

NEWSLETTER

NOVEMBER 2023



LAC DUY & ASSOCIATES



**NOTEWORTHY NEW
POINTS OF DECREE
75/2023 ON
AMENDING AND
SUPPLEMENTING
DECREE
146/2018/ND-CP**

**OFFICIAL DISPATCH
NO. 196/TANDTC-PC
ANSWERING SOME
CONCERNS IN THE
FIELD OF CIVIL, CIVIL
PROCEDURE,
COMMERCIAL, FAMILY
AND MARRIAGE**



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CONTACT WITH US

 : <http://lacduy-associates.com>

 : lacduy@lacduy-associates.com

 : +84917275572/+842836221603

 : 6th Floor, Centec Tower, 72-74 Nguyen Thi Minh Khai Street, Vo Thi Sau Ward, District 3, Ho Chi Minh

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Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of November 2023 with some notable updates and articles as follows:

- Official dispatch No. 196/TANDTC-PC answering some concerns in the field of civil, civil procedure, commercial, family and marriage
- Noteworthy new points of Decree 75/2023 on amending and supplementing Decree 146/2018/ND-CP
- Legal Document in 11/2023





OFFICIAL DISPATCH NO. 196/TANDTC-PC ANSWERING SOME CONCERNS IN THE FIELD OF CIVIL, CIVIL PROCEDURE, COMMERCIAL, FAMILY AND MARRIAGE

On 24 April 2023, the Judicial Council of the Supreme People's Court held an online conference to answer some problems in the judicial work of the Courts. On that basis, on 3 October 2023, the Supreme People's Court ("SPC") issued Official Dispatch No. 196/TANDTC-PC announcing the results of online answers to some problems in the the adjudicating work

In which, the fields of Civil, Civil Procedures, Commercial Business, Marriage and Family are the most answered fields with 16 questions. Thereby, Lac Duy & Associates ("LDA") presents to readers some of the following outstanding questions:

1. When resolving a credit contract dispute case requiring the handling of mortgaged property, the Court discovered that another Court had accepted the case of a dispute over property ownership and use rights of this mortgaged property. In this situation, two cases must be merged to resolve or the resolution of the credit contract dispute case must be suspended to wait for the resolution of the case of dispute over property ownership and use rights of mortgaged property?

[SPC]: Clause 1, Article 42 of the Civil Procedure Code 2015 ("CPC 2015") regulates the joining of civil cases as follows:

"1. A Court may join two or more cases which it has separately accepted to a single case to resolve if the joinder and resolution in the same case ensure the law compliance.

Regarding cases where multiple persons filing the same petitions for lawsuits against the same individuals or agencies/organizations, the Courts may gather their petitions to resolve in the same cases."

The law only regulates the joining of two or more cases that one Court has separately accepted into one case for resolution, but does not provide for the merging of cases accepted by different Courts for resolution. In this situation, the Court must suspend the credit contract dispute according to point d, Clause 1, Article 214 of the CPC 2015 to wait for the result of the case of dispute over property ownership and use rights of mortgaged property. When there is the result of this case, the Court will continue to resolve



the credit contract dispute case according to the law.

[LDA]: According to the provisions of the CPC 2015, civil cases can only be merged when they are handled by the same court. Therefore, if two civil cases involve the same disputed property but are handled by two different Courts, the more important case must be given priority. In the above situation, determining who is the owner of the disputed property is an important basis for determining the



owner of the mortgaged property, from which can further resolve credit contract disputes related to that mortgaged property. According to the provisions of point d, Clause 1, Article 214 of the CPC 2015, the Court shall issue a decision to suspend the resolution of the case when: *"The results of resolution of another related case or matter, which, as required by law, must be settled by other agencies or organizations before the cases are resolved, need to be waited for."*

2. According to the provisions of the Law on Credit Institutions and Section 3, Article 6 of Decision 1160/2004/QĐ-NHNN: "Owner of savings deposit is a person whose name is stated in the savings card", so the person whose name is stated in the passbook (bankbook) has full authority to decide on the amount of money in the passbook in their name. In case the savings amount is a common property between husband and wife, the husband or wife whose name is stated in the passbook mortgages bankbook to borrow money from the Bank and the other does not know, then is the contract on mortgage this bankbook effective or not?

[SPC]: Clause 1, Article 32 of the Law on Marriage and Family 2014 regulates:

"In transactions with third parties in good faith, the spouse who is the holder of the bank or securities account shall be regarded as the person having the right to establish and make transactions related to that property."

Article 8 of Decree No. 126/2014/ND-CP dated 31 December 2014 detailing a number of articles and measures for implement of the Law on Marriage and Family stipulates:

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“A third party that establishes and makes transactions with a spouse related to bank account, securities account or other movable assets for which ownership registration is not required by law shall be regarded as not acting in good faith in the following cases:

1. He/she/it has been provided with information by a spouse in accordance with Article 16 of this Decree but still establishes and makes transactions against such information.

