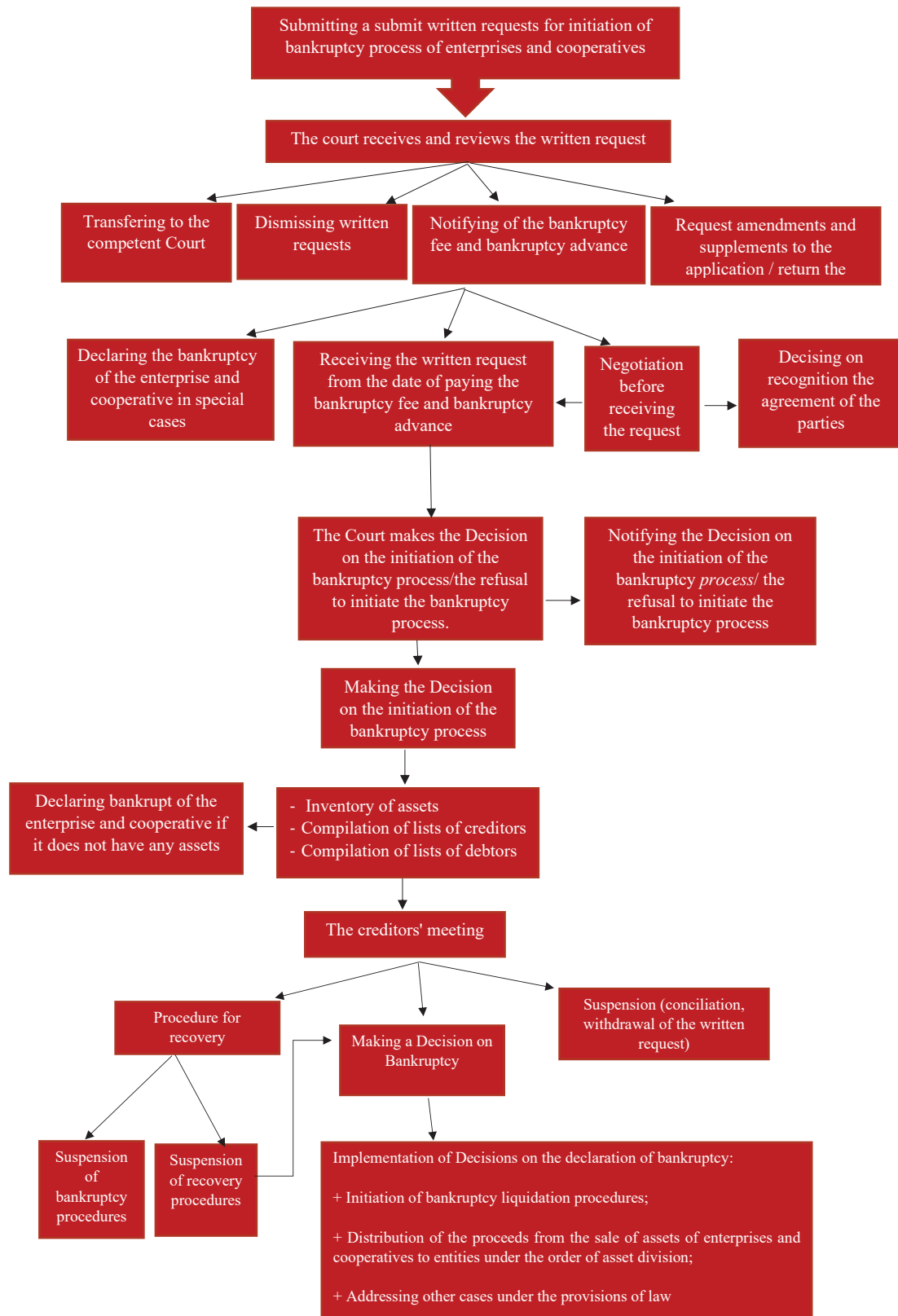
ii. Entities who are entitled to request initiation of bankruptcy procedures prescribed in above Section 3,4, and 5 do not submit the request for initiation of bankruptcy process on the situation of insolvency of the enterprise or the co-operative, they shall not take the liability, and compensate for any damage arising after the insolvency of the enterprise or the co-operative due to failure to file a request for initiation of bankruptcy procedures.

iii. After the Decision on the initiation of the bankruptcy process is available, enterprises and cooperatives are prohibited from:

- Dispersing and hiding assets;
- Paying the unsecured debts, except the unsecured debts incurred after the initiation of the bankruptcy process and the employees' salaries in the enterprise and cooperative;
- Renouncing the right over debt claim;
- Making an unsecured debt into a secured or partly-secured debt with collateral which are assets of the enterprise and co-operative.

iv. Provisions in sections i, ii and iii above are not applied if the enterprise or cooperative goes bankrupt with force majeure reason.

3. Procedures for bankruptcy



Contact:

Pham Thi Thoa

Senior Partner

thoa.pham@apolatlegal.com

Bui Bich Phuong

Associate

phuong.bui@apolatlegal.com

We are proud to present that Apolat Legal is one of the leading professional law firms in Vietnam who is capable of providing a wide range of professional services for clients' business activities in Vietnam. We have a wealth of valuable practical knowledge and experience in advising and assisting different clients with respect to their operations and business in Vietnam. Our outstanding and typical clients are: Asus (Taiwan); LG; Gemadept Vietnam, a subsidiary of CJ Logistics (Korea); CapitaLand; Mimosa Technology Co., Ltd (Singapore); Viet Trade Alliance; Central Group (Thailand); AEON (Japan); Vina Capital; Borden Company Limited (Singapore); The Body Shop (TBS), etc. We are confident that our legal services will greatly support your above request.

Apolat Legal is also honored to receive numerous recognitions and/or articles posted by world-leading and local organizations and publications including: The Law Association for Asia and the Pacific (LawAsia, 1966), The Legal500, IP Link, IP Coster, Lexology, Global Trade Review (GTR), The Saigon Times, etc.

APOLAT LEGAL LAW FIRM

info@apolatlegal.com

(+84) 911357447

www.apolatlegal.com

36A Nguyen Gia Tri st., ward 25, Binh Thanh district, HCMC