

Legal news

May 2017

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Highlighted

1. Tight control over “tontine main holder” in usury

With the social and economic developments, demand for lending and borrowing with tontines has increasingly been diverse and complicated. It has even been abused and provisions of Decree No. 144/2006/ND-CP dated 27 November 2006 show certain limits and issues...

Ministry of Justice has submitted to the Government a request for development of a Decree amending and supplementing Decree 144.

Borrowing with tontines has increasingly been diverse and complicated, even abused.

Over the last ten years of implementation, Decree 144 has basically contributed to a safer legal framework for people in using tontines; to restrain usury and to suppress other related social issues.

Nevertheless, demand for lending and borrowing with tontines has increasingly been diverse and complicated, even abused, and the provisions of this Decree show certain shortcomings and issues.

Tontine with annuity has increasingly developed entailing disguised complex schemes, which are not only for mutual assistance but also for "commercial" purpose.

There have been many disputes over tontine, which have increasingly been more complicated. Therefore, besides some measures, such as: mediation, negotiation, etc., disputes over tontine have increasingly been resolved through courts.

According to the Ministry of Justice, being in charge of drafting Decree, among others, one reason is that several provisions of Decree 44 on tontines, such as those on tontine participants; forms of tontine agreement; tontine books; interest rates; control mechanism; etc. reveal certain shortcomings.

For determining the measures to handle cases: Decree 44 only gives general provisions on forms of tontine, rights and obligations of tontine holder and participants in accordance with the civil law, whereas there is not yet any legal sanction for those involving criminal offence. In fact, there have only been few grounds to readily determine whether a tontine holder had deceived for criminal prosecution. Therefore, deterrence and punishment are not severe that many failed schemes have recently occurred over and over again.

On the other hand, Civil Code 2015 (“Civil Code”) took effect on 01 January 2017 with the new provisions on legal status of the subjects; establishment, performance and protection of civil rights; civil transactions; authorized representation; obligations and contracts; interest rates for loan contracts...; in

which those on loan contracts for property were fundamentally amended and supplemented. The Civil Code expressly provides that in case of tontines with annuity, the rates must comply with the provisions of this Code. Therefore, it is necessary to amend Decree 44.

Adding the stricter provisions on annuity-tontine main holder

Accordingly, the draft Decree has added provisions on mutual control mechanism among participants, which will help to direct behaviours of participants; amended those on rights and obligations of parties to enhance awareness and responsibility for self-protecting civil rights. Provisions on tighter conditions for tontine main holder, especially annuity tontine main holder have also been studied and supplemented.

The draft Decree has added some provisions on the contents for tontine books and receipts in order to ensure that evidence can be established to resolve disputes.

Regarding the forms of tontine agreement, the draft Decree adds several optional provisions on tontine agreement, such as accession of new participants, responsibility commitments of tontine main holder, etc.

Notably, the draft Decree has added several provisions on annuity calculation in specific cases on the basis of compliance with Articles 466 and 468 of the Civil Code on interest rates, including: annuity in case of annuity tontine and determination of annuity rate, tontine with annuity, but rate of which is not clearly agreed, interest rates in case of late payment, etc.

It is expected that the draft Decree will be submitted to the Government for consideration and promulgation in November 2017.

2. Amendment and supplement to Decree detailing a number of Articles and implementation measures of the Law on Lawyers

Draft Decree amending and supplementing a number of Articles of Decree No.123/2013/ND-CP detailing a number of Articles and implementation measures of the Law on Lawyers, has been developing by the Ministry of Justice with significant amendments on code of professional conducts and standards for a lawyer.

Accordingly, the draft Decree adds provisions on ethics of lawyer: “Lawyer must be a person who has integrity, honesty, responsibility in professional activities to protect justice and fairness, must not do against laws and profession morality for material benefits or other benefits.”

Those violating the ethics of lawyer will have their law practice certificates revoked

The draft Decree also adds responsibilities of lawyers, individuals and organizations in buiding a good image and prestige for lawyer profession.

