

ANNOUNCEMENT OF CASE LAW NO. 38/2020/AL AND CASE LAW NO. 39/2020/AL

REJECT CIVIL LAWSUITS ON REQUESTS FOR ASSET ALLOCATION HAS BEEN EFFECTIVE BY JUDGMENT

In the establishment of case law No. 38/2020/AL, Ms. M filed a lawsuit, asking the court to force Ms. H and Mr. DD to return the house to her because she thought that Ms. H and Mr. DD had taken the house of her family. However, before that, the People's Court of Lam Dong Province had declared that the marriage and family judgment were legally valid, under which the ownership of this house belonged to Ms. H and Mr. DD.

The question poses **whether the content of Ms. M's lawsuit falls into the case of "the matter has been resolved by the legally effective judgment or decision of the Court", thereby serving as a basis for suspending the case and returning her petition?** Or is it that the disputing relationship in this case is "Property Claim", there is a plaintiff, the defendant is different from the plaintiff, the defendant in the marriage and family case has been tried before, so the Court must continue to resolve the case of Ms. M?

For case law No. 38/2020/AL applied from November 15, 2020, the Judicial Council of the Supreme People's Court has based on the nature of Ms. M's lawsuit to determine whether the incident coincides with the previous

effective judgment or not? And according to Article 256 of Civil Code 2005, to claim property, two conditions must be met:

- (i) The claimant is a legal owner or possessor;
- (ii) The person claimed is the person who possesses or uses the property and benefits from property without a legal basis.

Accordingly, Ms. M is not the subject that has the right to claim Mr. DD and Ms. H to return the house according to Article 256 mentioned above. The content of Ms. M's lawsuit must be considered in the case "The case has been resolved by the legally effective judgment or decision of the Court." If Ms. M disagrees with the declaration of Mr. DD and Ms. H is the legal owner of the house as the content of the judgment, Ms. M can pursue cassation procedures (if there is a statute of limitations) or reopening (if there are grounds) under Clause 2 of Article 327 and Clause 1 of Article 353 of Civil procedure Code 2015. Since then, the Court decides to suspend and return Ms. M's petition under the provisions of Point c, Clause 1, Article 192 and Point g, Clause 1, Article 217 of Civil Procedure Code 2015.

WHY SELECT AND ANNOUNCE CASE LAW NO. 38/2020/AL?

Due to the ambiguity in the way of understanding and applying the law to judicial practice to determine how the case has been resolved by legally effective judgment or decision. Specifically, after the property has been divided by an effective judgment, there appears to be another person other than the involved parties in the previous case to sue for the property which can be considered a new case "Property Claim" or dispute has coincided with the case resolved by the previous judgment?

It is the ambiguity in determining the correct understanding of the above problem that the Supreme People's Court has selected and announced the case law No. 38/2020/AL in order to provide a unified solution to this situation.



DETERMINE CONDITIONAL CIVIL TRANSACTION IS VOID DUE TO CONDITIONS CANNOT HAPPEN

With respect to a conditional contract where, if the condition does not arise, change or terminate in practice as agreed, is this type of contract possible? Or should this contract be considered a invalid civil transaction? Case law No. 39/2020/AL applied from November 15, 2020, selected and announced by the Judicial Council of the Supreme People's Court, will provide a legal solution to such a specific situation.

A simple dispute when the seller, Mr. Tran Van C, who is the tenant of the government-owned house, has committed that, after Mr. C purchased the price of the government-owned house, the ownership will be transferred to the buyer is Ms. C1. But after a while, the Government did not proceed with house prices as agreed upon by the buyers and sellers. Leading up to a question is whether the transfer agreement between the parties takes effect or not? And does this house ownership belong to the buyer, the seller or the Government?

To resolve this issue, the Judicial Council of the Supreme People's Court relies on the nature of the transaction between the buyer and the seller to determine that this is a conditional civil transaction. Because the Commitment Letter and the Receipt between the seller and the buyer clearly shows that the seller (Mr. C) has received the gold and the couple buyer (Mr. H and Ms. C1) has been delivered the house. The two sides agreed when the Government for the seller to buy goods prices, the couple buyer must pay the price for the area where they're using, the seller is responsible for procedures to transfer ownership to the buyer.

So it is understandable that the condition for the seller to sell a part of the house he is renting from the Government to the buyer is when the seller is accepted the price by the Government. For a transaction between parties, when the conditions of this transaction occur (Mr. C is accepted the price by the Government), the transaction will become effective.

