



LAC DUY & ASSOCIATES

NEWSLETTER

02/2023

THE OBLIGATION & LEGAL PROCEDURES TO REGISTER INTERNAL LABOUR REGULATIONS

**SOME QUESTIONS IN CIVIL,
MARRIAGE AND FAMILY
CASES HAVE BEEN
RESOLVED BY THE SUPREME
PEOPLE'S PROCURACY
(LATEST)**

**REMOVING HOUSEHOLD
REGISTRATION BOOK,
TEMPORARY RESIDENCE BOOK
- WHAT TO BE USED INSTEAD?**

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Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of February 2023 with some notable updates and articles as follows:

- Some questions in civil, marriage and family cases have been resolved by the Supreme People's Procuracy (Latest)
- The OBLIGATION & legal procedures to register internal labour regulations (As per Article 118, 119, 120, 121 of Labour Code 2019)
- Removing household registration book, temporary residence book - What to be used instead?
- Legal Document in 02/2023





SOME QUESTIONS IN CIVIL, MARRIAGE AND FAMILY CASES HAVE BEEN RESOLVED BY THE SUPREME PEOPLE'S PROCURACY (LATEST)

Recently, the Supreme People's Procuracy has issued Official Letter No. 443/VKSTC-V9, effective from February 15, 2023 on solving concerns in civil, marriage and family cases in order to resolve professional problems in prosecution work. Accordingly, some notable issues are as follows:

1. Questions about court fees, appellate court fees obligations, on-site consideration and appraisal costs in civil cases

1.1. Two opinions on the first-instance civil court fees in cases "Dispute over land use rights", the plaintiff files a lawsuit to request the Court to order the return of encroached land from the defendant

- **The opinion of the Procuracy:** The Court does not need to value this property because the parties are only disputing the land use rights which are not related to the land value. Accordingly, civil court costs are calculated in the same way as for civil cases involving no monetary value as per clause 2, Article 27 of Resolution No. 326/2016/UBTVQH14 ("**Resolution 326/2016**");
- **The opinion of the Court:** Based on the fact that the court has conducted the property valuation, the Court considers that the dispute falls into the case "the Court must determine the property value" according to point b, clause 2, Article 27 of Resolution 326/2016 to order the the involved parties to bear civil court costs involving monetary value



Instructions of the Supreme People's Procuracy: Based on clause 2, Article 27 of Resolution 326/2016, the fact that the Court conducts the property valuation is not a basis for determining whether the involved parties must bear the civil court costs involving monetary value or no monetary value. Instead, the determination is based on on the purpose of the use of the valuation results of the Court. If the Court has to use the valuation results to determine the land use rights by parts, the



parties must bear civil court costs involving monetary value for the part to which they are entitled. **If the Court only determines who the land use rights belong to, without using the valuation results, the parties will only bear the first-instance civil court costs involving no monetary value .**

1.2. Question about the obligation to bear appellate court fees in case many parties appeal the same content.

Currently, the law does not provide for appellate court fees in case there are many parties appeal the same content. Accordingly, based on clause 1, Article 148 of the Civil Procedure Code and clause 1, Article 29 of Resolution 326/2016, appellate court fees are paid separately by each appellant, regardless of whether they appeal the same content or not.

1.3. Two opinions on how to calculate on-site inspection/appraisal expense in case the Court accepts part of the lawsuit claim.

- **First opinion:** In case the Court accepts (even though part of the plaintiff's claim is not accepted, it is still in the same claim), the defendant must bear the entire fees for on-site inspection/ appraisal.
- **Second opinion:** The plaintiff must bear part of the on-site inspection/ appraisal expense for the part of the claim that is not accepted by the Court.

Instructions of the Supreme People's

Procuracy: Currently, the law has no specific guidance on the obligation to bear the on-site inspection/ appraisal expense in case the Court accepts part of the plaintiff's requests. However, referring to the regulations on the obligation to bear examination expense under clause 1, Article 161 of the Civil Procedure Code and referring to the provisions on the obligation to bear first-instance civil court costs in clauses 1 and 4, Article 26 of Resolution 326/2016, it is possible to draw the principle of determining the obligation to bear the on-site inspection/appraisal expense in this case, i.e. **the Plaintiff shall bear the on-site inspection/**





appraisal expense for his/her part of the unaccepted request(s) and the Respondent shall bear the on-site inspection/ appraisal expense for of the Plaintiff's accepted request(s).

