



LAC DUY & ASSOCIATES

NEWSLETTER

05/2023



SUMMARY OF NEW POINTS OF DECREE NO. 10/2023/ND- CP GUIDING THE LAND LAW

CASE LAW NO. 62/2023/AL ABOUT THE TIME TO BEGIN TO PERFORM THE OBLIGATION TO SUPPORT MINOR CHILDREN IN THE DISPUTES ON THE DETERMINATION OF PARENTS



PUBLISHED BY LAC DUY & ASSOCIATES

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05/2023


Dear Clients,

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

- Summary of new points of Decree No. 10/2023/ND-CP guiding the land law
- Case law No. 62/2023/AL about the time to begin to perform the obligation to support minor children in the disputes on the determination of parents
- Legal Document in 05/2023



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SUMMARY OF NEW POINTS OF DECREE NO. 10/2023/ND-CP GUIDING THE LAND LAW

On 3rd April, 2023, the Government promulgated the Decree No. 10/2023/ND-CP amending and supplementing some provisions of Decrees instructing the implementation of the Land Law, effective from 20/05/2023 (“**Decree No. 10/2023**”). The promulgation of the Decree is a response to many expectations of the business community, especially real estate project investors. This is considered as a solution to address immediate and short-term difficulties in the implementation of the land law before proceeding to the comprehensive solution of promulgating the amended Land Law.

1. New regulations on Certificates of land use rights (red books) and Certificates of ownership of house and other land-attached assets (pink books)

1.1. Procedures for granting a red book via the e-service portal

According to Clause 7, Article 1, when Decree No. 10/2023 takes effect, people and enterprises can carry out registration of granting certification procedures in the electronic environment (via the Public Service Portal), accordingly:

(i) In case failing to issue decisions on land-related applications within the prescribed time limits due to the need of inspection, verification and clarification or other causes, the agency receiving and handling land-related applications must clearly state the reason and send a notice to the applicants through one of the following ways:

- Document;
- The public service portal;
- SMS.

CHÍNH PHỦ

Số: 10/2023/ND-CP

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

Hà Nội, ngày 03 tháng 4 năm 2023

NGHỊ ĐỊNH

Sửa đổi, bổ sung một số điều của các nghị định
hướng dẫn thi hành Luật Đất đai

Căn cứ Luật Tổ chức Chính phủ ngày 19 tháng 6 năm 2015; 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 Đất đai ngày 29 tháng 11 năm 2013;

Căn cứ Luật Đầu giá tài sản ngày 17 tháng 11 năm 2016;

Căn cứ Luật Đầu tư ngày 17 tháng 6 năm 2020;



(ii) Land users and land-attached property owners may perform financial obligations directly or online via the payment solution embedded into the Public Service Portal;

(iii) The applicant shall submit the original Certificate and enclosing other documents as legally required as requested by the application receiving agency or the application handling agency after the applicant has fulfilled financial obligations;

(iv) Decisions on applications for registration of land and other land-attached property; for issuance, replacement or reissuance of Certificates shall be issued at offices of land-related application receiving agencies or by public post, or to the given addresses of recipients.

Thus, people can carry out the procedures for applying a red book online and receive the result by post without going to the administrative agency for such procedures. This is a breakthrough in administrative reform, especially in the field of land, often causes difficulties for people. This saves time and effort for people, contributing to reducing input costs for production and business activities.

Besides the advantages, there are also challenges for state management agencies. Firstly, it requires investment capital to build the digital resource and infrastructure system of connecting internet and equipment, leading to localities in remote and difficult areas must rely on capital from the central government. Secondly, there must be a unified software system for integration among localities across the country and training must be organized for staff in this procedure. Thirdly, there must be a technical security solution to avoid the attacks of hackers. That is a matter of concern when this Decree takes effect.

