



LAC DUY & ASSOCIATES

NEWSLETTER

09/2022

**GUIDELINES ON LABOUR
DISPUTES SETTLEMENT
DUE TO COVID-19 FOR
EMPLOYEES**

**OUTSTANDING
NEW POINTS OF
INTELLECTUAL
PROPERTY LAW**

**PUBLISHED BY LAC DUY & ASSOCIATES
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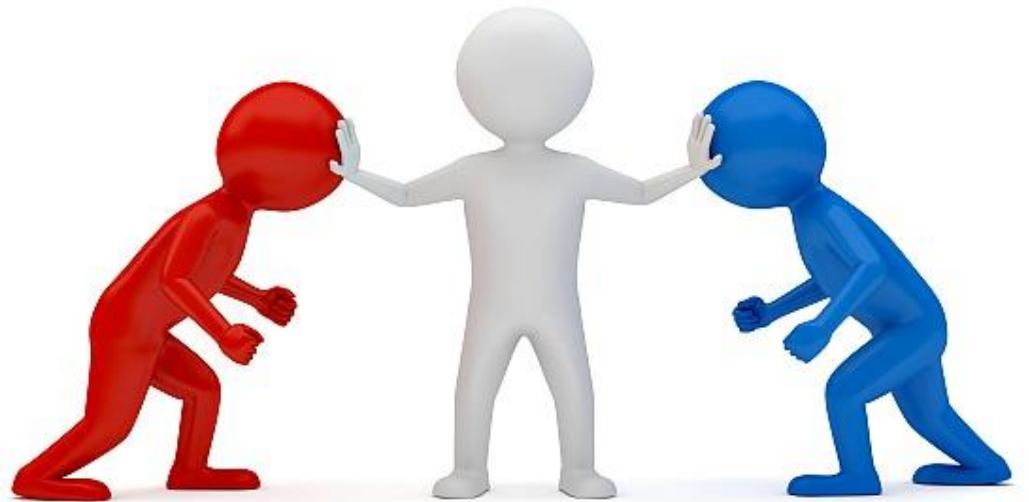
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Dear Clients,

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

- Guidelines on labour disputes settlement due to Covid-19 for Employees
- Outstanding new points of Intellectual Property Law
- Legal documents in 09/2022





GUIDELINES ON LABOUR DISPUTES SETTLEMENT DUE TO COVID-19 FOR EMPLOYEES

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CASES OF EMPLOYEE CONTRACT TERMINATION

“Due to a major epidemic”, the employer has to lay off employees after all possibilities have been exhausted.

Point c,
Clause 1,
Article 36 of
the LC 2019

Enterprises change in the organizational structure, enterprise rearrangement to reduce labour (also known as "restructuring").

Clause 1,
Article 42 of
the LC 2019

Employers terminate labour contracts with employees for economic reasons.

Clause 2,
Article 42 of
the LC 2019

NOTE: ALLOWANCES FOR EMPLOYEES WHEN THE CONTRACT IS TERMINATED

Severance allowance: Applied to employees who have worked on a regular basis for a period of at least 12 months and have their labour contracts terminated in case the agreement terminates the labor contract or the employer unilaterally terminates the labor contract.

Redundancy allowance: Applied to employees who have worked on a regular basis for the employer for at least 12 months and have their labour contracts terminated in case the enterprise changes organization or personnel rearrangement.

Unemployment allowance: This allowance is paid by the Unemployment Insurance Fund (UI) to employees when their labour contract is terminated; have paid unemployment insurance for full 12 months or more within 24 months before unemployment.



**STEPS TO DO
WHEN
EMPLOYEES
THOUGHT
THAT
EMPLOYER
ILLEGAL
TERMINATE
LABOUR
CONTRACT**

Step 1: Complaints

The employee directly submits a complaint or asks for the intervention of the Trade Union at the enterprise to request the correct performance of the signed contract (Article 131 of the Labor Code 2019).

Step 2: Labour Mediation (*)

If the participation of the Trade Union is not effective, the employee shall file a request for conciliation to the labour mediator of the district-level Department of Labor - War Invalids and Social Affairs where the enterprise is headquartered. This is a mandatory procedure (except for some cases in Clause 1, Article 188 of the Labor Code 2019).

