



LAC DUY & ASSOCIATES

NEWSLETTER

06/2023

**HOW TO HANDLE VIOLATIONS CAUSED BY
SENIOR EXECUTIVES TO AVOID CRISIS**

**DECREE 17/2023/ND-CP REGARDING THE
APPLICATION OF CIVIL, ADMINISTRATIVE,
AND CRIMINAL MEASURES TO PROTECT
COPYRIGHTS AND RELATED RIGHTS**

**NEW POINTS OF CIRCULAR 02/2023
REGARDING BUSINESS REGISTRATION**

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Dear Clients,

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

- How to handle violations caused by senior executives to avoid crisis
- Decree 17/2023/ND-CP regarding the application of civil, administrative, and criminal measures to protect copyrights and related rights
- New points of Circular 02/2023 regarding business registration
- Legal Document in 06/2023





How to handle violations caused by senior executives to avoid crisis



By Quỳnh Chi

The article was published on The Leader dated 11/06/2023

When a senior executive commits violation, the extent and scale of damage to the enterprise are often much severe than those caused by their subordinates' violations. Without understanding the law and not taking measures to prevent and deal with the problem in a timely manner, a crisis is a possible consequence.

Winner – Loser

In labor cases, it is common to find judgments favoring the employees rather than those on the side of the employers. This is the reality shared by Ms. Lac Thi Tu Duy, the Managing Partner Lac Duy & Associates, after many years of participating in labour-related lawsuits.

In particular, when a senior executive commits violation, the extent and scale of damage to the enterprise are often much severe than those caused by their subordinates' violations. Without understanding the law and not taking measures to prevent and deal with the problem in a timely manner, a crisis is a possible consequence.

Ms. Duy recounted that a long time ago, the general director of a company in Tan Thuan Export Processing Zone, whose owner was in Japan, submitted a resignation letter and left the company peacefully. Two years later, the regional audit of this company discovered errors in the financial reports when the director was in office, causing a loss of nearly 6 billion dong.

However, the Labour Code 2012 applied at that time only allowed a maximum of one year to initiate a lawsuit and the People's Court of District 5 did not accept the petition because the statute of limitations had expired. The enterprise continued to complain to the People's Court of Ho Chi Minh City but the outcome was just the same.



Another case that Ms. Duy was in charge in 2017 involving a Japanese director who ran a business in Vietnam under a labour contract signed with the company.

While in office, he hired foreign workers without work permits, causing the business to be fined 60 million dong by the Department of Labour, War Invalids and Social Affairs. The enterprise was also fined 5 million dong by the Department of Transport for hiring a driver without a labour contract. The court accepted the company's claim and the Japanese director was obliged to pay the sum that the company had to pay.

A senior executive may have many violations that can cause harm to the enterprise such as violations of conflicts of interest, favoring close relationship with subordinates, lack of responsibility causing the enterprise to suffer administrative sanctions... These behaviours can cause effects enterprises and violate the sustainable development of enterprises if they are not prevented and handled promptly.



Making senior executives accountable for violation

Relating to the liability of senior executives for violations, Ms. Duy emphasized three aspects: labour, civil and criminal responsibility.

Regarding the group of violations of conflicts of interest, in terms of labor relations, Ms. Duy said that it is necessary to take measures to prevent violations in a timely manner through the drafting of regulations to bind responsibility of senior executives through internal regulations and policies of the enterprise and in the labour contracts, such as the regulations on dealing with customers when being offered a commission. This will help ensure the interests of the enterprise when there are conflicts with senior executives.

The prevention stage will form a solid foundation for the violator handling phase. However, in case the enterprises have not yet established these bases, a senior executive can still be held responsible based on the law, particularly Article 71, Article 83 and Article 165 of the Law on Enterprise on company management.

First, depending on the behavior, the company can proactively apply disciplinary measures such as reprimand, deferment of pay rise for up to 6 months and demotion. Enterprises are allowed to proactively develop procedures for disciplining. In



the severe form of discipline which is dismissal, enterprises need to be careful in identifying violations of senior executives to avoid illegal dismissal, must comply with Article 125 and Article 126 of the Labour Code.

Accordingly, enterprises can dismiss employees when they commit acts which are seriously detrimental or pose a seriously detrimental threat to the assets or interests of the employer.

