



In order to properly and consistently apply a number of provisions on injunctive relief of the Civil Procedure Code 2015 and based on the Law on Organization of People's Court 2014, Chief Justice of the Supreme People's Court has signed Resolution No. 02/2020/NQ-HDTP guiding the application of some provisions on injunctive relief (IR) of the Civil Procedure Code 2015. Resolution 02/2020/NQ-HDTP takes effect from 01 December 2020 and replaces Resolution 02/2005/NQ-HDTP dated 27 April 2005.

RESOLUTION NO. 02/2020/NQ-HDTP: GUIDING THE APPLICATION OF SOME PROVISIONS ON INJUNCTIVE RELIEF OF THE CIVIL PROCEDURE CODE 2015

Contrary to Resolution No. 02/2005/NQ-HDTP, which requires all three bases, according to Article 3.1 of Resolution No. 02/2020/NQ-HDTP, only one of the following bases is required, concurrently with the filing of a lawsuit petition, agencies, organizations and individuals have the right to request a competent court to issue a decision on application of injunctive relief specified in Article 114 of the Civil Procedure Code 2015:

- Due to an urgent situation, which means it needs to be resolved immediately, without delay;
- Require immediate protection of the evidence in case source of evidence is being destroyed, in danger of being destroyed, or is difficult to collect later;
- Prevent possible serious consequences (physical or mental consequences).

Accordingly, if the lawsuit petition falls under the jurisdiction of another court, the court that has received the petition shall immediately transfer the petition and the petition for application of injunctive relief to the competent Court. In case a lawsuit petition has contents to determine that the acceptance and settlement of the case fall under the jurisdiction of the receiving court but some other contents need to be modified or supplemented, the Chief Justice shall assign immediately a Judge to handle the petition for application of injunctive relief. Within 48 hours from the time of receiving the petition, the Judge must issue a decision to apply injunctive relief; if not, the judge must notify in writing and clearly state the reasons for the petitioner. The request for amendment and supplement of the lawsuit petition and the acceptance of the case shall comply with Articles 193 and 195 of the Civil Procedure Code 2015.

The measure of banning exit against obligors specified in Article 128 of the Civil Procedure Code 2015 is applied when there are 2 following grounds:

- The person subject to the measure of banning exit is the involved party who is being requested by another involved party to force them to perform his / her obligations;
- Their exit affects the resolution of the case, the interests of the Government, the legitimate rights and interests of other agencies, organizations or individuals or to secure judgment enforcement.

For foreigners, the Court shall not impose the injunctive relief of temporary exit ban on obligors and apply measure of exit suspension, exit suspension, exit suspension instead according to specified in Articles 28 and 29 of the Law on entry, exit, transit, and residence of foreigners in Vietnam.

Regarding the distraint of disputed assets under the provisions of Article 120 of the Civil Procedure Code 2015, the Court shall issue a decision to apply injunctive relief to temporarily seize disputed property when there are sufficient grounds below:

- Disputed property is the object of the disputed relationship that the Court has accepted for settlement;
- There are documents and evidence proving that the disputing property keeper commits acts of dispersing or destroying such property.

Grab and the driver: the "halfway" relationship between a business cooperation contract and a labour contract?

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It is difficult to say that the relationship between Grab and the driver is a pure relationship between two independent business partners cooperating to share profit in the provision of transport services when Grab dominates in almost every decision making, and the driver only has the right to "accept" or "walk away".

Recently, there have been many conflicts between Grab and thousands of drivers, also known as the conflict pair between Grab and Grab "business partners" arose regarding the reduction of driver discount rates and the increase of fares for customers when the Government's Decree 126/2020/ND-CP on value added tax (VAT) collection takes effect as from December 5, 2020.

The scope of this article does not cover the issue of the discount rate or the tax, but through this conflict, the writer wants to analyze the "ambiguity" in the establishment of the legal framework adjusting the relationship between Grab and the driver. Specifically, is Grab and the driver a pure relationship between two independent business partners cooperating to share the profit in transportation business? One side is Grab, the giant that owns the software, retains the right to set the fare, manages customers and sanctions or rewards drivers during course of the cooperation. The other side is the drivers, utilizing their manual labour, using their motorbike to make a living. Or could Grab and the driver have met the constituent elements of a labour relationship that is governed by the Labour Code 2019, effective from 01 January 2021?

