

## LEGAL UPDATES (March 29<sup>th</sup>, 2021)

In these legal updates, we would like to send clients the legal updates on some following issues:

- The Supreme People's Court issued Decision No. 42/QD-CA dated March 12<sup>th</sup>, 2021 on the publication of 04 new case laws for the year 2021.
- The Ministry of Planning and Investment issued the first Circular for the year 2021 on new guidance on enterprise registration.

### 1. **The Supreme People's Court issued Decision No. 42/QD-CA dated March 12<sup>th</sup>, 2021 on the publication of 04 new case laws for the year 2021**

On March 12<sup>th</sup>, 2021, the Chief Justice of the Supreme People's Court of Viet Nam Mr. Nguyen Hoa Binh signed Decision No. 42/QD-CA on the publication of 04 new case laws for reference and to be officially applied to judgments as of April 15<sup>th</sup>, 2021. Accordingly, the serial numbers of 04 case laws range from 40/2021/AL to 43/2021/AL, with the following main contents:

- **Case law No. 40/2021/AL** regarding recognition of de facto assignment of rights to use land:
  - **Background of the Case law No. 40/2021/AL** is that parties assigned their land use right to each other in practice without any written agreement. The parties have also used the land for a stable and long time, have registered, declared and been granted the certificate of land use rights with respect to the assigned land area, without any dispute.
  - **Legal solution:** In this case, it is necessary to recognize the actual assignment of the land use rights, the parties have entirely the land use right on the assigned land area.
- **Case law No. 41/2021/AL** regarding termination of de facto marital relationships:
  - **Background of the Case law No. 41/2021/AL** is that a man and a woman lived together without marriage registration. However, they no longer lived together and prior to the effective date of the Law on Marriage and Family, one of either the man or the woman lived with another as husband and wife. The first marriage relationship and the second marriage relationship in this case both are de facto marital relationships.
  - **Legal solution:** In this case, it is necessary to determine the termination of the first de facto marital relationship.

- **Case law No. 42/2021/AL** regarding customers' right to opt for Court for dispute resolution in case of entering into standard form contracts containing the term of arbitration agreement:
  - **Background of the Case law No. 42/2021/AL** is that in case of the standard form contracts containing the term of foreign arbitration agreement, the customer is able to initiate a legal proceeding at the Court of Viet Nam.
  - **Legal Solution:** In this case, it is necessary to determine that the customer does not opt for arbitration and reserves the right to opt for the Court of Viet Nam for dispute resolution.
  
- **Case law No. 43/2021/AL** regarding effect of mortgage contracts in which the mortgaged property is real estate that the mortgagor receives as transferred property without paying the seller in full yet:
  - **Background of the Case law No. 43/2021/AL** is that in the event that the contract on assignment of land use right and house ownership was notarized, the buyer was granted the certificate of land use right and house ownership without paying the seller in full. Both parties have not yet conducted the stage of delivery. The buyer mortgaged such real estate to the Bank and registered the mortgage in accordance with the laws. The seller was aware of and agreed to let the buyer mortgage the real estate, but then the seller requests to terminate the contract on assignment of land use right and house ownership.
  - **Legal Solution:** In this case, it is necessary to determine that the mortgage contract is of full force and effect as well as not to accept the request of termination of the contract on assignment of land use right and house ownership.

Decision No. 42/QD-CA is of full force and effect as of the signing date of March 12<sup>th</sup>, 2021. However, the 04 new case laws will be officially applied to judgment as of April 15<sup>th</sup>, 2021.

## 2. **The Ministry of Planning and Investment issued the first circular for the year 2021 on new guidance on enterprise registration**

On March 16<sup>th</sup>, 2021 the Ministry of Planning and Investment issued Circular No. 01/2021/TT-BKHDT ("**Circular 01**") on guidance on enterprise registration. Accordingly, there are 99 forms accompanying with the promulgation of Circular 01. Those forms are used in enterprise and household business registration and detailed guidance on several issues on enterprise and household business registration. The use of forms will be uniform nationwide, including several notable forms as follows:

- The application forms for registration of private enterprise, single-member limited liability company, multi-member limited liability company, joint-stock company and partnerships.

- List of members of multi-member limited liability company, list of founding shareholders of joint-stock company, list of shareholders being foreign investors, etc.;
- Notice of changes in enterprise registration information; notice of changes in legal representatives; notice of changes in information about registration of operation of branches/representative offices/business locations, notice of dissolution of enterprises, etc.;
- The application form for amending and supplementing the enterprise registration information in terms of enterprise incorporated under the certificate of securities establishment and trading;
- The application form for cessation of enterprise registration procedures;
- The application form for household business registration; the application form for the re-issuance of the certificate of household business registration; and
- Etc.

Circular No. 01/2021/TT-BKHDT will be of full force and effect as of May 01<sup>st</sup>, 2021.

We hope this short Letter of legal updates would bring you useful information.

Best regards.

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