2. The husband and wife have made public in accordance with relevant laws their agreement on possession, use and disposition of property and a third party has known or must know this agreement but still establishes and makes transactions against such agreement.”

Based on the above regulations, in case the husband or wife holds the name of the deposit account holder at the bank (name of the passbook or bankbook), he/she is considered the person with the right to establish and perform related to that property. The contract to mortgage the bankbook is, therefore, legally valid, except in cases of transactions with third parties not acting in good faith as prescribed in Article 8 of Decree No. 126/2014/ND-CP dated 31 December 2014 mentioned above.



[LDA]: Currently, according to the regulations in Circular No. 48/2018/TT-NHNN regulating savings deposits, a bankbook can be in the names of many people. Therefore, husband and wife can jointly own the bankbook. On the other hand, in the case of a bankbook that is common property of husband and wife but is only in the name of a spouse, in order to prove that this is common property of husband and wife, two conditions must be

met: (i) The bankbook is formed during the marriage period and (ii) There is no basis to prove that this is the separate property of each party (such as a separate gift, separate inheritance, etc.).

When the bankbook is a common property of husband and wife but is in the name of only one person, according to the provisions of Clause 1, Article 32 of the Law on Marriage and Family 2014, the person whose name is on the bank account is considered the person having the right to establish and make transactions related to that property. In case the spouse arbitrarily mortgages the bankbook to the Bank



without notifying the other spouse, there will be 2 situations as follows:

Situation 1: If a Bank accepts mortgages the bankbook but does not know that this is the common property of the couple, then the Bank is a third party in good faith. At this time, it is legal for the Bank to accept the mortgage of the bankbook and if the other person does not know, they have no right to request declaration of invalidity of civil transactions. However, they can sue their husband/wife and request reimbursement of expenses and compensation for damages according to the provisions of Clause 3, Article 133 of the Civil Code 2015.

Situation 2: If the Bank know that this is common property of husband and wife and know that the other person has not agreed to the mortgage, but the Bank still accepts the mortgage of the bankbook, the Bank is considered a third party not acting in good faith according to Article 8 of Decree No. 126/2014/ND-CP dated 31 December 2014. At this time, the civil transaction will not have legal effect according to the provisions of Clause 2, Article 26 of the Law on Marriage and Family 2014.

3. In a credit contract dispute case, the Bank initiates a lawsuit to request the borrower to repay the debt according to the credit contract. If the borrower fails to repay the debt, the collateral will be requested to be handled to recover the debt. The litigants do not request that the mortgage contract be declared invalid. In case the mortgage contract is deemed to be invalid, does the Court have the right to declare the mortgage contract invalid?

[SPC]: This is a case of credit contract dispute, the borrower mortgaged property to ensure debt repayment obligations, the Bank requested to handle the mortgaged assets to recover the debt if the borrower did not repay the debt. During the process of resolving the case, the Court must consider the validity of this property mortgage contract. If the property mortgage contract complies with the law, the Court must recognize the property mortgage contract as valid and treat the mortgaged property according to the law; If a property mortgage contract violates the conditions for the contract's validity according to the law, the Court must declare the property mortgage contract invalid regardless of whether the litigants request a declaration whether the mortgage contract is invalid or not.

[LDA]: Comparing with the provisions of Clause 1, Article 117 of the Civil Code 2015, the Mortgage Contract will be invalid when: the participants in the mortgage relationship have no personality and/or legal capacity; the participants are not voluntary; the purpose and content of the Mortgage Contract is contrary to the law and/or social ethics. Considering these conditions, the Court will declare the Mortgage Contract invalid or not. However, the question is, if the Mortgage Contract is invalid, will the Credit

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Contract be invalidated, and how should the bank recover debt when there is no mortgaged property?

In principle, the Credit Contract is the main contract, relied upon by the parties to identify the borrower and the loan. Meanwhile, the Mortgage Contract serves as a backup plan for risks outside the main



contract. If the binding plan in the Credit Contract is not implemented, it will be replaced by the Mortgage Contract. Therefore, if the Mortgage Contract is invalid, it does not affect all of the parties' obligations but only affects the alternative debt repayment source in the Credit Contract. In this case, the mortgagor has the right to replace the mortgaged property with another if the mortgagee agrees as prescribed in Clause 5, Article 321 of the Civil Code 2015. If the mortgagor does not change the mortgaged property or has no mortgaged property, the bank has the right to sue in Court regarding credit contract disputes.



