NEWSLETTER 05/2021



LAC DUY & ASSOCIATES

SOME HIGHLIGHTS OF DECREE 01/2021/ND-CP ABOUT ENTERPRISE REGISTRATION INITIATING WTO
LAWSUIT AGAINST
THAILAND'S EXPORT
SUBSIDY ON SUGARCANE
SUBSIDIES: "ĐÒN GIÓ BỂ
MĂNG"?

05 NEW POINTS ON
PUBLISHING OF
INFORMATION ABOUT
STATE-OWNED
ENTERPRISES AS DECREE
47/2021/ND-CP

PUBLISHED BY LAC DUY & ASSOCIATES

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Dear Clients,

Lac Duy & Associates would like to send you the newsletter of May 2021 with some outstanding new point and article as:

- Some highlights of Decree 01/2021/ND-CP about enterprise registration
- 05 new points on publishing of information about state-owned enterprises as Decree 47/2021/ND-CP
- Initiating WTO lawsuit against Thailand's export subsidy on sugarcane subsidies: "Đòn Gió Bẻ Măng"?

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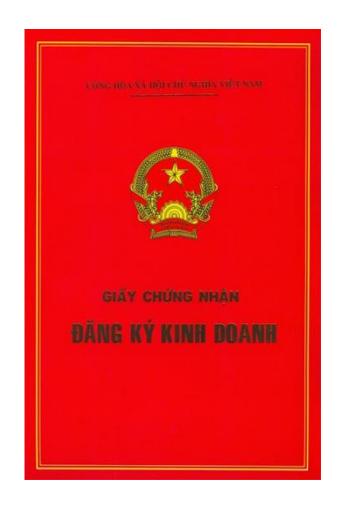


SOME HIGHLIGHTS OF DECREE 01/2021/ND-CP ABOUT ENTERPRISE REGISTRATION

Implementing the Law on Enterprises in 2020, effective from January 1, 2021, the Government has issued Decree 01/2021/ND-CP of January 4, 2021 on enterprise registration. This Decree replaces the Government's Decree No. 78/2015/ND-CP of September 14, 2015 and Decree No. 108/2018/ND-CP of August 23, 2018. Decree No. 01/2021/ND-CP, effective from January 4, 2021, has the following highlights:

1. Business code

Clause 1 Article 8 of Decree No. 01/2021/ND-CP stipulates: "Each enterprise is granted a unique code called a business code. This code is also the tax code and the social insurance unit number of the enterprise". Compared to the provisions of Clause 1, Article 8 of the previous Decree No. 78/2015/ND-CP, the enterprise code is only the tax code of the enterprise but not at the same time the number of the enterprise's social insurance participants, so when participating, the procedures for applying for the social insurance unit number must be carried out according to regulations. Thus, it can be seen that Decree 01/2021/ND-CP has agreed a unique code for an enterprise to reduce unnecessary procedures, save time and optimize the management of relevant state agencies.



2. Be refunded the fee for announcing the contents of enterprise registration

This is a new regulation that complements the "gap" of Decree 78/2015/ND-CP. Previously, Decree 78/2015/ND-CP did not specify the case of refund of fees for announcing the enterprise registration contents when enterprises were not





granted enterprise registration certificates as prescribed. Noting that, Decree 01/2021/ND-CP has added this provision in Clause 3, Article 35, specifically: "In case the enterprise is not granted the enterprise registration, the enterprise will be refunded the fee for announcing the enterprise registration contents".

3. Additional cases of authorization to carry out procedures for enterprise registration

Clauses 3 and 4, Article 12 of Decree No. 01/2021/ND-CP add two additional cases authorized to carry out enterprise registration procedures: Authorization for public postal service providers and non-public postal service providers.

- In case of authorization to a public postal service provider: "When carrying out procedures for enterprise registration, postal workers must submit copies of dossier submission forms according to the form issued by the public postal service provider with the signature of the postal worker and the person competent to sign the written request for enterprise registration."
- In case of authorization for postal service providers other than public postal services: When carrying out procedures for enterprise registration, the enterprise registration dossier must be accompanied by a copy of the service

provision contract with the service-providing organization performing procedures related to the enterprise registration, the introduction paper of that organization to the individual directly carrying out the procedures related to the enterprise registration and a copy of legal papers of the individual being introduced.