Grab and the driver: is it a pure business partnership?

The term business partner is normally be interpreted as a partner conducting business, usually established in the form of a business cooperation contract and governed by law on investment and civil law.

According to Clause 1 Article 28 of the Law on Investment 2014 and Article 504 of the Civil Code 2015, the form of business cooperation contract between Grab and the driver is a type of civil bilateral contract. Therein lies the equality in rights and obligations between two parties in the transaction as the core principle of the establishment and development of this kind of cooperation contract.

In fact, considering the relationship between Grab and the driver, in addition to the huge difference between the giant and the ant, is there any chance that Grab and its drivers have the original equality of this principle while only one party has the right to offer the discount, control almost everything in transactions from the customer to the route, holds the right to reward and sanctions its partner, and the other party has only the right to "accept" or "walk away".

In addition, in a business partnership, drivers participate in an organized transport service where Grab is always the one to unilaterally set the "rules of the game" and define its own terms and conditions. At the same time, in terms of business cooperation sharing the profits or losses arising from pure business partnerships, with respect to each party in the transaction between Grab and the driver, the story of profit or loss is completely separate, even hidden or "irrelevant" towards the other party. Thus, is there any constraint if asserting that between Grab and the driver is the relationship between two partners sitting at the same table, doing business together?

Many countries have gradually reclassified the relationship between Uber and the driver as a labour relationship

In France(1), after more than a year of trial, the French Supreme Court issued a ruling on 04 March 2020 recognizing a typical dispute between drivers and Uber in France as the dispute over labour relationship. Accordingly, the French Supreme Court held that binding contract between Uber and its drivers has established labour relationships through two key questions as follows(2):

Question 1: Is the independent self-employment of drivers fictitious? The answer is yes, it is fictitious because Uber drivers do not create their own base, do not freely set the fares, and do not define their own terms and conditions for conducting transportation business. Simultaneously, Uber imposes the driver on a particular route and fares adjustment could be applied if the driver does not follow that particular route. The driver does not know the destination, from which it can be seen that the driver cannot freely choose the appropriate route, so it is impossible to consider the driver as independent in their own business.

Question 2: Is there a relationship of subordination between Uber and its drivers? The answer is yes. This is demonstrated in the situation that if a driver has refused more than three rides, Uber can temporarily disconnect the driver from its application. In case the order cancellation rate is exceeded or "problematic behavior" is reported, the driver may lose access to his /her account.

Similarly in the US, in some states such as California, New York, there have been decisions recognizing the relationship between drivers and tech-enabled transportation companies such as Uber, Dynamex, Lyft, etc. as labour relationship. The most typical one is the "ABC test" rule in California Assembly Bill 5 ("**AB5 Law**") issued by the Supreme Court of California, effective on January 1, 2020, providing the principle, a relationship that is not considered is a labour relationship if the relationship satisfies the following 3 conditions: (a) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (b) The person performs work that is outside the usual course of the hiring entity's business; and (c) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

In addition, in Switzerland and the UK, there are judgments that recognize drivers as not being independent contractors of tech-enabled transportation companies but being employees of tech-enabled transportation companies. Cases i.e. UberPop in Lausanne, Switzerland, Uber in the UK in *Uber BV and others v Aslam and others* are of reference sources of these judgments(3).

Grab and the driver: Not really a labour relationship

In Vietnam, the Labour Code 2019 taking effect as from 01 January 2021 stipulates two criteria that lawmakers offer to distinguish a labour relationship from business cooperation relationships, other civil relationships or just a sham to avoid legal obligation to establish employment relationship between the employer and the employee in each specific case. These two criteria are: (i) working conditions, rights and obligations of each party in the transaction; and (ii) direct salary payment from the employer to the employee (Articles 13.1 and Article 94.1).

