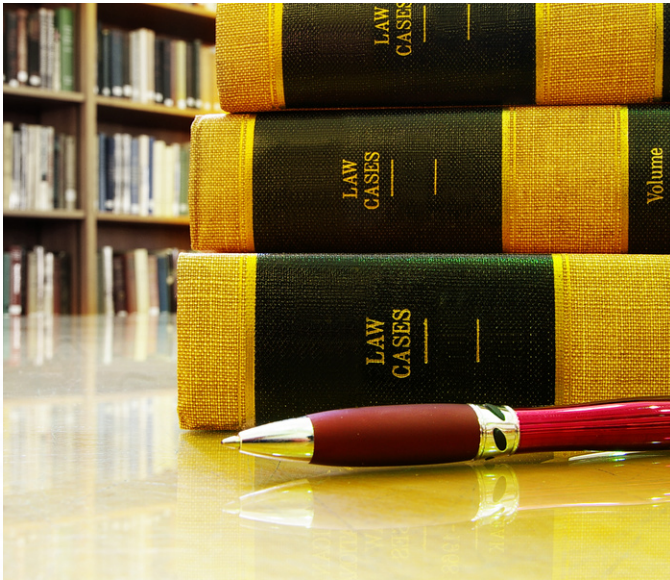




LAC DUY & ASSOCIATES

NEWSLETTER

10/2023



SALIENT POINTS OF DECREE 70/2023/ND- CP ON EMPLOYING FOREIGN EMPLOYEES

7 NEW CASES OF CASE
LAW TAKE EFFECT FROM
NOVEMBER 1, 2023



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Dear Clients,

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

- Salient points of Decree 70/2023/ND-CP on employing foreign employees
- 7 New cases of Case law take effect from November 1, 2023
- Legal Document in 10/2023





SALIENT POINTS OF DECREE 70/2023/ND-CP ON EMPLOYING FOREIGN EMPLOYEES



On September 18, 2023, the Government issued Decree 70/2023/ND-CP amending and supplementing several articles of Decree 152/2020/ND-CP regulating foreign employees

working in Vietnam, and recruiting and managing Vietnamese employees working for foreign organizations and individuals in Vietnam. We send to customers some notable points of this Decree.

1. Amend and supplement a number of requirements for foreign experts, executives, and technical employees

- (i) In Article 1.1, Decree 70/2023/ND-CP relaxes the requirement for experts. Instead of the old regulation that experts must have a university degree in the fields they intend to work in, since September 18, 2023, onwards, experts only need to have a university degree or higher or equivalent and have at least 03 years of work experience suitable for the expected job position in Vietnam.
- (ii) Supplementing regulations on the executive director not only being the head and directly managing a unit of the agency, organization, or enterprise but also expanding its scope:
 - Head of branch, representative office, or business location of the enterprise;
 - The person who leads and directly operates at least 01 field of an agency, organization, or enterprise and is subject to the direct direction and management of the head of the agency, organization, or enterprise;
- (iii) Amend the requirement for foreign technical employees to work in the correct field of training; Instead, the employees only need to be trained for at least 01 year and have at least 03 years of experience suitable for the job position expected to work in Vietnam.

2. Shorten the time limit for reporting the need to use foreign employees and change the competent authority receiving the report

- (i) **At least 15 days** in advance from the expected date of using foreign employees, employers (except contractors) are responsible for determining the need to use foreign employees for each job position that Vietnamese employees have not yet met and reporting to **the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs** where the employee expected to work.
- (ii) During the implementation process, if there is a change in the need to use foreign employees in terms of position, job title, form of work, quantity, and location, the employer must report **to the Ministry of Labor - Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs** at least 15 days in advance from the expected date of employing foreign employees.

3. Recruit Vietnamese employees into positions expected to recruit foreign employees.

Since January 1, 2024, recruitment notification will be announce on the Electronic Information Portal of the Ministry of Labor, War Invalids and Social Affairs (Department of Employment), or the Electronic Information Portal of the Employment Service Center established by the Chairman of the People's Committee of the province or centrally run city within a period of at least 15 days from the expected date of the explanation report. The content of the recruitment announcement includes:

- (i) Position title and job;
- (ii) Job description;
- (iii) Quantity;
- (iv) Requirements on qualifications and experience;
- (v) Wage;



(vi) Working time and location.

