

LEGAL UPDATE (February 22th, 2022)

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

- Entry procedures for foreigners, overseas Vietnamese and their relatives to return to Vietnam;
- Precedent No. 52/2021/AL on the validity of contracts for a donation of land use rights without the registration of land use rights.

1. Entry procedures for foreigners, overseas Vietnamese and their relatives to return to Vietnam

On January 18th, 2022, the Government Office has issued the Official Letter No. 450/VPCP-QHQT governing the entry into Vietnam of foreigners, overseas Vietnamese and their relatives, creating favourable conditions for these subjects to perform their entry procedures.

Foreigners, overseas Vietnamese and their relatives with valid entry documents (valid permanent residence cards, temporary residence cards, visas, visa exemption certificates) are allowed to enter Vietnam in accordance with the Law on Entry, exit, transit, residence of foreigners in Vietnam and Decree No. 82/2015/ND-CP dated September 24th, 2015, without having to undergo procedures on personnel checks or re-issuance of visas/visa exemption certificates or apply for approval on entry policies from the relevant department, sector or municipality.

For foreigners who have not obtained any visas: The provincial People's Committee shall continue to review and facilitate approvals for entry to work, participate conferences, seminars, study or for humanitarian purposes, etc. within the province; the Ministries, sectors and central agencies shall take initiative to invite, greet and be responsible for managing foreigners working with their agency.

Foreigners allowed to enter Vietnam in accordance with Official Letter No. 450/VPCP-QHQT include those invited and sponsored by the agencies, organizations and individuals in Vietnam according to the Law on Entry, exit, transit, residence of foreigners in Vietnam. The exception of this rule is the case of foreign tourists who, in the near future, shall continue to follow the current pilot program on welcoming foreign tourists.

2. Precedent No. 52/2021/AL on the validity of contracts for a donation of land use rights without the registration of land use rights

Precedent No. 52/2021/AL is taken from Judicial Review Decision No. 231/2020/DS-GDT dated September 30th, 2020 of the Superior Court in Ho Chi Minh City on the case "Dispute on property inheritance; dispute on a request for deciding that contracts for a donation of land use rights invalid", passed by the Judicial Council of the Supreme People's Court on

November 25th, 2021 and published in accordance with Decision No. 594/QD-CA dated December 31st, 2021 of the Chief Justice of the Supreme People's Court.

The facts of this precedent can be briefed as follows: Mrs. C1 was the lawful owner of a number of land lots to which she had been issued with certificates of land use rights. On June 14th, 2010, Mrs. C1 made 02 contracts for the donation of 02 of the land lots mentioned earlier to her son, Mr. V, these contracts was certified by the local People's Committee, after that, she passed away. As regards the first land lot, Mr. V has completed the procedures to change the land owner's name from his mother's name into his name and been issued with a certificate of land use rights, however, as regards the second land lot, Mr. V has not been able to perform the same procedures because the local People's Committee needed some time to adjust the land master map and then, because the land use rights were disputed by Mrs. U (daughter of Mrs. C1). On the part of Mrs. U, she requested the Court to declare that the 02 contracts for the donation of land use rights are invalid, determine that such land lots are the estates left behind by Mrs. C1 and distribute the estates according to the law.

Pursuant to the precedent's content, a contract for the donation of land use rights shall be deemed legally valid if it satisfies all the following requirements:

- The contract has satisfied all legal requirements on the right to donate land use rights;
- Until death, the donor had not had any document to replace the contract for the donation of property previously signed and had not taken any action to indicate a change of the will expressed in the signed contract of property donation;
- The donee is unable to register the property (land use rights) due to objective obstacles in administrative procedures (or other objective obstacles), but not due to the donor's subjective will.

Therefore, although the donee of land use rights had not registered such land use rights when the donor passed away, the contracts for the donation of land use rights are still legally valid if they satisfy all 03 of the requirements above.

We hope this Weekly Newsletter would bring you useful information.

Best regards.

Contributor(s):**Mr. DINH QUANG LONG****Director cum Managing Partner****M** (+84) 919 963 977 | **E** long.dinh@apolatlegal.com**Ms. THIEU THI KIEU THU****Associate****M** (+84) 378 513 939 | **E** thu.thieu@apolatlegal.com

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Contacts:

HO CHI MINH CITY (Head office)

5th Floor, IMM Building
99-101 Nguyen Dinh Chieu, District 3
Ho Chi Minh City, Vietnam

THE BRANCH IN HA NOI CITY

Room A8, 29th Floor, East Tower, Lotte Center
54 Lieu Giai, Cong Vi Ward, Ba Dinh District
Hanoi City, Vietnam

Tel: +84-28-3899 8683

Email: info@apolatlegal.com

Website: www.apolatlegal.com

SINGAPORE (Affiliated office)

#26-10, SBF Center,
160 Robinson Road
Singapore 068914

Tel: +84-93-2014 986

Email: info@apolatlegal.com

Website: www.apolatlegal.com

Scan QR code:

