FDVN LAWFIRM

Newsletter

LEGAL FORUM

No. 11 - 9.2020

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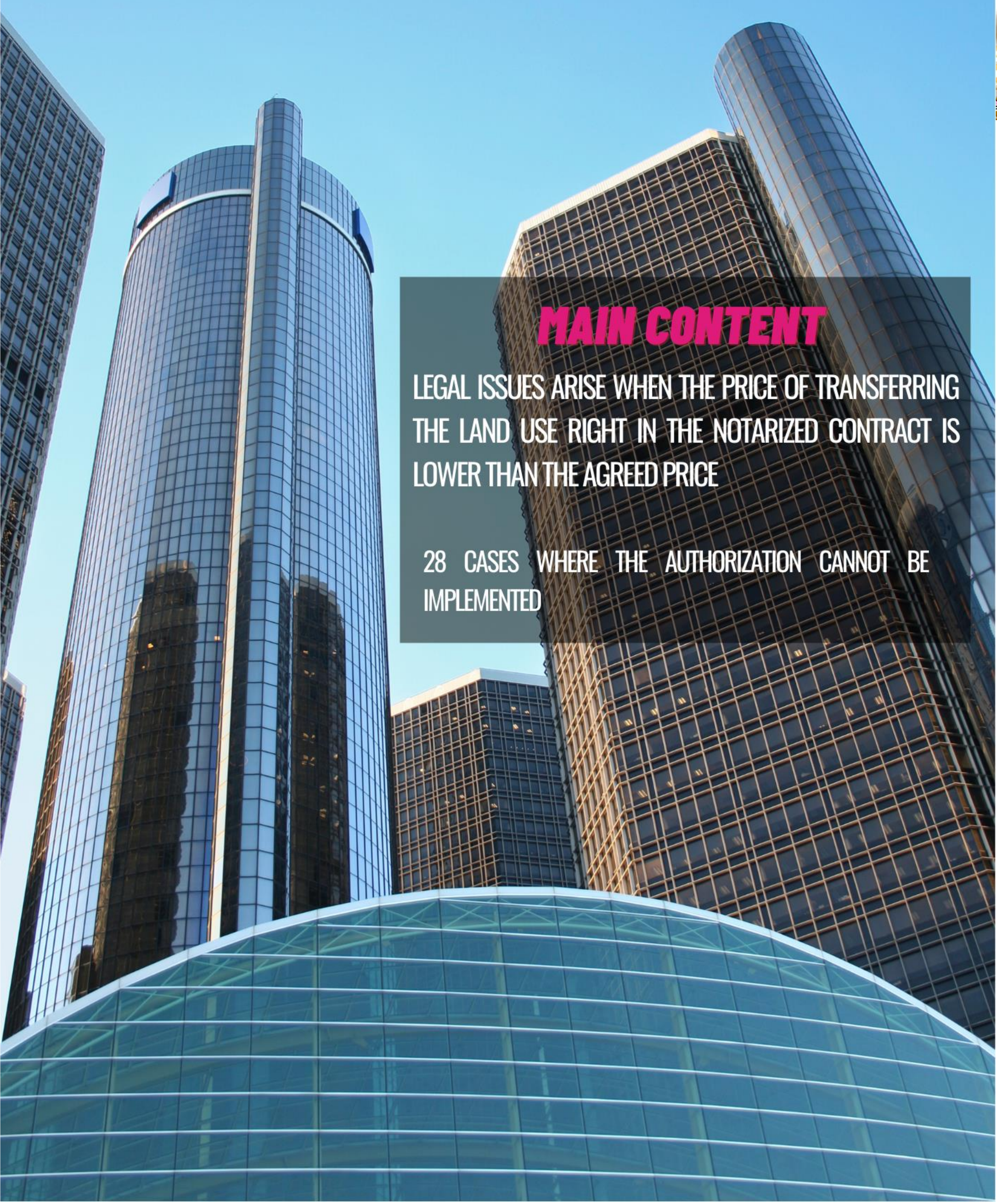

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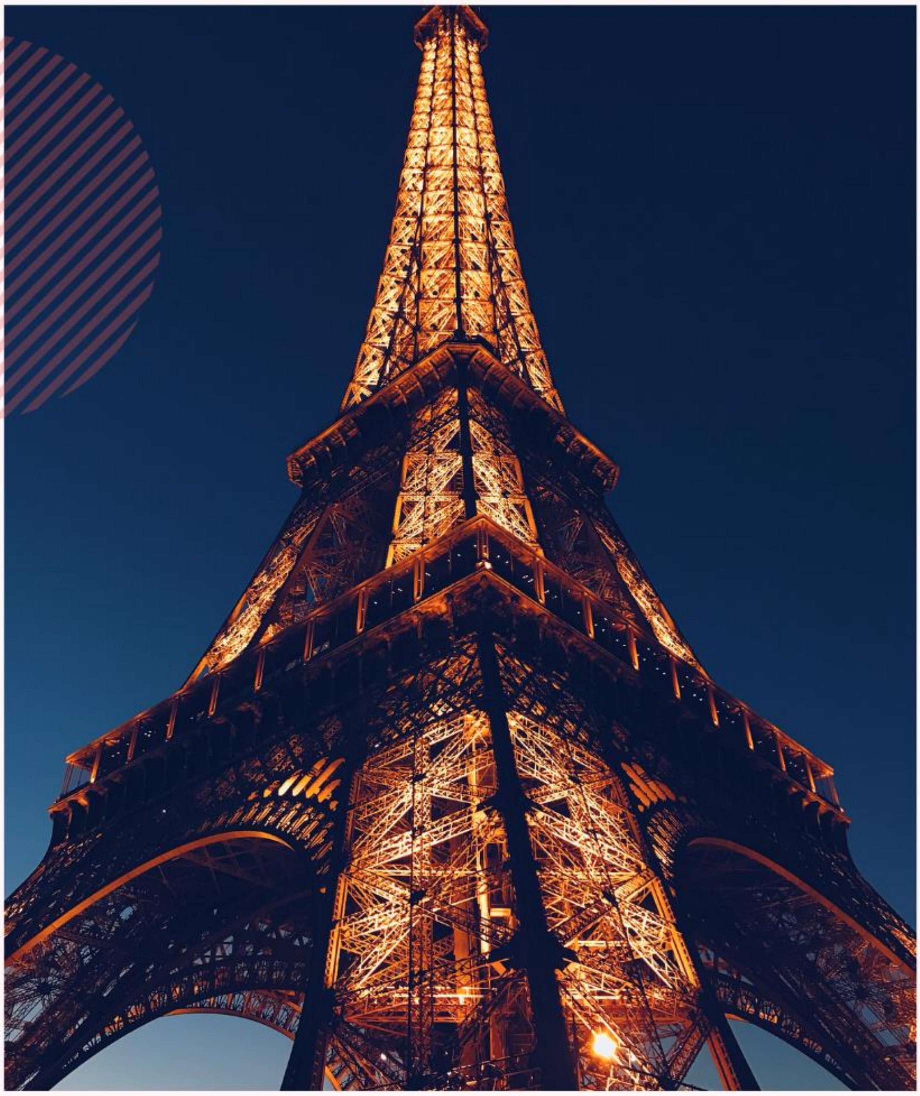


