



EPLegal Law Firm

EPLegal Newsletter

December 2023

'Intelligence beats strength' - Vietnamese saying

ABOUT US

EPLegal is a boutique firm, founded in Vietnam, operating throughout South East Asia and the UK. The firm specialises in cross-border investment & commercial transaction, and dispute resolutions (including arbitration, mediation, and litigation). Our firm drives results across numerous industries - including Energy, Construction, Real Estate, Aviation, Finance, and many more.

IN THIS VOLUME:

- News from EPLegal
 - EPLegal has achieved Highly Recommended & Recommended in Legal Practices such as Energy, Banking and Finance and Dispute Resolution.
- Legal Updates
 - Decision No. 1241/QĐ-TTg on approving the investment policy and approving the investor of the 500kV transmission line Nam Dinh I Thermal Power Plant – Thanh Hoa project
 - Circular No. 16/2023/TT-BCT dated 31st August 2023 guiding power purchase agreements serving domestic purposes
 - Decree No. 69/2023/ND-CP dated 14th September 2023 amending Decree No. 159/2020/ND-CP on the management of individuals holding titles, positions, and representatives of state capital in enterprises.
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ELEGAL NEWS

EVENT

14th December 2023



Our Founding Partner, Mr. Tony Nguyen, and Managing Partner, Mrs. Annie Ngo, were bestowed with the prestigious role of lecturers at the "PetroVietnam's Training Program: Commencing an International Arbitration". This event was a triumph, attracting the active participation of numerous PetroVietnam leaders and employees.

12th December 2023



Our Founding/Sr Partner, Mr. Tony Nguyen, and Managing Partner, Mrs. Annie Ngo, have taken part in the "Investment Legal Support Forum 2023," organised by VIAC. Mr. Tony delivered a presentation on potential disputes and necessary contractual provisions for investors opting to invest through the PPP.

16th November 2023



Mrs. Annie Ngo, Managing Partner, successfully finished the Director Certification Program hosted by the Vietnam Institute of Director (VIOD). She has been granted standard membership in their prestigious individual membership program.

15th November 2023



Mr. Tony Nguyen - Founder, Sr Partner of EPLegal, actively contributed to the discourse on matters relating to arbitration in Vietnam in the "PCA VIETNAM CONFERENCE" hosted by the Permanent Court of Arbitration (PCA), together with the Ministry of Foreign Affairs and the Vietnam Society of International Law.

10th November 2023



EPLegal Vietnam and EPLegal UK were honored to be invited as the main speakers to present at the workshop “General Data Protection Regulation from Vietnamese and International Perspectives”. This workshop organised by the Vietnam Business Lawyers Club (VBLC) in Ho Chi Minh City.

From 30th October to 3rd November 2023



Founding/Senior Partner, Tony Nguyen, and Managing Partner, Annie Ngo, actively participated in the 12th Asia-Pacific ADR Conference, as a part of the Seoul ADR Festival (SAF) 2023 from 30th October to 3rd November 2023, organised by the KCAB International.



Who's Who Legal: Construction 2023 and Arbitration 2024 publications

Mr. Tony Nguyen – Founding, Sn Partner of EPLegal is one of the Vietnamese Lawyers ranked as a Recommended Lawyer and A Future Leader in Who’s Who Legal: Construction 2023 And Arbitration 2024. It brings us immense pride to emphasize that Mr. Tony is among the distinguished Vietnamese lawyers featured in the esteemed Who's Who Legal: Construction 2023 and Arbitration 2024 publications. This prestigious acknowledgment serves as a resounding affirmation of Mr. Tony Nguyen’s remarkable accomplishments.



Asialaw 2023: EPLegal’s high ranking publications

Highly Recommended & Recommended in Legal Practices:

- Energy: “Highly Recommended”
- Banking and Finance: “Recommended”
- Dispute Resolution: “Recommended,”

Tony Nguyen, Founder, Sr Partner of EPLegal – A Distinguished Practitioner in Dispute Resolution and Energy.