Particularly, lawyers must keep their images, have good conducts and statements on media and social network, towards agencies, organizations and individuals, which comply with the ethics of lawyer profession. Lawyers should not take and handle lawsuits and cases for the purposes, which are against the laws and rules of law practice, or prohibited by the Law on Lawyers; assemble, mobilise or incite others to assemble for the purpose of disturbing public order or otherwise performing other illegal acts.

Lawyers committing serious violations of the Code of Lawyer Profession Conducts, violations of the Constitution and laws, which severely affect good image and prestige of lawyer profession, violations of ethics of lawyer profession or violations of legal prohibitions in accordance with Article 9 of Law on lawyers, shall have their Practicing Certificate for Lawyers revoked.

Notably, the draft Decree clearly provides the standards for becoming a lawyer. Those who have committed illegal acts, which were disciplined or imposed with an administrative sanction in the judicial field or who have been convicted of lesser offence, if they want to become a lawyer, they must show the process of endeavour, self-discipline and awareness about their committed illegal acts after such judgement or sentence.

Those, who have committed illegal acts in relation to integrity and honesty or repetitive violations, shall not adequately meet the standards on compliance with the Constitution, laws and being of moral virtue.

Revocation of Business Registration Certificate of Law Practicing Organization for organizations operating beyond their permitted scope of business

Draft Decree also adds several cases of revocation of certificate of business registration of legal practicing organization as follows:

Failure to notify a head office relocation within 30 days from its date of relocation or activities beyond scope of operations in accordance with the Law on Lawyers.

The law-practicing organization or its branch does not resume its operations or fails to report on temporary discontinuance of operations after six months from the end date of the period of temporary discontinuance of operations stated in the notice of temporary discontinuance in accordance with Clause 1, Article 46 of the Law on Lawyers.

Organisation, which commits a serious violation of Vietnamese laws or has been imposed with an administrative sanction in the judicial field for an act but still continues to violate.

Lawyers who are disciplined by way of having their names removed from the list of lawyers of a bar association, and has not yet had their practicing certificates revoked, can only resume practicing after at least 3 years from the date of the decision on discipline by way of name deletion from the list of

lawyers of a bar association or the effective date of the Decision on complaint resolution.

3. Travel allowance

On 8 May 2017, the Ministry of Finance issued Circular No.40/2017/TT-BTC, on regime of travel allowances and regime of expenses for conference applicable to the State agencies, public professional units, and socio-political organizations (“Circular 40”).

According to Circular 40, accommodation allowances for people on business trip shall be increased from VND50,000 per day to VND200,000 per day.

In addition, some types of other travel allowances shall also be increased, such as an increase of VND100,000/person/day for lump sum accommodation expense.

This Circular shall take effect on 1 July 2017.

4. Drugs’ listed prices are those including VAT

On 8 May 2017, the Government promulgates Decree No. 54/2017/TT-BTC, detailing a number of Articles and measures to implement Law on Pharmacy (“Decree 54”).

According to Decree 54, wholesale and retail medicine trading entities must post prices of their medicines and must not sell them at higher prices. Specifically:

- (a) Posted prices are inclusive of all types of tax, fee and charge (if any).
- (b) Currency of posting is Vietnamese Dong.
- (c) Wholesale entities shall post prices on public notice boards, papers or in any other form which is suitable and convenient for customers and state agencies to find and see them.
- (d) Besides the forms of posting by wholesale entities, retail entities can also post prices in the form of printing, writing or sticking on medicines packaging without covering the compulsory contents of drug labelling.

This Decree shall take effect on 1 July 2017.

5. Cancellation of payment for transactions on trading Government bonds

On 12 May 2017, the Ministry of Finance promulgated Circular No.46/2017/TT-BTC, providing guidelines on payment for transactions on trading Government bonds, bonds guaranteed by the Government, and local Government bonds (“Circular 46”).