After failing to recruit Vietnamese employees, the employer is responsible for determining the need to employ foreign employees according to regulations.

4. Change the competent authority to issue documents approving or disapproving the employment of foreign employees

According to Article 1.2 of Decree 70/2023/ND-CP, the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs will be the agencies with the authority to approve or disapprove the employment of foreign employees for each job position. The time limit for issuing documents of approval or disapproval is 10 working days from the date of receiving the explanation report or report explaining changes in the need to use foreign employees. Previously, Decree 152/2020/ND-CP stipulated that the authority to approve or disapprove the use of foreign employees belonged to the Ministry of Labor, War Invalids and Social Affairs or the Provincial People's Committee. This change in authority has unified state management of recruitment and management of foreign employees working in Vietnam from local to central level.

5. Amend and supplement a number of cases where foreign employees are not subject to work permits

- (i) Being sent to Vietnam by a competent foreign agency or organization to do the following jobs:
- Teaching;
 - Working as a manager or executive director at an educational institution proposed to be established in Vietnam by a foreign diplomatic representative agency or intergovernmental organization;
 - Work as a manager and executive director at establishments and organizations established under international treaties that Vietnam has signed and participated in.
- (ii) Additional cases of foreign employees certified by the Ministry of Education and Training entering Vietnam to perform the following jobs:



- Teaching and research;
- Work as a manager, executive director, principal, or vice principal of an educational institution proposed to be established by a foreign diplomatic mission or intergovernmental organization in Vietnam.



6. Adding some cases where it is not necessary to determine the need to use foreign employees

Point b Article 1.2 Decree 70/2023/ND-CP amending Article 4 Decree 152/2020/ND-CP adding cases where employers are not required to determine the need to use foreign employees countries include:

- (i) Be a foreign lawyer who has been granted a License to practice law in Vietnam according to the regulations of the Law on Lawyers;
- (ii) Foreigners married to Vietnamese people and living in Vietnamese territory;
- (iii) Entering Vietnam to provide professional and technical consulting services or perform other tasks serving research, development, appraisal, monitoring, evaluation, management and program implementation, Projects using official development assistance (ODA) according to regulations or agreements in international ODA treaties signed between competent agencies of Vietnam and foreign countries;
- (iv) Licensed by the Ministry of Foreign Affairs to operate information and press activities in Vietnam according to the regulations of law;
- (v) Volunteers entering Vietnam voluntarily without salary to implement international treaties to which Vietnam is a member and with confirmation from foreign diplomatic missions or international organizations in Vietnam;



- (vi) Foreigners certified by the Ministry of Education and Training to enter Vietnam to do teaching and research work; or work as a manager, executive director, principal, or vice principal of an educational institution proposed to be established by a foreign diplomatic mission or intergovernmental organization.

7. Foreign employees working in many provinces and cities must make reports.

This is a completely new point of Decree 70/2023/ND-CP for foreign employees. For foreign employees working for one employer in many provinces and centrally run cities, within 03 working days from the date the foreign employee starts working, the employer must report via the electronic environment to the Ministry of Labor, War Invalids and Social Affairs and the Department of Labor, War Invalids and Social Affairs where the foreign employee comes to work according to Form No. 17/PLI.

8. Regulating the form and authorization of electronic work permits.

The Work Permit format has the following requirements:

- (i) Size A4 (21 cm x 29.7 cm);
- (ii) Includes 2 pages: page 1 is blue; page 2 has a white background, blue pattern, and a star in the middle;
- (iii) Work permits are coded as follows: province and centrally run city codes and codes issued by the Ministry of Labor, War Invalids and Social Affairs; The last 2 digits of the year of license issuance; type of license (newly issued symbol 1, renewed symbol 2, reissued symbol 3); serial number (from 000.001).

According to the new Decree, in addition to the current paper version of the Work Permit, the electronic version of the Work Permit is also allowed. And the format of this electronic version must ensure compliance with the regulations of law and meet the content according to Form No. 12/PLI Appendix I issued with Decree 70/2023/ND-CP.

9. Additional cases of reissuance of work permits.

In case of having to re-issue a work permit for foreign employees, there is a change in one of the following contents:

- (i) First and last name;
- (ii) Nationality;
- (iii) Passport;
- (iv) Work location;
- (v) Change the enterprise name without changing the enterprise code in the valid Work Permit.