1.2. Amendment of authority to issuance red book

Clause 5, Article 1 of Decree No. 10/2023 amending and supplementing Article 37 of Decree No. 43/2014/ND-CP relating to the authority to grant red books in the case specified in Clause 4, Article 95; Clause 3, Article 105 of the Land Law is as follows:

For administrative subdivisions where Land Registration Offices have set up, Certificates or endorsement of changes in the existing Certificates may be granted, subject to the following regulations:

(i) Land Registration Office: For religious organizations and institutions; overseas Vietnamese executing



investment projects; foreign entities and persons; foreign-invested enterprises;

(ii) Branch of Land Registration Office or Land Registration Office: For family households, individuals, residential community and overseas Vietnamese permitted to own houses attached to land use rights in Vietnam.

Land Registration Offices and Branches of Land Registration Offices are authorized to use their own seals affixed to grant Certificates or endorsement of changes in the existing Certificates.

Thus, Decree No. 10/2023 has amended the authority to grant red books and changed the Certificate in the way of creating favorable conditions for people in carrying out these administrative procedures (made in Land Registration Office without going to the Department of Natural Resources and Environment as prescribed in Clause 1, Article 37 of Decree No. 43/2014/ND-CP as amended by Decree No. 01/2017/ND-CP).

1.3. Official regulations on the issuance of pink books for construction works used for tourist accommodation purposes if built on commercial - service land

Clause 4, Article 1 of Decree No. 10/2023 of the Government officially allows owners of construction projects developed to serve travel accommodation purposes on commercial or service land to be granted certificates.

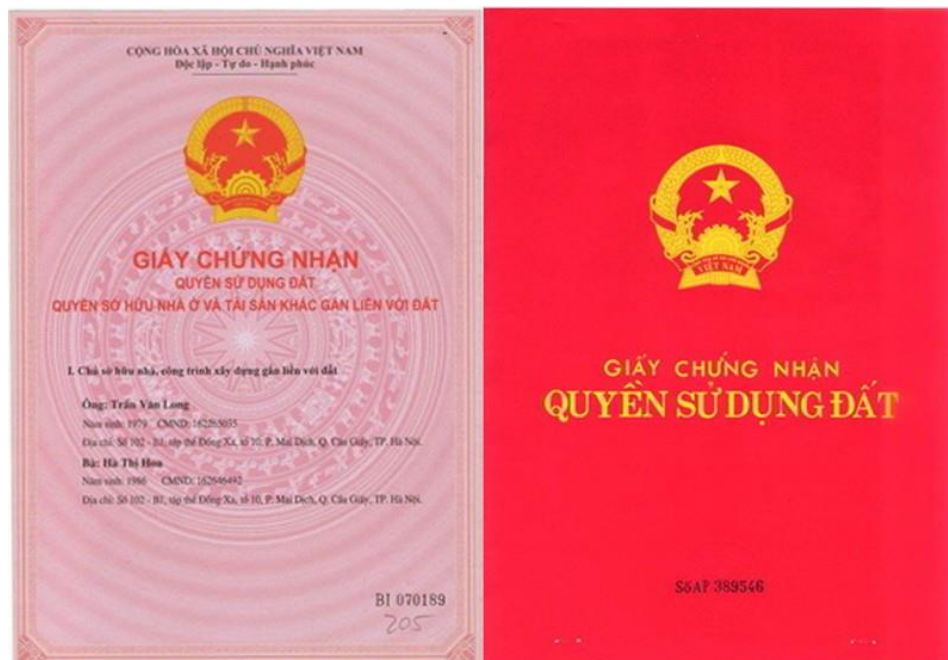
The construction projects developed to serve travel accommodation purposes that can be mentioned include: condohotel, shophouse, officetel, resort villas,... and other projects. In order to be granted a certificate of ownership of a construction work attached to land (pink book), this construction must satisfy:

- (i) Conditions of construction law;
- (ii) The conditions of the land laws;
- (iii) Legal conditions on real estate business.