NOTEWORTHY NEW POINTS OF DECREE 75/2023 ON AMENDING AND SUPPLEMENTING DECREE 146/2018/ND-CP



On October 19, 2023, the Government issued Decree 75/2023/ND-CP amending and supplementing several articles of Decree No. 146/2018/ND-CP dated October 17, 2018 of the Government detailing and instructing measures to implement several articles of the Health Insurance Law. This Decree has resolved several problems in the payment mechanism for medical examination and treatment expenses covered by health insurance to facilitate medical examination and treatment under health insurance and ensure the rights of health insurance participants, supplement and support health insurance premiums, amend health insurance benefits and strengthen the roles and responsibilities of ministries, branches and medical examination and treatment facilities in managing and effectively using health insurance funds. Decree 75/2023/ND-CP will take effect from December 3, 2023. The following are the new and amended points that we send to clients for reference to promptly grasp the new situation of relevant laws:

1. Amend and supplement the groups covered by the state budget for health insurance

Amendments to:

- (i) People in near-poor households according to near-poor household standards in the 2022-2025 period;
- (ii) People belonging to households working in agriculture, forestry, fishery, and salt production having an average standard of living in the period 2022-2025.

Decree 07/2021/ND-CP and documents of relevant

competent authorities will participate in applying to subjects (i) and (ii). Compared to the old regulations in Decree 146/2018/ND-CP which only generally mentioned that near-poor families; Households working in agriculture, forestry, fishery, and salt production with an average standard of living will be supported by the state budget with health insurance premiums, Decree 75/2023/ND-CP clearly stipulates that the above two subjects must comply with the law by the standards set by Decree 07/2021/ND-CP regulating multidimensional poverty lines for the period 2021-2025 issued by the Government on January 27, 2021, or legal documents issued by related competent agencies in different periods.

The new Decree also adds clause 5 after clause 4,



Article 4 of Decree 146/2018/ND-CP regulating state budget support for health insurance premiums. Ethnic minorities in communes of Region II, Region III, and extremely difficult villages in ethnic minority and mountainous areas in the 2016-2020 period but these communes are no longer on the list of communes in Region II, Region III and extremely difficult villages in ethnic minority and mountainous areas for the 2021-2025 period according to the Prime Minister's decision.

2. Expand the group of people receiving support from the state budget

(i) The state budget continues to support 100% of health insurance premiums for people from near-poor households residing in poor districts according to the Prime Minister's decision and other documents of competent agencies. However, these near-poor households will no longer be regulated by Resolution No. 30a/2008/NQ-CP dated December 27, 2008 of the Government on the rapid and sustainable poverty reduction support program and the districts applying mechanisms and policies in accordance to Resolution No. 30a/2008/NQ-CP.

(ii) Subjects in Clause 5, Article 4 of Decree 146/2018/ND-CP will be added to the list of that receive 70% of health insurance payment support from the state budget.

3. Add a new group of people to enjoy 100% and 95% of medical examination and treatment expenses

(i) For the coverage of 100% of medical examination and treatment expenses:

- People in revolutionary safe zone communes during the resistance war against the French and Americans currently residing in revolutionary safe zone communes during the resistance wars against the French and the Americans that the information has been updated in the National Database of Residence, National Database on the population but not subject to regulations Clauses 1, 2, and 3, Article 12 of the Health Insurance Law;

- People who participate in the resistance war and protect the Fatherland.

(ii) For the coverage of 95% of medical examination and treatment expenses:

- The martyr's spouse marries another husband or wife who is receiving monthly benefits as prescribed in Point a, Clause 10, Article 16 of the Ordinance on Preferentiality for People with Merits to the Revolution;





- People who serve other people with merit living in the family, including: People who serve Vietnamese Heroic Mothers; People serving wounded soldiers, including type B war invalids recognized before December 31, 1993, policy recipients such as war invalids, sick soldiers, resistance activists exposed to toxic chemicals with high injury rates from 81% or more.

4. Supplement other identification documents if a health insurance participant does not bring the health insurance card on arrival for medical examination and treatment

- (i) Citizen identification card;
- (ii) Other legal proof of identity; or
- (iii) Level 2 electronic identification documents as prescribed in Decree 59/2022/ND-CP dated September 5, 2022 of the Government regulating electronic identification and authentication.

5. Strengthen the role and responsibility of medical examination and treatment facilities with several expanded regulations

- (i) Amend and supplement the rights of medical examination and treatment facilities:
 - Medical examination and treatment facilities exercise the rights specified in Article 42 of the Health Insurance Law and legal regulations on medical examination and treatment;

- Be provided with timely information when the health insurance assessment information system detects an increase in health insurance medical examination and treatment expenses compared to the average fee of a medical examination and treatment facility of the same class, at the same level line, same specialty to promptly review, verify, and implement appropriate adjustment solutions.