From 24th to 25th October 2023



Mrs. Annie Ngo, Managing Partner of EPLegal was thrilled and honoured to become a speaker for the Asia Hydrogen & LNG Markets Conference. This event, an integral part of Singapore International Energy Week (SIEW), took place from 24th to 25th October 2023 and was hosted by S&P Global Commodity Insights in collaboration with the Energy Market Authority in Singapore.

From 17th to 21st October 2023



Mr. Tony Nguyen - Founder, Sr Partner of EPLegal, was honored to participate in the 14th ASEAN Law Association (ALA) General Assembly. This event took place from 17th to 21st October 2023 and was hosted by ALA in collaboration with Badan Kehakiman Malaysia and the Malaysia Judiciary in Kuala Lumpur, Malaysia.

From 13th to 14th October 2023



Mr. Tony Nguyen, Founder, Sr Partner of EPLegal, participated in the “Belt and Road Cooperation and Partnership Model Agreement Conference” at the “6th Belt and Road Initiative International Forum”, from 13-14th October 2023 in Hong Kong, jointly organised by the International Academy of "Belt and Road", the Hong Kong WTO Research Institute and Academy of International Strategy and Law of Zhejiang University.

25th September 2023



EPLegal is proud to become a sponsor of the Vietnam Mediation Moot 2023. Vietnam Mediation Moot 2023 is a competition on commercial mediation in Vietnamese for students with passion and interest in commercial mediation, organised by the Vietnam International Commercial Mediation Center – VICMC and the College of Economics, Law and Government (CELG) of the University of Economics Ho Chi Minh City (UEH).

EPLEGAL UPDATES

No.	Documents	Issuing authority	Issued date	Effective date
I. Energy – Oil & Gas				
1.	Circular No. 19/2023/TT-BKHCH guiding several articles of Decree No. 107/2013/ND-CP regulating penalties for administrative violations in the field of atomic energy, amended by Decree No. 126/2021/ND-CP	Ministry of Science and Technology	20/9/2023	5/11/2023
2.	Circular No. 16/2023/TT-BCT guiding power purchase agreements serving domestic purposes	Minister of Industry and Trade	31/8/2023	16/10/2023
3.	Decision No. 1243/QĐ-TTg approving the plan to restructure Vietnam Oil and Gas Group for the period until the end of 2025	Prime Minister	25/10/2023	25/10/2023
4.	Decision No. 1241/QĐ-TTg on approving the investment policy and approving the investor of the 500kV transmission line Nam Dinh I Thermal Power Plant - Thanh Hoa project	Prime Minister	24/10/2023	24/10/2023
5.	Decision No. 1135/QĐ-TTg promulgating the plan to implement the Petroleum Law in 2022	Prime Minister	28/9/2023	28/9/2023
II. Finance – Banking				
6.	Circular No. 12/2023/TT-NHNN amending and supplementing legal documents regulating the implementation of state foreign exchange reserve management duties	The State Bank of Vietnam	12/10/2023	27/11/2023
7.	Circular No. 61/2023/TT-BTC stipulating the rates, collection, remittance, management and use of fees in the field of secured transaction registration	Ministry of Finance	28/9/2023	15/11/2023
8.	Resolution No. 148/NQ-CP of the year 2023 on further implementation of Resolution No. 42/2017/QH14 regarding pilot disposal of bad debts of credit institutions	The Government of Vietnam	20/9/2023	20/9/2023
III. Enterprise – Investment				

9.	Decree No. 69/2023/ND-CP amending Decree No. 159/2020/ND-CP on the management of individuals holding titles, positions, and representatives of state capital in enterprises	The Government of Vietnam	14/9/2023	14/9/2023
10.	Circular No. 05/2023/TT-BKHDT stipulating the reporting forms of the investment supervision and evaluation; online reporting procedures and the operational management of the Information System for monitoring and evaluating state-funded investment programs and projects	Ministry of Planning and Investment of Vietnam	30/6/2023	1/9/2023
IV. Environment				
11.	Circular No. 15/2023/TT-BTNMT prescribing the provision and sharing of information and data on natural resource and environmental monitoring	Ministry of Natural Resources and Environment	30/10/2023	15/12/2023
V. Shipping				
12.	Circular No. 10/2023/TT-BGTVT establishing economic and technical management standards for inland waterway maintenance	Ministry of Transport	22/6/2023	1/9/2023
13.	Circular No. 20/2023/TT-BGTVT regulating professional standards, professional certificates, training and the minimum safety margin for Vietnamese ship crew members	Ministry of Transport	30/6/2023	1/9/2023
VI. Tax				
14.	Decree No. 68/2023/ND-CP amending Decree No. 115/2022/ND-CP of the Government concerning the issuance of preferential export tariffs and special preferential import tariffs of Vietnam to implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership in 2022 – 2027 period.	The Government of Vietnam	7/9/2023	7/9/2023
VII. Labor				