According to statistics of the Ho Chi Minh City Real Estate Association (HoREA), by the end of 2022, there



are approximately 83,000 condotel apartments waiting for pink books, most of them are in resorts, using commercial and service land, having lease terms of 50 - 70 years. In the segment of officetel and shophouse, there are currently 10,019 units in Ho Chi Minh City that have not yet been issued certificates¹. That is the reason why investors leave this segment, causing apartment prices to plummet, leading to the quiet from the market of this type of real estate. Since late 2017, the legal issues of resort real estate types have been discussed at many conferences as well as National Assembly forums. The most concern of investors is the ownership period and the possibility to be granted certificates of these apartments and villas. As such, the promulgation of the Decree is considered to have a positive impact on travel projects, resorts, and other non-residential real estate projects. As a basis for affirming the legality of non-residential real estate projects, giving investors confidence before investing in the project. This is considered as a sign of prosperity as well as an opportunity to expand for the real estate market. This regulation will remove the legal “bottlenecks” for businesses and buyers and other projects developed to serve travel accommodation purposes on commercial or service land.



2. Supplementing some regulations on administrative procedures on land

2.1. Supplementing conditions of permission to repurpose rice, protection forest or special-use forest land with the aim of executing investment projects



According to current regulations, the condition for changing the use purpose of rice, protection forest or special-use forest land with the aim of executing investment projects is there is the approval of the National Assembly or the Prime Minister or provincial People's Council (depending on the size and the nature of each project). The corresponding processes and procedures are guided in Article 68 of Decree No. 43/2014/ND-CP (amended and supplemented by Decree No. 148/2020/ND-CP). The criteria for the competent authorities to consider and decide whether to allow the change of land use purpose or not are not clearly guided but regulated in many different legal documents (law on investment, land on law, environmental protection law, etc.). In order to fix this problem, Clause 9 Article 1 of Decree No. 10/2023 supplements Article 68a of Decree 43/2014/ND-CP on conditions and criteria for permission to repurpose rice, protection forest or special-use forest land with the aim of executing investment projects, including:

- (i) Must have certificates of investment registration or approved investment policies;
- (ii) Must be consistent with the district-level land use planning schemes, and be on the list of district-level annual land use plans that have been approved;
- (iii) There are compensatory afforestation plans or written notifications of discharge of obligations to pay for compensatory afforestation in accordance with forestry law; or there are topsoil use plans and written documents on discharge of obligations to pay for protection and development of rice land in according to relevant regulations;
- (iv) There is preliminary environmental impact assessment or environmental impact assessment conducted under law on environmental protection (if any).

2.2. Supplementing the land revocation procedures applied in case of terminating investment projects as prescribed in investment regulations

Decree No. 10/2023 adds Article 65a to Decree No. 43/2014/ND-CP stipulating the land revocation processes and procedures applied in case of terminating investment projects as prescribed in laws on investment as follows:

- (i) The investment registration agency or investor sends the written notice of termination of the investment project using land as defined in laws on investment to the natural resource and environment authority having



jurisdiction over the project land, except as stipulated in point d of clause 2 of Article 48 in the Law on Investment;

(ii) Upon receipt of that written notification of termination of the investment project, the natural resource and environment authority shall have the duty to check and determine whether land of that investment project is recovered;

(iii) Land recovery and implementation of land recovery decisions shall be subject to Article 15b and clause 2, 3 and 4 of Article 66 in Decree No. 43/2014/ND-CP.

2.3. Detailed regulations on auction land conditions and land auction participants

Clause 3, Article 1 of Decree No. 10/2023 stipulates more closely and transparently the conditions on auction participants and auctioned land in case the State’s assigned land subject to the land use levy, or leased land. Some salient features are as follows:

| Conditions for land auction participants | Conditions for land to be auctioned for use rights |
|---|---|
| <p>(i) Must pay a deposit which is 20% of total value calculated at the starting price of the parcel or the complex of parcels at auction before coming up for the auction of land use right if it is an organization;</p> <p>(ii) Not be prohibited from attending the auction;</p> <p>(iii) Cross-ownership companies are not allowed to participate in the auction but only one company can participate.</p> | <p>(i) The starting price at which the right to use such land is auctioned is decided by a competent state authority;</p> <p>(ii) The cadastral map in 1:500 scale of the parcel approval from a competent authority.</p> |

The remarkable point here is that Decree No. 10/2023 has fixed the deposit when participating in land auction at 20% of the value of the land plot, the land plot is calculated at the starting price for auction, instead of the a threshold of 5% to 20% from the previous regulation, to prevent bid deposit evasion when participating in



land auctions. In case the auction winner does not pay or underpays the successful bid as stated in point d of clause 5 of Article 68 Decree No. 43/2014/ND-CP, the auction winner shall not be entitled to their deposit refund. If the auction winner overpays the required deposit, they shall be entitled to the refund of the overpayment in accordance with regulations.