A new point of this Decree, when an enterprise changes its name, the employer needs to carry out procedures to change the Work Permit for foreign employees working for them.

10. Abolish several of duties and powers of the Industrial Park and Economic Zone Management Board.

Decree 70/2023/ND-CP also participates in editing Decree No. 35/2022/ND-CP on the management board of industrial parks and economic zones. Accordingly, this Decree eliminates several tasks and powers of the Industrial Park and Economic Zone Management Board. The abolished contents include point dd Article 68.2 and point c Article 68.3 of Decree 35/2022/ND-CP, respectively:

- (i) Issue, re-issue, extend, revoke Work Permits and confirm that foreign employees are not subject to work permits for foreigners working in industrial parks and economic zones; receive reports on the use of foreign employees;
- (ii) Receive explanatory reports from enterprise in industrial parks and economic zones about the need to employ foreigners for each job title that Vietnamese people cannot meet.

The above authority will be assigned to the Ministry of Labor, War Invalids and Social Affairs and the Department of Labor, War Invalids and Social Affairs where the foreign employees work. This change in duties and powers aims to unify state management of recruitment and management of foreign



employees working in Vietnam. The Ministry of Labor, War Invalids and Social Affairs will unify state management of recruitment and management of foreign employees nationwide, including the management of Vietnamese employees working for foreign organizations or individuals in Vietnam. The Department of Labor, War Invalids and Social Affairs unified the management of foreign employees locally, including issuing Work Permits to foreign employees. Centralizing tasks and powers to the Ministry of Labor, War Invalids and Social Affairs and the Department of Labor, War Invalids and Social Affairs will create efficiency and flexibility in the process of managing foreign employees as well as contributing to reducing the workload for local People's Committees, helping enterprise easily carry out legal procedures when there is a need to use or change the need to use foreign employees.

7 NEW CASES OF CASE LAW TAKE EFFECT FROM NOVEMBER 1, 2023

1. Case law No. 64/2023/AL on punishment bracket and aggravating factor "organized" in the crime of "Kidnapping for ransom"

1.1. Source of the Case law

Cassation Decisions No. 15/2022/HS-GDT dated October 4, 2022 of the Council of Judges of the Supreme People's Court on the criminal case "Kidnapping for ransom" against defendant Tran Van N and his accomplices.



1.2. Relevant legal provisions to the Case law

Article 169 of the Criminal Code 2015 (amended and supplemented in 2017).

1.3. Comment on the Case law

In this Case law, the Court recognized that it is not only when the offender receives a specific amount of money that aggravating factors apply. In the criminal process, when the purpose of this kidnapping was clearly shown that the defendants wanted to appropriate a specific amount of money, regardless of whether the defendants had appropriated the money or not, the Court must impose an aggravating penalty for the defendant. In order words, the Court must base on the value of the property the defendant intends to appropriate to determine the penalty.

2. Case law No. 65/2023/AL on criminal prosecution for the crime of "Human trafficking"

2.1. Source of the Case law

First-instance court's criminal judgments No. 42/2018/HSST dated December 3, 2018 of the People's Court



of Dong Hai district, Bac Lieu province on the case of "Human Trafficking" against the defendants Duong Van S and Pham Hong K, Duong Thi T1, Tran Ich C.

2.2. Relevant legal provisions to the Case law

- Article 150 of the Criminal Code 2015 (amended and supplemented in 2017);
- Resolution No. 02/2019/NQ-HDTP dated January 11, 2019 of the Council of Judges of the Supreme People's Court guiding the application of Article 150 on the crime of human trafficking and Article 151 on the crime of trafficking of people under 16 years of age of Criminal Code.

2.3. Comment on the Case law

Regarding this Case law, defendant Duong Van S, for his personal benefit of finding fishermen for the fishing boats to receive the difference, took action to receive the victims in preparation for transferring them to the fishing boats. In addition, accomplices Pham Hong K, Tran Ich C and Duong Thi T1 assisted S in detaining and using weapons to threaten the victims to sign seafaring contracts. Thus, in addition to Duong Van S's direct acts of human trafficking, the acts of defendants Pham Hong K, Tran Ich C and Duong Thi T1, although not directly receiving the money, were acts of detention, threatening the victims to sign contracts against their will to transfer them to fishing boats has shown that the purpose of these defendants is human trafficking to share money with defendant Duong Van S. Therefore, there is a basis for the Court to declare these defendants guilty of "Human Trafficking".