Dismissal can also be applied to the act of disclosing technological or business secrets or infringing the intellectual property rights of enterprises. However, Ms. Duy emphasized the importance of confidentiality agreements during the prevention stage. This agreement can be expressed as a clause in the labour contract, a specific regulation or an agreement separate from the labour contract. When signing such agreement, the duration of binding and compensation when violating are important.

According to Ms. Duy, in the past, when suing senior executives for disclosing technological or business secrets or infringing the intellectual property rights of enterprises, the courts often focused on the damage to the business while calculating is extremely difficult because there are no specific numbers like the case of the Japanese director who caused a loss of 65 million dong above. Employers' position is often weak due to

However, in a case that Ms. Duy was the lawyer in March 2023 which was successful in the first instance and appellate courts when convincing the trial panel not to look into the damages proved but through numbers related to the establishment of a company by the senior executive, taking customers, suppliers and employees of the enterprise. This business has successfully obtained a favorable judgment related to its decision to dismiss the personnel.

Managing Partner of Lac Duy & Associates also noted that do not rush to sue when senior executives still have a labour relationship because it may be against the law. A general director while still in an employment relationship with a company in Da Nang was found to commit series of wrongdoings: buying goods at a higher price than the market price, selling goods of the company at a lower price than the market price, calculating interest, late payment interest to suppliers and payment of bonuses not in accordance with the labour contracts. The enterprise won at the first instance court, but when the dispute went to the appellate trial, the case was suspended. The reason is that this company was not eligible to sue because it had not performed the stage of determination of compensation under Clause 3, Article 130 of the Labour Code.

Thus, when handling this group of acts, enterprises need to follow the procedures for the determination



of compensation according to Article 130 and dismissal for disciplinary reasons according to Article 125 of the Labour Code if the Senior Employee is still in the employment relationship. Enterprises only handle the violations according to the provisions of civil law and other relevant laws after the labour contract has been terminated.

“Although if there is no agreement on confidentiality with senior executives, Article 71, Article 83 and Article 165 of the Law on Enterprise on corporate management can also be applied to hold them accountable, it is perfect that the enterprise should have a contractual agreement on management responsibilities with the senior position group because the confidentiality of information is too important,” said Ms. Duy.

Considering violations of conflict of interest from criminal aspect, Ms. Duy listed three crimes that still apply to non-state enterprises.

First, the crime of abuse of trust to appropriate property. For example, it is easier for a bank leader to set up a backyard company to get a loan from that bank, thanks to the easing of many conditions. If the backyard company fails to pay the money when it is due, there is an act of escape, etc., the crime of abuse of trust to appropriate property may be considered with the penalty of up to 20 years in prison.

The second crime is embezzlement under Article 353 of the Criminal Code. The third is the crime of taking bribes under Article 354 of the Criminal Code. For both of these crimes, the most severe punishment frame can be up to the death penalty.

Regarding the group of favour behaviour due to having a romantic relationship/other relationship with subordinate employees, under labour aspect, Ms. Duy emphasized about clearly stipulating in the labour regulations and/or labour contracts. In particular, senior executives are required to provide full information about the above relationships as well as annual updates (if any).

Similarly, *for irresponsible management causing enterprises to be administratively sanctioned by authorities,* Ms. Duy noted the prevention stage is necessary with provisions in the labour regulations; internal regulations and policies of the enterprise and labour contracts.

At the stage of handling these two groups of behaviours, enterprises should focus on the following forms: reprimand, demotion or deferment of pay rise for up to 6 months.





Under the civil aspect, the enterprise considers the damage caused by these acts and bases on the liability agreement, the company's charter and the responsibility of the managements specified in Article 71, Article 83, Article 165 of the Law on Enterprise 2020 to decide the compensation requirement (if any).

The dismissal only applies if that personnel commits acts which are seriously detrimental or pose seriously detrimental threat to the assets or interests of the enterprise; discloses technological or business secrets or infringes the intellectual property rights of the enterprises.

Ms. Duy noted that when handling senior executive crisis, the acts must be extremely careful, quick and concise. Instead of focusing on many procedures like normal personnel, which can last for months, businesses need to consider to immediately cut off the impact of the personnel to stabilize employees, customers, and suppliers.