Regarding the issue that before the auction of land use rights, there must be a detailed planning 1/500: The detailed planning 1/500 will clarify and provide planning criteria (about construction works, scale, floor area, height, construction density, land use coefficient, infrastructure connection, fire protection, ...) are sufficient and specific to estimate total hypothetical development revenue of a real estate in the most accurate way, thereby determining the specific land price according to the "closest" surplus method (the essence of the surplus method is the method of valuing land by taking the assumed total development revenue of the property minus the take the total assumed development cost according to the planning option). Regulation on this issue is necessary because after having detailed planning, there is a basis for determining the total investment, determining the minimum capital of auction participants, making an auction plan and determining the price. starting point for auction of land use rights. This is to avoid conflicts and overlaps with relevant legal documents, to avoid the situation of suspended planning...





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05/2023

3. Some transitional provisions in Article 4 of Decree No. 10/2023

3.1. If Certificates that have been signed by competent authorities before the effective date of this Decree 20th May 2023 have not yet been issued to land users or owners of land-attached property, Certificate-related procedures shall be continued in accordance with regulations in force before 20/5/2023.

3.2. If application dossiers for participation in land use right auctions have been received before May 20, 2023, relevant laws remaining in force on the date of receipt of these dossiers shall continue to govern.

3.3. If dossiers on adjustment of the decision on recovery, assignment, lease or permitted repurposing of land that the Prime Minister issued before July 1, 2004 have been received, regulations in force before 20/5/2023.

¹ <https://vnexpress.net/hon-10-000-can-officetel-shophouse-khong-duoc-cap-so-hong-4587081.html?gidzl=Rnhp4o9v4J5f3VOLBsKJD68DyXSoRq4pALQcGsDeGMSeKACMOZn4PIIm2eqStQKSmVWkZ531-MjOI8tGTCm>



CASE LAW NO. 62/2023/AL ABOUT THE TIME TO BEGIN TO PERFORM THE OBLIGATION TO SUPPORT MINOR CHILDREN IN THE DISPUTES ON THE DETERMINATION OF PARENTS

Upon divorce, the child support obligation is a legal obligation that parents must perform towards a child if the child is a minor or an adult with no working capacity and no property to support himself/herself. However, in practice, there are still many obstacles in applying the law, especially in determining when to start performing child support obligations. To solve this problem, recently Case law No. 62/2023/AL, which was issued by the Chief Justice of the Supreme People's Court on February 24, 2023, has made assessments and instructions in determining the time to begin performing the obligation to support minor children when parents separate, as follows:

- 1. Source of the case law:** Appellate Judgment No. 07/2018/HN-PT dated March 22, 2018 of the People's Court of Binh Phuoc Province on the marriage and family case "Identification of father for the child and child support obligation" between the plaintiff Ms. Le Thi D and the defendant, Mr. Trinh Vinh C.
- 2. Location of the case law's content:** Paragraph 4, section "Assessment of the Court".
- 3. Summary of the case law's content**

–**The case law situation:** After the child was born, the mother initiated a lawsuit to request identifying the defendant as the child's biological father and requiring the defendant to perform the support obligation for the minor child. The court determined the defendant was the biological father of that child and was obliged to support the child.

– **Legal solution:** In this case, the Court determined that the period of support for a minor child was



calculated from the time the child was born.

4. Provisions of law related to the case law: Article 3.24, Article 107, Article 110 Law on Marriage and Family 2014.

5. Summary of the case law

Ms. Le Thi D and Mr. Trinh Vinh C had been living together voluntarily since 2013, and had a wedding ceremony but did not register their marriage. In the period living together, they had a child, Le Gia P (born in 2014). Since giving birth, Ms. D has raised her son alone due to a conflict between them. In 2017, because of not living together and the climax of the conflict, the People's Court of Loc Ninh District declared non-recognition of their spousal relationship. Ms. D sued to request the Court to determine that P is the common child of her and Mr. C; and force Mr. C to provide child support of VND1,500,000 per month, from the time the child was born until he is fully 18 years old. Mr. C only agreed to VND 1,300,000 per month and from the first month after Ms. D filed the lawsuit until the child becomes an adult.

