

LEGAL UPDATE (March 17th, 2022)

In this issue, we would like to bring to your attention to the following:

- Several amendments and supplements to conditions for approving foreign loans under Circular No. 09/2022/TT-BTC.
- New regulations on the registration fee under Circular No. 13/2022/TT-BTC.

1. **Several amendments and supplements to conditions for approving foreign loans under Circular No. 09/2022/TT-BTC**

On February 14th, 2022, the Ministry of Finance issued Circular No. 09/2022/TT-BTC stipulating the amendments and supplements to several articles on considering, verifying and approving foreign loans by self-borrowing and self-paying method of enterprises whose more than 50% of charter capital is owned by the State. Accordingly, Circular No. 09/2022/TT-BTC promulgated together with Circular No. 153/2014/TT-BTC stipulates the following notable points:

- Amending the applicable subjects of Circular No. 153/2014/TT-BTC, including: owner's representative agency; wholly state-owned enterprises, excluding enterprises that are credit institutions; and relevant agencies, organizations and individuals.
- In addition, several conditions for consideration, examination and approval of foreign loans have been amended. Specifically,
 - Circular No. 153/2014/TT-BTC only stipulates that investment projects are included in investment plans approved by competent authorities. In Circular No. 09/2022/TT-BTC, it has been amended to the project using foreign loans to serve production and business activities in the main business lines of enterprises, invested by the enterprise and included in the 5-year investment and development plan, the annual production and business plan of the enterprise;
 - Circular No. 153/2014/TT-BTC stipulates that the owner has approved the foreign loan policy by the method of self-borrowing and self-paying. In Circular No. 09/2022/TT-BTC, it has been amended to the owner's representative agency that has approved the foreign loan policy;
- Circular No. 09/2022/TT-BTC has amended and supplemented the sequences and procedures for considering and approving foreign loans for appraisal content by the Ministry of Finance. Accordingly, the appraisal content includes:

- The satisfaction of conditions for appraisal and approval of foreign loan policy;
- Completeness of records;
- Financial situation of the enterprise at the time of appraisal;
- The plan to balance the reciprocal capital of the enterprise when borrowing foreign debt by the self-borrowing and self-pay method;
- The ability to repay foreign loans according to the policy approved by the owner's representative agency at the time of appraisal.

Circular No 09/2022/TT-BTC will be of full force and effect as of April 1st, 2022.

2. **New regulations on registration fees under Circular No. 13/2022/TT-BTC**

On February 28th, 2022, the Ministry of Finance issued Circular No. 13/2022/TT-BTC guiding several provisions of Decree No. 10/2022/ND-CP on registration fees. Accordingly, the Circular provides the following notable points:

(a) The price subject to the registration fee does not include the maintenance fee for shared areas

Circular No. 13/2022/TT-BTC stipulates that the price subject to the registration fee imposed on apartment buildings is the price excluding the maintenance fee for shared areas of the apartment buildings. This is a new regulation that previously did not specify in Circular No. 301/2016/TT-BTC and Circular No. 20/2019/TT-BTC.

If the apartment purchase and sale contract and its invoice do not separate the maintenance fee for shared areas of the apartment building, the price subject to the registration fee is the total value of apartment purchase and sale written in the apartment purchase and sale invoice and contract.

(b) Supplementing regulations to clarify the price subject to the registration fee when the sale and purchase contract does not separate house and land

The purchase and sale of houses associated with the land use right is very popular in reality; in which there are many cases of "not separating" house and land values into separate items. However, the legal documents on previous registration fee did not provide for the "cumulative" calculation of the registration fee for both house and land. Therefore, Circular No. 13/2022/TT-BTC has been promptly supplemented to determine the calculation method in case the sale and purchase contract does not separate house and land.

(c) Amending the criteria for determining households when dividing house and land to serve as a basis to clearly identify subjects exempt from the registration fee

Circular No. 13/2022/TT-BTC stipulates that properties of organizations and individuals granted ownership and use rights certificates when re-registering their ownership and use rights shall be exempt from the registration fee. Specifically:

Property that has been granted a certificate of common ownership or use right of the household or of household members upon division of such property to household members for re-registration in accordance with law; Consolidated property of husband and wife after marriage; Property to be distributed to husband and wife upon divorce according to an effective judgment or decision.

In which, the identification as household members when dividing common property under the law to re-registered household members is amended to be those who are marital relationship, bloodline, upbringing (adoptive father, adoptive mother with adopted child,...). In comparison with Circular No. 301/2016/TT-BTC amended and supplemented by Circular No. 20/2019/TT-BTC, Circular No. 13/2022/TT-BTC has removed the regulation that household members must be registered at the same permanent address with the person(s) named on the certificate of ownership and use rights.

It can be seen that the basis for determining who is a household member when "dividing land" in order to be exempted from the registration fee under the new Circular, can ensure the rights of land users who are household members holding the land use right, and also be consistent with the plan to abolish "paper household registration" in accordance with the laws on the residence.

Circular No. 13/2022/TT-BTC has come into force and effect as of March 1st, 2022.

We hope this Monthly Newsletter would bring you useful information.

Best regards.

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