2. Question about the starting time of the time limit for initiating a lawsuit in the case "Loan contract dispute" is from the expiration date of the contract or from the date the two parties have a new agreement on the payment term

According to the provisions of the civil law, the time limit for initiating a lawsuit will not apply to a request to pay the principal amount and the time limit for initiating a lawsuit for the interest is 03 years. Accordingly, in case the involved parties did meet, acknowledge the debt and offer a payment plan after the loan contract expires, it can be understood that the involved parties have agreed to extend that debt and have a new agreement on the payment term. Therefore, 03 years will be counted from the date the parties have a new agreement on the payment term.

3. Question about the whether to revoke the deposit contract or not in the case "Dispute over the deposit contract" when one party has given the deposit but the other party does not perform its obligations

There are two opinions as follows:

- **The first opinion:** Because one party has seriously violated the obligations agreed upon in the contract, the Court shall base on Articles 423 and 427 of the Civil Code to revoke the deposit contract and impose a deposit penalty on the violating party.
- **The second opinion:** Must determine the contract is valid, not revoke the contract. The party that violates the contract shall be subject to the same sanctions as the contractual agreement.



Instructions of the Supreme People's Procuracy: Since one party has seriously violated the contract leading to the failure to conclude the contract, this is the basis for revoking the contract according to point b, clause 1, Article 423 of the Civil Code. In addition, as per clauses 1 and 2, Article 427 of the Civil Code, the Court may revoke the deposit contract and the violating party must return the deposit to the other party and pay a



deposit penalty. Therefore, if the Court does not revoke the contract, the legitimate rights and interests of the other party will not be guaranteed because if the contract continues to perform, the other party will not achieve its purpose when signing the contract, while still bearing the damage due to the deposit was delivered to the breaching party.

4. Question about the settlement of consequences of an invalid contract

According to Article 131 of the Civil Code and the guidance in Official Dispatch No. 01/2017/GD-TANDTC dated April 07, 2017 of the Supreme People's Court, the Court is obliged to explain to the involved parties the legal consequences of an invalid contract, and such explanation must be recorded by the minutes and kept in the case file... In case the Court has explained, but all involved parties still do not request settlement of the consequences of an invalid contract, the Court shall declare the invalid contract without having to deal with consequences of the invalid contract. If the Court only raises issues without fully outlining the consequences of the invalid contract for the involved parties, failing to make a record identifying the requests of the involved parties is an omission and violation of the above provisions.





THE OBLIGATION & LEGAL PROCEDURES TO REGISTER INTERNAL LABOUR REGULATIONS (AS PER ARTICLE 118, 119, 120, 121 OF LABOUR CODE 2019)

1. OBLIGATION



1. Every employer shall issue their own internal labour regulations. An employer that has at least 10 employees shall have written internal labour regulations.
2. An employer that has at least 10 employees shall register the internal labour regulations at the labour authority of the province where business registration is applied for.

2. PREPARE THE DOCUMENTS



An application for registration of internal labour regulations shall consist of:

1. The application form;
2. A copy of the internal labour regulations;
3. Comments of the representative organization of employees (if any);
4. Documents of the employer that are relevant to labour discipline and material responsibility (if any).

3. THE LEGAL PROCEDURES



1. After being promulgated, the internal labour regulations must be sent to each employee representative organization at the grassroots level (if any) and notified to all employees, and at the same time, the major contents must be displayed at necessary places at the workplace.
2. Within 10 days from the date of issuance of the internal labour regulations, the employer must submit the application for registration of the internal labour regulations.
3. If any of the contents of the internal labour regulations is found contrary to the law, within 07 working days from the date of receipt of the application, the provincial labour authority shall notify and instruct the employer to revise it and re-submit the application.
4. The internal labour regulations shall start to have effect after 15 days from the day on which the satisfactory application is received by a competent authority.



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REMOVING HOUSEHOLD REGISTRATION BOOK, TEMPORARY RESIDENCE BOOK - WHAT TO BE USED INSTEAD?