The first-instance trial identified P is the common child of of Ms. D and Mr. C and assigned to Ms. D the right to care for and raise the child until he is an adult. Regarding child support, the court forced Mr. C to support VND 1,500,000 per month from October 12, 2017.

On November 27, 2017, the plaintiff filed an appeal requesting to partially amend the first-instance judgment, forcing the defendant to pay child support from the date of birth until the date of the lawsuit which was October 2017 with the total amount of VND 67,500,000.

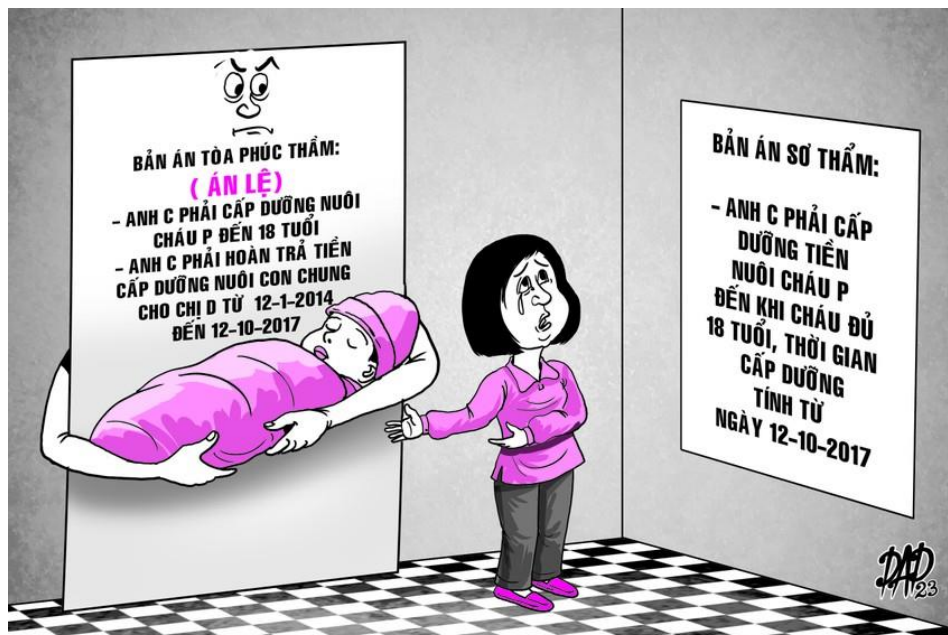
In the appellate judgment No. 07/2018/HN-PT, the People's Court of Binh Phuoc Province stated that the determination of the time to start support obligation is as follows: *“Considering the provisions of Articles 82 and 83; Clause 24, Article 3, Articles 107, 110, Law on Marriage and Family 2014, Article 281 of the Civil Code 2005, the parent's support obligation towards a minor child arises from the time that the child was born. Child support is a right and an obligation of parents who do not directly raise children. Le Gia P is the child of Ms. Le Thi D and Mr. Trinh Vinh C, but from the time P was born, January 12, 2014 until October 12, 2017 (the date Ms. D filed the petition for support), Ms. D took care of, raised, and paid the child-rearing expenses by herself. Thus, the first-instance Court did not accept the request to force Mr. C to refund the expenses that Ms. D spent to raise P from the date of birth on January 12, 2014 until October*



12, 2017 is inappropriate, affecting the legal rights and benefits of Ms. D. Therefore, it is necessary to accept part of Ms. D's appeal, forcing Mr. C to refund Ms. D one half of the amount of VND 2,000,000 per month that Ms. D has spent on raising children from January 12, 2014 until October 12, 2017 as follows: 45 months X VND 1,000,000 /month = VND 45,000,000”.