When unilaterally terminating the labour relationship with mid-level employees or below, most enterprises find solutions to handle in accordance with the law, but with leaders violating the law, the compensation liability is important. Note to those who work as human resources (HR) of enterprises with a senior executive committing violation, Ms. Duy emphasized that it is necessary to have the clear instructions from competent leaders about their desire to handle the case in the direction of civil compensation or criminal liability.

When enterprises have to deal with senior executives who commit violations, it may be necessary to have documents carefully drafted and notified to stabilize employees in the enterprise, other documents sent to suppliers to confirm the business is fine and another announcement to the customers for the same purposes.





DECREE 17/2023/ND-CP REGARDING THE APPLICATION OF CIVIL, ADMINISTRATIVE, AND CRIMINAL MEASURES TO PROTECT COPYRIGHTS AND RELATED RIGHTS

*On April 26 2023, the Government issued Decree 17/2023/ND-CP elaborating some articles and measures for the implementation of the Law on Intellectual Property regarding copyrights and related rights (“**Decree 17**”). Besides elaborating the Law on Intellectual Property, Decree 17 regulates the application of civil, administrative, and criminal measures to protect copyrights and related rights.*

1. General provisions on protecting copyrights, related rights

According to clause 1 Article 56 Decree 17, copyright holders and related rights holders have the direct authority or may delegate authority to collective management organizations of authors' rights, related rights, or other organizations and individuals as prescribed by law, to exercise and protect their copyright and related rights. The authorized party is responsible for providing public information for organizations and individuals to exploit and use the works, performances, sound recordings, audio-visual recordings, and broadcasting programs in accordance with the agreed exploitation and use terms.

Accordingly, if organizations, individuals illegally exploit and use copyrights, related rights, the copyright holders, performers, related rights holders or authorized organizations, individuals have right to self-defence by notifying to infringing organizations, individuals in writing¹.

The notice has to have information about:

- Name of authors, copyright holders, performers, related right holders, and authorized organizations, individuals (if any);
- The basis of copyright and related rights, Certificate of registered copyright, Certificate of registered related rights (if any);
- Scope and term of copyright, related right protection; infringement of copyright, related rights;

- Request for immediate termination of infringement; time limit for termination of infringement;
- Request for royalty payment, damages (if any).



2. The application of civil measures to protect copyrights, related rights

Pursuant to clause 1 Article 57 Decree 17, if organizations, individuals who infringe copyrights, related rights of other organizations, individuals, depending on the nature and extent of the infringement, may be subject to civil measures as provided in Part V of the Law on Intellectual Property and the following provisions:

- Civil measures shall be taken against infringement at request of copyright holders, related right holders or organizations, individuals suffering from damage as a result of the infringement even when the infringement was or is being met with administrative or criminal measures.
- Procedures for requesting the adoption of civil measures, entitlement, procedures for adopting civil measures shall comply with laws on civil or arbitration proceedings.

Indeed, regardless of whether the infringing behaviour is being dealt with administrative measures or



criminal measures, the holders of copyrights and related rights have the right to request the application of civil measures.

3. The application of administrative measures to protect copyrights, related rights

Based on clause 2 Article 57 of Decree 17, the administrative measures can be applied to deal with infringement following the request of: (i) the holders of copyrights, related rights, organizations, individuals who suffer damages by infringements; (ii) the organizations, individuals who discover the infringements or (iii) competent authorities proactively discovering the infringements. The infringements include:

- Copyrights infringement causes damages to the authors, holders, consumers or society;
- Producing, importing, transporting or trading counterfeit goods related to intellectual property as stipulated in Article 213 of this Law, or entrusting others to carry out such acts;
- Producing, importing, transporting, trading or possessing counterfeit labels, tags, or other items bearing counterfeit trademarks or misleading geographical indications, or entrusting others to carry out such acts.

Forms, penalties, jurisdiction, and procedures for sanctioning acts of infringement and measures to remedy the consequences shall comply with the provisions of the Law on Intellectual Property and the laws on administrative sanctions in the field of copyrights and related rights.

4. The application of criminal measures to protect copyrights, related rights

Based on clause 3 Article 57 of Decree 17, the criminal measures can be applied to deal with infringement in case that action meets the elements of a criminal offense as defined by the provisions of the Criminal Code. The maximum penalty for individuals can be up to 300,000,000 VND (Three hundred million Vietnamese dong) or non-custodial reform for up to 03 years, while for legal entities, it can be up to 1,000,000,000 VND (One billion Vietnamese dong). The jurisdiction, procedures, and formalities for applying criminal measures shall comply with the provisions of the laws on criminal proceedings.