Legal issues arise when the price of transferring the land use right in the notarized contract is lower than the agreed price

Ngô Mỹ Trâm
FDVN Law firm

In fact, with many different purposes such as transferring land to relatives and friends, transferring land urgently to handle personal or family affairs,... or with a negative reason to avoid obligation to State agencies, parties involved in the transaction have agreed on a land price lower than the price prescribed by the State according to the Decision of the Provincial People's Committee at the time of transfer. In this article, the author focuses on analyzing the legal issue that in case there is an agreement that the notarized land price is lower than the actual land price agreed by the parties and whether the notarized land use right transfer contract is determined to be invalid.

LEGAL ISSUES ARISE WHEN THE PRICE OF TRANSFERRING THE LAND USE RIGHT IN THE NOTARIZED CONTRACT IS LOWER THAN THE AGREED PRICE

Ngô Mỹ Trâm –FDVN Law firm

In fact, with many different purposes such as transferring land to relatives and friends, transferring land urgently to handle personal or family affairs,... or with a negative reason to avoid obligation to State agencies, parties involved in the transaction have agreed on a land price lower than the price prescribed by the State according to the Decision of the Provincial People's Committee at the time of transfer. In this article, the author focuses on analyzing the legal issue that in case there is an agreement that the notarized land price is lower than the actual land price agreed by the parties and whether the notarized land use right transfer contract is determined to be invalid.

1. Legal provisions on land prices, personal income taxable prices and registration fees

According to the 2012 Price Law and the 2013 Land Law, the State shall promulgate land price brackets and tables, and decide on specific land prices. Land price tables, specific land prices issued by the State will be used as a basis for the cases specified in Article 114 of Land Law 2013 such as calculating land use fees, land use tax, charges in land management and use, fines for administrative violations in the field of land... According to these provisions, the land price when the parties transfer, purchase, and sell land will not be required to comply with the land price issued by the State, the land price will be agreed upon by the parties. However, unlike other activities of buying and selling ordinary assets, when the parties transfer the land use rights, there will be an obligation to pay personal income tax, corporate income tax (in case the transferor is an enterprise), registration fee, in which, land price is one of the important basis for determining these taxes and fees.

Currently, according to Point a, Clause 1, Article 17 of Circular No. 92/2015/TT-BTC amending and supplementing Article 12 of Circular No. 111/2013/ TT-BTC on basis for calculating tax on incomes from real estate transfer:

"a) The price of transfer of right to use land without constructions thereon is the price written on the transfer contract at the time of transfer.

If transfer contract does not specify the price or the price written on the transfer contract is lower than the land prices imposed by the People's Committee of the province at that time, the land price imposed by the People's Committee of the province at that time shall apply."

Thus, when determining the financial obligations of the transferors, the State Agency will base on the prices in the Transfer Contract. In case the transferred land price is lower than the land price bracket issued by the Provincial People's Committee at the time of transfer, it will be determined according to the land price table issued by the provincial People's Committee at the time of transfer.

Normally, the actual land price of the transferors will always be much higher than the land price prescribed by the State, but most of the parties will agree to write the price the same as the State land price in the notarization contract. As mentioned above, the parties will be charged personal income

tax and registration fee at the State price, from which each party will benefit from paying lower tax and fee.

2. Actual settlement of disputes on land use right transfer contracts

In fact, these "two-price" transfers are very common and virtually undetected if the parties do not dispute. There are often cases in which one of the transferors requests the court to declare a land use right transfer invalid on the grounds of a falsification contract in order to evade obligation to a third party (namely tax obligation to State agencies). Currently, in order to deal with these disputes, the Court still has 02 viewpoints:

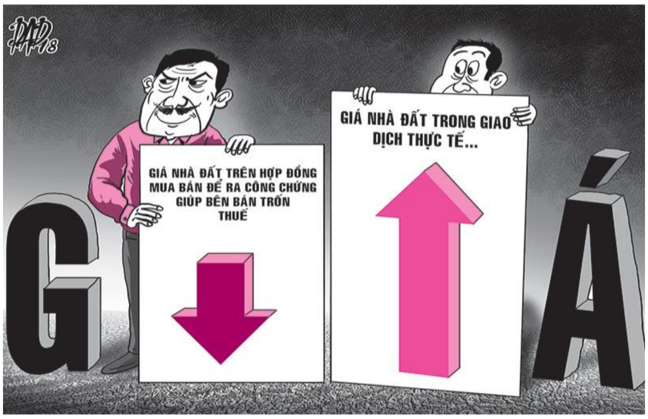
Viewpoint 1: Not determined notarized land use right transfer contracts invalid due to falsification.

This viewpoint is based on the grounds that the transfer of land use rights is lower than the price regulated by the State, but the tax authority has considered and applied the law to determine financial obligation. The parties have fulfilled the tax obligation at the unit price set by the State, so they can not declare the signed contract invalid. Some examples are shown in the following verdict:

The verdict 01/2018/HC-ST dated February 12, 2018 of the People's Court of Phuc Yen town, Vinh Phuc province on the request to cancel the certificate of land use rights, the court stated that: Regarding transfer price: The contract represents the transfer price of VND 50 million. However, in fact, the two parties agreed and paid for VND 650 million and the transferor received the full amount of VND 650 million according to the minutes of money delivery and transfer of land use rights dated September 24, 2014, and real estate transfer paper dated October 21, 2014 before. *Therefore, the agreement on the above transfer price is implemented according to Article 690 of the 2005 Civil Code. However, when entering into a contract at the notary office, the price is lower than the actual price agreed by the parties for tax reduction when carrying out the name transfer procedure. The writing of a lower amount in the contract is also not considered by the Tax Department, but the Tax Department charges according to the price set by the State as the basis for tax calculation. <u>Thus, it does not affect the agreement of the two parties in the contract on price terms.”</u>*

The verdict 152/2019/DS-PT dated July 1, 2019 of the People's Court of Binh Duong province[1] about disputes on land-use rights transfer contracts, the court stated: “The Department of Civil Judgment Execution of District D finds that the contract has tax evasion fraud (agreed price is VND 750 million but the contract is only VND 30 million), request to review the illegality of the contract, that the transfer price in the contract is lower than the actual transaction price is not a condition for the contract to be invalid, when the involved parties do not write equal to the land use right price at the price set by the State, the tax agency will force the obligor to pay tax at the land use right price set by the State.

