



LAC DUY & ASSOCIATES

NEWSLETTER

10/2021

**“CHARITY DRAMA”: NEED
TO BE TRANSPARENT FROM
A LEGAL PERSPECTIVE**

**THE LATEST POLICIES THAT
SUPPORT EMPLOYEES AND
EMPLOYERS AFFECTED DUE TO
THE COVID-19 PANDEMIC**

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Dear Clients,

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

- “Charity Drama”: Need to be transparent from a legal perspective
- The latest policies that support employees and employers affected due to the Covid-19 pandemic
- Legal Document 10/2021





“CHARITY DRAMA”: NEED TO BE TRANSPARENT FROM A LEGAL PERSPECTIVE

Attorney Lac Duy

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For the purpose of “The intact leaves protect the tattered ones”, by prestige, image, personal brand, individuals, entrepreneurs, artists or other famous people have called for charity through personal accounts. Recently this is becoming a hot topic in both mainstream and “spontaneous” media channels.

In order to return personal charity activities to its original nature, for those who have been and will participate, whether as a donor or a direct contributor, there are two legal issues that need to be clear and transparent before making this transaction. Firstly, it is necessary to define the above spontaneous personal charity activities established according to what legal relationship in Vietnam? How are the rights and obligations of the participants regulated? Secondly, when the charity money is used for the wrong purpose that the people calling for donations initially campaigned, how far will the legal consequences be resolved?

Consider the key of personal charity activities

Besides the money, there are 03 main groups of subjects temporarily called A, B, C participating in charity transactions through the form of money donations by personal accounts. The first subject, A - who stands to call for charitable donations through personal accounts or a third party to receive donations. Normally, for each donation, A can use social networks such as Facebook, Zalo, etc. to build specific topics, programs, and donations, such as donation programs for the people of central Vietnam or building

pagodas, temples, etc. The second subject, B - with the heart of the intact leaves protect the tattered ones, B can be the organizations or the individuals who voluntarily contribute money to A so that A can carry out the programs that A has mentioned above. The third subject, C - the beneficiary of charity money through receiving goods or cash from A or the person assigned by A to be in charge. In particular, in any case, C cannot be A but must be the people of central Vietnam, or anyone with a difficult situation depending



on the programs, ways to call for charity money in batches that A has built. In other words, the key legal relationship, the backbone and even if it is burned into “ashes”, it cannot be denied that the essence of the above charity transaction is a transaction for gift of property from B for C, not a transaction for gift of property from B to A or serve A’s personal interests.

Considering the legal framework regulatory: as tangled as a chive soup

There are some opinions that the individual calling for charity is not a gift from B to C and A cannot only act as the intermediary mentioned above, because it is subject to the provisions of Decree No. 64/2008/ND-CP took effect on 6th

June, 2008 (“**Decree 64/2008**”) providing for the mobilization, receipt, distribution and use of sources of voluntary donations from domestic and overseas organizations and individuals in support of people to remedy consequences of natural disasters occurring domestically and overseas: fires; serious incidents; and for terminally ill patients. Specifically, Article 5.3 of Decree 64/2008 prohibited artists or any individual from using their personal status to organize the receipt and distribution of charity money and goods without going through organizations and units as prescribed in Article 5 of Decree 64/2008, Article 4 of Circular 72/2008/TT-BTC. Thus, A’s act of calling and making spontaneous donations of an individual can be considered an act contrary to the above regulations.

However, it should also be added that, in addition to this provision, the current law does not have any sanctions that can be applied to handle these violations of calling for personal charitable donations.

Conversely, if the legal relationship between B and C above is considered as a gift transaction from B to C, it will be adjusted according to the provisions of Article 457 of the Civil Code 2015. Simultaneously, C is always a donee, i.e. the direct or indirect beneficiary of charitable funds. Although, the cash flow from B transfers directly to A, but A’s role in this transaction is simply an intermediary built and established on B’s trust and assets given to A. So that A has enough financial resources to on behalf of B to carry out charitable works in accordance with A’s original program and purpose of calling for donations. The relationship between B and A has the nature of an authorized transaction and is regulated by law according to the provisions of Article 138.1 of the Civil Code 2015: *“Each natural or juridical person may authorize another natural or juridical person to enter into and perform a civil transaction”*. For the above authorization transaction or donation transaction, currently the law is not required to be made