¹ Article 58 of the Decree 17



NEW POINTS OF CIRCULAR 02/2023 REGARDING BUSINESS REGISTRATION

On April 18 2023, the Minister of Planning and Investment issued Circular 02/2023/TT-BKHĐT amending Circular 01/2021/TT-BKHĐT dated March 16 2021 guiding business registration (“**Circular 02**”). Circular 02 has amended provisions about household business registration and will take effect from July 01 2023, included following main provisions:

1. Supplementing and clarifying definitions related to household business

Circular 02 addresses some definitions as: “household business registration”, “Certification of household business registration”, “household business registration information system”. These are basic definition serving for online household business registration as well as facilitating the integration of business registration and tax registration for household businesses.

Specifically, in Article 1a of the Circular 02, household business registration means household

business performs business registration and tax registration with business registration authority of districts where head office is located, including registration for establishment of household business, registration for revision of business household registration, and other registration, notification obligations.

Moreover, Circular 02 has introduced the definition of household business code. Accordingly, household business will have 2 codes recorded on the Certificate of Household Business Registration. One is Household business registration code (issued in accordance with the



provisions of Decree 01/2021/ND-CP) and the other is Household business code. The Household Business Code is a numerical sequence automatically generated by the Tax Registration Application System and transmitted to the household business registration information system. This code serves as both the household business code and the tax identification number for the household business.

2. Supplementing regulations on the process of integrating procedures for business registration and tax registration for household businesses

Circular 02 introduces a new method for individuals establishing household businesses to register their businesses. In addition to the traditional method of submitting documents and receiving results directly at the Business Registration Office, there is now an online registration option provided under Article 5e of this Circular. Instead of having to personally visit the district-level Business Registration Office to submit and receive results for household business registration, individuals establishing household businesses can now register and receive online results from the comfort of their own homes, similar to the registration process for enterprises and cooperatives. This new method aims to save time and effort for household business owners.

According to Article 5g of Circular 02, the online registration dossier for household businesses shall include the documents specified in Decree No. 01/2021/ND-CP and shall be presented in electronic form. These documents may include: (i) Business registration application form, (ii) Legal documents of the individual who is the head of the household business or family members registering the household business, in case the family members register the household business, (iii) Certified copy of the family meeting minutes regarding the establishment of the household business, in case the family members register the household business, ...

3. Supplementing regulations on the designated location for receiving notifications of business premises activities of household businesses

A household business can operate at multiple locations, but it must select one location as its registered business address and notify the tax authority and market management authority where it conducts business activities at the remaining locations. According to the regulations specified in point h, clause 3 of Article 5 of Circular No. 105/2020/TT-BTC dated December 3, 2020, issued by the Minister of Finance providing guidelines on tax registration, the business location of the household business is assigned a tax identification number and subject to tax management.



Based on the aforementioned regulations and the proposal of the General Department of Taxation - Ministry of Finance, in order to coordinate the state management of business locations of household businesses, Circular 02 has supplemented provisions regarding the place for receiving notifications of business location activities by household businesses. According to Article 5d of Circular 02, the district-level business registration authority is the focal point for receiving notifications of business locations from household businesses. The received information is then transmitted to the tax authority through the household business registration information system. The tax authority receives and returns the notification of tax identification number and the tax authority directly responsible for managing the business location to the business registration authority for delivery to the household business.

4. Supplementing guidelines on recording the business sector and occupation of a household business

The recording of the business sector and occupation of a household business still complies with the provisions of clause 1 Article 89 of Decree No. 01/2021/ND-CP. However, based on the proposal of the General Department of Taxation - Ministry of Finance, Circular 02 provides specific guidelines on recording the

primary business sector and occupation of the household business to serve the state management of household businesses. Accordingly, when establishing or amending and supplementing the business sector and occupation, the founder of the household business or the household business itself selects a level-four economic sector in the Vietnamese Economic Sector System as the primary business sector and occupation. The district-level business registration authority is responsible for guiding, verifying, and recording the primary business sector and occupation for the household business.

