



LAC DUY & ASSOCIATES

# NEWSLETTER

## 08/2022

**PRENUPTIAL AGREEMENT/CONTRACT AND  
SOME POINTS TO CONSIDER WHEN DRAFTING A  
PRENUPTIAL AGREEMENT/CONTRACT**

**RIGHTS AND OBLIGATIONS OF A REPRESENTATIVE  
ORGANIZATION OF EMPLOYEES AT THE GRASSROOTS  
LEVEL IN LABOUR RELATIONS**

**INDIVIDUALS CALLING FOR AND  
DISTRIBUTING VOLUNTARY DONATIONS HAVE  
TO RECORD AND REPORT TRANSPARENTLY  
ACCORDING TO CIRCULAR NO. 41/2022/TT-BTC**

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Dear Clients,

**Lac Duy & Associates would like to send you the legal newsletter of August 2022 with some notable updates and articles as follows:**

- Prenuptial Agreement/Contract and some points to consider when drafting a Prenuptial Agreement/Contract
- Rights and obligations of a representative organization of employees at the grassroots level in labour relations
- Circular No. 41/2022/TT-BTC: Individuals calling for and distributing voluntary donations have to record and report transparently
- Legal documents in 08/2022

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### PRENUPTIAL AGREEMENT/CONTRACT AND SOME POINTS TO CONSIDER WHEN DRAFTING A PRENUPTIAL AGREEMENT/CONTRACT

For many couples preparing to enter a marriage, prenuptial agreement/contract is known as one of the measures to reduce the financial/property risks once their marriage unfortunately had to go through unexpected scenarios. In this article, Lac Duy & Associates will introduce some related legal issues to help our clients better understand the prenuptial agreement/ contract in accordance with Vietnamese law.



#### 1. What is a prenuptial agreement?

*regime of the spouses*

Vietnamese law does not have a specific definition of a prenuptial agreement/contract. However, through some related provisions, a prenuptial agreement/contract can be understood as a written agreement between a man and a woman made before their marriage stipulating the property regime of the couple during their marriage.

*In case the two parties to the marriage choose the property regime according to the agreement, this agreement must be made before the marriage, in the form of notarized or certified documents. The property regime of the spouses according to the agreement is established from the date of registration of the marriage."*

Particularly, Vietnamese law stipulates that there are two property regimes of spouses including: the property regime as agreed upon and the property regime according to the law. Accordingly, Article 47 of the Law on Marriage and Family No. 52/2014/QH13 issued on 19 June 2014 ("**Law on Marriage and Family 2014**") stipulates:

Thus, in accordance with this provision, a prenuptial contract/agreement is considered as a legally binding document, intended to agree on legal issues such as the delimitation of common property, private property, before, during and after marriage. A prenuptial contract/agreement must be made before marriage and the effective date of a prenuptial contract/agreement is from the date on which the two parties register their marriage at the competent

*"Article 47. Agreement establishing the property*

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People's Committee.

### **2. Notes when drafting a prenuptial agreement/contract**

In terms of content, based on the provisions of Article 48 of the Law on Marriage and Family 2014, the basic contents of the prenuptial contract /agreement shall include:

- a) Property is defined as common property, private property of spouses;
- b) Rights and obligations of spouses with respect to common property, private property and related transactions; assets to secure the essential needs of the family;
- c) Conditions, procedures and principles of asset division upon termination of the property regime;
- d) Other relevant contents.

In case the implementation of the property regime under the agreement arises issues that have not been agreed upon by the spouses or the agreements are unclear, the provisions of Articles 29, 30, 31 and 32 of the Law on Marriage and Family 2014 and the corresponding provisions of the property regime according to law shall apply.

In case the property regime under the agreement is applied, when establishing and performing

transactions, spouses are obliged to provide third parties with relevant information. If the spouse violates this obligation, the third person shall be considered as bona fide and be protected in accordance with the provisions of the Civil Code.