In fact, the land area in the transfer transaction between the parties is not accepted by the Government and the Government does not recognize Mr. C's house ownership, land use right. Therefore the transaction was declared invalid by the Court of First Instance and Appeal due to the condition that did not happen in practice.

The determination of a conditional civil transaction in this case law is based on the provisions in Article 23 of the Ordinance on Civil Contracts 1991. Similar contents are also specified in Clause 6, Article 406 of the Civil Code 2005, Clause 6 Article 402 Civil Code 2015. Hence, case law No. 39/2020/AL is not limited to disputes within the effective period of the Ordinance on Civil Contracts 1991, but similar disputes can also be resolved according to the resolution given by case law. For a conditional

contract, the condition is an initial prerequisite. Because the core of the contract is ultimately benefits, is the purpose of the parties. If because the condition does not happen, the conditional contract cannot be performed, the parties should prioritize negotiating so that their purpose is achieved when entering into the contract. In case the negotiation is still unsuccessful, then the parties should bring it to the Court for settlement.

Applicable to similar circumstances

"The tenant of the government-owned house (the seller) commits that after being recognized by the Government, ownership rights will be transferred to the buyer. The seller received the money and handed over the house to the buyer, but then the Government did not price it and did not recognize ownership of the house.

In this case, it must be determined that the house ownership transfer contract is a conditional civil transaction but invalid because the contractual conditions cannot occur".



EXTENSION OF GOVERNMENT SUPPORT POLICY DUE TO COVID-19 PANDEMIC IMPACTS

To assist people in overcoming the consequences of COVID-19 pandemic, Vietnam Government has issued the Resolution No. 154/NQ-CP (came into force as October 19, 2020) to replace the Resolution No. 42/NQ-CP to extend the supported objects that affected by the pandemic. The details as follow:

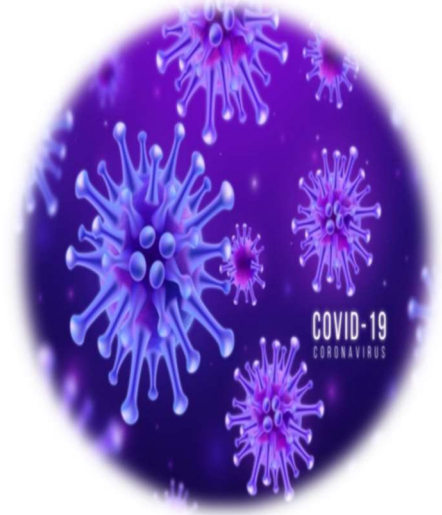
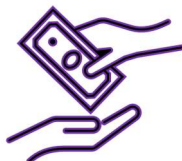
1. Supporting limit by cash at VND1,800,000/person/month

The new Resonlution No. 154/NQ-CP has extend the supported objects as follows: employees working under the labor contract regime must agree to suspend the implementation of labor contracts or leave without pay for 01 month or more due to enterprises; private educational institutions, public educational institutions in the levels of preschool, kindergarten, primary school, secondary school, high school that meet difficulties due to COVID-19 pandemic, no revenue or financial resources to pay salaries.

The receiving support time is based on the actual time that the employees suspend the implementation of labor contract or leave without paying, monthly depend on the actual situation of the pandemic, started from April 1, 2020 and no longer than 3 months.

2. Supporting loans to pay work suspension salaries for employees

Enterprises have the revenue in the first quarter of 2020 decreased by 20% in compare with the revenue in the fourth quarter of 2019 or the revenue in the previous financial quarter decreased by 20% in compare with the revenue in the same period of 2019 will be loaned without mortgages up to 50% of the regional minimum wage to warrant for the payment of work suspension employee's salaries pursuant to Clause 3, Article 98 of Labor Code in the period from April to December 2020 according to the actual salary payment period but not more than 3 months with 0% loan interest rate, the maximum loan term of 12 months at the Vietnam Bank for Social Policy.



3. Supporting enterprises to suspend the payment of retirement and death funds

Enterprises affected by the COVID-19 pandemic that lead to the reduction of employees participate in social insurance by 20% in compare with the time when the competent agencies announce the pandemic (including work suspension employees, employees suspend the implementation of labor contracts or leave without paying), employees and employers may suspend the time of payment for retirement and dead funds but no longer than 3 months from submitting date of the application.