This point of view is based on the legal provisions about the calculation of taxes and fees when transferring land-use rights. Therefore, although the tax declaration is lower than the actual price, in which the parties have fulfilled all their financial obligations per the law, the contract is still valid.



Viewpoint 2: Determining the land use right transfer contract with "two prices" invalid

This view is based on an argument about the validity conditions of the contract, namely the "purpose" of the contract in the transaction. When the parties entering into a falsification civil transaction to evade obligations to a third party, such civil transaction will be invalid.[2]

For example, in the case of a land use right dispute between claimant Le Thi Thanh H and Mr. Nguyen Van D, defendant Mr. Le Tr and Ms. Tran Thi X were tried at first instance by the People's Court of district N. The Court of First Instance stated that *“The price in the transfer contract is VND 50 million for tax evasion, so this is a falsification contract that violates the prohibition of the law; Ms. H is also at fault because she knows this is the disputed land but still agrees to transfer”* and the Court of First Instance accepted the request to initiate a lawsuit and declared the Contract invalid. However, after that, the Ninh Thuan Provincial People's Court on appellate trial rejected this argument of the Court of First

[1] See at: https://thuvienphapluat.vn/banan/ban-an/ban-an-1522019dspt-ngay-01072019-ve-tranh-chap-hop-dong-chuyen-nhuong-quyen-su-dung-dat-99571

[2] Clause 2 Article 124 Civil Procedure Code 2015

Instance, revised the first-instance judgment with the statement *"According to Article 18 of Land Law 2013, The State exercising management rights over land is: The State issues the land price brackets and tables and decides the specific land price for each land plot location. According to the principle of tax calculation, in case of transferring land-use rights, the parties in the contract specify a price lower than the land price prescribed by the State, land prices set by the State will be applied for tax calculation. Therefore, that the Court of First Instance stated the involved parties are underpricing for tax evasion to violate the prohibition of the law is not true."*

According to the author, on the legal consequences of the contract when the actual price is lower than the state price, it is necessary to base on the purposes of the parties when entering into the contract. In case the two parties voluntarily agree not to violate prohibitions of law and not to be contrary to social morality, to ensure the form of the contract (notarized at a notary public organization), fully declare and fulfill financial obligations to the State agencies according to the land price bracket issued by the Provincial People's Committee, this contract will not be invalidated per law.

In case the parties enter into a contract and declare a price lower than the actual price in order to reduce the payable tax, the author agrees with the second viewpoint about declaring the contract invalid. At present, the parties' financial obligation when participating in land use right transfer transactions is not based on the land price bracket issued by the Provincial People's Committee, but on the transfer price that the parties agreed. When there are enough evidences to prove that the land use right transfer contract has the price agreed in the contract lower than the actual price in order to reduce the tax or fee, the parties are considered to evade their obligation with the third party - State, so this is a falsification contract and it will be invalid. The hidden transaction is still legally valid, if it meets all legal conditions, the related parties still comply with the provisions of the law, it means that they must declare the actual value of the contract and pay personal income tax and registration fee. At the same time, they must be held administrative or criminal responsibility depending on the severity of the violations they cause:

Under the provisions of Clause 5, Article 143 of the Law on Tax Administration 2019: *"Use of documents that do not truthfully reflect the nature of the transactions or their values which leads to decrease in the tax payable or increase in the tax eligible for remission, refund or cancellation."* According to the provisions of Point c, Clause 2, Article 6 of Circular No. 166/2013/TT-BTC, *"The fine for tax evasion and tax fraud shall be 1 to 3 times the tax arrears. The fines in Article 13 of this Circular are incurred by organizations, which are twice the fines incurred by households and individuals."*

Besides, in accordance with Article 200 of the Criminal Code 2015, amended and supplemented in 2017, in case of tax evasion from VND 100,000,000 to less than VND 300,000,000, a fine range from VND 100,000,000 to VND 500,000,000 or a penalty of 03 - 24 months' imprisonment will be imposed. A fine range from 500,000,000 VND to 1,500,000,000 VND or a prison term of between 1 year and 3 years will be imposed if tax evasion is from VND 300,000,000 to less than VND 1,000,000,000. Committing the crime of tax evasion with an amount of VND 1,000,000,000 or more, the offender shall be subject to a fine of from VND 1,500,000,000 to VND 4,500,000,000 or a penalty of imprisonment between 02 years and 07 years. In addition, offenders may also be subject to a fine range from VND 20,000,000 to VND 100,000,000, prohibited from holding certain posts, practicing occupations or doing certain jobs from 1 to 5 years, or partly confiscated or all assets.

If the transfer is completed, the parties have completed the registration of ownership at a competent state agency, the transferee has transferred to a bona fide third party and this person based on such registration to establish and perform transactions, transactions with third parties will not be invalid.[3]

3. Legal solutions to protect parties when participating in land use right transfer transactions

As the above mentioned provisions, when participating in a transfer transaction, the land price stated in the contract is lower than the actual price. If it falls into the case of declaring two prices to avoid liability, the transaction is likely to be declared invalid. Thus, the transferee will easily face with the risk "Land is not available, but it's difficult to take money back". In order to ensure the correct implementation of the law and avoid unnecessary legal risks, the parties involved in land use right transfer transactions should:

- - Agree clearly about the actual price, payment method between the parties in each transaction, don't act for the immediate small benefit of tax reduction but declare the wrong price compared with the actual value. After fulfilling the payment obligation, a receipt from the purchaser or a money transfer receipt is required if the transaction is made through the bank.

- Comply fully with the regulations on the order and procedures for the transfer, and registration of land use rights at the competent authorities and fulfill all financial obligations under the law.

Ngo My Tram - FDVN Law Firm

References:

[1]. Civil Code 2015

[2]. Civil Procedure Code 2015

[3]. Law on Personal Income Tax 2007, amended and supplemented in 2012

[4]. Law on Tax administration 2019

[5]. Decree No. 140/2016/ND-CP on registration fee

[6]. Circular No. 92/2015/TT-BTC, amending and supplementing Article 12 of Circular No. 111/2013/TT-BTC

[7]. Criminal Code 2015, amended and supplemented 2017

[8]. Verdict 01/2018/HC-ST dated 12/02/2018 of the People's Court of Phuc Yen town, Vinh Phuc province regarding the request to cancel the land use right certificate,

[3] Clause 2, Article 133 of Civil Code 2015.

https://thuvienphapluat.vn/banan/ban-an/ban-an-012018hcst-ngay-12022018-ve-yeu-cau-huy-giay-chung-nhan-quyen-su-dung-dat-14151.

