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## LEGAL UPDATE

### No. 1 – September 2023

(1 September 2023 – 15 September 2023)



### News in focus

*Summary of outstanding policies effective in early September 2023*



### New

### Legal documents

Remarkable among documents:

*Circular 60/2023/TT-BTC from September 7, 2023 regulates the fees for registration, issuance, and management of license plates for road vehicles*

## A – News in focus

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### **Summary of outstanding policies**

*(Taking effect on September 2023)*

This legal update will provide some policies, which come into effect from September 2023.

This legal update will summarize new legal regulations issued in early September 2023.

# ADDING CAPITAL DEMAND CAN NOT BE BORROWED FROM BANKS, AND CREDIT INSTITUTIONS ARE NOT PERMITTED TO LEND

Circulars 06/2023/TT-NHNN and 10/2023/TT-NHNN, which modify Circular 39/2016/TT-NHNN, will become effective on September 1, 2023. As a result, there will be no permission to lend capital that cannot be obtained from banks or credit institutions. This includes:

## **1. Credit institutions are restricted from lending for certain capital demand, including:**

- Deposited money .
- Capital contributions, shares not listed on the stock market or registered on the UPCOM system, or transfers of these items cannot be borrowed
- Investment projects that do not meet the criteria for being put into business cannot borrow money for capital contributions.
- Financial compensation cannot be borrowed from credit institutions.

## **2. Capital demands that cannot be borrowed from banks, including:**

- To carry out business investment activities in industries and occupations prohibited from business investment
- To pay expenses and meet the financial needs of business investment activities in industries banned from business investment
- To buy and use goods and services in industries and occupations banned from business investment
- To buy gold bars
- To repay the credit loan at the lending institution, except in the case of lending to pay loan interest arising during the construction process, where loan interest costs are included in the total investment amount. Competent authorities approve construction investment according to the provisions of the law.
- To repay foreign loans and credit extensions at other credit institutions, except in cases where the loan is for early repayment and ensures that the loan term does not exceed the remaining the old loan term; The loan has not had its repayment term restructured
- For deposit money

# GUIDELINES FOR USING STATE BUDGET FUNDS TO SUPPORT SMALL AND MEDIUM ENTERPRISES

Circular No. 52/2023/TT-BTC gives guidance on using state budget funds for small and medium businesses. It aligns with Decree No. 80/2021/ND-CP, effective September 23, 2023, including:

- **Subjects of application:** Small and medium businesses under Chapter II of Decree No. 80/2021/ND-CP, established and operating legally.

- **Expenditure levels for management of support activities for small and medium enterprises are implemented as follows:**

Expenses related to conferences, seminars, business trips, and surveys must comply with Circular 40/2017/TT-BTC regulations.

Overtime costs comply with the provisions of the Labor Code and relevant decrees and guiding documents (Decree 145/2020/ND-CP).

Hiring experts' expenses comply with Circular 02/2015/TT – BLDTBXH regulations.

Media and communication costs comply with the principles in Clause 3, Article 4 of Circular 52/2023/TT-BTC.

Supplier selection costs comply with Bidding Law and guidelines.

- **Funding for implementation of support contents:** the central budget, local budget, contributions and sponsorships from domestic and foreign businesses, organizations, individuals, and other legal funding sources outside the state budget

• **State budget sources:** The state budget funds programs for small and medium businesses. Agencies and organizations receive budget estimates, and support is given based on resource allocation and prioritization. The budget is prepared, assigned, implemented, audited, and finalized according to legal provisions.

• **Sources of contributions and sponsorship:** The mobilization, management, and settlement of funds need to adhere to the latest legal regulations. If there is an agreement with an enterprise, organization, or individual to use contributions or sponsorship for state budget support, the agreement shall be enforced

- **Principles for determining costs:**

For expenses that have specific standards and norms outlined in legal documents issued by competent authorities, use the prescribed regime to determine costs.

For expenses without specific standards and norms, determine costs based on specific cases, nature, scope, and related factors of similar costs that have been made. This determination should occur within 12 months (if any).