1.

Claims of compensation for damage to Government's property.

2.

Civil cases or matter of civil transactions that violate the provision of the laws or against social morals.

3.

A spouse in divorce disputes is the person who loses his/her civil act capacity.

7 CIVIL CASES NON-CONDUCTING MEDIATION OR DIALOGUE AT THE COURT

Law on Mediation or Dialogue at the Court 2020 coming into force as of January 01, 2021

4.

One of the parties proposes not to conduct mediation or dialogue.

5.

The involved parties have been invited to participate in the second valid mediation or dialogue are still absent except the reason of force majeure events or objective obstacles or other justifiable reasons.

6.

One of the parties petitions the application of provisional emergency measures in accordance with the Civil Procedures Code or Law on Administrative Procedures.

7.

Other cases as provided by the laws.



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MONTHLY LEGAL DOCUMENTS UPDATE

NO.	DOCUMENT NAME	DAY OF ISSUE	EFFECTIVE DAY
GOVERNMENT			
1	Decree No. 125/2020/ND-CP on sanctioning administrative violations of tax and invoices	19/10/2020	05/12/2020
2	Decree No. 124/2020/ND-CP on several articles and measures to implement the Law on Complaints	19/10/2020	10/12/2020
3	Decree No. 123/2020/ND-CP on invoices and receipts	19/10/2020	01/07/2022
4	Decree No. 122/2020/ND-CP on single-window cooperation in processing applications for registration of enterprises, branches, representative offices; declaration of personnel; social insurance participation; use of invoices by enterprises	15/10/2020	15/10/2020
5	Decree No. 121/2020/ND-CP on amendment to Clause 2 Article 12 of Decree No. 91/2015/ND-CP dated October 13, 2015 of the government on state capital investment in enterprises and management, use of capital and property in enterprises with amendments thereto under Clause 5 Article 1 of Decree No. 32/2018/ND-CP dated March 8, 2018 of the government on amendments to Decree No. 91/2015/ND-CP	09/10/2020	09/10/2020
6	Decree No. 120/2020/ND-CP on the establishment, reorganization and dissolution of public non-business units	07/10/2020	01/12/2020
7	Decree No. 119/2020/ND-CP on sanctioning of administrative violations in journalism and publishing activities	07/10/2020	01/12/2020
8	Decree No. 117/2020/ND-CP on sanctioning administrative violations in the health	28/09/2020	15/11/2020
MINISTRY OF CULTURE, SPORTS AND TOURISM			
1	Circular No. 06/2020/TT-BVHTTDL on annulling several legal documents under the promulgation competence of the Minister of Culture, Sports and Tourism	08/09/2020	01/11/2020

MINISTRY OF TRANSPORT			
1	Circular No. 24/2020/TT-BGTVT on amending and supplementing several articles of the Circulars providing for periodical reports in the railway sector	13/10/2020	01/12/2020
2	Circular No. 20/2020/TT-BGTVT on amending some articles of Circular No. 63/2013/TT-BGTVT dated December 31, 2013 by minister of transport providing guidelines for a number of articles of memorandum of understanding between and among the governments of the kingdom of Cambodia, the Lao people's democratic republic and the socialist republic of Vietnam on road transport	17/09/2020	15/11/2020
MINISTRY OF EDUCATION AND TRAINING			
1	Circular No. 39/2020/TT-BGDDT on the quality assessment standards for distance training programs at the university level	09/10/2020	25/11/2020
2	Circular No. 38/2020/TT-BGDDT on joint training with foreign countries at university, master's, PhD degrees in the form of online and direct combination online	06/10/2020	20/11/2020
3	Circular No. 37/2020/TT-BGDDT on the organization of operation and use of email and web portal at the Department of Education and Training, Office of Education and Training, and preschool, general education institutions	05/10/2020	20/11/2020
MINISTRY OF LABOUR, WAR INVALIDS AND SOCIAL AFFAIRS			
1	Circular No. 08/2020/TT-BLDTBXH on employment protection of denouncers who are working under labour contracts issued by the Ministry of Labour, War Invalids and Social Affairs	15/10/2020	01/12/2020
2	Circular No. 07/2020/TT-BLDTBXH stipulating the development, evaluation and promulgation of economic-technical norms for training applicable in the field of vocational education	12/10/2020	01/10/2021