[9]. Verdict 152/2019/DS-PT dated July 1, 2019 of the People's Court of Binh Duong province on disputes on land use right transfer contracts,

https://thuvienphapluat.vn/banan/ban-an/ban-an-1522019dspt-ngay-01072019-ve-tranh-chap-hop-dong-chuyen-nhuong-quyen-su-dung-dat-99571

[10]. Verdict No. 32/2018/DS-PT dated July 31, 2018 on the dispute over the contract of land use right transfer by the People's Court of Ninh Thuan province,

http://congbobanan.toaan.gov.vn/5ta153250t1cvn/AN_HOAI TRAN_.pdf

9. 2020

PART II. *Law & Practice*

Is it possible for a child to be named in a foreign language in the birth certificate?

How do parents enjoy the sickness regime upon the sickness of their children?

Is it possible for a partnership member to be the owner of a private company?

LEGAL SITUATION: IS IT POSSIBLE FOR A CHILD TO BE NAMED IN A FOREIGN LANGUAGE IN THE BIRTH CERTIFICATE?

I and my husband have just given birth and we intend to name the baby in English. Can we get a birth certificate for our child in English? We hope that FDVN Lawyers can give me an advice. Sincerely thank you.

FDVN's opinions:

Thank you for concerning FDVN's legal services. Base on your consulting requirements, after studying the legal documents, FDVN Law Firm offers the following opinions:

Clause 3 Article 26 of Civil Code 2015 provides the right to have a full name as follows:

"1. Each natural person has right to have a family name and a given name (including a middle name, if any). The family and given names of a person shall be the family and given names in the birth certificate of such person.

3. The naming is restricted in case it violates lawful rights and interests of other people and contravenes basic principles of civil law prescribed in Article 3 of this Code.

The name of each Vietnamese citizen must be in Vietnamese or other ethnic minority languages of Vietnam and not include any figure or any symbol other than a letter.

4. Each natural person shall enter in and perform his/her civil rights and obligations following his/her family and given name.

5. A person may not use his/her code name or pen name to cause damage to the lawful rights and interests of other people."

According to the above provisions, because the name of a Vietnamese citizen must be in Vietnamese or other ethnic minority languages of Vietnam, you cannot register in your child's birth certificate in English name.

Above is the advisory opinion of FDVN related to your consulting request on the basis of researching legal regulations. Hopefully, the advice of FDVN will be useful to you.

Hoang Tran Ngoc Anh – FDVN Law Firm

LEGAL SITUATION: HOW DO PARENTS ENJOY THE SICKNESS REGIME UPON THE SICKNESS OF THEIR CHILDREN?

My child is 4 years old this year. Last Tuesday, my child with dengue was hospitalized and he has been receiving treatment. I and my husband are very worried and our family lives far away from our paternal grandmother, so we have to take care of our sick child by ourselves. Therefore, I would like to ask FDVN Lawyer if both I and my husband are paying social insurance and how we will enjoy the sickness regime upon the sickness of our child?

FDVN's opinions:

Thank you for concerning FDVN's legal services. Base on your consulting requirements, after studying the legal documents, FDVN Law Firm offers the following opinions:

Clause 1 Article 27 of Law on Social Insurance 2014 provides as follows:

"1. The leave period upon sickness of a child in a year shall be calculated based the number of days of care for the sick child, which must not exceed 20 working days, if the child is under 3 years old, or must not exceed 15 working days, if the child is between full 3 years and under 7 years old."

Accordingly, in this case, your child is 4 years old this year, so the time to enjoy the benefits upon child's sickness in a year for each child is calculated as the maximum number of days to take care of the child which is 15 working days.

When both the husband and wife are paying social insurance premiums and have a sick child, according to Paragraph b and c, Article 5 of Circular No. 59/2015/TT-BLDTBXH detailing and guiding the implementation of some articles of the Law on social insurance on compulsory social insurance, the sickness regime is provided as follows:

"Article 5. Time to enjoy the benefits upon child's sickness

...

b) Where both parents participate in social insurance, depending on the condition of each person to alternate their leave to take care of their children. The maximum time to enjoy the benefits in a year of a father or mother for each child is specified in Clause 1, Article 27 of the Law on social insurance.

Ex 7: The married couple of Ms B are participating in compulsory social insurance. Their weekend is the Sunday. Their child is 5 years of age and is sick and hospitalized 11/01 to 05/02/2016. Due to working conditions, the married couple of Ms B must alternate their leave to take care of their child as follows:

- Ms B takes leave to take care her child from 11/01 to 17/01/2016 and from 25/01 to 05/02/2016;

- Ms B's husband takes leave to take care her child from18/01 to 24/01/2016.

Therefore, the time to enjoy the benefits upon child's sickness of the married couple of Ms B is calculated as follows:

+ For Ms B: The total days of leave to take care of her child is 19 days, except for 02 weekends on Sundays, the remaining day is 17. However, because her child is 5 years of age so the time of leave to enjoy the benefits upon child's sickness is a maximum of 15 days. Therefore, the time to enjoy the benefits upon child's sickness of Ms B is 15 days.

+ For Ms B's husband: The total number of leave days to take care of his child is 07 days, except for 01 weekend on Sunday, the remaining day is 06 days. Therefore, the time to enjoy the benefits upon child's sickness of Ms B's husband is 06 days.

c) Where both parents participate in the compulsory social insurance and take leave to take care of their sick child, both parents shall be entitled to the benefits upon their child's sickness. The maximum time to enjoy the benefits upon child's sickness in a year of a father or mother for each child is specified in Clause 1, Article 27 of the Law on social insurance.

Ex 8: The married couple of Ms T participate in the compulsory social insurance and have a son of 5 years of age who is sick and hospitalized from 07/3/2016 to 11/3/2016. During their child's hospitalization, both married couple of Ms T must take their leave to take care of their child.

In this case, both married couple of Ms T shall enjoy the benefits upon their child's sickness with the time of 05 days.

Thus, when both you and your husband are participating in social insurance, you can take turns quitting or taking leave together to take care of your sick child. Both of these cases are entitled to the sickness regime according to Clause 1, Article 27 of Law on Social Insurance 2014.

Above is the advisory opinion of FDVN related to your consulting request on the basis of researching legal regulations. Hopefully, the advice of FDVN will be useful to you.

Nguyen Thi Thanh Thanh Tra

– FDVN Law Firm

LEGAL SITUATION: IS IT POSSIBLE FOR A PARTNERSHIP MEMBER TO BE THE OWNER OF A PRIVATE COMPANY?

My name is An and I am a Director as well as a general partner of a partnership. I am going to open a private company. Therefore, could you tell me whether I can be an owner of this private company.

