



LEGAL NEWSLETTER

AUGUST 2023

 **TNTP & ASSOCIATES INTERNATIONAL LAW FIRM**

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LISTS OF CONTENT

Notable Provisions guiding the Implementation of the Law Insurance Business in the Government's Decree No. 46/2023/ND-CP

1. Financial requirements for being granted Establishment and Operation Licenses to insurers, reinsurers, and foreign branches in Vietnam
2. Detailed regulations on increase and decrease of charter capital
3. Payment limit of the Fund for the Protection of the Insured

Regulations on Beneficiaries and Adjustments to Pensions, Social Insurance Allowances, and Monthly Allowances according to Circular 06/2023/TT-BLĐTBXH of the Ministry of Labor-War Invalids and Social Affairs

1. Regulated entities
2. Specific adjustment levels

Notable contents of Circular 02/2023/TT-BKHĐT amending Business Registration Instructions in Circular 01/2021/TT-BKHĐT

1. Supplementing the regulations on the process of connecting business registration and tax registration procedures for business households
2. Supplementing regulations related to business location registration for business households
3. Supplementing regulations on business household registration through the electronic information network
4. Replace some forms of Circular 01/2021/TT-BKHĐT ("Circular 01")
5. Payment method for business household registration fees

What should the employees do when facing an unlawful unilateral termination of their labour contract?

1. Collect evidence related to the unlawful termination of the labour contract
2. Assess the legality of the employer's unilateral unlawful termination of the labour contract
3. Identify the rights and benefits that employees are entitled to under the law
4. Request relevant individuals, agencies, and organizations to resolve the issue

Notable Provisions guiding the Implementation of the Law Insurance Business in the Government's Decree No. 46/2023/ND-CP

The Government of Vietnam has issued Decree No. 46/2023/ND-CP which elaborates on the Law Insurance Business ("**Decree 46**"). This Decree has come into effect, bringing with it a viral change in the management and regulation of insurance business activities in Vietnam, including some contents that need attention as follows:

1. Financial requirements for being granted Establishment and Operation Licenses to insurers, reinsurers, and foreign branches in Vietnam

a) A capital contributor that contributes at least 10% of charter capital to establish an insurer or reinsurer must meet the requirements as prescribed in Articles 64, 65, and 66 of the Law on Insurance Business and the following financial conditions:

(i) Capital contributors engaging in businesses that require legal capital, minimum charter capital, or minimum capital must ensure that the difference between owner's equity and the required capital is greater than or equal to their planned contribution.

(ii) If capital contributors are established and operated under the Law on Credit Institutions, the Law on Insurance Business, and/or the Law on Securities, they must maintain their financial safety conditions and obtain permission from competent authorities to contribute capital according to the law. In cases where relevant laws do not require written approval from a competent authority, the capital contributors must have a written certification of this.

(iii) If capital contributors are foreign insurers, foreign reinsurers, and foreign financial and insurance corporations, capital contributors must maintain their conditions of financial safety and be approved by the competent authority of the country where they are headquartered (hereinafter referred to as home country) to establish insurers and reinsurers in Vietnam. In case the home country's regulations do not require, written approval, a written certification from a competent authority, organization, or individual is required in accordance with the law of that home country.

(iv) The financial statements for the three consecutive years preceding the year of application must receive an unqualified opinion.

b) When foreign non-life insurers or foreign reinsurers establish branches in Vietnam, they must satisfy the conditions specified in Article 67 of the Law on Insurance Business and the following financial conditions:

(i) Same as the conditions under points (i) and (iv) as above.

(ii) They are certified by the competent authority of their home country that they maintain the condition of financial safety and have not seriously violated the regulations of the law on insurance business within the last 3 consecutive years preceding the year of application.

Notable Provisions guiding the Implementation of the Law Insurance Business in the Government's Decree No. 46/2023/ND-CP

2. Detailed regulations on increase and decrease of charter capital

a) If an insurer, reinsurer, or foreign branch in Vietnam seeks to increase its charter capital, it must meet the following requirements:

(i) The charter or allocated capital increase shall be made in Vietnamese Dong.