3. Case law No. 66/2023/AL on determining the crime of "Human Trafficking"

3.1. Source of the Case law

Appellate court's Criminal Judgment No. 86/2022/HS-PT dated February 17, 2022 of the High People's Court in Hanoi on the case of "Human Trafficking"



against defendants Trinh Thi H and Dang Thi C

3.2. Relevant legal provisions to the Case law

- Article 150 of the Criminal Code 2015 (amended and supplemented in 2017);
- Resolution No. 02/2019/NQ-HDTP dated January 11, 2019 of the Council of Judges of the Supreme People's Court guiding the application of Article 150 on the crime of human trafficking and Article 151 on the crime of trafficking of people under 16 years of age of Criminal Code.

3.3. Comment on the Case law

Currently, illegally sending "Vietnamese brides" out of the country to marry a foreign husband is a painful problem in some areas. However, depending on the situation, these girls are in an active or passive position (voluntarily or tricked) when they are illegally taken abroad. The illegal actions of these brokers can cause confusion between the crime of "Human Trafficking" and the crime of "Organizing for illegal emigration". Case law No. 66 has determined that the behavior of H and C was discussed with the motive and purpose of bringing Vietnamese women to China to hand over to T to receive money, not as a marriage broker or illegal emigration. The defendants considered humans as an object exchanged for money, so the first-instance and appellate courts tried the defendants for human trafficking under point d, Clause 2, Article 150 of the Criminal Code and imposed the penalty according to the punishment bracket appropriate.

4. Case law No. 67/2023/AI on who receives in kind when dividing common property

4.1. Source of the Case law

Cassation Decision No. 40/2021/DS-GDT dated June 23, 2021 of the High People's Court in Hanoi on the civil case "Dispute over the division of common property" between the



plaintiff, Ms. Nguyen Thi D with the defendant is Mr. Pham Ngoc H; persons with related interests, obligations include 06 people.

4.2. Relevant legal provisions to the Case law

Article 209 and Article 219 of the Civil Code 2015.

4.3. Comment on the Case law

According to Article 219 of the Civil Code 2015 on dividing jointly owned property, the parties can request to sell their ownership rights in that common property in cases where the property cannot be divided in kind. However, in this case, both Ms. D and Mr. H want to keep the house and land as they are. Therefore, one of the two parties will not receive in kind but will only receive half of the property value. However, the regulations on who is entitled to the property are not specified in the Civil Code 2015 and other related documents. Therefore, the Court of Cassation considered many factors from Ms. D such as the elderly, weakness, and restricted in changing and creating other accommodations. In addition, Ms. D was instrumental in creating, managing and using real estate in a stable, long-term manner. At the same time, Mr. D's children also proposed to give her real estate to Ms. D so that she could have a place to live and worship until she passed away. Therefore, the Court's decision to let Ms. D keep the house and land is appropriate. This is a judgment that not only meets the principles of applying the law but also respects the rules of social and ethical conduct for the elderly.



5. Case law No. 68/2023 on the right to receive inheritance in kind as a house of the heir who is overseas Vietnamese

5.1. Source of the Case law

Cassation Decision No. 06/2019/DS-GDT dated March 18, 2019 of the Council of Judges of the Supreme

People's Court on the civil case "Inheritance dispute, claiming contributions to raise, look after, preserving the real estate and claiming the real estate" between the plaintiff, Ms. Nguyen Tuy H, and the defendant,



Ms. Ly Lan H1; persons with related interests, obligations include 06 people.

5.2. Relevant legal provisions to the Case law

- Point d, Clause 1, Article 169; Article 186 of the Land Law 2013;
- Clause 1 and point b, Clause 2, Article 8 of the Law on Housing 2014.