Firstly, with respect to agreements on working conditions, rights and obligations of the parties as mentioned in point (i) above, there exists these agreements between Grab and the driver under the name of business cooperation contracts. For example, driver is required to have obtained a driver's license, working tool such as a motorbike or a car to be eligible for becoming a Grab driver; the rights and obligations of the driver and Grab, the third party (if any) related to each ride during the entire course of cooperation. The difference being that in a business cooperation contract, drivers are the one to prepare their own working tools and investing their money to buy the cars while the employer in the employment relationship is the one to be responsible for such preparation and investment. Especially, the remarkable distinction being that Grab does not pay social insurance, health insurance and unemployment insurance for drivers in a business cooperation contract compared to compulsory payment obligation in a normal employment relationship.

Secondly, considering the criterion "salary payment" and the principle of direct salary payment from the employer to the employee, Grab does not directly pay the drivers' salary. This criterion has excluded the determination of the labour relationship between Grab and the drivers for many years under the scope of application of the Labour Code 2012 and the Labour Code 2019. However, at the root of the problem, it is undeniable that the discount rate the drivers receive after each ride by performing

their obligations as per the agreements with Grab is also an amount of money, corresponding to a certain percentage as agreed in the business cooperation contract and having the nature of salary under Clause 1, Article 90 of the Labour Code 2019. What makes the difference here is that the amount of remuneration received by the driver is not directly from Grab but from its customers.

The Labour Code 2019 allows employees to receive salary directly or indirectly through their legitimate authorized representative from the employer (Article 94.1) but not the other way round being that the employer can pay salary indirectly through the employer's authorized representative (possibly the employer's customer). In other words, when A is employed and under B's management and supervision, as long as A does not receive the salary/remuneration directly from B, A is implicitly not the employee of B. Is this convincing?

Meanwhile, according to Decree No. 10/2020/ND-CP of the Government effective from 01 April 2020 and guided by Circular No. 12/2020/TT-BGTVT of the Ministry of Transport taking effect from 15 July 2020, transport business organizations by cars, including technology software business such as Grab, Uber,... are obligated to sign labour contracts with its employees, including drivers(4).

Expectation: contracts with a different name are under the scope of application of the Labour Code 2019

A remarkable new point of the Labour Code 2019 compared to the Labour Code 2012 is that when the parties sign a contract with a different name but the content shows the nature of the labour contract, it is still considered a labour contract thus being subject to the adjustment of the Labour Code 2019 (Article 13) . This provision aims to bring disguised employment relationship back under the scope of the labour law.

In other words, in this respect, the Labour Code 2019 only considers the nature of the labour relationship rather than the name of the contract, so the relationship between Grab and the driver may be considered as a labour relationship under Article 13 of the Labour Code 2019(5).

However, if the principle of direct salary payment from the employer to the employee is not eliminated and continues to be a key basis for determining the labour relationship as above, it is recommended that the competent authorities should issue new specific instructions for employees working on high-tech platforms in order to avoid the "ambiguous" situation where it is not really a business cooperation contract nor a labour contract as the story between Grab and drivers nowadays.

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(1) <https://www.soulier-avocats.com/en/french-supreme-court-says-uber-drivers-are-employees/>

(2) <https://www.soulier-avocats.com/en/uber-drivers-are-employees-according-to-the-paris-court-of-appeals/>

(3) <https://www.supremecourt.uk/cases/uksc-2019-0029.html>

(4) <https://www.baogiaothong.vn/be-grab-phai-dong-bao-hiem-cho-lai-xe-d469107.html>

(5) Article 13 Labour Code 2019

Under Decision No. 24/QĐ-TTg dated 06 January 2020, the Prime Minister issued the List and assigned the agency to preside over drafting documents detailing the implementation of laws, codes and resolutions approved by the 14th National Assembly at the 8th Session. Accordingly, the Prime Minister assigned the Ministry of Labour, War Invalids and Social Affairs to preside and coordinate with the Ministry of Justice, the Government Office, ministries, ministerial-level agencies, agencies and related organizations to draft 21 legal documents ("LD") which will be submitted to the Government or issued according to the roadmap from before August 2020 to before 15 October 2020. However, up to now, the Prime Minister has only issued 01 (one) Decree No. 135/2020/ND-CP providing guidance on the retirement age (to be effective on 01 January 2021). Thus, there will be at least 20 more legal documents issued in the near future to provide guidance on the new Labour Code No. 45/2019/QH14 dated 20 November 2019 ("Labour Code 2019")