4. Removing the regulation on the number of business registration offices in Hanoi and Ho Chi Minh City

Article 14 of Decree No. 01/2021/ND-CP stipulates: "Business registration agencies shall be organized in provinces or centrally run cities (herein referred to as provincial level) and in provincial districts, towns or cities (below referred to as district level)". Accordingly, Decree 01/2021/ND-CP has removed the regulation on the number of business registration offices in Hanoi and Ho Chi Minh City under Point a, Clause 1, Article 13 of Decree No. 78/2015/ND-CP. specifically: "Hanoi City, Ho Chi Minh City can establish one or two more Business Registration Offices and be numbered in order. establishment of additional Business Registration Office is decided by the City People's Committee after the ministry of planning and investment is agreed".





5. Supplementing regulations on registration of enterprise Office grant names, branch names, representative offices and business Registration locations

Enterprises

Decree No. 01/2021/ND-CP added the provisions of Clause 2, business from the date of being Article 18 on enterprise name registration, specifically: "The Business Registration Office has the right to approve or reject the expected name of the enterprise in accordance with the provisions of law. In order to avoid the name of the enterprise being duplicated, mistaken and violating the regulations on naming the enterprise, the opinion of the Business Registration Office is final decision. In case of disagreeing with the decision of the Business Enterprise Registration Office, the enterprise may initiate a lawsuit in Certificate, the enterprise may accordance with the law on administrative procedures".

6. Additional regulations on the time of starting business activities of enterprises

Clause 2 Article 34 of Decree No. 01/2021/ND-CP supplements the provisions on the time of starting business activities of enterprises: "The information on the Enterprise Registration Certificate is legally valid from the date the Business Registration



Enterprise grants the Certificate. Enterprises have the right to do the granted Enterprise Registration Certificate, except for conditional business sectors and trades. In case an enterprise registers the date of business start after the date of issuance of the Enterprise Registration Certificate, the enterprise may operate its business from the date it is registered, except for conditional business sectors and trades". Therefore, enterprises should note that if in the dossier of enterprise's establishment, enterprise does not declare the expected operation time of the enterprise, the enterprise is entitled to operate from the date of being granted the business registration certificate, but if it has declared the expected operation time submitted it to the Department in the dossier and the tax authority, only until the expected date of operation in the dossier that such enterprise is entiled to operate.

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7. Provide enterprise registration information

According to the provisions of Clause 1, Article 33 of the Law on Enterprises 2020: "Organizations and individuals have the right to request the State management agency in charge of business registration and the business registration authority to provide information stored on the National Information System on enterprise registration and pay fees in accordance with the provisions of law". Therefore, according to this Regulation, Decree 01/2021/ND-CP has added provisions on registration information of enterprises in Article 36, specifically: "1. Information is provided publicly and free of charge on the national portal on enterprise registration at https://dangkykinhdoanh.gov.vn , including: business name; business code; head office address; business sectors and trades; full name of the legal representative; legal status of the enterprise.

2. Organizations and individuals wishing to provide enterprise registration information as prescribed in Clause 1, Article 33 of the Law on Enterprises shall send requests for information to the national portal on enterprise registration or the state management agency in business registration or the provincial-level business registration office for information provision."

Thus, in addition to the free posting information, organizations and individuals in need can also pay a fee to look up the details in the business registration dossier on the National Enterprise Registration Portal (https://dichvuthongtin.dkkd.gov.vn/inf/default.aspx), for example: (i) Enterprise Registration Certificate, (ii) Enterprise history information in the last 3 years, (iii) Latest enterpirse registration information ...





05 NEW POINTS ON PUBLISHING OF INFORMATION ABOUT STATE-OWNED ENTERPRISES AS DECREE 47/2021/ND-CP

CHÍNH PHỦ

CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM Độc lập - Tự do - Hạnh phúc

Số: 47/2021/NĐ-CP

Hà Nội, ngày 01 tháng 4 năm 2021

NGHỊ ĐỊNH Quy định chi tiết một số điều của Luật Doanh nghiệp

Căn cử Luật Tổ chức Chính phủ ngày 19 tháng 6 năm 2015 và Luật sửa đổi, bổ sung một số điều của Luật Tổ chức Chính phủ và Luật Tổ chức chính quyền địa phương ngày 22 tháng 11 năm 2019;

Căn cứ Luật Doanh nghiệp ngày 17 tháng 6 năm 2020;

Căn cử Luật Quản lý sử dụng vốn nhà nước đầu tư vào sản xuất kinh doanh tại doanh nghiệp ngày 26 tháng 11 năm 2014;