5.3. Comment on the Case law

In this Case law situation, Mr. H2 died in 2009 before the Land Law 2013 and Law on Housing 2014 took effect. At the time of the trial of the case of property division, the Land Law 2013 and the Law on Housing 2014 took legal effect, the Court of Cassation applied the two documents mentioned above to resolve the dispute. However, during the period of the appeal trial, when the Law on Housing 2014 took effect, Clause 1, Article 8 of the Land Law 2013 showed that Ms. H1 was eligible to inherit a house in Vietnam. However, the Court of Appeal does not recognize this right, as shown by the failure to apply the provisions in Clause 3, Article 186 of the Land Law 2013 on the right to transfer or donate the inherited land use rights and hand over all in kind for the inheritance to Mr. D, seriously affecting the rights and interests of Ms. H1. The Council of Cassation concluded that when applying the provisions of Clause 3, Article 186 of the 2013 Land Law, although Ms. H1 shall not be granted the certificate of land use rights but may transfer or donate the inherited land use rights. Therefore, Ms. H1 is entitled to receive her inheritance in kind. Inheritance relationships often last a long time with legal issues occurring at different times such as the time of opening the inheritance, and the time of requesting to divide the heritage, and sometimes these events occur at different times with different laws as in the above case, causing the adjudication agency to be confused in determining the regulations that need to be applied. Therefore, the adoption of Case law 68 is necessary to unify the law, make the law on inheritance easy to apply (no need to issue guiding documents) and create conditions to protect rights of the heir who is overseas Vietnamese.

6. Case law No. 69/2023/AL on the jurisdiction of the Arbitration in resolving information confidentiality and non-competition agreement disputes.

Regarding this Case law, LDA presented in the July 2023 Newsletter in the section "Draft Case law No. 12/2023 - Decision on arbitration jurisdiction to resolve information confidentiality and non-



complete agreement disputes”. Please refer to the link: <https://lacduy-associates.com/ban-tin-phap-ly/Thang-7.pdf>

7. Case law No. 70/2023/AL on termination of labour contracts for employees who are part-time union officials.

Regarding this Case law, LDA presented in the August 2023 Newsletter in the section " Draft Case law No. 13 - On termination of labour contracts for employees who are part-time union officials". Please refer to the link: <https://lacduy-associates.com/ban-tin-phap-ly/thang-8.pdf>



LEGAL DOCUMENT IN 10/2023

NO.	EFFECTIVE DATE	NAME
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JUSTICE

1.	27/09/2023	Consolidated document No. 4510/VBHN-BTP 2023 consolidates Circular guiding Decree No. 87/2020/ND-CP regulating Electronic civil status database and online civil registration issued by the Minister of Justice
2.	05/10/2023	Consolidated document No. 4716/VBHN-BTP 2023 consolidates the Decree guiding the Law on Property auction issued by the Ministry of Justice

HEALTH

1.	09/11/2023	Circular No. 17/2023/TT-BYT dated September 25, 2023 on amendments to and annulment of certain legislative documents on food safety promulgated by the Minister of Health
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FINANCE

1.	15/11/2023	Circular No. 61/2023/TT-BTC rates, collection, transfer, management, use of fees for registration of secured transactions issued by the Minister of Finance
2.	03/10/2023	Circular No. 62/2023/TT-BTC amendment to Circular No. 25/2021/TT-BTC dated April 7, 2021 of the minister of finance on fees in immigration, transit, and residence in Vietnam and collection, submission, management, and use thereof issued by the Minister of Finance
3.	05/10/2023	Consolidated document No. 15/VBHN-BTC 2023 consolidates the Circular guiding Decree No. 67/2014/ND-CP on fisheries development policy issued by the Minister of Finance



INSURANCE

1.	25/09/2023	Decision No. 1333/QD-BHXH 2023 on the Process of document digitization and administrative procedures under the jurisdiction of the Vietnam Social Insurance
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INDUSTRY AND TRADE

1.	28/09/2023	Decision 2503/QD-BCT approving the 2023 electricity price range issued by the Minister of Industry and Trade
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CONSTRUCTION

1.	22/09/2023	Consolidated document No. 12/VBHN-BXD 2023 consolidates the Decree guiding the Law on Architecture issued by the Ministry of Construction
2.	27/09/2023	Consolidated document No. 13/VBHN-BXD 2023 consolidates the Decree guiding the construction plan issued by the Ministry of Construction
3.	28/09/2023	Decision No. 1023/QD-BXD 2023 announcing internal administrative procedures in the state administrative system within the scope of management functions of the Ministry of Construction
4.	02/10/2023	Consolidated document No. 14/VBHN-BXD 2023 consolidates the Decree guiding the construction investment project management

COURT

1.	01/10/2023	Decision No. 364/QD-CA 2023 announcing precedents issued by the Chief Justice of the Supreme People's Court
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