THERE WILL BE 21 LEGAL DOCUMENTS PROVIDING GUIDANCE ON THE LABOUR CODE 2019

According to the list attached to Decision No. 24/QĐ-TTg, the contents of legal documents to be issued can be summarized as follows:

- 1 Decree guiding a number of provisions on Social Insurance, Health Insurance and Unemployment Insurance in accordance with Chapter XII of the Labour Code 2019 (which is **Decree No. 135/2020/ND-CP providing guidance on the retirement age, cases of retirement at a age lower than the retirement age under normal working conditions**);
- 3 Decrees, 3 Circulars guiding a number of separate regulations for minor employees and some other employees according to the provisions of Chapter XI of the Labour Code 2019;
- 1 Decree providing general guidance on a number of regulations on employment, recruitment and Labour management; Labour contract; salary; working time, rest time; Labour discipline, material responsibility according to the law in Chapters II, III, VI, VII, VIII of the Labour Code 2019;
- 1 Decree, 1 Circular guiding a number of provisions on Labour contracts as prescribed in Chapter III of the Labour Code 2019;
- 2 Decrees, 1 Circular providing guidance on a number of regulations on workplace dialogue, collective bargaining, and collective Labour agreements in accordance with Chapter V of the Labour Code 2019;
- 1 Decree, 1 Decision of the Prime Minister guiding a number of provisions on salary as prescribed in Chapter VI of the Labour Code 2019;
- 1 Decree guiding a number of regulations on working time and rest time as prescribed in Chapter VII of the Labour Code 2019;
- 1 Decree, 1 Circular guiding a number of separate provisions for female employees and ensuring gender equality as prescribed in Chapter X of the Labour Code 2019;
- 1 Decree guiding a number of provisions Internal representative organizations of employees according to the provisions of Chapter XIII of the Labour Code 2019;
- 2 Decrees guiding a number of provisions on the settlement of labour disputes according to the provisions of Chapter XIV of the Labour Code 2019;

For further information about the List above, readers can read the Appendix attached to the Prime Minister's Decision No. 24/QĐ-TTg dated 06 January 2020.

THE COMMERCIAL BANKS SHALL PROVIDE INFORMATION ABOUT CHECKING ACCOUNTS OF EACH TAXPAYER FOR THE TAX AUTHORITIES

THE PROVISIONS OF DECREE NO. 126/2020/ND-CP

Firstly, the provision of information of the taxpayer's checking account (ie account holder's name, account number according to taxpayer identification number issued by the tax authority, account opening date, account closing date) is not entirely new. Currently, when carrying out business registration procedures, enterprises have to declare and provide payment account information to the tax authority directly managing them to link accounts into the electronic tax payment system. This regulation aims to standardize the existing regulations and help tax authorities to better manage enterprises information.

Secondly, the provision of transaction information via account, account balance, transaction data must be made only at the request of the Head of the tax authority, which means there must be a written decision and clear grounds for such decision to base itself upon. Article 30.2 (c) of Decree No. 126/2020/ND-CP also stipulates that the provision of information on this transaction is for the purpose of tax inspection and carrying out enforcement measures as per administrative decision on tax management. Thus, the provision of transaction information through the above account is aimed at taxpayers who have not fulfilled their obligations or violating regulations on tax.

Thirdly, the tax authorities shall protect and be responsible for the confidentiality of the information provided as prescribed by the Law on Tax Administration and relevant laws.

PAYING TAX ON BEHALF OF FOREIGN SUPPLIERS UNDER CLAUSE 3 ARTICLE 27 OF THE LAW ON TAX ADMINISTRATION 2019

If the foreign supplier has not registered, declared and paid taxes, the commercial bank shall deduct and pay tax corresponding to the tax liability owed in accordance with the tax law for each product, goods or service paid for by individuals in Vietnam through e-commerce or digital trade activities.

On that basis, the General Department of Taxation shall provide these names and websites for commercial banks, which will deduct tax from the transaction accounts of these foreign supplies.

In case goods and services of the foreign supplier are paid for by card or other methods that cause the commercial bank to be unable to deduct tax, the commercial bank shall monitor the amounts transferred to overseas supplier and send monthly reports to General Department of Taxation.

Commercial banks shall monthly declare and transfer the deducted tax payable by foreign suppliers to state budget using the set form provided by the Minister of Finance.