# NEW REGULATIONS ON COMPULSORY INSURANCE FOR VEHICLE OWNERS' CIVIL LIABILITY

Starting September 6, 2023, insurance for fire, explosion, and construction is mandatory for vehicle, property, and construction owners under Decree 67/2023/ND-CP

**Insurance period for cars and motorbikes:** The compulsory insurance period for motor vehicle owners' civil liability is a minimum of 1 year and a maximum of 3 years, except in cases where the insurance period is less than 1 year as follow:

- + Foreign motor vehicles temporarily imported for re-export with a duration of traffic participation in the territory of the Socialist Republic of Vietnam for less than 1 year.
- + Motor vehicles with a shelf life of less than 1 year as prescribed by law.
- + Motor vehicles are subject to temporary registration according to the regulations of the Minister of Public Security. In addition, if there is a transfer of ownership of a motor vehicle, the owner of the old motor vehicle has the right to terminate the insurance contract within the valid period stated on the Insurance Certificate.

## **Insurance compensation level when an accident occurs**

Circular 04/2021/TT-BTC clarifies the compensation level for insurance companies in case of accidents, now referred to as "insurance liability limit" in Decree 67/2023/ND-CP

## **Compensation advance level in case the accident within the scope of compensation has not been determined**

- If the estimated injury rate is 81% or more, the compensation advance level is 30% of the prescribed insurance liability limit for one person in the accident in the event of death or injury.
- If the estimated injury rate is between 31% and less than 81%, the compensation advance level is 10% of the prescribed insurance liability limit for one person in the accident.

## **More explicit regulations on mandatory motorbike and car insurance coverage**

Insurance companies are responsible for compensating for the following damages:

- Non-contractual damage to health, life and property to third parties caused by motor vehicles participating in traffic and activities.
- Damage to the health and life of passengers in that vehicle caused by motor vehicles participating in traffic and activities.

## **Amend regulations on cases excluding insurance liability**

- Damage to property caused by a driver operating a motor vehicle with an alcohol concentration in his blood or breath that exceeds the standard value according to the instructions of the Ministry of Health; Using drugs and stimulants is prohibited by law
- The driver does not meet the age requirements according to the provisions of the Road Traffic Law.

## FORMER MINISTRY OF CONSTRUCTION EMPLOYEES WERE BANNED FROM STARTING BUSINESSES IN SOME FIELDS

Circular 05/2023/TT-BXD from the Ministry of Construction prohibits individuals in positions of power from holding titles or operating private enterprises after leaving their positions:

### Fields:

1. Construction planning and architecture.
2. Construction investment activities
3. Urban Development
4. Infrastructure
5. Housing, offices and real estate market
6. Building materials
7. Science and technology in the field of construction
8. Managing enterprises with 100% charter capital held by the state

### Termination

- 24 months from the date of resignation according to the decision of the competent authorities, people with positions and working powers in the fields specified in sections (1), (2), (3), (4), (5), (6) mentioned above.
- 12 months from the decision date of competent authorities, people with positions and powers working in the fields specified in sections (7) (8) above..

## 05 NATIONAL TECHNICAL REGULATIONS ON QUALITY SURROUNDINGS IN EFFECT

Circular 01/2023/TT-BTNMT issued by the Ministry of Natural Resources and Environment accompanied by 05 national technical regulations on ambient environmental quality effective from September 12, 2023, including:

- QCVN 03:2023/BTNMT - National technical regulation on soil quality;
- QCVN 05:2023/BTNMT - National technical regulation on air quality;
- QCVN 08:2023/BTNMT - National technical regulation on surface water quality;
- QCVN 09:2023/BTNMT - National technical regulation on groundwater quality;
- QCVN 10:2023/BTNMT - National technical regulation on seawater quality.

## B – New legal documents

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### Remarkable new legal documents (Enacted from 01 Aug 2023 – 15 Aug 2023)

No.	Legal documents	
<b>TAX - FEES</b>		
<b>1</b>	Decree 68/2023/ND-CP amends Decree 115/2022/ND-CP to implement the Comprehensive and Progressive Trans-Pacific Partnership Agreement for 2022-2027, relating to export and import tariffs in Vietnam	
	Enactment Date: 07/09/2023	Effective Date: 07/09/2023
<b>2</b>	Circular 60/2023/TT-BTC from September 7, 2023 regulates the fees for registration, issuance, and management of license plates for road vehicles	
	Enactment Date: 07/09/2023	Effective Date: 22/10/2023

