



LEGAL NEWSLETTER

SEPTEMBER 2023

 **TNTP & ASSOCIATES INTERNATIONAL LAW FIRM**

Website: [/dsvc.com.vn/](https://dsvc.com.vn/) & [/tntplaw.vn/](https://tntplaw.vn/)

Contact: (+84) 93 179 8818

NHỮNG MỤC TIN CHÍNH

Decree No. 70/2023/ND-CP amended the government's decree No. 152/2020/ND-CP on foreign workers working in Vietnam and recruitment, management of Vietnamese workers working for foreign employers in Vietnam

1. Amendment to the regulations regarding requirements for experts, executives, technical workers
2. Amendment to regulations regarding using foreign workers
3. Amendment to authorities that issues written approval for using foreign workers
4. Amendment to the responsibilities of competent authorities to recruit, manage Vietnamese workers
5. Foreign worker working in more than one province must report to the authorities

Issues that businesses need to note in decree 13/2023/ND-CP on personal data protection

1. The definition of personal data
2. Prohibited acts
3. The consent of the data subject when processing personal data
4. Data processing in special cases
5. Assessment of impact and outbound transfer of personal data

Analysis of Case Law No. 43/2021/AL on the validity of the mortgage agreement in the case where the collateral is a property which has been transferred by the mortgagor but has not paid the full amount to the seller

1. THE SUMMARY OF CASE LAW NO. 43
2. ASSESSMENT OF THE COURT
3. COMMENTS ON CASE LAW NO. 43

Decree No. 70/2023/ND-CP amends the government's decree No. 152/2020/ND-CP on foreign workers working in Vietnam and recruitment, management of Vietnamese workers working for foreign employers in Vietnam

On September 18th, 2023, the government promulgated the Decree No. 70/2023/ND-CP on amendment to the **Government's Decree 152/2020/ND-CP** dated December 30th, 2020 on foreign workers working in Vietnam and recruitment, management of Vietnamese workers working for foreign employers in Vietnam ("**Decree 70**"). The outstanding contents of Decree 70 include:

1. Amendment to the regulations regarding requirements for experts, executives, technical workers

According to Clause 1 Article 1 of Decree 70, foreign experts and technical workers no longer need to meet the condition of having at least 03 years of working experience in a specialized field with training appropriate to the job position which they intend to work in Vietnam, but only need to have at least 03 years of work experience suitable to the job position that the foreign worker intends to work in Vietnam.

Besides, Decree 70 stipulates that there are 02 (two) cases of individuals being considered executive directors as follows:

The head of a branch, representative office, or place of business of the enterprise; or

The head who directly administers at least one field of the agency, organization, or enterprise and be under the direct direction and administration of the head of the agency, organization, or enterprise.



Decree No. 70/2023/ND-CP amends the government's decree No. 152/2020/ND-CP on foreign workers working in Vietnam and recruitment, management of Vietnamese workers working for foreign employers in Vietnam

2. Amendment to regulations regarding using foreign workers

Before using foreign workers, the employer (except contractor) shall conduct the procedure to determine the demand for using foreign workers for every job position for which Vietnamese workers are underqualified and send a report to the Ministry of Labor, Invalids and Social Affairs or the Department of Labor, Invalids and Social Affairs of province where the foreign workers are expected to work.

The deadline set for this procedure according to the new regulations is at least 15 days in advance from the expected date of using foreign workers, while the old regulations require reporting 30 days in advance. In addition, in case of any change to the demand for foreign workers in terms of job position, job title, working mode, quantity of workers, working locations, the employer shall send a report at least 15 days (old regulation is 30 days) before the date on which the foreign worker are expected to be employed.

Amending a number of cases where employers are not required to determine the need of using foreign workers, specifically, Clause 2 Article 1 Decree 70 added 05 cases and removed 01 case of foreigners who are not required to carry out procedures to determine the need of using foreign workers.

From January 1st, 2024, the announcement of recruitment of Vietnamese workers for positions expected to recruit foreign workers shall be made on the website of the Ministry of Labor, Invalids and Social Affairs (Employment Department) or the website of the Employment Service Center at least 15 days from the expected date of reporting to the Ministry of Labor, Invalids and Social Affairs or the Department of Labor - Invalids and Social Affairs where the foreign workers are expected to work. After failing to recruit Vietnamese workers for foreign labor recruitment positions, employers are responsible for determining the demand for foreign workers according to regulations.

3. Amendment to authorities that issues written approval for using foreign workers

Specifically, Decree 70 stipulates that The Ministry of Labor, Invalids and Social Affairs or the Department of Labor, Invalids and Social Affairs shall issue a document specifying acceptable or unacceptable job positions for foreign workers within 10 working days after receiving a report on demand for foreign workers or report on change thereof.

Decree No. 70/2023/ND-CP amendedamends the government's decree No. 152/2020/ND-CP on foreign workers working in Vietnam and recruitment, management of Vietnamese workers working for foreign employers in Vietnam

4. Amendment to the responsibilities of competent authorities to recruit, manage Vietnamese workers

According to the Clause 10 Article 1 Decree 70, the organizations that are empowered by the People's Committee of province to recruit and manage Vietnamese workers working for foreign employers shall send reports to the Department of Labor, Invalids and Social Affairs.