The Enterprise Law No. 59/2020/QH14 ("Enterprise Law 2020") effective from January 1, 2021, on April 1, 2021, the Government issued Decree No. 47/2021/ND-CP ("Decree No. 47/2021") detailing some articles of Enterprise Law replacing Decree No. 81/2015/ND-CP September 18. ("Decree No. 81/2015"). It can be seen that Decree No. 47/2021/ND-CP has significantly amendments and supplements on the publishing of information about stateowned enterprises to solve the outstanding limitations Decree No. 81/2015/ND-CP. specifically:

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1. Amending of regulations on media of publishing information

Based on Clause 3, Article 5 Decree No. 81/2015/ND-CP (which has expired), publishing of information about state-owned enterprises must be carried out "simultaneously" through the following media of publishing:

- For enterprises: written reports, website or web portals or web portals, publications, and other mass media as prescribed by law;
- For representative agencies: information receipt system, website or web portals or web portals, publications, and other mass media as prescribed by law;
- For the Ministry of Planning and Investment: information receipt system, website or web portal (www.business.gov.vn), publications, and other mass media as prescribed by law.

Meanwhile, Clause 2, Article 21 Decree No. 47/2021/ND-CP stipulating media of publishing information, including:

- Web portals of enterprises;
- Website or web portals of representative agencies;
- Website or web portal of enterprises.

In addition, Clause 3, Article 21 Decree No. 47/2021/ND-CP also adds regulations on the time when enterprises publish information that coincides with a holiday or public holiday. Accordingly, in case the time publish of information coincides with a holiday or public holiday as prescribed by law, the enterprise shall fulfill the obligation to publish information on the first working day after the holiday ends.



2. Supplementing regulations on Information to be periodically published

Article 10 Decree No. 81/2015/ND-CP and Article 108 Enterprises Law 2014 only stipulated that information must be disclosed periodically for enterprises in which 100% of charter capital is held by the State.

However, in Clause 2, Article 23 Decree No. 47/2021/ND-CP has added regulations on information to be periodically published for enterprises in which the State holds more than 50% of the charter capital or the total number of authorized shares voting rights, specifically, these enterprises must publish periodically the following information:

- Basic information about the enterprise and the company's charter;
- An evaluation report on the results of the implementation of the annual production and business plan according to the contents specified in Table 3, Appendix II attached to this Decree; the time limit for the announcement is before June 30 of the year immediately following the year of implementation;
- Report on the six-month management status and organizational structure of the enterprise according to the contents specified in Table 5, Appendix II attached to this Decree; the deadline for publication is before July 31 every year;
- Report on the annual situation of management and organizational structure of the enterprise according to the contents specified in Table 6, Appendix II attached to this Decree; the time limit for the announcement is before June 30 of the year immediately following the year of implementation;
- Report and summarize the annual financial statements audited by an independent auditing
 organization, including the parent company's financial statements and the consolidated financial
 statements (if any) under the law on corporate accounting; publication within 150 days from the end
 of the fiscal year.



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3. Supplementing the cases of Suspension of information publishing

Decree No. 81/2015/ND-CP lists only one case Suspension of information publishing as "due to force majeure". Article 7.1 Decree No. 81/2015/ND-CP: "In case information cannot be published on schedule because of some force majeure event, the enterprise must send a report to the representative agency and publish information right after the end of the force majeure event".

However, Decree No. 47/2021/ND-CP adds a case where "the owner's representative agency's approval is required for the contents that need to be restricted from the publishing of information". Accordingly, according to Article 26, there are 02 (two) cases of Suspension of information publishing: (i) due to force majeure or (ii) the owner's representative agency's approval is required for the contents that need to be restricted from the publishing of information.

4. Amendment of forms of handling violations of publishing of information

Decree No. 47/2021/ND-CP no longer stipulates that the form of handling violations is reprimand and warning for the business manager, instead, according to Clause 2, Article 33, the agency representing the owner of the property according to the competence to evaluate and classify enterprise managers, representatives of state capital in enterprises according to current regulations on management of titleholders and representatives of state capital in enterprises in case of violation of the provisions at Points a and b, Clause 2 of this Law.

5. Supplementing regulation on the publishing of information about state-owned enterprises account on website or web portal

Article 22 Decree No. 47/2021/ND-CP detailing the publishing of the content of information about state-owned enterprises on website or web portal, including: (i) the Ministry of Planning and Investment to set up and guide enterprises register for publishing of information accounts; (ii) the contents of the account include: information about the legal representative, basic information about the business; (iii) the change of the enterprise's password.