5. Supplementing methods of payment for business registration fees for household businesses

Decree 02/2023/TT-BKHDT introduced additional provisions regarding the timing and methods of payment for household business registration fees. In accordance with Article 5k of this Decree, the business registration fee is to be paid at the time of submitting the household business registration application. The fee can be paid directly at the receiving department or transferred to the account of the district-level business registration authority, or through online payment services available on the National Public Service Portal. The household business registration fee is non-refundable in the event that the household business registration is not granted.



6. Amending, supplementing form system being used in household business registration

Decree 02/2023/TT-BKHDT introduced 23 forms, which are issued regarding the registration of household businesses under the interconnection mechanism. The modifications and additions to the forms are necessary to ensure the comprehensive and consistent collection of information for business registration and tax registration purposes of household businesses, thereby meeting the requirements for interconnection of this entity. Specifically, the following are detailed:

- Adding 04 new forms (Appendix III-7: Request for supplementary information and updates in the household business registration information system, Appendix VI-2: Notification of the tax authority directly managing the household business, Appendix VI-3: Notification of tax identification number and tax authority directly managing the business location of the household business, Appendix VI-13: Receipt of the online registration application for the household business through the electronic information network);
- Amending 19 forms, such as: Standardizing the fields of information in the household business registration to facilitate interconnectivity, adding information about the household business registration number, supplementing information about the registered business locations of the household business, etc.
- Abolishing 01 form (Appendix VI-14: Notification of issuing the Certificate of Household Business Registration due to change of business address, issued in accordance with Circular No. 01/2021/TT-BKHDT).





LEGAL DOCUMENT IN 06/2023

NO.	EFFECTIVE DAY	NAME
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TRANSPORTATION

1	15/7/2023	Decree No. 25/2023/ND-CP amends to some articles of Decree No. 32/2014/ND-CP on management, operation and maintenance of expressway facilities
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HEALTH

1	09/6/2023	Integrated Document No. 06/VBHN-BYT in 2023 consolidating the Circular guiding the health examination issued by the Ministry of Health
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MINISTRY OF JUSTICE

1	11/5/2023	Integrated Document No. 1843/VBHN-BTP in 2023 consolidates Decree guiding for Law on Civil Status issued by Minister of Justice.
2	11/5/2023	Integrated Document No. 1844/VBHN-BTP in 2023 integrates the Circular guiding the civil status law and the Decree 123/2015/ND-CP guiding the civil status law issued by the Minister of Justice

GOVERNMENT

1	01/7/2023	Decree 24/2023/ND-CP prescribing statutory pay rate for officials, public employees and armed forces
2	01/7/2023	Decision 12/2023/QĐ-TTg on granting Certificates of technology transfer encouraging transfer issued by the Prime Minister
3	01/6/2023	Decision 13/2023/QĐ-TTg on the list of waste permitted for import as production materials issued by the Prime Minister.

FINANCE

1	21/7/2023	Circular 36/2023/TT-BTC on the rates, collection regulations, management, and utilization of fees for certification of origin of goods (C/O), issued by the Minister of Finance.
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2	07/6/2023	Consolidated Document 10/VBHN-BTC in 2023 consolidates the Circulars that regulate customs procedures and management of imported vehicles and motorcycles by individuals permitted to import or temporarily import for non-commercial purposes, issued by the Minister of Finance.
3	01/8/2023	Circular 41/2023/TT-BTC on the rates, collection regulations, management, and utilization of fees in the pharmaceutical and cosmetic sectors, issued by the Minister of Finance.

CURRENCY - BANK

1	01/7/2023	Resolution 23/2023/ND-CP amends Decree 89/2016/ND-CP on the conditions for foreign exchange agency activities, the provision of foreign currency receipt and payment services by economic organizations, and Decree 88/2019/ND-CP on administrative penalties in the monetary and banking sector.
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ENVIRONMENT

1	12/5/2023	Decree 22/2023/ND-CP amends and supplements certain provisions of the Decrees related to business activities in the field of natural resources and environment.
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INDUSTRY AND TRADE

1	25/5/2023	Decision 1239/QD-BCT in 2023 regarding the Code of Conduct for cadres, civil servants, employees, and workers of the Ministry of Industry and Trade.
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TAX

1	31/5/2023	Decision 679/QD-TCT in 2023 on the Tax Refund Process issued by the Director General of the General Department of Taxation.
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