in writing or notarized. In other words, the authorization relationship from B to A and the donation relationship from B to C through B's authorized person is A above, although not in writing, are both regulated by law according to the provisions of Articles 457 and Articles 138.1 of the Civil Code 2015. However, in practice there is a problem that between A and B has never been established orally or in writing any binding terms of an agreement or authorization contract. Moreover, B completely voluntarily transfers money to A's personal account almost unconditionally, whether this relationship can be considered as an authorization relationship according to the provisions of Article 138.1 of the Civil Code 2015 as above or not? To solve this conundrum, in some countries with common law systems such as the UK and the US, the issue of calling for individual charity has long been effectively regulated and managed under the "trust" or "trust management". In a trust relationship, there are also 3

parties including the settlor, the trustee and the beneficiary of the trust. The highlight in this relationship, the trust assets must be completely separated from the debts, other private assets of the trustee and always only serve the purposes of the beneficiary according to the conditions specified in the document establishing the initial trust relationship between the settlor and the trustee. Currently, Vietnam only recognizes trust relationship with the name of the asset manager in the relationship of will, inheritance or marriage, but has not mentioned trust activities in volunteering activities for individuals.

Consequences and difficulties when charity money goes to the wrong purpose

Firstly, the consequences of civil liability, when the relationship between the individual receiving the donation and the organizations and individuals donating is considered as an authorized relationship, i.e., relationships between A and B mentioned above, Article 565.6 of the Civil Code 2015 will be

applied: *"The authorized person who does not perform the work under the authorization means that the authorized person has violated his/her obligations and is responsible for compensating the authorized party for damages."* Therefore, B or individuals and organizations transferring donations have the right to sue A to reclaim the money they have transferred with interests. The most difficult thing, in solving this problem is that side A is difficult to convincingly prove that it has used 100% of the charity money for the right purpose because there are occasions when A gives cash, does not sign or buy goods without bills, except to prove that A did use this money for personal purposes such as shopping, paying debt, if any. From there, infer the flow of charitable money to the wrong purpose so that they can ask A for reimbursement and compensation. On the contrary, side B is not easy. Since the transfer value is sometimes only a few tens of thousands and hundreds, thousands of organizations and individuals with B status already made the transfer and



some of these are subject to court proceedings to reclaim money from A. Instead, the majority of B choose to resolve it by silence and declining trust in volunteering.

Secondly, the consequences of criminal liability, A may be considered for prosecution for fraud or abuse of credit misappropriation of assets as prescribed in Articles 174 and 175 of the Criminal Code 2015 (amended and supplemented in 2017) when there is a complaint and the investigative agency has collected and fully proved the acts of charity money against the purpose, for personal profiteering.

Thirdly, there is a decline in "*charitable*" trust in the community. This is an alarming issue, especially at the time of the Covid-19 epidemic as at present, there are still many individuals and organizations that are not allowed to operate under Decree 64 or establish a legitimate charitable and social fund as prescribed in the Decree No. 93/2019/ND-CP, but it has been every day, every month, and years, whether quietly or "*noisily*" calling for charitable donations and, if not enough, bringing, selling property or borrowing money for charity. These honourable entities are also affected, subjected to more or less the wrong orders of others or even the decision to stop volunteering.

In light of the above practice, hopefully, the government agency will soon issue new regulations or amend Decree 64/2008 so that the individual charity activity is legally recognized, with the specific responsibilities of each individual participating in this transaction. At the same time, the "*charity drama*" is rising will soon have a reasonable end by the heart of charity activities as well as relevant legal regulations and do not become the phenomenon of "worm that makes the soup pot" in each of us





THE LATEST POLICIES THAT SUPPORT EMPLOYEES AND EMPLOYERS AFFECTED DUE TO THE COVID-19 PANDEMIC

With the purpose of supporting employees to overcome difficulties, stabilize their lives, combat disruption of the labour supply chain and labour shortage during the Covid-19 pandemic. The Government issued Resolution No. 116/NQ-CP (**“Resolution 116”**), effective on 24th September 2021, regulating policies to support employees and employers affected due to the Covid-19 pandemic. Following that, on 1st October 2021, the Prime Minister issued Decision No. 28/2021/QD-TTg (**“Decision 28”**) effective on the same day guiding Resolution No. 116/NQ-CP, as follows:

1. For the employer: Reduced in contribution rates to the Unemployment Insurance

- **Eligible entities:** Employers that are prescribed in Article 43 of the Law on Employment, participating in unemployment insurance before 1st October 2021 (Except: State agencies, political organizations, socio-political organizations, units of people’s armed forces; Business units-public whose recurrent expenditures are financed by the state budget according to the Government’s Decree No. 60/2021/ND-CP and current legal regulations on financial autonomy of business units-public; People who voluntarily waive the aid).
- **Rate:** Reduction from 1% to 0% of the monthly wage fund for employees who are participating in unemployment insurance.
- **Duration:** 12 months, from 1st October 2021 to 30th September 2022 inclusive.
- **Procedures:** There will be no administrative procedures. The social insurance agency shall base on the data on the management software of collection of social, health and unemployment insurance of the employer unit to print out a monthly payment reconciliation table of receivables and payables and will exclude the 1% contribution to the enterprise’s Unemployment Insurance Fund.