(ii) Amend and supplement responsibilities of medical examination and treatment facilities:

- Carry out responsibilities as prescribed in Article 43 of the Law on Health Insurance and responsibilities as prescribed by law on medical examination and treatment;
- Comply with the law on medical examination and treatment, professional instructions of the Ministry of Health, and relevant legal regulations on procurement and bidding to ensure the supply of drugs, chemicals, medical supplies, and quality and effectively medical technical services;
- Establish an information technology infrastructure system, upgrade and complete the hospital management software system to comply with legal regulations on input data standards, output data standards, and extraction of electronic datatransfer, digital transformation, and electronic transactions in the medical field;
- Review and promptly issue procedures and professional guidance in medical examination and



treatment, health insurance, and measures to prevent abuse and profiteering of health insurance funds according to authority; Organize inspection and review of payment of health insurance medical examination and treatment expenses by the law; proactively detect, review, and verify increased health insurance medical examination and treatment costs at the facility according to recommendations and warnings of the social insurance agency and make appropriate adjustments.

1. Modify and supplement payment principles

(i). Medical examination service expenses, hospital bed day service expenses, and technical and laboratory services used for patients within the scope and level of benefits of health insurance participants are paid by the actual quantity used for patients and the price according to current regulations;

(ii). Expenses of drugs, chemicals, and medical supplies that have not been included in the price of health insurance medical examination and treatment services or used in technical services that have not been issued health insurance medical examination and treatment prices that have been used for patients within the scope and level of benefits of health insurance participants are paid according to the actual quantity used and the purchase price by the regulations of the law on bidding.

It can be seen that Decree 75/2023/ND-CP was issued to expand the number of groups eligible for support from the state budget, amend and supplement medical examination and treatment procedures by Government regulations on the use of level 2 electronically identified documents, promote the implementation of solutions to control health insurance medical examination and treatment expenses, manage and use health insurance funds economically and effectively, and prevent abuse, waste, and profiteering of health insurance funds. Innovative and groundbreaking regulations demonstrate the determination of the Government, the Ministry of Health, and other ministries and branches to improve the quality and efficiency of health insurance medical examination and treatment to create convenience for participants in health insurance, medical establishment, and state management of health insurance.



LEGAL DOCUMENT IN 11/2023

NO.	EFFECTIVE DATE	NAME
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GOVERNMENT

1.	17/11/2023	Decree No. 80/2023/ND-CP amending Decree No. 95/2021/ND-CP and No. 83/2014/ND-CP on petroleum business
2.	25/12/2023	Decree No. 76/2023/ND-CP guiding the Law on Prevention and Combat against domestic violence
3.	22/12/2023	Decree No. 78/2023/ND-CP amending Decree No. 32/2017/ND-CP on State investment credit
4.	15/11/2023	Decree No. 79/2023/ND-CP guiding the Law on Intellectual Property about rights to plant varieties

FINANCE

1.	15/12/2023	Circular No. 65/2023/TT-BTC regulating collection rates, collection, payment, management and use of fees for exploiting and using environmental data issued by the Minister of Finance
2.	02/11/2023	Circular No. 67/2023/TT-BTC guiding the Law on Insurance Business, Decree No. 46/2023/ND-CP guiding the Law on Insurance Business issued by the Minister of Finance
3.	25/12/2023	Circular No. 68/2023/TT-BTC abolishes 04 Circulars issued by the Minister of Finance related to financial management in the field of diplomacy

NATURAL RESOURCES AND ENVIRONMENT

1.	15/12/2023	Circular No. 15/2023/TT-BTNMT regulating about providing and sharing of information and data on natural resources and environmental monitoring issued by the Minister of Natural Resources and Environment
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HEALTH

1.	09/11/2023	Consolidated document No. 14/VBHN-BYT 2023 consolidates the Decree guiding the Health Insurance Law issued by the Ministry of Health
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| 2. | 01/01/2024 | Circular No. 20/2023/TT-BYT abolishes legal documents issued by the Minister of Health |
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STATE AUDIT

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| 1. | 31/10/2023 | Decision No. 1348/QD-KTNN 2023 on Regulations on using State Audit collaborators |
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INDUSTRY AND TRADE

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| 1. | 09/11/2023 | Decision No. 2941/QD-BCT 2023 regulating about electricity prices issued by the Minister of Industry And Trade |
| 2. | 10/11/2023 | Consolidated document No. 26/VBHN-BCT 2023 consolidated Circular regulating about occupational safety inspection under the management of the Ministry of Industry And Trade |

STATE BANK

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| 1. | 14/12/2023 | Circular No. 13/2023/TT-NHNN amendments to Circulars prescribing licensing, organization, operation, and application and procedures for approval of changes of commercial banks and foreign bank branches issued by the Governor of the State Bank of Vietnam |
| 2. | 10/11/2023 | Consolidated document No. 21/VBHN-NHNN 2023 consolidated Circular regulating about application and procedures for approval of changes of commercial banks and foreign bank branches issued by the Governor of the State Bank of Vietnam |