Step 3: In cases of conciliation failure, the employee has the right to choose one of the following methods to resolve the dispute (Clause 7, Article 188 of the Labor Code 2019).

***LABOUR DISPUTES FOR WHICH MEDIATION IS NOT MANDATORY:**

1. Dismissal for disciplinary reasons; unilateral termination of employment contracts;
2. Damages and allowances upon termination of employment contracts;
3. Between a domestic worker and his/her employer;
4. Social insurance; health insurance; unemployment insurance; occupational accidents and disease insurance;
5. Damages between an employee and organization that dispatches the employee to work overseas under a contract;
6. Between the outsourced worker and the client enterprise.

Request the Labour Arbitration Council to settle the dispute.

Request the Court to settle the dispute.



**Step 1:
Send a
request**

When an employee and an employer have a dispute, the employee should send a request for conciliation to the mediator to conduct mediation procedures.

**Step 2:
Conduct
mediation**

The Labor Arbitration Council shall complete the mediation process within 05 working days from the receipt of the request (Clause 2, Article 188 of the Labor Code 2019).

Both disputing parties must be present at the mediation meeting. The disputing parties may authorize another person to attend the mediation meeting (Clause 3, Article 188 of the Labor Code 2019).

The labor mediator shall instruct and assist the parties to negotiate with each other (Clause 4, Article 188 of the Labor Code 2019).

**Step 3:
Make a
record
mediation**

The mediator makes a record of successful or unsuccessful mediation, depending on each specific case.

**Step 4:
Send the
record
mediation**

Copies of the record of successful mediation or unsuccessful mediation shall be sent to the disputing parties within 01 working day from the date on which it is made (Clause 5, Article 188 of the Labor Code 2019).



DISPUTE SETTLEMENT PROCESS IN COURT
(Articles 186 to 315 of the Civil Procedure Code 2015)

The plaintiff files the petition and documents and evidence to the competent court