15.	Decision No. 1549/QD-LDTBXH on announcing amended and supplemented administrative procedures in the field of occupational safety and hygiene within the scope of state management functions of the Ministry of Labor - Invalids and Social Affairs	The Ministry of Labour - Invalids and Social Affairs	16/10/2023	16/10/2023
16.	Decree No. 71/2023/ND-CP amending Decree No. 112/2020/ND-CP on disciplinary measures for officials, civil servants, and public employees	The Government of Vietnam	20/9/2023	20/9/2023
17.	Decree No. 70/2023/ND-CP amending Decree No. 152/2020/ND-CP on foreign workers working in Vietnam, and recruitment and management of Vietnamese workers working for foreign employers in Vietnam	The Government of Vietnam	18/9/2023	18/9/2023
VIII. Others				
18.	Decision No. 1250/QD-TTg of 2023 outlining the plan for implementing the enforcement of the Law on Price No. 16/2023/QH15	Prime Minister	26/10/2023	26/10/2023
19.	Decision No. 364/QD-CA of 2023 announcing legal precedents	Chief Judge of the Supreme People's Court	1/10/2023	1/10/2023

Recently, the following legislation in several sectors entered into effect:

ENERGY – OIL & GAS

a) Decision No. 1241/QĐ-TTg on approving the investment policy and approving the investor of the 500kV transmission line Nam Dinh I Thermal Power Plant – Thanh Hoa project

On 24th October 2023, Deputy Prime Minister Tran Hong Ha signed Decision No. 1241/QĐ-TTg on approving the investment policy and approving the investor (“**Decision 1241**”) of the 500kV transmission line Nam Dinh I Thermal Power Plant - Thanh Hoa project (“**Project**”). Decision 1241 took effect from the date of signing.

Pursuant to Decision 1241, the National Power Transmission Corporation (“**EVNNPT**”), a subsidiary of the Vietnam Electricity Group (“**EVN**”), was approved as the investor for the Project.

The Project is set to be carried out over 40 years in the provinces of Nam Dinh, Ninh Binh, and Thanh Hoa, with an estimated investment capital of approximately VND 3,086.827 billion. This investment is divided into 30% equity and 70% commercial bank loans, including value-added tax. The implementation timeline is from 2023 to 2025, with an aim to complete it by June 2024. The validity period of the investment policy decision is determined from the date when Decision 1241 becomes effective, and it expires in accordance with current legal regulations.

Decision 1241 also clearly outlines the responsibilities of various entities in implementing the Project, including the Ministry of Planning and Investment, ministries and agencies involved in the appraisal process, the Ministry of Industry and Trade, the Ministry of Natural Resources and Environment, the Ministry of Construction, the Committee for Management of State Capital at Enterprises, the People's Committees of the provinces of Nam Dinh, Ninh Binh, and Thanh Hoa, as well as EVN and EVNNPT.

b) Circular No. 16/2023/TT-BCT dated 31st August 2023 guiding power purchase agreements serving domestic purposes

On 31st August 2023, the Minister of Industry and Trade issued Circular No. 16/2023/TT-BCT, providing guidance on the power purchase agreement (“**PPA**”) serving domestic purposes (“**Circular 16**”). Circular 16 will come into effect on 16th October 2023 and supersede Circular No. 19/2014/TT-BTC dated 18th June 2014 (“**Circular 19**”).