2. For the employee: The employee affected due to the Covid-19 pandemic will be financial aid from the surplus of Unemployment Insurance Fund

- **Eligible entities:** Decision 28 clearly stipulates that the eligible entities under Resolution 116 include:
 - (i) Employees who are participating in unemployment insurance on 30th September 2021 (included in the list of unemployment insurance participants of social insurance agency), except:
 - Employees who are working at state agencies, political organizations, socio-political organizations, units of people's armed forces.
 - Employees who are working at business units-public whose recurrent expenditures are financed by the state budget according to the Government's Decree No. 60/2021/ND-CP and current legal regulations on financial autonomy of business units-public.
 - (ii) Employees who have stopped participating in unemployment insurance due to termination of their labour contracts within the period from 1st January 2020 to end of 30th September 2021, and whose unemployment insurance contribution periods are reserved according to employment, except people who have received decisions on monthly pensions.

Although there is Decision 28 guiding the implementation of policies to support employees and employers affected due to the COVID-19 pandemic from the Unemployment Insurance Fund, in the process of implementing Vietnam Social Security still encounters problems related to the identification of eligible entities. On 6th October 2021, Vietnam Social Security issued Official Dispatch 3138/BHXXH-CSXH to the Ministry of Labor, War Invalids and Social Affairs on determining eligible entities of support under Decision No. 28/2021/QĐ-TTg ("**Official Dispatch 3138**"). According to Official Dispatch 3138, currently, Vietnam Social Security only accepts dossiers, settles support payments for those who have specific regulations under Resolution 116, Decision 28 and will not receive support dossiers that will wait for the Ministry of Labour - Invalids and Social Affairs to research and give guidance to the following subjects:



- Employees take maternity leave or sick leave for 14 days or more, not receiving monthly salaries, and receiving social insurance.
- Employees suspend working contract or employment contract signed as per the law.
- Employees take temporary leave without receiving salaries.
- Employees unilaterally terminate working contracts/employment contracts against the law (on Employees' volition).

On 11th October 2021, the Ministry of Labour, War Invalids and Social Affairs issued Official Dispatch 3535/LDTBXH-VL replying to Official Dispatch 3138 of Vietnam Social Security as follows:

"...Employees participate in unemployment insurance on the basis of the working contracts/employment contracts entered into with the employer. As of 30th September 2021, the employee has not terminated the working contracts/employment contracts, is on the list of participating in unemployment insurance of the social insurance agency, so he is still considered to be participating in unemployment insurance and are supported on the basis of the time of paying unemployment insurance but not yet receiving unemployment benefits (including cases of temporary suspension of working contracts/employment contracts, unpaid leave without salary, suspension of work, maternity benefits, etc.) during the period from 1st January 2020 to 30th September 2021 as well as before 1st January 2020)."

Accordingly, the above 04 groups of subjects will receive support according to Resolution 116. And in the next time, Vietnam Social Security will accept dossiers, settles support payments for these 04 groups of subjects.

- **Level of support:** The level of support on the basis of the time of payment of unemployment insurance premiums of employees as of 30th September 2021 but not yet counted as unemployment benefits.



In case the employee has submitted an application for unemployment benefits but as of 30th September 2021 has not yet decided on unemployment benefits, the total time of payment of unemployment insurance has not been entitled as a basis for determining the level of support of the employee as the total time of payment of unemployment insurance not yet enjoyed as of 30th September 2021.