- Send postal service
- Directly file a petition
- File online Court Portal

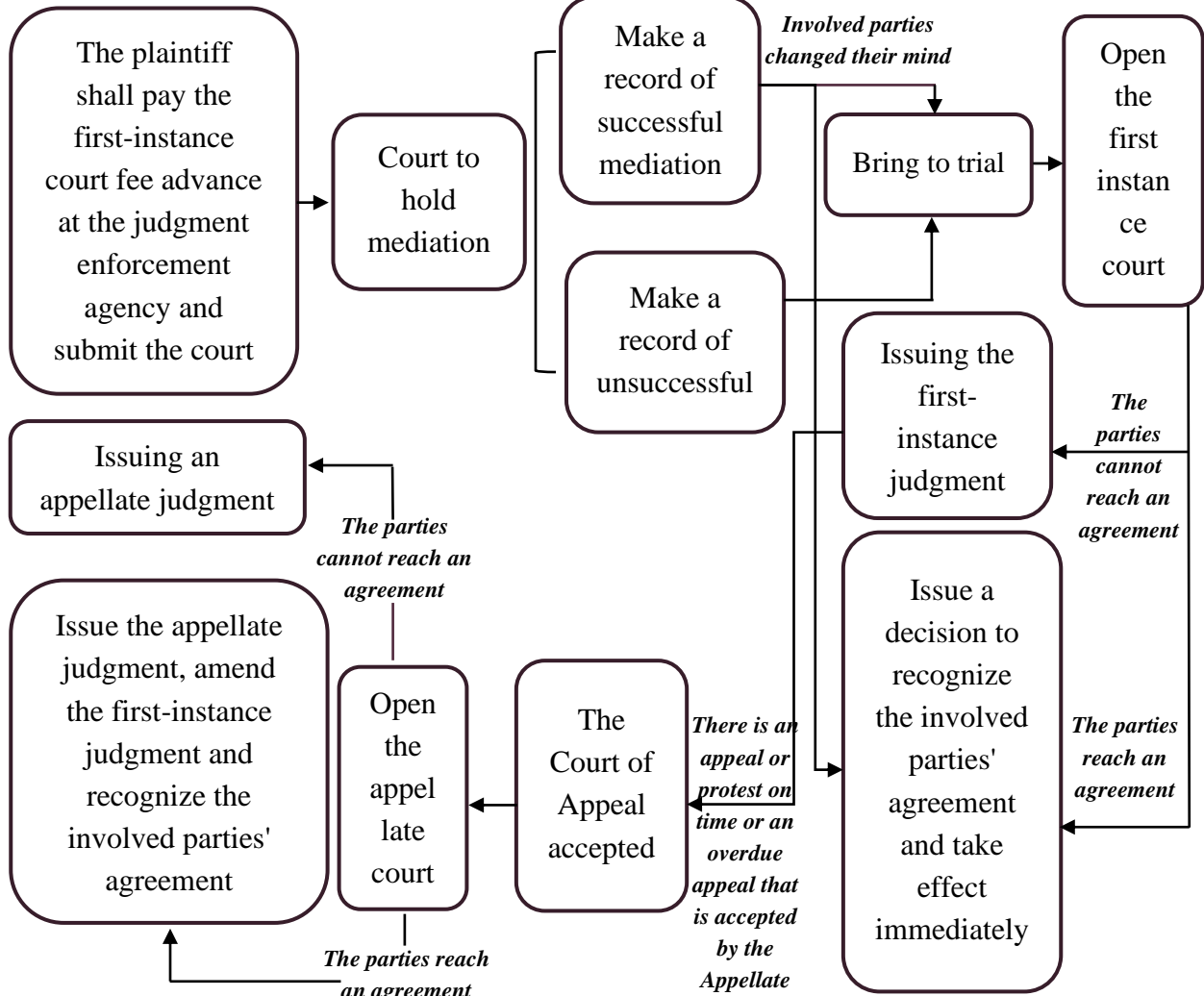
Assign a judge to review the petition

- Transfer the petition to another Court if it falls under the jurisdiction of another Court
- Return the Petition to the plaintiff
- Request to amend and supplement the petition when the petition is not properly adjusted
- Proceed to accept the case if it falls under its jurisdiction and the appropriate petition

The petition is not properly adjusted

The petition is properly adjusted

15 days from the date of receiving the notice of payment of court fee advances





OUTSTANDING NEW POINTS OF INTELLECTUAL PROPERTY LAW

On June 16, 2022, at the 3rd session of the XV National Assembly, the National Assembly approved the Law amending and supplementing a number of articles of the Law on Intellectual Property 2005 (hereafter referred to as "**Law No.07/2022**"). Law No. 07/2022 will take effect from 01 January 2023 and has some notable new points as follows:

1. The new points of Invention Protection

1.1. The novelty of invention

Clause 19, Article 1 of Law No. 07/2022 amends and supplements Clause 1, Article 60 of the Law on Intellectual Property 2005 in the direction of clarifying 02 cases that an invention is considered as not a novel, as follows:

- (i) Case 1: The invention is publicly disclosed by use or written description or any other form either inside or outside Vietnam before the filing date or the priority date, as applicable, of the invention registration application.
- (ii) Case 2: The invention disclosed in another application has an earlier filing date or priority date but was published on/or after the filing date or priority date of the application.

1.2. Right to register invention

Clause 25, Article 1 of Law No. 07/2022 supplements the provisions of Article 86 of the Law on Intellectual Property 2005, which gives organizations and individuals assigned to manage genetic resources to provide genetic resources and traditional knowledge about genetic resources under a contract of access to genetic resources and benefit sharing the right to patent.

2. New points about Industrial Design Protection

2.1. Amending the definition of industrial design

Law No. 07/2022 introduces legal signs of an industrial design such as product parts, complex products and visibility during the use of the products when redefining the concept of industrial designs, specifically: "Industrial design is the appearance of a product or **part for assembly into a complex product**, represented by configuration,



lines, colors or a combination of such elements and **visible during the manufacturing, exploiting the utility of a product or a complex product.**”

2.2. Supplementing mechanism to object to the application for registration of industrial designs

In addition to the old mechanism, document recording a third-party opinion is only considered as a reference information source for the processing of industrial property registration applications, specified in Article 112 of the Law on Intellectual Property 2005, Law No. 07/2022 for the first time introduces a new mechanism allowing any third party to have the right to object to an industrial design application. Accordingly, before the date of issuance of the decision to grant an industrial design protection title, any third party has the right to object to such grant of protection title *"within 04 months from the date of application for registration of the industrial design be announced"*.