Compared to Circular 19, Circular 16 adopts a more specific approach to govern the format of PPA as follows:

- The PPA must be expressed in writing, either in the form of a physical form (02 copies with the same validity, 01 copy retained by each party) or an electronic form (which the Buyer can access for downloading from the Seller’s website). The PPA shall be executed using the template provided in the attached Appendix under Circular 16; and
- The PPA shall be written in the Vietnamese language. The parties may agree to use another ethnic language of Vietnam or a foreign language. In case of discrepancies between a version written in the Vietnamese language and a version written in an ethnic language of Vietnam or a foreign language, whichever version is more beneficial to the users shall prevail.

The duration of the PPA shall be agreed upon by both parties. Otherwise, it shall commence from the date of execution until the expiration date as prescribed by the law.

The contracting party of the Buyer must satisfy the requirements specified in Clause 1 Article 8 of Decree No. 104/2022/ND-CP dated 21st December 2022.

The contracting party of the Seller shall either be the legal representative or the authorised representative of the electricity retailing unit with a distribution network capable of supplying electricity to meet the Buyer's needs.

ENTERPRISE – INVESTMENT

Decree No. 69/2023/ND-CP dated 14th September 2023 amending Decree No. 159/2020/ND-CP on the management of individuals holding titles, positions, and representatives of state capital in enterprises

On 14th September 2023, the Government issued Decree No. 69/2023/ND-CP amending Decree No. 159/2020/ND-CP on the management of individuals holding titles, positions, and representatives of state capital in enterprises (“**Decree 69**”). Decree 69 has a number of amendments and additions to the aspects as below.

Decree 69 has added criteria for personnel to be considered for inclusion in planning, implementing such criteria akin to appointment standards for management positions. Competent authorities are tasked with reviewing and approving the planning of two categories: (i) Category 1 individuals shall meet the corresponding theoretical and political criteria for the appointed title, and (ii) Category 2 individuals, after being planned, shall undergo training and development according to regulations. Furthermore, Decree 69 also includes detailed provisions regarding the age of personnel subject to planning. Personnel must have served for a minimum of 02 terms, at least 01 subsequent term of appointment. In the event that personnel exceeds the planning age, they shall be removed from the planning.

TAX

Decree No. 68/2023/ND-CP amending Decree No. 115/2022/ND-CP of the Government concerning the issuance of preferential export tariffs and special preferential import tariffs of Vietnam to implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership in 2022 – 2027 period

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership is effective with Vietnam from 14th January 2019, and effective with (i) Malaysia from 29th November 2022; (ii) the Republic of Chile from 21st February 2023; (iii) Brunei Darussalam from 12th July 2023.

The preferential export tariffs and special preferential import tariffs applicable to Malaysia, the Republic of Chile, and Brunei Darussalam for the 2022 – 2027 period are stipulated in Appendix I and II of Decree No. 115/2022/ND-CP respectively.

BANKING & FINANCE

Circular No. 12/2023/TT-NHNN amending and supplementing legal documents regulating the implementation of state foreign exchange reserve management duties

On 12th October 2023, the State Bank of Vietnam issued the Circular No. 12/2023/TT-NHNN on amending and supplementing a number of articles of legal documents regulating the implementation of state foreign exchange reserve management duties (“**Circular 12**”). Circular 12 will take effect from 27 November 2023.

The entity responsible for notifying the results of gold bar transactions to credit institutions and enterprises after confirming the transactions is changed from the State Foreign Exchange Reserve Management Department to the State Foreign Exchange Reserve Management Agency.

Circular 12 also specifies the specific responsibilities of the State Foreign Exchange Reserve Management Agency. Moreover, Circular 12 clearly assigns responsibilities to the Trading Center in conducting payment transactions for buying and selling gold bars based on notifications from the State Foreign Exchange Reserve Management Agency.

INSURANCE

Decree No. 75/2023/ND-CP amending and supplementing several articles of Decree 146/2018/ND-CP detailing and guiding measures to implement a number of articles of the Law on Health Insurance

On 19th October 2023, the Government issued Decree No. 75/2023/ND-CP amending and supplementing several articles of Decree 146/2018/ND-CP detailing and guiding measures to implement a number of articles of the Law on Health Insurance ("**Decree 75**"). Decree 75 will take effect on 3rd December 2023.