In terms of form, the prenuptial agreement/contract of the spouses must be made in writing, notarized or attested. Procedures for notarization of the agreement to establish the property regime of the spouses shall comply with the provisions of Article 40 of the Law on Notarization No. 53/2014/QH13 issued on 20 June 2014 with the composition of the dossier including:

- A request form for notarization of the agreement to establish the property regime of the husband and wife;
- A draft Agreement on establishing the property regime of husband and wife;
- A copy of the identity document of the notarization requester;
- A copy of the certificate of ownership, right to use or a copy of a substitute paper prescribed by law for the property for which the law requires registration of ownership or use right in case the Agreement is related to such property;
- Copies of other relevant documents as prescribed by law such as residence registration,



## RIGHTS AND OBLIGATIONS OF A REPRESENTATIVE ORGANIZATION OF EMPLOYEES AT THE GRASSROOTS LEVEL IN LABOUR RELATIONS

The term “Representative organization of employees at grassroots level” was firstly known in 2019 with the introduction of the Labour Code 2019. Different from "Representative organization of a grassroots-level employees' collective" according to the Labor Code 2012 which is considered as "old wine in a new bottle", in the Labour Code 2019, the concept of "Representative organization of employees at grassroots level" includes both grassroots trade unions and employees' organizations at enterprises, specifically in Article 3.3 of the Labour Code 2019 stipulates: "Representative organization of employees at grassroots level include grassroots trade unions and employees' organizations at enterprises". Accordingly, the rights and obligations of a representative organization of employees at the grassroots level have been expanded compared to the Labour Code 2012, as follows:

### **1. Regulations on the rights and obligations of the Internal Representative Organization of Employees**

Firstly, the most obviously expanding is that the Labour Code 2019 has devoted a whole chapter to the provisions on the representative organization of employees at grassroots level, while in the Labour Code 2012 those regulations are not separate but attached to the regulations of the trade unions, which can be seen that the approach to the issue of the law has changed and expanded. Specifically, in Article 178 of the Labour Code 2019 the rights and obligations of the representative organization of employees at grassroots level in labour relations are specified as follows:

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***“Article 178. Rights and obligations of the representative organization of employees in labour relations***

- 1. Enter into collective bargaining with the employer in accordance with this Labour Code.*
- 2. Hold dialogues at work in accordance with this Labour Code.*
- 3. Comment on the establishment; supervise the implementation of the pay scale, payroll, labour rates, regulations on salary payment, rewards, internal labour regulations, and other issue relevant to rights and interests of employees that are members of the organization.*
- 4. Represent the employee during labour dispute settlement when authorized by the employee.*
- 5. Organize and lead strikes in accordance with this Labour Code.*
- 6. Provide technical assistance for legally registered organizations in Vietnam to improve their knowledge about labour laws, procedures for establishment of the representative organization of employees and performance of representative activities in labour relation after registration is granted.*
- 7. Be provided a working location, information and other necessary facilities for operation of the representative organization of employees by the employer.*
- 8. Other rights and obligations prescribed by law.”*

With this recognition of the law, the representative organization of employees at grassroots level is provided with certain powers to perform the function of protecting the legal rights and interests of employees, and several obligations to ensure this is performed properly.







### **2. Additional regulations on the rights of members of the management boards of the representative organization of employees at grassroots level**

While according to Article 191 of the Labour Code 2012, the rights of grassroots-level trade union representatives are limited to only: (i) *To meet the employer to discuss, exchange ideas and negotiate on labour and employment issues;* (ii) *To visit workplaces to meet employees within the scope of responsibility which they represent,* their rights are added and expanded according to the Labour Code 2019. Particularly, Article 176.1 stipulates that:

*“1. Members of the management board of a representative organization of employees have the rights to:*

- a) Approach employees at the workplace during the performance of the organization’s duties, provided it does not affect the employer’s normal operation.*
- b) Approach the employer to perform the duties of the employees’ representative organization;*
- c) Be fully paid by the employer for performance of the duties of the representative organization of employees during the working time in accordance with Clause 2 and Clause 3 of this Article;*
- d) Other guarantees in labour relation and performance of the representative’s duties as prescribed by law.”*

It can be seen that the addition to the content of the rights of the representatives of employees at the grassroots level is to help these organizations operate more effectively in protecting the rights and interests of the employees while still not affecting the labor productivity or the interests of the employers.

Regarding compliance with the above regulations, according to Article 6.1 and Article 12.3 of Decree No. 12/2022/ND-CP, the company may be fined from VND 10,000,000 to VND 20,000,000 for failing to consult the representative organization of employees at grassroots level when carrying out the acts mentioned in Section 1 above.