3. New points about Mark Protection

3.1. General conditions for a protected mark

Clause 20, Article 1 of Law No. 07/2022 supplements *“sound signs in the form of graphic”* as one of the conditions for Mark Protection, as follows:

“Article 72. General conditions for marks to be eligible for protection

A mark shall be eligible for protection when it satisfies the following conditions:

1. It is a visible sign in the form of letters, words, drawings or images including holograms, or a combination thereof, represented in one or more colours or sound signs in the form of graphic.”

3.2. Amending the definition of well-known mark

Law No. 07/2022 amends the definition of well-known mark to replace the old definition in the Law on Intellectual Property 2005, specifically replacing the phrase *“consumer”* with *“relevant public”* to comply with the regulations on well-known mark protection in international trade agreements such as EVFTA, CPTPP, etc. and at the same time, it is consistent with 08 criteria for recognition of the well-known marks specified in Article 75 of the Law on Intellectual Property 2005.

4. New points of Geographical Indication

4.1. Supplementing the definition of homonymous geographical indication



The definition of homonymous geographical indication was not previously provided in the Law on Intellectual Property 2005 but has been added by Law No. 07/2022. Pursuant to Point d, Clause 1, Article 1 of Law No. 07/2022 supplementing Clause 22a, Article 4 of the Law on Intellectual Property 2005, homonymous geographical indications are geographical indications having the same pronunciation or spelling. This is an important legal basis for determining the object of protection and the conditions that allow these geographical indications to existing at the same time.

4.2. Supplementing conditions for protection of homonymous geographical indication

In addition to the introduction of definition of homonymous geographical indication, Law No. 07/2022 also provides additional conditions of homonymous geographical indication protection, specified in Clause 2, Article 79: ” *The homonymous geographical indication that meets the conditions specified in Clause 1 of this Article is protected if such geographical indication is used in a way that does not confuse consumers about the geographical origin of the product bearing geographical indications, and ensures the principle of fair treatment among organizations and individuals producing the products bearing such geographical indications.* ”

- (i) Products bearing a geographical indication originating from the region, locality, territory, or country corresponding to the geographical indication;
- (ii) Products bearing a geographical indication whose reputation, quality, or characteristics are mainly determined by the geographical conditions of the region, locality, territory, or country corresponding to such geographical indication;
- (iii) Products bearing a geographical indication shall not confuse consumers as to the geographical origin of products bearing a geographical indication.



LEGAL DOCUMENTS 09/2022

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NO.	EFFECTIVE DATE	NAME
LABOUR		
1.	05/09/2022	Circular 44/2022/TT-BTC of the Ministry of Finance on the management and use of recurrent expenditures for the implementation of policies and preferential regimes for persons credited with the revolution, relatives of persons credited with the revolution and persons directly participating in the resistance
2.	09/09/2022	Circular 12/2022/TT-BCT of the Ministry of Industry and Trade stipulates working time and rest time for employees working in the operation, maintenance and repair of gas distribution pipeline systems and gas works
TAX		
3.	12/09/2022	Decree 49/2022/ND-CP dated July 29, 2022 amending and supplementing a number of articles of the Government's Decree No. 209/2013/ND-CP dated December 18, 2013 detailing and guiding the implementation of a number of articles of the Law on Value Added Tax that have been amended and supplemented with a number of articles under Decree No. 12/2015/ND-CP, Decree No. 100/2016/ND-CP and Decree No. 146/2017/ND-CP.
BUSINESS – TRADE		
4.	01/09/2022	Decree 47/2022 amending and supplementing a number of articles of the government's Decree No. 10/2020/ND-CP dated January 17, 2020 regulating business and conditions for transport business by car
5.	09/09/2022	Circular 09/2022/TT-BYT guiding the sample of bidding dossiers for procurement of medicinal herbs and traditional medicines at public health establishments



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ADMINISTRATIVE

6.	20/09/2022	Decree 59/2022/ND-CP regulating electronic identification and authentication
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7.

EDUCATION

8.	05/09/2022	Resolution 116/NQ-CP on the financial autonomy classification plan of public non-business units in 2022
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