FDVN's opinions:

Thank you for concerning FDVN's legal services. Base on your consulting requirements, after studying the legal documents, FDVN Law Firm offers the following opinions:

[1]. According to Article 172 of Law on enterprises providing about the partnership:

"1. A partnership means an enterprise of which:

a) ***At least 02 partners are co-owner of the company*** *who run business together in a common name (hereinafter referred to as general partner). Apart from general partners, the company may have contributing partners;*

b) General partners are ***individuals*** *who are responsible for the company's obligations with all of their property;*

c) Contributing partners are only liable for the company's debts up to the value of capital contributed to the company.

2. A partnership ***has its own legal status*** *from the issuance date of the Certificate of Business registration.*

3. Partnerships must not issue any kind of shares."

[2]. Comparing with the information you provide, according to the provisions at Clause 1, Article 175 of the Law on Enterprises 2014 stipulating the restriction on rights towards general partners, what a general partner will not be able to do is:

"1. A general partner must not own a sole proprietorship or hold the position of general partner of another partnership, unless otherwise agreed by other general partners."

Thus, if there is the consent of the remaining general partners, you, even as a general partner, will have the right to own a sole proprietorship.

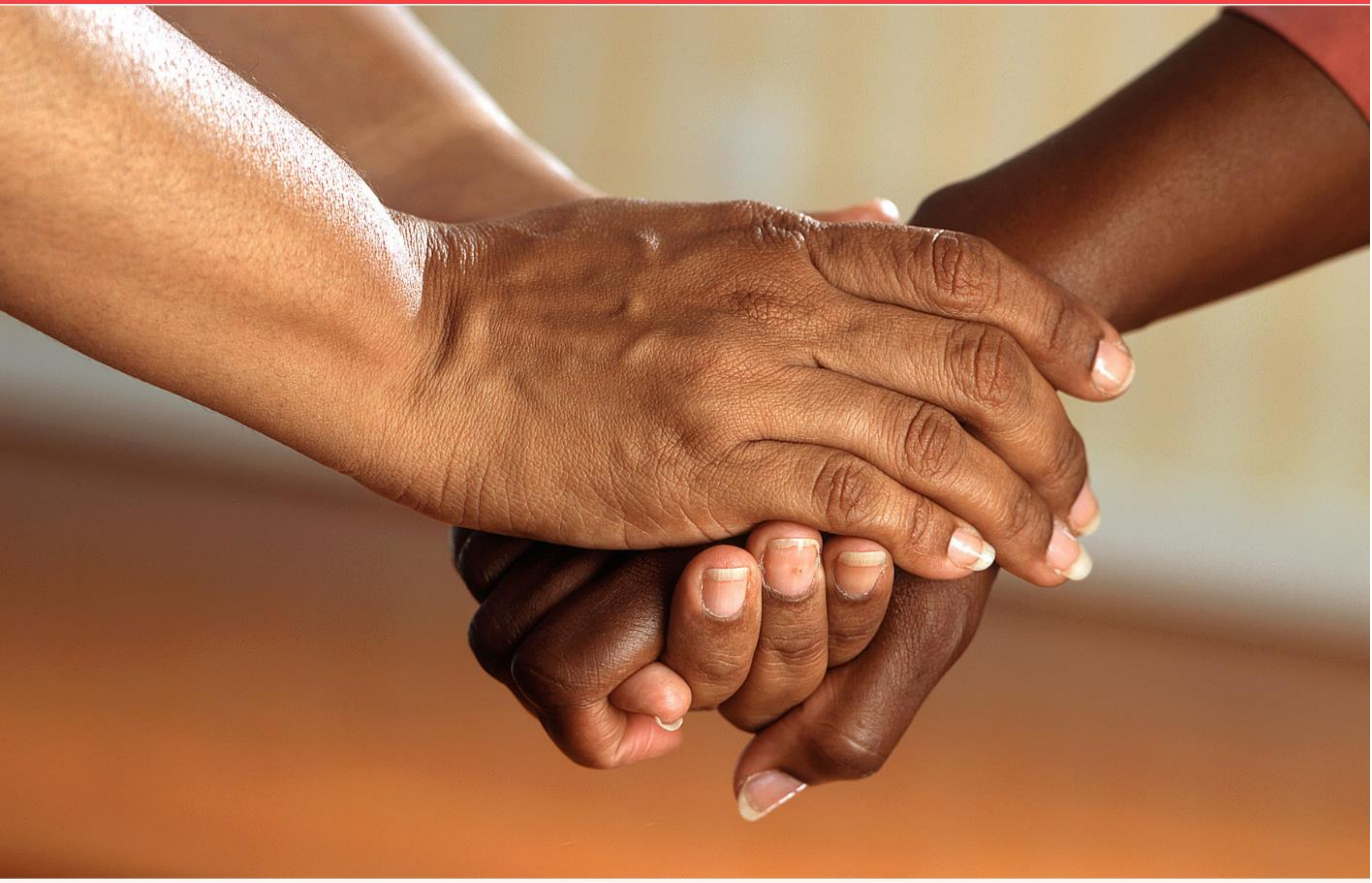
Above is the advisory opinion of FDVN related to your consulting request on the basis of researching legal regulations. Hopefully, the advice of FDVN will be useful to you.

Nguyen Thi Lan Anh – FDVN Law Firm

PART III. KNOW THE RULES:

F

NO 11 • 9.2020



28 CASES WHERE THE AUTHORIZATION CANNOT BE IMPLEMENTED


28 TRƯỜNG HỢP KHÔNG ĐƯỢC ỦY QUYỀN
THEO QUY ĐỊNH CỦA PHÁP LUẬT
FDVN LAWFIRM
28 CASES SHALL NOT AUTHORIZE
AS PRESCRIBED BY LAW
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01

Một số trường hợp đăng ký hộ tịch:

- Đăng ký kết hôn;
- Đăng ký lại việc kết hôn;
- Đăng ký nhận cha, mẹ, con.

Một bên có thể trực tiếp nộp hồ sơ tại cơ quan đăng ký hộ tịch có thẩm quyền, không phải có văn bản ủy quyền của bên còn lại.

Some cases of civil registration:

- Marriage registration;
- Marriage re-registration;
- Recognition of parent-child relationship.

One party may submit an application to the competent civil registration authority without a written authorization from the other party.

Điều 2 Thông tư số 04/2020/TT-BTP

Article 2 Circular No. 04/2020/TT-BTP

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02

Đối với việc ly hôn, đương sự không được ủy quyền cho người khác thay mặt mình tham gia tố tụng. Trường hợp cha, mẹ, người thân thích khác yêu cầu Tòa án giải quyết ly hôn theo quy định tại khoản 2 Điều 51 của Luật hôn nhân và gia đình thì họ là người đại diện.