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### CIRCULAR NO. 41/2022/TT-BTC: INDIVIDUALS CALLING FOR AND DISTRIBUTING VOLUNTARY DONATIONS HAVE TO RECORD AND REPORT TRANSPARENTLY



Recently, some negative information related to the activities of calling for voluntary donations of some artists attracted the attention of the public. Many fans have suspected that some artists may have embezzled part of the donations. They, therefore, they believe that the details of these donation amounts should be made public.

From the above practice, the Ministry of Finance has recently issued Circular No. 41/2022/TT-BTC guiding the accounting regime applied to social and charitable activities ("**Circular 41**") **effective from 01 September** to manage the charity work of individuals, specifically:



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### **1. Books must be opened to record donations received by donors; funds distributed and used from this source to carry out social and charitable activities accurately, honestly, ensuring publicity and transparency**

According to the provisions of Section 3, Article 10 of Circular 41/2022/TT-BTC, individuals when mobilizing, receiving and distributing contributions to carry out social and charitable activities must open the books immediately upon the start of mobilizing, receiving and distributing contributions. Recorded data must be continuous in chronological order and fully reflect the information required to publicize the data. When the page is written, the data of each page must be added to bring the previous page addition to the top of the next page, not added to the top or bottom of the page. If the page is not written down, it must be crossed out the unwritten part, it is strictly forbidden to delete or correct the recorded data information on the book.

### **2. The book must be finalized, according to which all revenue and expenditure data must be added and calculated unused inventory to prepare reports and publicize data in accordance with the law at the end of the campaign**

Specifically, according to the provisions of Clause 3, Article 10 of Circular 41/2022/TT-BTC, individuals must compare data with the bank where

the account is opened monthly and compare at the end of the campaign for amounts received and used through bank deposit accounts. A reconciliation of the data with the bank or the deposit account detail book sent by the bank must be stored and made public at the end of the campaign.

### **3. Make report and disclose data**

Individuals participating in mobilizing, receiving, distributing and using voluntary contributions to carry out social and charitable activities at the end of each campaign must prepare revenue and expenditure reports and publicize data in accordance with the Government's Decree No. 93/2021/ND-CP dated October 27, 2021 on advocacy, receiving, distributing and using voluntary contributions to assist in overcoming difficulties caused by natural disasters, epidemics and incidents; support for critically ill patients and relevant documents (if any).

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### LEGAL DOCUMENTS 08/2022

NO.	EFFECTIVE DATE	NAME
<b>LABOUR</b>		
1.	15/08/2022	Circular 12/2022/TT-BLDTBXH of the Ministry of Labour, Invalids and Social Affairs instructing on the implementation of labour management, salary, bonus for the National Technology Innovation Fund
2.	15/08/2022	Circular 13/2022/TT-BLDTBXH of the Ministry of Labour, Invalids and Social Affairs instructing on the implementation of labour management, salary, bonus for the Cooperative Development Support Fund
<b>TAX</b>		
3.	12/08/2022	Circular 11/2022/TT-BCT of the Ministry of Industry and Trade stipulating on the allocation of sugar import tariff quota via auctions
<b>BUSINESS – TRADE</b>		
4.	08/08/2022	Circular 39/2022/TT-BTC of the Ministry of Finance on the guiding a number of articles of Decree No.121/2021/ND-CP dated December 27, 2021 of the government on the business of prize-winning electronic games for foreigners
5.	01/08/2022	Circular 04/2022/TT-NHNN of the State Bank of Vietnam stipulating on application of interest rates on premature withdrawal of deposits from credit institutions and foreign bank branches
<b>ADMINISTRATIVE</b>		
6.	15/08/2022	Decree 42/2022/ND-CP of the Government on provision of online public information and services by State agencies in the network environment
7.	15/08/2022	Decree 40/2022/ND-CP Amending and supplementing a number of articles Decree No. 144/2016/ND-CP dated November 1, 2016 of the

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government stipulating a number of specific mechanisms on investment and finance, budget and management decentralization for Da Nang city

8.	25/08/2022	Decree 45/2022/ND-CP of the Government on sanctioning of administrative violations in the environmental protection field
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### REAL ESTATE

9.	15/08/2022	Decree 44/2022/ND-CP of the Government on construction, management and use of information systems in the accommodation and property market
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