The employee will receive one-time assistance with money, specifically as follows:

- The period of payment of unemployment insurance is less than 12 months: support of **VND 1,800,000 per person.**
 - The period of payment of unemployment insurance from full 12 months to less than 60 months: support of **VND 2,100,000 per person.**
 - The period of payment of unemployment insurance from full 60 months to less than 84 months: support of **VND 2,400,000 per person.**
 - The period of payment of unemployment insurance from full 84 months to less than 108 months: support of **VND 2,650,000 per person.**
 - The period of payment of unemployment insurance from full 108 months to less than 132 months: support of **VND 2,900,000 per person.**
 - The period of payment of unemployment insurance is full 132 months or more: support of **VND 3,300,000 per person.**
- **Order and procedures:** Vietnam Social Security guides the process and procedures for employees to receive this support package as follows:



Group 1: Employees are participating in unemployment insurance as of 30th September 2021

(Excluding employees at State agencies, socio-political organizations, people's armed units and public non-business units guaranteed regular expenditures by the State budget)

The time of support expenditure from when the employer submits the dossier to the Vietnam Social Security (VSS):

- **In 5 working days** if case the information is right and enough (shortened 5 days compared to the Decision)
- **Within 10 working days** in case information needs to be adjusted (10 days shorter than Decision)



Based on the list of supported employees sent by the Vietnam Social Security, the Employers collate, publicize, and notify to the Employees:

- 1 Employees shall collate, supplement and adjust incorrect and sufficient information in the list (if any);
- 2 The employee provides their bank account number information to receive support

Based on the list of employees sent by the employer to the Vietnam Social Security to pay for support for employees

Group 2: Employees who have stopped participating in unemployment insurance due to termination of labor contracts or work contracts between 1st January 2020 and 30th September 2021

(having paid unemployment insurance without unemployment benefits and not subject to a monthly pension)



Employees can work with the VSS through:

- | | |
|---|--|
| <ul style="list-style-type: none"> - Online forms: <ul style="list-style-type: none"> + the National Public Service Portal + Public Service Portal of Vietnam Social Insurance + the organizations providing I-VAN services + the digital social insurance (VssID) applications | <ul style="list-style-type: none"> - Directly at the provincial or district-level social security - Through the postal service |
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- 1 The employers may declare information and request the support by form from the Vietnam Social Security at the provincial or district level where the employee is staying.

Within 5 working days from the date of receipt of the employee's request for support, sufficient information, the Vietnam Social Security pays the employee's support

The deadline for receiving support offers is 20th December 2021

* The supporting request form is following by Form No. 04 under the Decision 28/2021/QĐ-TTg dated 1st October, 2021

(Source: <https://baohiemxahoi.gov.vn/tintuc/Pages/chinh-sach-ho-tro-nguoi-lao-dong-tu-quy-bhtn.aspx?ItemID=17391&CateID=178>)



LEGAL DOCUMENTS 10/2021

NO.	EFFECTIVE DATE	NAME
BUSINESS - GOVERNMENT FINANCE		
1.	03/10/2021	Directive 27/CT-TTg 2021 on production restoration in industrial production areas in the context of COVID-19 pandemic prevention and control issued by the Prime Minister
2.	01/10/2021	Decision 28/2021/QD-TTg stipulating the implementation of policies to support employees and employers affected by the COVID-19 pandemic from the Unemployment Insurance Fund issued by the Prime Minister
INFORMATION TECHNOLOGY		
3.	01/10/2021	Decree 88/2021/ND-CP on collection of fees for granting the right to use radio frequencies, auctioning, licensing and transferring the right to use radio frequencies for radio frequency bands
TRANSPORT		
4.	20/10/2021	Decision 42/2021/QD-UBND stipulating the operation management of passenger transport cars in Tien Giang province
TRADE		
5.	05/10/2021	Decision 4347/QD-UBND in 2021 on the operation regulation of the Council and the Advisory Group to assist the Council for evaluating and classifying OCOP products at the Hanoi City level
CRIMINAL LIABILITY, CULTURE - SOCIETY		
6.	10/10/2021	Decision 21/2021/QD-UBND amending and supplementing a number of articles of the Regulation attached to Decision 07/2018/QD-UBND on the Regulation on the Quang Tri Provincial Literature and Art Awards



NATURAL RESOURCES - ENVIRONMENT

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| 7. | 04/10/2021 | Decision 1664/QD-TTg in 2021 approving the Project on development of marine aquaculture to 2030, with a vision to 2045 issued by the Prime Minister |
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SPORT - HEALTH

- | | | |
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| 8. | 06/10/2021 | Decision 4689/QD-BYT 2021 guiding the diagnosis and treatment of COVID-19 issued by the Minister of Health |
| 9. | 04/10/2021 | Decision 3466/QD-UBND in 2021 on the Regulations on operation at concentrated isolation centers for COVID-19 prevention and control issued by Ho Chi Minh City |