The Decree adds a group of beneficiaries whose health insurance premiums are paid by the State budget. Specifically, it updates the national population database with the information of people residing in safe zones, and revolutionary base areas during the resistance against the French and the Americans.

Decree 75 also amends and supplements provisions related to the rights of healthcare facilities in implementing health insurance contracts.

The provision regarding the total payment of health insurance expenses and the method of payment based on service prices applied from 01 January 2019 are now eliminated under Decree 75.

Decree 75 also stipulates that healthcare expenses covered by health insurance within the scope of beneficiaries' entitlements and the reimbursement rates determined by the social insurance authority will be included in the scope of payment from the health insurance fund.

DISPUTE SETTLEMENT

Precedent No. 69/2023/AL regarding the authority of commercial arbitrators in resolving disputes related to confidentiality agreements and non-competition agreements ("Precedent 69**")**

Precedent 69 is derived from Decision No. 755/2018/QĐ-PQT dated 12th June 2018 of the People's Court of Ho Chi Minh City ("**Decision 755**") on the "Request for Annulment of Arbitration Award" filed by the Vietnam International Arbitration Center ("**VIAC**").

On 10th October 2015, Company R (Claimant) and Ms. T (Respondent) entered into an employment contract with a duration of 12 months from the signing date. On 21st October 2015, Company R and Ms. T signed a Non-Disclosure Agreement and Non-Compete Agreement ("**NDA**"). According to Article 3.1 of the NDA, after the termination of the employment contract, Ms. T was prohibited from engaging in similar work or competing with Company R for a specific period. Any disputes, if any, would be resolved through commercial arbitration.

On 1st November 2016, Company R and Ms. T continued to sign an employment contract with similar terms and conditions. On 2nd October 2017, Company R filed a lawsuit with VIAC, seeking compensation from Ms. T for her alleged violation of Article 3.1 of the NDA after unilaterally terminating her employment contract.

In the Arbitration Award dated 12th February 2018 issued by VIAC ("**Arbitral Award**"), the Arbitral Tribunal determined that the commercial arbitrator had jurisdiction to resolve the dispute and accepted all of Company

R's claims. On 22nd March 2018, Ms. T submitted a request to the Ho Chi Minh City People's Court ("**HCM Court**"), to set aside the Arbitral Award.

The key content of Precedent 69 is located in Paragraph [8] of the "Judgment of the Court" section. Accordingly, the HCMC Court's findings include:

- The arbitration agreement between Ms. T and Company R is legal and has legal validity. Company R is a registered business entity and conducts commercial activities under the Law on Commerce 2005. Therefore, the arbitration agreement falls under the jurisdiction of VIAC, and the arbitrator is authorized according to Article 2.2 of the Law on Commercial Arbitration 2010.
- Ms. T did not object to the arbitrator's jurisdiction during the entire arbitration process. In this case, Ms. T argued that the dispute was a labor dispute within the jurisdiction of the Labor Court. However, Ms. T did not raise any objections to the arbitrator's jurisdiction and participated in the arbitration proceedings, including dispute resolution meetings. Therefore, she forfeited her right to object to the jurisdiction of the Arbitral Tribunal, in accordance with Article 13 of the Law on Commercial Arbitration and Article 6 of Resolution No. 01/2014/NQ-HDTP.
- The NDA is an independent agreement separate from the employment contract. Ms. T contended that disputes regarding the NDA were labor disputes and fell under the jurisdiction of the Labor Court since the NDA is an inseparable part of the employment contract. However, in the final written submission and at the last hearing, Ms. T asserted that the NDA was entirely separate from the employment contracts between Company R and her. Therefore, the HCM Court determined that the NDA was an independent agreement, and any disputes arising from it would fall within the jurisdiction of commercial arbitration, as chosen by the parties.

In light of the above findings, HCM Court rejected Ms. T's request for setting aside the Arbitral Award.

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