INITIATING WTO
LAWSUIT
AGAINST
THAILAND'S
EXPORT SUBSIDY
ON SUGARCANE
SUBSIDIES: "ĐÒN
GIÓ BỂ MĂNG"?



Dr.Le Thi Anh Nguyet *

Thailand government has implemented a variety of subsidies programs on its sugarcane to support the industry¹. In response to the negative injuries from these subsidizes programs, Vietnam has also simultaneously imposed preliminary anti-dumping and countervailing duties, given that there is a possibility of infringing the double remedies², in order to increase Thailand's sugarcane prices in Vietnam market. However, these measures are still only the "top" solution. The article analyzes a possibility that need serious consideration to handle the "root" of Thailand's unfair sugar price; that is, suing Thailand to the Dispute Settlement Body ("DSB") of the World Trade Organization's ("WTO") for consultation, asking Thailand to cut and abolish export subsidies programs on sugarcane.

Thailand's sugarcane subsidies: compatible with WTO or not?

According to the WTO, subsidy is a financial contribution by a government or any public body in the form of money transfers, loans, tax exemptions, supply of raw materials³. Accordingly, WTO members do not necessarily have to cut off all of the subsidies, financial support for businesses and their goods because up to now, depending on the different items and the level of development of WTO members

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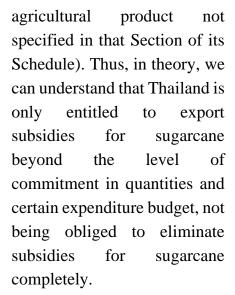


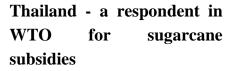
that implementing the subsidies, the WTO applies corresponding obligations to eliminate and cut subsidies differently.

Specifically, for non-agricultural products, according to Agreement on Subsidies and Countervailing WTO Measures of ("SCM Agreement") divides subsidy for industrial goods into the following 02 groups: (1) export subsidy and (2) domestic subsidy, not related to export. In particular, only for export subsidy, WTO members are prohibited the provision.

In contrast, for agricultural products, the WTO establishes a

detailed WTO membership obligation in Agreement Agriculture. Accordingly, WTO members are obliged to commit not exporting subsidy exceeding a certain level, but WTO members are not obliged to completely abolish subsidies export agricultural products (Article 3.2 and 3.3 of Agreement on Agriculture mentioned as: Member shall not provide export subsidies... in excess of budgetary outlay and quantity commitment levels specified therein and shall not provide such subsidies in respect of any





For some WTO members, sugarcane is one of the "early staged developed", "vulnerable" agricultural goods of many countries such as China, Brazil, Thailand, India. Australia. and European Union ("EU")⁴. The DSB of WTO has received complaint relating to these countries' breach of export subsidy obligation in Agreement on Agriculture For example, Brazil, Australia,



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Thailand complained to the EU to the WTO (2006); Brazil sues India for violating sugarcane subsidies (2019);export Australia sues India for violating subsidies sugarcane export (2019); Guatemala sues India for violating sugarcane export subsidies (2019).

WTO in 1995, joined Thailand did not specify the maximum expenditure budget for sugarcane export subsidies (in Section II of Part IV of Schedule Commitments). other words, the maximum amount of export subsidies for sugarcane that Thailand can apply is 0 bath Thai. Therefore, if Thailand is found to subsidize any large or small amount of money for the production and export of sugarcane, it means that Thailand violates the obligation which has not provided export subsidies for Because of sugarcane. Brazil, in 2016, once argued that Thailand's quota, price control

system and subsidies sugarcane producers are export subsidies for sugar in violation of Thailand's obligations under the Agriculture⁵. Agreement on However, this case has so far not had a final result because the panel was not established, and without any dispute resolution Particularly for Thailand, when it recommendations issued by the DSB. As such. Vietnam has not been able to inherit any subsidy information from the past about the method and level how Thailand subsidizes sugarcane. It should also be added that the

Ministry of Industry and Trade of Vietnam, on February 9, 2021, issued Decision No. 447 simultaneously imposing antidumping duties countervailing duties on imported from Thailand. sugarcane However, in fact that the sugar being imported from Thailand has not decreased and the damage to Vietnam's sugar industry has not abolished accordingly⁶.