According to Circular 46, transactions on trading Government bonds shall be cancelled in the following cases:

- (a) Error transaction by trading members;
- (b) Transaction with insufficient money on the date of payment without a request for application of a measure to defer the time limit for payment;
- (c) Transaction to which a measure to defer the time limit for payment is applied, but is still not fully paid on the deferred due date.
- (d) Short-selling transaction when the guidelines of the Ministry of Finance are not available.

This Circular shall take effect on 1 August 2017.

6. Guidelines on online property auction

On 16 May 2017, the Government issued Decree No. 62/2017/ND-CP, detailing a number of Articles and measures to implement the Law on Property Auction (“Decree 62”).

The form of online auction is guided in detail in Chapter III of Decree 42. Accordingly,

- (a) Online auction must be publicly published according to Article 57 of the Law on Property Auction and notice thereof shall be publicly available on the electronic information system for online auction.
- (b) Technical infrastructure system for online auction must have the following minimum functions:
 - (i) Guaranteeing the safety and confidentiality of access account and data integrity, bid placing, offered bids and information of bidders;
 - (ii) Recording and storing all bidding prices offered in the auction, withdrawn bids, and other necessary information in the auction;
 - (iii) Displaying publicly and honestly bids of bidders;
 - (iv) Extracting a history of bidding;
 - (v) Displaying the highest price level recorded by the online auction system every 30 seconds.

Other sectors

Finance

- Decree No. 63/2017/ND-CP dated 19 May 2017, providing a number of specific financial or treasury mechanisms and policies for Hanoi Capital.
- Decree No. 61/2017/ND-CP dated 16 May 2017, detailing the initial valuation of bad debts, collateral assets for bad debts, and the establishment of an Auction committee for bad debts and collateral assets for bad debts with respect to high value bad debts and collateral assets.

Banking

- Decision No. 902/QD-BTC dated 22 May 2017 of the Ministry of Finance, publishing administrative procedures in the field of banking - finance under the authority of the Ministry of Finance.
- Decision No. 630/QD-TTg dated 10 May 2017 of the Prime Minister, on preferential lending interest rates applicable to social housing by the Bank for Social Policies according to Decree No. 100/2015/ND-CP.
- Circular No. 02/2017/TT-NHNN dated 17 May 2017 of the State Bank, on factoring activities of foreign credit institutions and foreign banks' branches.

Taxation

- Decision No. 942/QD-BTC dated 24 May 2017 of the Ministry of Finance, on amendment and supplement to the Schedule of Prices for calculation of registration fees for automobiles and motorbikes accompanying Circular No.304/2016/TT-BTC dated 15 November 2016 of the Ministry Finance.
- Circular No. 51/2017/TT-BTC dated 19 May 2017 of the Ministry of Finance, on amending and supplementing a number of articles of Circular No.117/2012/TT-BTC dated 19 July 2012, providing guidelines for practicing tax services.

Trade

- Decree No. 67/2017/ND-CP dated 25 May 2017, on sanctioning administrative violations in the field of petroleum, gasoline and oil trading, and gas trading.
- Decision No. 2913/QD-UBND dated 22 May 2017 of the People's Committee of Hanoi, approving the Project on "Promotion of export of Hanoi for an integration

period up to 2020, with an orientation to 2025”.

- Decision No. 15/2017/QD-TTg dated 12 May 2017 of the Prime Minister, promulgating the List of imported goods required to do customs procedures at the import border gates.
- Decision No. 2511/QD-UBND dated 3 May 2017 of the People’s Committee of Hanoi, announcing newly-issued administrative procedures under the authority of Department of Industry and Trade of Hanoi.
- Circular No. 07/2017/TT-BCT dated 29 May 2017 of the Ministry of Industry and Trade, on import border gates for some items of fertilizer.
- Circular No. 06/2017/TT-BCT dated 25 May 2017 of the Ministry of Industry and Trade, on amendment and supplement to Circular No. 22/2009/TT-BCT dated 4 August 2009 of the Ministry of Industry and Trade, on transits of goods originated from the Democratic People's Republic of Laos through the territory of the Socialist Republic of Vietnam.