(ii) Shareholders, capital contributors, and parent companies of insurers, reinsurers, and foreign branches in Vietnam cannot supplement their charter or allocated capital through loan or investment trust capital from other organizations or individuals.

(iii) After charter capital is increased, the insurer or reinsurer must still satisfy the requirements about shareholder structure specified in Article 66 of the Law on Insurance Business for joint-stock companies.

Concerning joint-stock companies established before January 1, 2023, they must satisfy the mentioned requirements about shareholder structure from January 1, 2026.

(iv) If the insurer or reinsurer increases its charter capital through capital contributions from new shareholders or capital contributors, these new shareholders and capital contributors must satisfy the conditions prescribed in Clauses 1 and 2, Article 64 and Article 65 of the Law on Insurance Business.



Notable Provisions guiding the Implementation of the Law Insurance Business in the Government's Decree No. 46/2023/ND-CP

b) If an insurer, reinsurer, or foreign branch in Vietnam seeks to decrease their charter capital or allocated capital, they must meet the following requirements:

(i) The insurer, reinsurer, or foreign branch in Vietnam must fully satisfy the financial requirements as prescribed in Decree 46.

(ii) After the charter capital or allocated capital is decreased, the insurer, reinsurer, or foreign branch in Vietnam still must follow relevant regulations on capital and solvency margin as prescribed by law, and requirements about shareholder structure are specified in Article 66 of the Law on Insurance Business for joint-stock companies.

3. Payment limit of the Fund for the Protection of the Insured

Decree 46 has set out detailed regulations on the Fund for the Protection of the Insured in case of bankruptcy or insolvency. The payment limit of the Fund for the Protection of the Insured depends on each type of insurance policy, the payment level will vary according to the provisions of Article 95 Decree 46.

In general, the focal point of Decree 46 is to detail regulations on conditions for establishing an enterprise, especially eligibility requirements about finance, and contents on the payment level of each type of insurance policy. It can be seen that the purpose of state agencies is to ensure stability and sustainability for the enterprise establishment and operation licenses of enterprises and the liquidity of the Fund for the protection of the insured.

Regulations on Beneficiaries and Adjustments to Pensions, Social Insurance Allowances, and Monthly Allowances according to Circular 06/2023/TT-BLĐTBXH

On June 29th, 2023, the Ministry of Labor - War Invalids and Social Affairs issued Circular No. 06/2023/TT-BLĐTBXH to guide the adjustment of pensions, social insurance allowances, and monthly allowances ("**Circular 06**"). According to the contents of this Circular, the increase in pension, social insurance allowance and monthly allowance shall be applied to certain beneficiaries and with specific levels as follows:

1. Regulated entities

a) Clause 1 Article 1 Circular 06 stipulates that beneficiaries of pensions, social insurance allowances, and monthly allowances before July 1st, 2023, include:

- (i) Cadres, officials, public employees, and workers (including those contributing social insurance voluntarily and retired people transferred from the Social Insurance Fund of farmers of Nghe An province as prescribed in the Prime Minister's Decision No. 41/2009/QĐ-TTg dated March 16th, 2009); military personnel, police officers and cypher officers who are receiving monthly retirement pensions.
- (ii) Cadres of communes, wards, and commune-level towns prescribed in Government's Decree No. 09/1998/ND-CP dated January 23rd, 1998, Government's Decree No. 121/2003/ND-CP dated October 21st, 2003, Government's Decree No. 92/2009/ND-CP dated October 22nd, 2009, and Government's Decree No 34/2019/ND-CP dated April 24th, 2019.
- (iii) Persons who are receiving monthly work-capacity loss allowance as per the law; persons who are on monthly benefits as prescribed in Decision No. 91/2000/QĐ-TTg dated August 04th, 2000 and Decision No. 613/QĐ-TTg dated May 06th, 2010 of the Prime Minister; workers in the rubber-manufacturing industry on monthly benefits as prescribed in the Decision No. 206-CP dated May 30th, 1979 of the Government.
- (iv) Persons who are receiving monthly occupational accident and disease allowances.
- (v) People who have been receiving monthly death benefits before January 01st, 1995.