Recently, Decree No. 126/2020/ND-CP ("Decree 126") of the Government guiding the Law on Tax Administration No. 38/2019/QH14 ("Law on Tax Administration 2019") officially took effect on 05 December 2020. In Article 30 of Decree 126 guiding the duties and entitlements of commercial banks has stipulated that commercial banks are responsible for providing information about taxpayers' checking accounts opened at the banks for tax authorities within 90 days in electronic information from the effective date of Decree 126. The provision of this information is subject to the request of the tax authorities and the update of the information will be made monthly within 10 days of the following month.

LEGAL DOCUMENTS UPDATE IN DECEMBER 2020

NO.	EFFECTIVE DAY	DOCUMENT NAME
ENTERPRISE		
1.	10/12/2020	Decree No. 129/2020/ND-CP on the functions, duties and operating mechanism of Vietnam Debt Trading One Member Limited Liability Company
2.	20/12/2020	Decree No. 132/2020/ND-CP on tax administration applicable to enterprises with associated transactions
INVESTMENT		
3.	01/12/2020	Decision 2149/QD-BGTVT 2020 on notification of expired documents related to the management of construction investment projects, contractor selection issued by the Ministry of Transport
EXPORT AND IMPORT		
4.	10/12/2020	Decree No. 128/2020/ND-CP on sanctioning of administrative violations in the customs domain
CURRENCY - BANK		
5.	17/12/2020	Circular No. 11/2020/TT-NHNN amendments to the Circular No. 24/2017/TT-NHNN procedures for revocation of license and liquidation of assets of credit institutions and foreign bank branches, and procedures for revocation of license of representative offices of foreign credit institutions and other foreign organization performing banking activities
6.	28/12/2021	Circular No. 13/2020/TT-NHNN amends Circular No. 22/2018/TT-NHNN on guidelines for the procedures and application for approval for provisional lists of personnel of commercial banks, non- banks credit institutions and foreign banks' branches
TAX - FEES – CHARGES		
7.	05/12/2020	Decree No. 126/2020/ND-CP on guiding the Law on Tax Administration
8.	05/12/2020	Decree No. 125/2020/ND-CP on administrative penalties for tax or invoice
9.	20/12/2020	Decree No. 132/2020/ND-CP on tax administration for enterprises with associated transactions
INSURANCE		
10.	01/12/2020	Official Letter No. 6611/BYT-BH 2020 on preparation for signing contract of medical examination and treatment covered by health insurance in 2021 issued by the Ministry of Health
11.	12/12/2020	Circular No. 136/2020/TT-BQP guiding the dossier, process and responsibility for settling social insurance benefits in the Ministry of National Defense
LABOUR, WAGES		
12.	01/12/2020	Circular No. 08/2020/TT-BLDTBXH on guidelines for protection of employment status of whistleblowers working under labour contracts
13.	20/12/2020	Decree No. 130/2020/ND-CP on controlling asset and income of persons holding titles and powers in agencies, organizations and entities
INFORMATION TECHNOLOGY		
14.	01/12/2020	Decree No. 119/2020/ND-CP on penalties for administrative violations in journalistic and publishing activities

15.	15/12/2020	Circular No. 33/2020/TT-BTTTT amends to Circular No. 08/2013/TT-BTTTT of Minister of Information and Communications on quality control of telecommunication services
16.	25/12/2020	Circular No. 31/2020/TT-BTTTT on Authentication regulation of the National Digital Signature Authentication Service Provider, issued by the Minister of Information and Communications
17.	10/12/2020	Decree No. 124/2020/ND-CP on guidelines for certain articles and implementation of the law on complaints
CRIMINAL RESPONSIBILITY		
18.	25/12/2020	Decree No. 133/2020/ND-CP on guidelines for the Law on enforcement of criminal judgements
PROCEDURES		
19.	01/12/2020	Resolution No. 02/2020/NQ-HDTP guidelines the application of the provisions on injunctive relief of the Civil Procedure Code issued by the Council of Justices of the Supreme People's Court
HEALTH		
20.	01/12/2020	Decision No. 4999/QD-BYT at 2020 promulgating Criteria for clinic safe from covid-19 and epidemic of acute respiratory infections