For the divorce, the involved parties must not designate any other persons to participate in the procedure on their behalf. If parents or other relatives of the involved parties petition the Courts to resolve the divorce cases as prescribed in clause 2 Article 51 of the Law on marriage and family, they such be the representatives.

Khoản 4 Điều 85 Bộ luật tố tụng dân sự 2015

Clause 4 Article 85 Code of civil procedure

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03

Đăng ký nhận cha, mẹ, con: Khi đăng ký nhận cha, mẹ, con các bên phải có mặt.

Registration of parent and child recognition: All parties must be present upon registration of parent and child recognition.

Điều 25 Luật hộ tịch 2014

Article 25 Law on civil status

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04

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Công chứng di chúc: Người lập di chúc phải tự mình yêu cầu công chứng di chúc, không ủy quyền cho người khác yêu cầu công chứng di chúc.

Notarization of testaments: A testator shall personally request notarization of his/her testament but may not authorize another person to request the notarization.

Theo Điều 56 Luật công chứng 2014

Article 56 Law on notarization 2014

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05

Quyền, lợi ích đối lập với người được đại diện trong cùng vụ việc trong tố tụng dân sự: Nếu họ cũng là đương sự trong cùng một vụ việc với người được đại diện mà quyền và lợi ích hợp pháp của họ đối lập với quyền và lợi ích hợp pháp của người được đại diện.

Rights and interests are contrary to the represented person in the same case in civil procedure: They are also the involved parties in the same case with the represented persons where their legitimate rights and interests are contrary to those of the represented persons.

Điểm a Khoản 1 Điều 87 Bộ luật tố tụng dân sự 2015

Point a Clause 1 Article 87 of Code of civil procedure 2015

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06

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Đang là người đại diện theo pháp luật trong tố tụng dân sự cho một đương sự khác mà quyền và lợi ích hợp pháp của đương sự đó đối lập với quyền và lợi ích hợp pháp của người được đại diện trong cùng một vụ việc.

They are acting as representatives at law in civil procedures for other involved parties whose legitimate rights and interests are contrary to those of the represented persons in the same case.

Điểm b Khoản 1 Điều 87 Bộ luật tố tụng dân sự 2015

Point b Clause 1 Article 87 of Code of civil procedure 2015

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07

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Các trường hợp không được ủy quyền trong tố tụng hình sự:
Thủ trưởng, Phó Thủ trưởng Cơ quan điều tra phải chịu trách nhiệm trước pháp luật về hành vi, quyết định của mình. Thủ trưởng, Phó Thủ trưởng Cơ quan điều tra không được ủy quyền cho Điều tra viên thực hiện nhiệm vụ, quyền hạn của mình.

Heads and vice heads of investigation authorities shall be held liable for their actions and decisions. Heads and vice heads of investigation authorities cannot mandate investigators to carry out their duties and power.

Khoản 4 Điều 36 Bộ luật tố tụng hình sự 2015
Clause 4 Article 36 Criminal procedure code 2015

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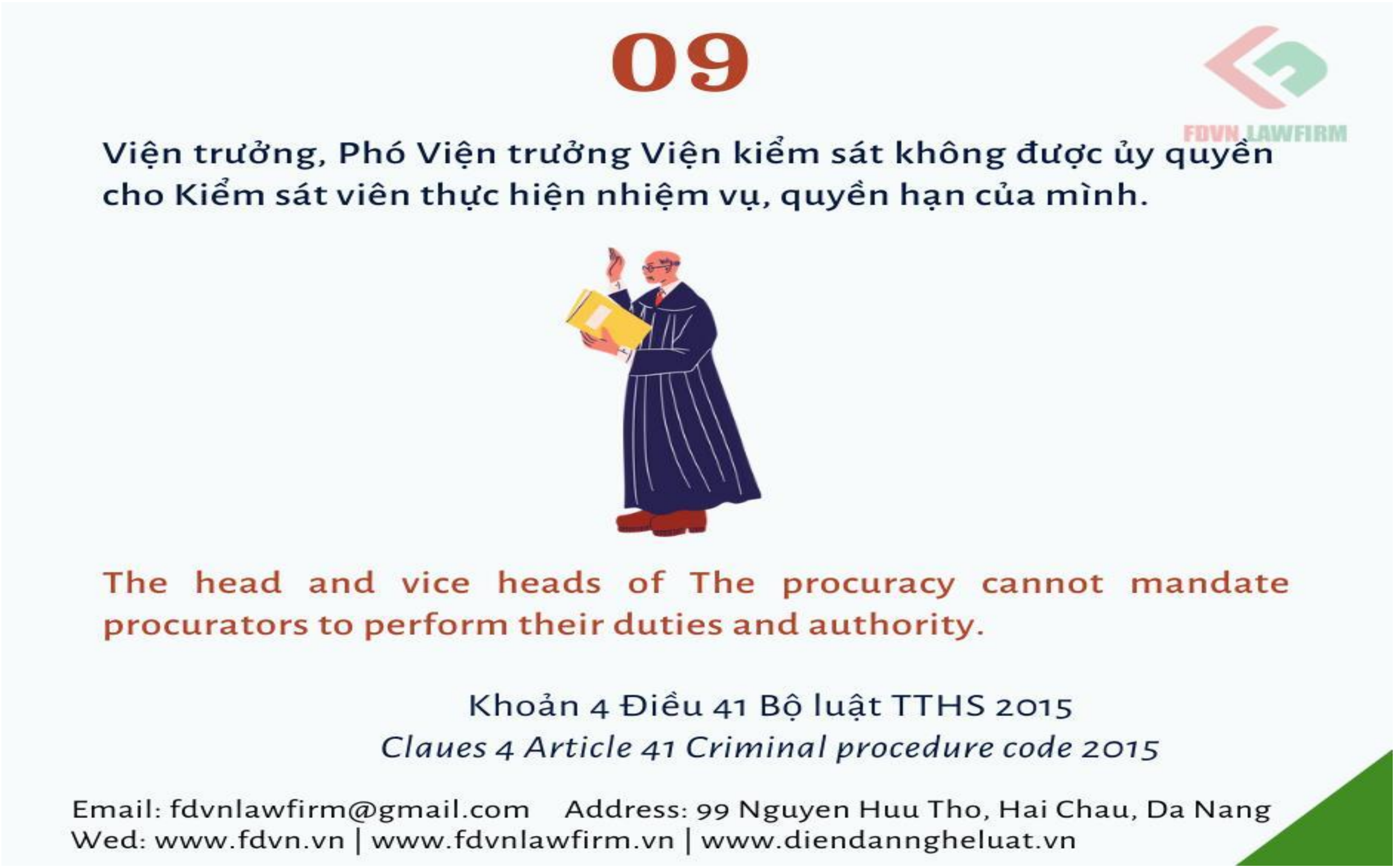
Cấp trưởng, cấp phó không được ủy quyền cho cán bộ điều tra thực hiện nhiệm vụ, quyền hạn của mình.