b) Clause 2 Article 1 Circular 06 stipulates the subjects specified in sections (i), (ii) and (iii) retired for pensions, social insurance allowances, and monthly allowances before January 1st, 1995 (including those who have retired for allowances for loss of working capacity before January 1st, 1995, then received allowances under Decision No. 91/2000/QĐ-TTg dated August 4th, 2000 of the Prime Minister of Vietnam and Decision No. 613/QĐ-TTg dated May 6th, 2010 of the Prime Minister of Vietnam) after making an upward adjustment by two (02) specific levels of 12.5% or 20.8% that have a pension, social insurance allowance, monthly allowance of less than VND 3,000,000/month.

Regulations on Beneficiaries and Adjustments to Pensions, Social Insurance Allowances, and Monthly Allowances according to Circular 06/2023/TT-BLĐTBXH

2. Specific adjustment levels

From July 1st, 2023, pensions, social insurance allowances, and monthly allowances of persons prescribed above are adjusted as follows:

a) For persons prescribed in Clause 1 Article 1 Circular 06

(i) **Increased by 12.5%** compared to the amount of money in June 2023 adjusted by Decree No. 108/2021/ND-CP. Specifically, the pension, social insurance allowance, and monthly allowance starting from July 2023 will be calculated using the formula:

Amount of pensions,
social insurance
allowances, and
monthly allowances
from July 2023

=

Amount of pensions,
social insurance
allowances, and
monthly allowances
from July 2023

x

1,125

(ii) **Increased by 20.8%** compared to the amount of money in June 2023 that was not adjusted in Decree No. 108/2021/ND-CP dated December 7th, 2021 of the Government of Vietnam. Specifically, the pension, social insurance allowance, and monthly allowance starting from July 2023 will be calculated using the formula:

Amount of pensions,
social insurance
allowances, and
monthly allowances
from July 2023

=

Amount of pensions,
social insurance
allowances, and
monthly allowances
from July 2023

x

1,208

Regulations on Beneficiaries and Adjustments to Pensions, Social Insurance Allowances, and Monthly Allowances according to Circular 06/2023/TT-BLĐTBXH

b) For persons prescribed in Clause 2 Article 1 Circular 06

(i) For persons who receive pensions, social insurance allowances, and monthly allowances after being increased by 12.5% or 20.8% according to the above regulations, below 2.700.000 VND per month:

Pensions, social insurance allowances, and monthly allowances after adjustments

=

The pension amount, social insurance allowance, and monthly allowance after being adjusted by an increase of 12.5% or 20.8% in specific cases as mentioned in section a)

+

300.000 VND

(ii) For persons who receive pensions, social insurance allowances, and monthly allowances after being increased by 12.5% or 20.8% according to the above regulations, from 2.700.000 VND per month to below 3.000.000 VND per month:

Pensions, social insurance allowances, and monthly allowances after adjustments

=

3.000.000 VND

It can be seen that along with the development of society, the standard of living in general has been improved along with the higher level of payment for essential activities. Circular 06 was issued to better ensure the quality of life of the people in the current period of rapid innovation.



Notable contents of Circular 02/2023/TT-BKHĐT amending Business Registration Instructions in Circular 01/2021/TT-BKHĐT

To supplement, and innovate regulations on business registration for business households, the Ministry of Planning and Investment has issued Circular 02/2023/TT-BKHĐT Amendment to Circular No. 01/2021/TT-BKHĐT dated March 16th, 2021 of the Minister of Planning and Investment guiding enterprise registration ("**Circular 02**"). Accordingly, this Circular has the following notable contents: ("**TT 02**").