Labour

- Decision No. 816/QD-BHXH dated 23 May 2017 of Vietnam Social Insurance, providing for the functions, tasks, powers, responsibilities and management regimes for professional offices under Social Insurance agencies of provinces and centrally run cities.
- Decision No. 645/QD-LDTBXH dated 8 May 2017 of the Ministry of Labour, War Invalids and Social Affairs, announcing newly-issued administrative procedures and repealed administrative procedures within the scope of State management function of the Ministry of Labour, War Invalids and Social Affairs.
- Decision No. 631/QD-LDTBXH dated 3 May 2017 of the Ministry of Labour, War Invalids and Social Affairs, announcing a list of administrative procedures for which receipt of and return of results cannot be made via public postal services.
- Circular No. 14/2017/TT-BLDTBXH dated 25 May 2017 of the Ministry of Labour, War Invalids and Social Affairs, providing for the formulation, assessment and issuance of economic - technical norms on training to be applied in the vocational education field.

Education

- Decree No. 69/2017/ND-CP dated 25 May 2017, on providing for the functions, responsibilities, powers and organizational structure of the Ministry of Education

and Training.

- Decision No. 18/2017/QĐ-TTg dated 31 May 2017 of the Prime Minister, on credit transfer between intermediate or junior college levels and university level.
- Circular No. 13/2017/TT-BGDĐT dated 23 May 2017 of the Ministry of Education and Training, on conditions for education institutions to organize improvement training and issue certificate of professional title improvement training for officials teaching in public educational institutions.
- Circular No. 12/2017/TT-BGDĐT dated 19 May 2017 of the Ministry of Education and Training, promulgating the Regulations on quality accreditation of university education institutions.

Health

- Decree No. 65/2017/NĐ-CP dated 19 May 2017, on the specific policy on varieties, funds and technologies in the development of breeding, planting and exploiting medicinal plants.
- Decision No. 2192/QĐ-BYT dated 31 May 2017, of the Ministry of Health on correcting Circular No. 04/2017/TT-BYT dated 14 April 2017 on promulgating a list, ratios and conditions for reimbursement with respect to medical materials under insurance entitlement to health insurance participants.
- Decision No. 2126/QĐ-BYT dated 26 May 2017 of the Ministry of Health, on correcting its Circular No. 02/2017/TT-BYT dated 15 March 2017, providing for the maximum levels of price range for medical examination and treatment service beyond the reimbursement scope of Health Insurance Fund in State-owned medical facilities and guidelines on the application of prices and reimbursement of of medical examination and treatment costs in some cases.
- Decision No. 2828/QĐ-UBND dated 17 May 2017 of the People's Committee of Hanoi, promulgating a list of Hanoi's public professional services funded by the State budget in the Health – Population field.
- Decision No. 1891/QĐ-BYT dated 11 May 2017 of the Ministry of Health, announcing the repeal of administrative procedures under the Ministry of Health in the preventive health care field.
- Circular No. 25/2017/TT-BYT dated 17 May 2017 of the Ministry of Health, on repealing a number of legal documents issued by the Minister of Health.
- Circular No. 22/2017/TT-BYT dated 12 May 2017 of the Ministry of Health, on health standards for seafarers working on Vietnamese ships and publishing health care providers for seafarers.

- Circular No. 21/2017/TT-BYT dated 10 May 2017 of the Ministry of Health, on amendment and supplement to the List of techniques in medical examination and treatment accompanying Circular No. 43/2013/TT-BYT dated 11 December 2013 of the Ministry of Health, detailing professional and technical levels of classification for the system of medical examination and treatment.