According to the provisions of the Law on Residence 2020, from January 1, 2023, household registration books and temporary residence books will no longer be used. Specifically, Clause 3, Article 38 of the Law on Residence 2020 stipulates as follows:



“Implementation clauses

...

3. Starting from the date on which this Law comes into force, issued household registration books and temporary residence books may continue to be used and are equivalent to written confirmations of residence per this Law until the end of December 31, 2022.”

So, when performing the administrative procedures that request a household registration book, what will people have to use instead? To answer this question, on 21 December 2022, The Government issued Decree No. 104/2022/ND-CP effective from January 1, 2023 to amend and supplement a number of articles of the Decrees related to the submission and presentation of household registration books, temporary residence books when performing administrative procedures, providing public services (“**Decree 104/2022**”). Accordingly, Decree 104/2022 stipulates 04 types of proof of residence to replace household registration books, specifically:

1. Citizen Identification Card;;
2. Identity card;
3. Residence information certification;
4. Notice of personal identification number and citizen information in the National Population Database.



For the residence information certification, as per Article 17 of the Circular 55/2021/TT-BCA, citizens have the right to request a residence information certification in 2 ways:

- **Option 1:** Directly go to the commune-level police station or district-level police station in a place where there is no commune-level administrative unit to request a residence information certification.
- **Option 2:** Submit a request for a residence information certification through the Public Service Portal of the Ministry of Public Security, the Public Service Portal for Residence Management, and the National Public Service Portal.

The procedure and application to get a residence information certification are relatively simple, including the following steps:

- **Step 1:** Prepare a dossier that is the Declaration of change of residence information (Form CT01) issued together with the Circular 56/2021/TT-BCA.
- **Step 2:** Submit the dossier at the commune-level police station to carry out the procedures for confirmation of residency or send it through the National Public Service Portal, the Public Service Portal of the Ministry of Public Security, the Public Service Portal for Residence Management.
- **Step 3:** The competent agency shall carry out the reception and processing of the application. If the application is complete and valid, it shall be received, accordingly, a receipt note confirming the receiving and appointment date to return the result to the applicant will be issued. In case the application is eligible but insufficient, the applicant shall be provided a guidance on supplementing and completing, accordingly, an instruction note shall be issued. In case the application does not meet the conditions, it will be rejected, accordingly, a rejection note shall be issued to the applicant.
- **Step 4:** Receive the notification of the result when the appointment date on the receipt note is due (*within 01 working day in case information is available in the National Population Database and within 03 working days in case verification is required*).



LEGAL DOCUMENTS 02/2023

NO.	EFFECTIVE DATE	NAME OF THE DOCUMENT
INVESTMENT		
1	02/02/2023	Resolution 09/NQ-CP in 2023 on the Action Programme to implement Resolution 20-NQ/TW on continuing to innovate, develop and improve the efficiency of collective economy in the new phase issued by the Government
2	03/02/2023	Official Dispatch 688/BKHDT-DTNN in 2023 on the report on the implementation of the investment promotion programme in 2022 issued by the Ministry of Planning and Investment
3	06/02/2023	Resolution 11/NQ-CP in 2023 on government guarantee limits and loan limit issued by the Government
4	06/02/2023	Decision 51/QD-TTg in 2023 on implement of the forecast of investment in foreign capital sources of the central budget in 2022 to the Ministry of Transport issued by the Prime Minister
COMMERCIAL		
5	03/02/2023	Decision 02/2023/QD-TTg on the price frame of the average electricity retail price issued by the Prime Minister
EXPORT/ IMPORT		
6	30/1/2023	Official Dispatch 401/BCT-KHCN in 2023 on import of used machinery and equipment under Article 9 Decision 18/2019/QD-TTg issued by the Ministry of Industry and Trade
MONEY AND BANKING		
7	30/1/2023	Decision 127/QD-NHNN in 2023 on announcement of the list of legal documents that will cease to be effective in whole or in part in the field of State management of the State Bank of Vietnam in 2022



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LABOUR - SALARY

1	30/1/2023	Official Dispatch 388/BCT-ATMT guiding the implementation of the month of action on occupational safety and health in 2023 issued by the Ministry of Industry and Trade
2	15/02/2023	Decree 05/2023/ND-CP amending Decree 56/2011/ND-CP stipulating preferential allowances according to the job title for civil servants and public employees working at public health facilities