1. Supplementing the regulations on the process of connecting business registration and tax registration procedures for business households

a) Definition of business household registration

Household business registration means when a household business performs enterprise registration and tax registration with the district business registration authority where their head office is located. Household business registration includes registration for the establishment of household business, registration for revision of business household registration, and other registration, notification obligations.

b) Detailed procedure

(i) District business registration authority shall receive and log business household registration information to the household business registration system within the National Enterprise Registration System.

(ii) District business registration authority shall accurately and adequately log information in household business registration, digitalize, name electronic documents corresponding to the types of documents in the physical form of business household registration, and upload to the household business registration system.

(iii) Household business registration information on the household business registration system shall then be transferred to the Tax Registration Application System to enable cooperation and communication between the district business registration authority and tax authority.



Notable contents of Circular 02/2023/TT-BKHĐT amending Business Registration Instructions in Circular 01/2021/TT-BKHĐT

2. Supplementing regulations related to business location registration for business households

If household businesses operate in locations other than their head office location, they must inform the district business registration authority where their head office is located. District business registration authority shall receive notice on business locations of household businesses and issue notice on Tax Identification Number and supervisory tax authorities of business locations to household businesses.

Household businesses shall perform other notifying obligations regarding business location in accordance with tax laws to tax authorities.

3. Supplementing regulations on business household registration through the electronic information network

Documents on household business registration via the website include documents specified under Decree No. 01/2021/NĐ-CP and are presented in electronic document format. Documents on household business registration via the website shall have the same legitimacy as the physical documents on household business registration.

Electronic documents mean documents in the form of data messages created or digitalized from physical documents and accurately, and adequately convey the contents of the physical documents. Electronic documents can have ".doc", ".docx", or ".pdf" format.

Documents on household business registration via the website shall be approved when the requirements below are met:

- a) All documents have been acquired and properly declared as per the law in the same manner as physical documents on household business registration and presented in electronic format. The name of electronic documents must correspond to the name of physical documents on household business registration. Owners of household businesses, household members, or other individuals signing the physical documents on household business registration can sign electronic documents using digital signatures or sign on physical documents and then scan the physical documents into the formats specified above.
- b) Household business registration information required on the household business registration system must be fully and accurately logged to match that in physical documents on household registration; including the phone number and email address of applicants.
- c) Documents on household business registration must be verified by digital signatures of owners of household businesses or persons authorized by owners of household businesses to register for household business. If household business registration is implemented by authorized persons, documents on household business registration via the website must include documents under Article 12 of Decree No. 01/2021/NĐ-CP.

Notable contents of Circular 02/2023/TT-BKHĐT amending Business Registration Instructions in Circular 01/2021/TT-BKHĐT

4. Replace some forms of Circular 01/2021/TT-BKHĐT ("Circular 01")

To comply with the new regulations, forms III - 1 to III - 6 and VI - 1 to VI - 14 in the Appendix to Circular 01 are replaced by forms III - 1 to III - 7 and from VI - 1 to VI - 16 in the Appendix to Circular 02.

5. Payment method for business household registration fees

Persons filing household business registrations shall pay the registration fees at the same time as filing the registration. Household business registration fees can be paid directly at the department that receives household business registration documents in districts or transferred to district business registration authority accounts or via online payment service on the National Public Service Portal.

The household business registration fees shall not be refunded if household business registration is rejected. Transaction errors that arise during the use of online payment service on the National Public Service Portal shall be resolved in accordance with regulations and laws on handling administrative procedures by electronic means and Regulations on management, operation, and use of the National Public Service Portal.

In general, Circular 02 has supplemented regulations on business household registration – which Circular 01 did not stipulate in detail. Individuals wishing to establish a household business can refer to this circular along with the forms so that business household registration can proceed smoothly.

What should the employees do when facing an unlawful unilateral termination of their labour contract?

Unilateral termination of a labour contract is an act by one party in the employment relationship that actively terminates the labour contract without depending on the will of the other party. Labour laws stipulate cases where the employer has the right to unilaterally terminate the labour contract with the employee. However, many employers do not adhere to the law and terminate the labour contract unlawfully with employees. So, in such cases, what should employees do to protect their rights and interests? In this article, TNTP will present the content that employees should consider applying.