Transport

- Decree No. 58/2017/ND-CP dated 10 May 2017, on detailing a number of articles of Vietnam Maritime Code on management of marine operations.
- Decision No. 1574/QD-BGTVT dated 30 May 2017 of the Ministry of Transport, announcing the amendment to and replacement of administrative procedures under the Ministry of Transport.
- Decision No. 1522/QD-BGTVT dated 26 May 2017 of the Ministry of Transport, amending and supplementing the price frame for certain non-aviation services in Vietnam airports and aero ports accompanying Decision No. 4224/QD-BGTVT dated 29 December 2016 of the Ministry of Transport, promulgating the price frame for certain non-aviation services in Vietnam airports and aero ports.
- Decision No. 1472/QD-BGTVT dated 23 May 2017 of the Ministry of Transport, promulgating the Technical instructions for repair of asphalt concrete surface on national highways in use.
- Circular No. 16/2017/TT-BGTVT dated 22 May 2017 of the Ministry of Transport, providing guidelines for routes of transportation of goods in transit through Vietnam's territory.
- Circular No. 14/2017/TT-BGTVT dated 10 May 2017 of the Ministry of Transport, providing guidelines for a number of articles of Decree No.70/2016/ND-CP dated 1 July 2016, on conditions for providing maritime safety assurance service.

Construction

- Decision No. 2897/QD-UBND dated 22 May 2017 of the People's Committee of Hanoi, announcing administrative procedures under Department of Construction in the area of Hanoi.
- Circular No. 08/2017/TT-BXD dated 16 May 2017 of the Ministry of Construction, on management of construction solid wastes.

Land

- Decree No. 53/2017/ND-CP dated 8 May 2017, providing for lawful documents on land for issuance of construction permits.
- Decision No. 19/2017/QD-UBND dated 30 May 2017 of the People's Committee of Hanoi, on amendment and supplement to the regulations accompanying Decision No. 96/2014/QD-UBND dated 29 December 2014 of the People's Committee of Hanoi, promulgating the regulations on prices of land in the area of Hanoi, which are applicable from 1 January 2015 to 31 December 2019.

Natural Resources - Environment

- Decree No. 59/2017/ND-CP dated 12 May 2017, on management of access to genetic resources and sharing of interests in using genetic resources.
- Decision No. 17/2017/QD-UBND dated 3 May 2017 of the People's Committee of Hanoi, amending and supplementing a number of articles of the Regulations on production, supply and use of clean water and protection of water supply works in the area of Hanoi accompanying Decision No. 69/2013/QD-UBND dated 30 December 2013 of the People's Committee of Hanoi.
- Circular No. 07/2017/TT-BXD dated 15 May 2017 of the Ministry of Construction, providing guidelines on methods for determination of service charges for processing household solid waste.
- Circular No. 44/2017/TT-BTC dated 12 May 2017 of the Ministry of Finance, on price brackets for determination of royalties applicable to groups and categories of natural resources with the same physical and chemical properties.

Science - Technology

- Decree No. 68/2017/ND-CP dated 25 May 2017, on management and development of industry clusters.
- Circular No. 06/2017/TT-BKHCHN dated 25 May 2017 of the Ministry of Science and Technology, providing for the economic – technical norms for activities of testing and calibrating measurement devices used in continuous and automatic water monitoring stations.
- Circular No. 05/2017/TT-BKHCHN dated 25 May 2017 of the Ministry of Science and Technology, on partial cancellation of Circular No. 13/2015/TT-BKHCHN dated 21 July 2015 of the Ministry of Science and Technology, amending and supplementing Circular No. 23/2010/TT-BKHCHN dated 29 December 2010,

providing guidelines on radioactive source security assurance.

- Circular No. 04/2017/TT-BKHCN dated 22 May 2017 of the Ministry of Science and Technology, on amendment to the national technical regulations 1:2017 QCVN 1:2015/BKHCN on gasoline, diesel and biofuels.