<b>No.</b>	<b>Legal documents</b>	
<b>INSURANCE</b>		
<b>4</b>	Decree 67/2023/ND-CP, issued on September 6th, 2023, regulates mandatory insurance for motor vehicle owners' civil liability, mandatory fire and explosion insurance, and mandatory insurance for construction investment activities	
	Enactment Date: 06/09/2023	Effective Date: 06/09/2023
<b>CRIMINAL</b>		
<b>5</b>	Official dispatch 6084/BCT-DKT dated September 5, 2023, guiding the application of provisions in Article 227, Article 238 of the 2015 Penal Code.	
	Enactment Date: 05/09/2023	Effective Date: 05/09/2023



## C – Q&A

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### **1. My business has been a household business, but I want to convert it into a small and medium enterprise. Can you advise me on how I can receive support?**

According to Clause 2, Article 16 of the 2017 Law on Support for Small and Medium Enterprises, it stipulates support for households converting to small and medium enterprises, specifically as follows:

*"Support content includes:*

- Free consultation and guidance on documents and procedures for establishing a business;*
- Exemption from business registration fees and fees for providing business information for the first time; Free appraisal, fees, and charges for first-time business licenses for conditional business lines; Exemption from license fees for a period of 03 years from the date of issuance of the first Business Registration Certificate;*
- Free consultation and guidance on tax administrative procedures and accounting regimes within 03 years from the date of issuance of the first Business Registration Certificate;*
- Exemption or reduction of corporate income tax for a limited period of time according to the provisions of law on corporate income tax;*
- Exemption or reduction of land use fees for a limited period of time according to the provisions of land law."*

In addition, to receive support when converting from household business to small or medium enterprises need to meet 02 conditions specified in Clause 1, Article 16 of the Law on Support for Small and Medium Enterprises 2017, specifically:

- (1) Before converting into an enterprise, a business household must be registered and operate according to regulations and
- (2) The business household has had continuous production and business activities for at least 01 years (up to the date of issuance of the first business registration certificate)

## **2. Can customers borrow from banks to repay consumer loans before maturity at other banks? Furthermore, can bank loans be paid in Foreign Currency?**

### **Can customers borrow from a bank to repay a consumer loan before maturity at another bank?**

Pursuant to Clause 2, Article 1, Circular 06/2023/TT-NHNN effective from September 1, 2023, regulating capital needs that cannot be loaned *"Capital needs that cannot be loaned...6 . To repay foreign loans (excluding foreign loans in the form of buying and selling goods on deferred payment), credit extensions at other credit institutions, except in the case of loans for early repayment of loans that meet fully meet the following conditions: a) The loan term does not exceed the remaining loan term of the old loan; b) It is a loan that has not had its repayment term restructured."*

**Therefore**, starting September 1, 2023, the State Bank has broadened the rules for credit institutions to review and approve loans for customers who need to repay debts to other credit institutions to support their personal needs beyond just borrowing for business and production.

### **Can bank loans be paid in Foreign Currency?**

According to Clause 3, Article 1 of Circular 06/2023/TT-NHNN, the State Bank of Vietnam supplements lending and credit debt repayment regulations: *"Currency for lending and debt repayment...2. The repayment currency is the lending currency of the loan. In case of debt repayment in another currency, it shall be carried out according to the agreement between the credit institution and the customer in accordance with relevant legal regulations."*

**Therefore**, the new regulations allow credit institutions and customers to agree on the repayment currency for loans as long as it is consistent with the law without restricting the debt repayment currency to be the loan currency of the borrower. Loan as previously stipulated.

## **3. In what cases does an insurance company have the right to refuse to sell compulsory insurance?**

Pursuant to Clause 5, Article 4, Decree 67/2023/ND-CP stipulates the cases in which insurance enterprises have the right to refuse to sell compulsory insurance:

### **- For compulsory insurance for civil liability of motor vehicle owners:**

Motor vehicles have expired according to the provisions of the law.

### **- For compulsory fire and explosion insurance:**

Facilities at risk of fire or explosion have not been approved for fire prevention and fighting according to legal regulations.

Establishments at risk of fire or explosion do not have a record of fire prevention and fighting safety inspection from a competent police agency, or the inspection record is more than 1 year old from the time of creation to the time of purchasing insurance. Mandatory fire and explosion hazard.

Establishments at risk of fire or explosion are temporarily suspended or have their operations suspended due to violating the fire prevention and fighting law.

### **- For compulsory insurance in construction investment activities:**

Compliance with capacity conditions for construction activities is required by the buyer as per Construction Law guidelines.