1. Collect evidence related to the unlawful termination of the labour contract

From the moment an employee is unilaterally terminated by the employer, if the employee believes that the termination is unlawful, he/she needs to promptly gather evidence related to the incident, including the labour contract, the employer's minutes determining the employee's violation leading to the unilateral termination of the labour contract, the decision to terminate the labour contract, payment documents from the employer, internal documents of the enterprise related to the termination of the labour contract, etc.

It can be said that the collection of evidence by employees plays an extremely important role in proving that the employer's unilateral termination of the labour contract is unlawful.

2. Assess the legality of the employer's unilateral unlawful termination of the labour contract

To determine the legality of the employer's unilateral unlawful termination of the labour contract, employees need to rely on legal provisions and legitimate internal documents of the enterprise.

Firstly, employees need to determine whether the grounds used by the employer to unilaterally terminate the labour contract are in accordance with the provisions of Article 1, Clause 36 of the 2019 Labour Code ("LC") or not.

Secondly, employees need to review the internal documents of the enterprise related to the unilateral termination of the labour contract, such as labour regulations, collective labour agreements, criteria for assessment of employees' fulfilment of duties, etc., to determine whether the enterprise has conducted any actions that are inconsistent with the provisions of these internal documents.

Thirdly, employees need to ascertain whether the employer notified them in advance of the unilateral termination of the labour contract in accordance with the provisions of Clauses 2 and 3 of Article 36 of the LC.



What should the employees do when facing an unlawful unilateral termination of their labour contract?

3. Identify the rights and benefits that employees are entitled to under the law

Firstly, regardless of whether the unilateral termination of the labour contract is lawful or unlawful, the employer has certain obligations towards the employee: i) Fully pay all amounts related to the employee's rights and benefits; ii) Complete the procedures for confirming the period of social insurance, unemployment insurance, and return relevant documents to the employee; iii) Provide copies of documents related to the employee's work process if requested. Costs of copying and sending documents are borne by the employer.

Secondly, in the case of the employer's unilateral unlawful termination of the labour contract, the employer must fulfil the obligations specified in Article 41 LC, such as the employer must reemploy the employee under the agreed labour contract; the employer must pay salary, contribute social insurance, health insurance, unemployment insurance for the days the employee is not allowed to work and pay an additional amount to the employee, at least equivalent to 02 months' salary under the labour contract.

Therefore, based on the actual situation, employees can request the employer to provide appropriate benefits in accordance with legal regulations, the labour contract, and the internal documents of the enterprise.

4. Request relevant individuals, agencies, and organizations to resolve the issue

When employees have grounds and evidence showing that the employer has unilaterally terminated the labour contract unlawfully, employees can first request the representative organization of employees at the workplace to protect their rights.

In cases where the enterprise does not have a representative organization of employees at the workplace, employees can directly negotiate with the employer, request the employer to fulfil responsibilities and provide benefits. In case the negotiation is not successful, employees can request the following individuals, agencies, and organizations to protect their rights: Chief Inspector of the Department of Labour - Invalids and Social Affairs where the employers headquarter is located; Labour mediator; Labour arbitration council; Competent court; Other agencies and organizations such as social insurance agency, Vietnam General Confederation of Labour, city-level Confederation of Labour where the employers headquarter is located.

Furthermore, employees should consider seeking legal assistance from specialized labour lawyers. Lawyers possess extensive experience and specialized knowledge, thus they can assist employees in resolving the issue, proposing resolution directions, drafting documents, providing advice, and representing employees in the process of protecting their rights.

In conclusion, when faced with unilateral unlawful termination of the labour contract, employees should familiarize themselves with relevant legal provisions, collect evidence, and seek support from individuals, agencies, and organizations with jurisdiction to protect their rights.

This is the article "*What should the employees do when facing an unlawful unilateral termination of their labour contract?*" that TNTP sends to the readers. If have any issues to discuss, please contact TNTP for assistance.

Sincerely,

LEGAL NEWSLETTER

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