Information - Communications

- Decree No. 66/2017/ND-CP dated 19 May 2017, on conditions for business of camouflage-generation equipment and software used for voice and video recording and positioning.
- Decision No. 727/QD-BTTTT dated 17 May 2017 of the Ministry of Information and Communications, promulgating the Working regulation of the Ministry of Information and Communications.
- Decision No. 698/QD-BTTTT dated 10 May 2017 of the Ministry of Information and Communications, providing for the functions, duties, powers and organizational structure of the Authority of Broadcasting and Electronic Information.
- Decision No. 632/QD-TTg dated 10 May 2017 of the Prime Minister, promulgating the List of important fields prioritized for cyber security assurance and national important information systems.
- Decision No. 689/QD-BTTTT dated 10 May 2017 of the Ministry of Information and Communications, providing for the functions, duties, powers and organizational structure of the Authority of Grassroots Information.

Administration - Judiciary

- Resolution No. 04/2017/NQ-HDTP dated 5 May 2017 of the Judges' Council of the Supreme People's Court, providing guidelines on provisions of Clauses 1 and 3, Article 192 of Civil Proceedings Code No. 92/2015/QH13 on return of petitions and right to re-lodge petitions.
- Decision No. 2907/QD-UBND dated 22 May 2017 of the People's Committee of Hanoi, announcing amended or supplemented administrative procedures under the Department of Finance and district-level People's Committees in Hanoi.
- Decision No. 2886/QD-UBND dated 19 May 2017 of the People's Committee of Hanoi, promulgating the List of Hanoi's public professional services funded by the State budget in the judiciary field.
- Decision No. 2857/QD-UBND dated 18 May 2017 of the People's Committee of

Ho Chi Minh City, promulgating the List of Hanoi's public professional services funded by the State budget in the field of labour, war invalids and social affairs.

- Circular No. 03/2017/TT-BNV dated 19 May 2017 of the Ministry of Home Affairs, promulgating the System of Home Affairs sector statistical norms.

Agriculture - Forestry - Fishery

- Decree No. 55/2017/ND-CP dated 9 May 2017, on management of breeding, processing and exporting Pangasius products.
- Decision No. 2764/QD-UBND dated 29 May 2017 of the People's Committee of Ho Chi Minh City, announcing administrative procedures under Department of Agriculture and Rural Development, which are standardized in Ho Chi Minh City.
- Decision No. 678/QD-TTg dated 19 May 2017 of the Prime Minister, promulgating the Set of criteria for supervising and evaluating agricultural restructure until 2020.
- Circular No. 11/2017/TT-BNNPTNT dated 29 May 2017 of the Ministry of Agriculture and Rural Development, on amendment and supplement to a number of articles of legal instruments in relation to the functions, duties of units under the Ministry of Agriculture and Rural Development.

Miscellaneous

- Decree No. 56/2017/ND-CP dated 9 May 2017 of the Government, detailing a number of articles of Law on Children.
- Decision No. 2765/QD-UBND dated 29 May 2017 of the People's Committee of Ho Chi Minh City, announcing newly-issued, amended, supplemented or replaced administrative procedures under Department of Tourism of Ho Chi Minh City.
- Decision No. 2906/QD-UBND dated 22 May 2017 of the People's Committee of Hanoi, on promulgating the Plan of supervising enforcement of the laws on supporting start-up enterprises in the area of Hanoi in 2017.
- Circular No. 52/2017/TT-BTC dated 19 May 2017 of the Ministry of Finance, amending and supplementing a number of articles of Circular No.120/2015/TT-BTC dated 14 August 2014 of the Ministry of Finance, providing for standard forms and regime for printing, issuance, management and use of Customs Declaration forms for incoming/outgoing passengers.
- Circular No. 50/2017/TT-BTC dated 15 May 2017 of the Ministry of Finance, providing guidelines for the implementation of Decree No. 73/2016/ND-CP dated

1 July 2016, detailing the implementation of Law on Insurance Business and Law amending the Law on Insurance Business.

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