Chiefs and deputies are not permitted to mandate investigation officers to perform their duties and authority.

(Khoản 5 Điều 39 Bộ luật TTHS 2015)
(Claues 5 Article 39 Criminal procedure code 2015)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Viện trưởng, Phó Viện trưởng Viện kiểm sát không được ủy quyền cho Kiểm sát viên thực hiện nhiệm vụ, quyền hạn của mình.
The head and vice heads of The procuracy cannot mandate procurators to perform their duties and authority.
Khoản 4 Điều 41 Bộ luật TTHS 2015
Claues 4 Article 41 Criminal procedure code 2015
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Chánh án, Phó Chánh án Tòa án không được ủy quyền cho Thẩm phán thực hiện nhiệm vụ, quyền hạn của mình.

The court president and Vice court presidents are not permitted to mandate judges to carry out their duties and powers.

(Khoản 4 Điều 44 Bộ luật TTHS 2015)

(Claues 4 Article 44 Criminal procedure code 2015)

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Cơ quan có thẩm quyền quyết định giao đất, cho thuê đất, cho phép chuyển mục đích sử dụng đất không được ủy quyền.

Agencies having the competence to decide on land allocation or lease and permit change of land use purpose may not delegate their competence.

Khoản 4 Điều 59 Luật đất đai 2013

Claues 4 Article 59 Law on land 2013

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Người đại diện theo ủy quyền trong tố tụng hành chính thực hiện các quyền, nghĩa vụ tố tụng hành chính của người ủy quyền. Người được ủy quyền không được ủy quyền lại cho người thứ ba..

Authorized representatives in administrative procedures shall exercise all administrative procedural rights and perform all administrative procedural obligations of their authorizers. An authorized person may not sub-authorize a third party.

Khoản 5 Điều 60 Luật tố tụng hành chính 2015

Claues 5 Article 60 Law on administrative procedures 2015

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Đối với tổ chức tín dụng là công ty cỏ phần: Chủ tịch và thành viên Hội đồng quản trị không được ủy quyền cho những người không phải là thành viên Hội đồng quản trị thực hiện quyền, nghĩa vụ của mình.

For credit institutions being joint-stock companies: The Chairman and members of the Board of Directors may not authorize persons other than members of the Board of Directors to exercise their rights and perform their obligations.

Khoản 5 Điều 81 Luật các tổ chức tín dụng 2010

Claues 5 Article 81 Law on credit institutions 2010

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Cơ quan được giao ban hành văn bản quy định chi tiết không được ủy quyền tiếp.

The agency assigned to promulgate the elaborating document must not assign a third agency to perform this task.

Khoản 2 Điều 11 Luật ban hành văn bản quy phạm pháp luật 2015
Claues 2 Article 11 Law promulgation of legislative documents 2015

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Ủy quyền cho cơ quan hành chính nhà nước ở địa phương: Cơ quan, tổ chức nhận ủy quyền không được ủy quyền tiếp cho cơ quan, tổ chức khác thực hiện các nhiệm vụ, quyền hạn đã được cơ quan hành chính nhà nước cấp trên ủy quyền.

Authorized agencies or organizations shall not be allowed to re-authorize other agencies or organizations to perform duties and exercise powers as delegated by superior-level State administrative agencies.

Khoản 3 Điều 14 Luật tổ chức chính quyền địa phương 2015

Claues 3 Article 14 Law organizing the local government 2015

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Thủ tục yêu cầu cấp Phiếu lý lịch tư pháp số 2: trường hợp cá nhân yêu cầu cấp Phiếu lý lịch tư pháp số 2 thì không được ủy quyền cho người khác làm thủ tục cấp Phiếu lý lịch tư pháp.

AProcedures for requesting the issuance of judicial record cards No. 2: Individuals who request the issuance of a judicial record card No, may not authorize others to carry out procedures for such request.

Khoản 2 Điều 46 Luật lý lịch tư pháp 2009

Claues 2 Article 46 Law on judicial records 2009

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Thẩm quyền quyết định trưng mua tài sản: Bộ trưởng Bộ Tài chính, Bộ trưởng Bộ Quốc phòng, Bộ trưởng Bộ Công an, Bộ trưởng Bộ Giao thông vận tải, Bộ trưởng Bộ Nông nghiệp và Phát triển nông thôn, Bộ trưởng Bộ Y tế, Bộ trưởng Bộ Công Thương, Chủ tịch Ủy ban nhân dân cấp tỉnh không được ủy quyền hoặc phân cấp thẩm quyền quyết định trưng mua tài sản.

Thẩm quyền quyết định trưng mua tài sản: Prime Minister, Minister of Finance, Minister of National Defence, Minister of Public Security, Minister of Transport, Minister of Agriculture and Rural Development, Minister of Health, Minister of Industry and Trade and Chairmen/Chairwomen of provincial-level People's Committee are not allowed to authorize issuance of asset purchase decisions

Khoản 3 Điều 14 Luật trưng mua, trưng dụng tài sản 2008

Clasue 3 Article 14 Law on Asset Purchase and Appropriation 2008

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Chủ đầu tư dự án kinh doanh bất động sản không được ủy quyền cho bên tham gia hợp tác đầu tư, liên doanh, liên kết, hợp tác kinh doanh hoặc góp vốn thực hiện ký hợp đồng mua bán, chuyển nhượng, cho thuê mua bất động sản.

Investors of real estate projects do not authorize any organization to participate in investment cooperation, joint venture, association, business cooperation or capital contribution to sign the agreement on real estate sale, transfer, or lease purchase.

Khoản 5 Điều 13 Luật kinh doanh bất động sản 2014

Claues 5 Article 13 Law on real estate trading.

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Người bị chất vấn phải trả lời trực tiếp, đầy đủ vấn đề mà đại biểu Quốc hội đã chất vấn, không được ủy quyền cho người khác trả lời thay.

The interpellated person is obligated to give a direct oral reply which fully covers the interpellation without authorizing to another person to provide the reply.

Khoản 2 Điều 15 Luật hoạt động giám sát của quốc hội và hội đồng nhân dân 2015/ *Claues 2 Article 15 Law on supervisory activities of the national assembly and people's councils 2015*

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Người được ủy quyền ký và đóng dấu của cơ sở khám bệnh, chữa bệnh trên giấy chứng nhận nghỉ việc hưởng bảo hiểm xã hội không được ủy quyền lại.

The authorized person to sign on the confirmation of eligibility to receive social insurance benefits shall not re-authorize.