In terms of WTO member

obligations, when Vietnam has simultaneously applied both countervailing duties and antidumping duties on Thailand's export sugarcane, we cannot generally say that Thailand's sugarcane is price-support and subsidized because according to Article VI.5 of the 1994 GATT Agreement, Vietnam is obliged not to impose countervailing duties and anti-dumping duties on the same imports being affected by dumping or export subsidies. Therefore, in the long term to minimize the troubles from Thailand suing Vietnam to the WTO violating Article VI.5 of the 1994 GATT Agreement, we believe that Vietnam still needs to clearly clarify what of subsidies kind that government of Thailand apply to sugarcane enterprises and these kinds of subsidies that benefits Thailand's how producers sugarcane receive and how much specifically. For example, Thai sugarcane is

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exported Vietnam to at 10,000VND/1 kg and Vietnam has discovered that 1 kg of Thailand's sugarcane has received a corresponding subsidy of VND 5,000 (including export subsidy and domestic subsidy). Based Agricultural on on and SCM Agreement the Agreement, countervailing duties is not applicable to domestic subsidies and, therefore, Vietnam entitled not to impose countervailing duties corresponding to VND 5,000/1 kg sugarcane of Thailand (Article 3.2 of the Agricultural on Agreement). Vietnam shall be obliged to determine how much export subsidies for sugarcane, assuming that in the export subsidies program in the form of reward because of sugarcane export achievements for sugarcane producers, Thailand spends 1,000VND/1 kg, Vietnam is only entitled to apply antidumping duties in the form of additional import tax of up to

1,000VND/1kg and this 1000VND/1kg will not be simultaneously applied tax and anti – dumping duties.

Meanwhile, according to current information, Vietnam has not yet determined the types of the subsidies programs that Thailand has applied to Thailand's sugarcane producers subjecting to export subsidies or domestic subsidies and, level of the subsidies, if any, how much it is?⁷

Sue Thailand's export subsidies in WTO: Why not?

In the fact that domestic sugarcane goes through many hardships, Vietnamese sugarcane enterprises must actively innovate technology to improve production productivity, minimizing damages⁸ because competition according to market rules "shared risks, shared interests", cannot wait for rescue measures from outside. Moreover, the measure of imposing anti-dumping duties

and countervailing duties in the form of additional import tax as currently in Vietnam is only a the measure at customs of Thailand and boundary Vietnam. Meanwhile, Vietnam is the country producing and sugar through exporting Thailand and other countries. Vietnam's sugarcane will now with Thailand's compete sugarcane in the Thailand market and the market of other country. Therefore, the solution of additional import tax at the boundary will not customs ensure that Vietnam's sugar products which are strong enough to compete or even dominate the market – things that Vietnam's sugarcane can do if countries eliminate their sugar subsidies programs. Thus, until the end, if the government of Thailand take drastic action in exports subsidies and domestic subsidies, the "external impact of additional import tax" will not be able to "lay the axe to the

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root of unfair competition", the higher the tax is, the higher and more the government of Thailand subsidizes to compensate for losses for Thailand's enterprises. At that moment, where will be the stop point?

From our point of view, the stop point can only be a compulsory and currently valuable economic diplomatic solution offered by the Dispute Settlement Body of WTO ("DSB") so that government of eliminates Thailand and reduces sugarcane export subsidies. And, in accordance with Article XXIII of the 1994 GATT Agreement and Article 1 of Dispute Settlement Understanding DSU, DSB only resolves only if Vietnam, as a member state of the WTO, presents sufficient evidence in the dossier of lawsuits against Thailand in violation of Article 3 of Agreement on Agriculture.

Regarding a practice lawsuit against WTO of Vietnam, up to now, Vietnam has sued the WTO three times against the USA for inappropriate application of Anti-dumping Measures on Certain Shrimp from Viet Nam (WT/DS404; WT/DS429) and Anti-Dumping Measures on Fish Fillets from Viet Nam (WT/DS536) and 01 case against Indonesia for inappropriate application of Safeguard on Certain Iron or Steel Products (WT/DS496). Vietnam has never sued any member of the WTO in relation to subsidy under Agreement on Subsidies and Countervailing Measures (SCM) and/or subsidies under the Agreement on Agriculture while subsidies are complex institution which being often very sophisticatedly concealed. Therefore, suing Thailand over the WTO to identify the type of Thailand's sugarcane subsidies is also necessary to learn from the experience for the investigation process, applying anti-subsidies and at the same time to show the causes of unfair sugar prices from Thailand.