6. Comments on the case law

In this case, Articles 82, Article 110 of the Law on Marriage and Family 2014 only stipulate the support obligation for parents who do not directly raise children, but there is no clear regulations on when to start the obligation in case the parents do not register their marriage. The problem in case is that there is a gap of three years from the child's birth and the time when the court indentified the father for the child. Although the parents do not register their marriage, and the father does not live with the child, but at the time the child was born, paternity is already established, so it is not fair for the mother to determine the start date of the support obligation as from the time of the trial. Therefore, determining the period of support from the time the child was born is completely appropriate, this viewpoint both protects the rights of the mother and ensures the fulfilment of the father's obligations.



(Illustrated image, Image source: Ho Chi Minh City Law Online Newspaper)



LEGAL DOCUMENT 05/2023

| NO. | EFFECTIVE DAY | NAME |
|-----|---------------|------|
|-----|---------------|------|

TRANSPORTATION

| | | |
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| 1. | 15/6/2023 | Circular No. 05/2023/TT-BGTVT amending the Circular related to the road transport, road transport support services, vehicles and drivers issued by the Minister of Transport |
| 2. | 27/4/2023 | Decision No. 506/QD-BGTVT, 2023 announcing the list of Inland Container Depot Vietnam issued by the Minister of Transport |

HEALTH

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|----|-----------|---|
| 1. | 20/6/2023 | Circular No. 09/2023/TT-BYT amending Circular No. 14/2013/TT-BYT guiding health examination issued by the Minister of Health |
| 2. | 09/5/2023 | Decision No. 310/QD-QLD announcing the List of drugs with proven bioequivalence Phase 1 - 2023 issued by the Director of the Drug Administration |
| 3. | 11/5/2023 | Circular No. 10/2023/TT-BYT amending Circular No. 19/2021/TT-BYT regulating the form of documents and reports on the implementation of Decree No. 98/2021/ND-CP on the management of medical equipment issued by the Ministry of Health |

MICROINSURANCE

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| 1. | 05/5/2023 | Decree No. 21/2023/ND-CP on microinsurance |
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INDUSTRY AND TRADE

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| 1. | 04/5/2023 | Decision No. 1062/QD-BCT, 2023 regulating Electricity prices issued by the Minister of Industry and trade |
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GOVERNMENT

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| 1. | 01/12/2023 | Decision No. 11/2023/QD-TTg regulating about range of values of which transactions are subject to mandatory reporting issued by the Prime Minister |
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| 2. | 20/6/2023 | Decree No. 18/2023/ND-CP amendments to the Government's Decree No. 40/2018/ND-CP dated march 12, 2018 on management of multi-level marketing business |
| 3. | 04/5/2023 | Decree No. 20/2023/ND-CP amendments and supplements to several articles of Government's Decree No. 114/2021/ND-CP dated december 16, 2021, regarding management and use of Official Development Assistance (ODA) or soft loans from foreign donors |
| 4. | 06/5/2023 | Resolution No. 73/NQ-CP, 2023 on authorization to decide on specific land prices issued by the Government |
| 5. | 10/5/2023 | Decision No. 486/QD-TTg, 2023 on preferential lending interest rates at the Bank for Social Policies applicable to loans with outstanding balances for purchase, lease-purchase of social housing, new construction or renovation repair of houses for living issued by the Prime Minister |

ANTI-MONEY LAUNDERING LAW

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| 1. | 28/4/2023 | Decree No. 19/2023/NĐ-CP elaborating on several articles of Anti-money laundering law |
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HOME AFFAIRS

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| 1. | 05/5/2023 | Circular No. 06/2023/TT-BNV regulating on updating, using and exploiting data and information of the National Database on cadres, civil servants and public employees in state agencies issued by the Minister of Home Affairs |
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STATE AUDIT

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| 1. | 28/4/2023 | Decision No. 06/2023/QĐ-KTNN on repealing Decision No. 02/2019/QĐ-KTNN on guiding the audit approach based on risk assessment and determination of materiality in the audit of Bank financial statements issued by the State Auditor General |
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INTELLECTUAL PROPERTY

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|----|------------|---|
| 1. | 26/04/2023 | Decree 17/2023/ND-CP, 2023 guiding the Law on Intellectual Property on copyright and related rights |
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