Điểm d Khoản 5 Điều 26 Thông tư số 56/2017/TT-BYT

Point d Clause 5 Article 26 of Circular No. 56/2017/TT-BYT

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Người xin trở lại, xin thôi quốc tịch Việt Nam hoặc giải quyết các việc khác về quốc tịch có thể trực tiếp nộp hồ sơ hoặc gửi hồ sơ qua hệ thống bưu chính, không ủy quyền cho người khác nộp hồ sơ. Trường hợp người xin trở lại, xin thôi quốc tịch Việt Nam hoặc giải quyết các việc khác về quốc tịch cư trú tại quốc gia hoặc vùng lãnh thổ không có Cơ quan đại diện ngoại giao, cơ quan lãnh sự hoặc cơ quan khác được ủy quyền thực hiện chức năng lãnh sự của Việt Nam ở nước ngoài thì nộp hồ sơ tại Cơ quan đại diện kiêm nhiệm hoặc Cơ quan đại diện nào thuận tiện nhất.

A person applying for restoration, renunciation of Vietnamese nationality or other issues related to nationality can file a dossier directly or by post, shall not authorize another person. In case A person applying for restoration, renunciation of Vietnamese nationality or other issues related to nationality residing in the country or territory without a diplomatic mission, consular office or another agency authorized to perform the consular function of Vietnam in a foreign country, the dossier shall be filed to the most convenient concurrent representative agency or representative agency.

Điều 3 Nghị định 16/2020/NĐ-CP/ *Article 3 Decree 16/2020/ND-CP*

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Cấp phó được ủy quyền cho phép sao, chụp tài liệu, vật chứa bí mật nhà nước phải chịu trách nhiệm về quyết định cho phép sao, chụp của mình trước cấp trưởng và trước pháp luật. Người được ủy quyền không được ủy quyền tiếp cho người khác.

The deputies delegated the power to grant permission for duplication and photographing of state secret containers shall be answerable to their superiors and the law for their decisions and may not delegate such power to another person.

Khoản 5 Điều 11 Luật bảo vệ bí mật nhà nước 2018

Claues 5 Article 11 State screts ptotection law 2018

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Cá nhân đảm bảo điều kiện được ủy quyền quy định tại điểm 1 nêu trên nhưng đã được tổ chức trả thu nhập cấp chứng từ khấu trừ thuế TNCN thì không ủy quyền quyết toán thuế cho tổ chức trả thu nhập (trừ trường hợp tổ chức trả thu nhập đã thu hồi và hủy chứng từ khấu trừ thuế đã cấp cho cá nhân).

If a person who fulfills eligibility requirements for granting authorization as prescribed in point 1 above has already been issued with documents evidencing PIT deductions by an income-paying entity, his/her authorization for submission of tax finalization returns given to that income-paying entity will be illegal (except if that income-paying entity has managed to get back and discard documents evidencing PIT deductions).

Khoản 2 Mục 1 Công văn số 5749/CT-TNCN

Claues 2 Section 1 of Official Dispatch No. 5749/CT-TNCN

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Cá nhân có thu nhập từ tiền lương, tiền công ký hợp đồng lao động từ 03 tháng trở lên tại một đơn vị nhưng vào thời điểm ủy quyền quyết toán thuế không làm việc tại tổ chức đó. Cá nhân có thu nhập từ tiền lương, tiền công ký hợp đồng lao động từ 03 tháng trở lên tại một đơn vị, đồng thời có thu nhập vãng lai chưa khấu trừ thuế hoặc khấu trừ thuế chưa đủ (bao gồm trường hợp chưa đến mức khấu trừ và đã đến mức khấu trừ nhưng không khấu trừ) không được ủy quyền quyết toán thuế cho tổ chức trả thu nhập.

Person paid income in salary and wage form has signed an employment contract lasting for the minimum period of 3 months at an entity but no longer works there. Any person earning income from salaries or wages has entered into an employment contract lasting for the minimum period of 03 months at an income-paying entity, and has the irregular income on which taxes have not been withheld yet or have not been withheld in full (even if such income has not yet reached the rate subject to tax withholding, or has reached the rate subject to tax withholding but taxes on such income have not been withheld) are not allowed to authorize income-paying entities to file tax finalization returns.

Khoản 2 Mục 1 Công văn số 5749/CT-TNCN

Claues 2 Section 1 of Công văn số 5749/CT-TNCN

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Cá nhân có thu nhập từ tiền lương, tiền công ký hợp đồng lao động từ 03 tháng trở lên tại nhiều nơi không được ủy quyền quyết toán thuế cho tổ chức trả thu nhập.

Person earning income from salaries and wages has signed an employment contract lasting for at least 3 months at multiple income-paying entities are not allowed to authorize income-paying entities to file tax finalization returns.

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Cá nhân chỉ có thu nhập vãng lai đã khấu trừ thuế theo tỷ lệ 10% (kể cả trường hợp có thu nhập vãng lai duy nhất tại một nơi) không được ủy quyền quyết toán thuế cho tổ chức trả thu nhập.

Person only earns the irregular income on which tax is withheld at the 10-percent rate (even if he/she earns the irregular income from only one source) are not allowed to authorize income-paying entities to file tax finalization returns.

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Cá nhân chưa đăng ký mã số thuế không được ủy quyền quyết toán thuế cho tổ chức trả thu nhập.

Person has not registered tax identification number yet are not allowed to authorize income-paying entities to file tax finalization returns.

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Cá nhân cư trú có thu nhập từ tiền lương, tiền công đồng thời thuộc diện xét giảm thuế do thiên tai, hỏa hoạn, tai nạn, bệnh hiểm nghèo thì không ủy quyền quyết toán thuế mà cá nhân tự khai quyết toán thuế kèm theo hồ sơ xét giảm thuế theo hướng dẫn tại khoản 1 Điều 46 Thông tư số 156/2013/TT-BTC ngày 06/11/2013 của Bộ Tài chính không được ủy quyền quyết toán thuế cho tổ chức trả thu nhập.

If resident individuals have income earned from salaries or wages and be considered for tax reduction due to natural disasters, conflagration, accidents and fatal diseases, he/she will not have the right to authorize submission of tax finalization returns and will, on his/her own, have to submit tax finalization returns, enclosing application documents for tax reductions, according to instructions given in clause 1 of Article 46 in the Circular No. 156/2013/TT-BTC are not allowed to authorize income-paying organizations to finalize tax.

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45C Tran Quoc Toan, Ha Noi city
336 Phan Chu Trinh, Hue city
359 Nguyen Du, Quang Ngai city
65 Hung Vuong, Phu Quoc, Kien Giang
30 TEAM MEMBERS
Legal consulting service
Participating in procedures
Non-litigation attorney/representative
Other legal services: M&A, Foreign investment
OUTSTANDING PARTNERS/CLIENTS
IPC
Kcon
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