Moreover, in theory, when there is enough above information, suing Thailand for violating Article 3 of the Agreement on Agriculture to the WTO because the sugarcane export subsidies or not are actively decided by Vietnam as this is a completely legal right of Vietnam in the WTO. Based on Brazil's experience (2016), after Brazil filed a lawsuit against the DSB, Thailand proactively cut sugarcane export subsidies under the 70:30 profit distribution program that had been in effect in Thailand since the 1980s without waiting for the DSB to reach a final conclusion⁹. Could Vietnam file a lawsuit that being a

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lawsuit that being a "intimidatory" enough for Thailand to suspend these subsidies? And, if being that, Vietnam's sugar producers also have more time to upgrade themselves and integrate more effectively.

- * Doctors of Law, Partner in Lac Duy & Associates, member of the scientific council of the Vietnam International Arbitration Center (VIAC).
- ¹ https://www.nationthailand.com/news/30389037, updated 22 April 2021
- ² Dr. Lê Thị Ánh Nguyệt Simultaneously impose anti-dumping and countervailing duties on Thailand sugar cane: Risk of double remedies? The Sai Gon Times No. 17.2021.
- ³ Article 1 SCM Agreement
- ⁴ Durong Bích Ngọc, Sugar Industry Report, Competitive pressure with Thai sugar, the sugar industry still has many shortcomings, 7/2019.
- ⁵ WT/DS507/1 date 7/4/2016
- http://agro.gov.vn/vn/tID30351 ap-thue-chong-ban-pha-gia-duong-nhap-khau-tu-Thai-Lan-van-o-at-vao-Viet-Nam.html, updated 5th May 2021.
- Decision 2466/QĐ-BCT dated 21th September 2020 investigating the application of anti-dumping duties and countervailing duties on imported sugarcane from Thailand
- ⁸ Directive 28/CT-Ttg of the Prime Minister on implementing solutions to develop Vietnam's sugar industry in the new situation.
- https://opendevelopmentmekong.net/news/the-real-cost-of-thailand-scrapping-its-sugar-subsidy-program/#!/story=post-4739669&loc=18.7905618,98.9880909,7, updated 05 May 2021.



LEGAL DOCUMENTS 05/2021

NO.	EFFECTIVE DATE	NAME
		BUSINESS - GOVERNMENT FINANCE
1.	06/05/2021	Plan 215/KH-UBND in 2021 on the operation of the Business Support Team in Lao Cai province
2.	21/05/2021	Decision 1095/QD-UBND in 2021 on temporary provision of support for concentrated isolation facilities for COVID-19 prevention and control in Nam Dinh province
		INFORMATION TECHNOLOGY
3.	20/05/2021	Decision 07/2021/QD-UBND on the operation regulation of Bac Kan province's legal education and popular portals
		TRANSPORT
4.	18/05/2021	Decision 2224/QD-UBND in 2021 approving the internal process of handling administrative procedures under the authority of the Hanoi Department of Transport
		TRADE
5.	21/05/2021	Official Letter 1641/UBND-VX in 2021 on continuing to suspend operation of some types of services to prevent and control the COVID-19 epidemic issued by Ho Chi Minh City
		CRIMINAL LIABILITY, CULTURE - SOCIETY
6.	06/05/2021	Official Letter 58/TANDTC-PC in 2021 defining the time limit for serving the prison sentence but serving a suspended sentence issued by the Supreme People's Court
7.	20/05/2021	Decision 1642/QD-BVHTTDL on the Plan for implementing child care activities in the family in 2021 issued by the Ministry of Culture, Sports and Tourism
		NATURAL RESOURCES - ENVIRONMENT
8.	20/05/2021	Decision 19/2021/QD-UBND stipulating the decentralization of management, exploitation and protection of irrigation works in Lam Dong province

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		SPORT - HEALTH
9.	22/05/2021	Official Letter 4198/BYT-KCB in 2021 on safe vaccination against Covid-19 issued by the Ministry of Health
10.	20/05/2021	Decision 2487/QD-BYT on the list of circulation numbers of in vitro diagnostic medical equipment issued in Vietnam (period 07/2021) issued by the Ministry of Health
		LEGAL SERVICES
11.	06/05/2021	Plan 259/KH-UBND in 2021 implements the key tasks of civil judgment enforcement and administrative judgment enforcement in Bac Kan province.

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