5. Foreign worker working in more than one province must report to the authorities

Another notable point of Decree 70 is that foreign workers working for an employer in multiple provinces or cities must report to the Ministry of Labor - Invalids and Social Affairs and the Department of Labor - Invalids and Social Affairs where the foreign worker is employed.

Time: within 03 working days from the date the foreign worker starts working.

Method of implementation: Online.

Documents: Form No. 17/PLI about Report on the situation of foreign workers coming to work.

Faced with the long and complicated conditions and procedures for granting foreign work permits in Vietnam, Decree 70 has had a positive impact, contributing to removing difficulties and obstacles in work permit procedures that individuals and businesses have had to face it in recent times.

Issues that businesses need to note in decree 13/2023/ND-CP on personal data protection

In the time when information technology has been rapidly developed, the protection of personal data has become a note-worthy issue. The Decree No. 13/2023/ND-CP on the protection of personal data ("Decree 13"), which came into effect on July 1st, 2023, for the first time established the rules on the processing of the personal data by personal data user to protect the individual information on the cyber network. Under the Decree 13, there are some issues that enterprises need to note:

1. The definition of personal data

By the provision of Clause 1 Article 2 Decree 13, personal data means electronic information in the form of symbols, letters, numbers, images, sounds, or equivalences on electronic media that are associated with a specific individual or used to identify a specific individual. The personal data includes basic personal data and sensitive personal data.

According to Clause 3 Article 2, Basic personal data includes: Name; Date of birth, Death or missing; Gender; Place of birth, registered place of birth; place of permanent residence, place of temporary residence, current place of residence, hometown, contact address; Nationality; Personal image...

According to Clause 4 Article 2, Sensitive personal data means data that is closely linked to an individual's right to privacy, and when violated, directly affects the individual's legitimate rights and interests, including: political and religious beliefs; health and personal life (excluding blood type); biometric data; sexual orientation; data on crimes and criminal behavior,...

2. Prohibited acts

Article 8 Decree 13 stipulates prohibited acts, including: Processing personal data in contravention of regulations of law on protection of personal data; processing personal data to create information and data aims against the State of the Socialist Republic of Vietnam; Processing personal data to create information and data that affect national security, social order and safety, legitimate rights and interests of other organizations and individuals.

Decree 13 also prohibits acts that obstruct the activities of protecting personal data by competent authorities, as well as the exploitation of activities protecting personal data to violate the law.



Issues that businesses need to note in decree 13/2023/ND-CP on personal data protection

3. The consent of the data subject when processing personal data

Article 11 Decree 13 regulates that the personal data processing activities of the data processing organizations must have the consent of the data subject whose data is processed. For the consent to become valid, the following conditions must be met:

The data subject must voluntarily consent and be informed about the information provided in Clause 2 of Article 11 as follows: The type of personal data; The purpose; Organization or individual permitted to process personal data; Rights and obligations of the data subject.

Regarding the form of the consent, it must be expressed in a clear and specific manner in writing, by voice, by ticking the consent box, by consent syntax via message, by selecting consent settings or by other forms that demonstrate the data subject's intention and are expressed in a format that can be printed, copied in written text, including electronic format or verifiable format. The silence of the data subject does not constitute consent.

4. Data processing in special cases

The processing of data of the personal data controller in some special cases is regulated by Decree 13 as follows:

The data subject is deceased or missing: Article 19 regulates that the processing of personal data of the deceased or missing subject must have the consent of his/her husband, wife, adult child, father and mother. If there is none of them, it is considered as not consented.

The data subject is children: Article 20 regulates that the processing of personal data of children must have the consent of the child if he/she is 7 years old or older and the consent of the parent or guardian. The controller and processor must verify the age of the child before processing his/her personal information.

Personal data in marketing activities: Article 21 regulates that organizations and individuals providing marketing and advertising services may only use the personal data of customers collected through their business activities to provide marketing and advertising services with the consent of the data subjects. The processing of customers's personal data for marketing and advertising services must have the consent of the customers, based on customers clear understanding of the content, methods, forms, and frequency of product introductions.

Issues that businesses need to note in decree 13/2023/ND-CP on personal data protection

5. Assessment of impact and outbound transfer of personal data

Article 24 requires the personal data controller and processor to make and store their dossiers of the assessment of the impact of personal data processing from the start of the process personal data. Also, they must submit 01 original dossier to the Ministry of Public Security within 60 days from the day the personal data is processed and ensure the availability of the dossier for the inspection and assessment of the Ministry of Public Security. When there is a modification, the personal data controller and processor must inform the Ministry of Public Security.

When a Vietnamese citizen's data shall be transferred abroad, Article 25 imposes an obligation for the personal data controller and processor, and the third party who sends the personal data aboard to make a dossier of the assessment of the impact of outbound transfer of personal data and submit 01 original dossier to the Ministry of Public Security within 60 days from the date of processing and ensure the availability of the documents for the inspection and assessment of the Ministry of Public Security.

It can be seen that Decree 13 established new and specified rules on personal data regarding personal data and the use of personal data in the activities of personal data controllers and processors.



Analysis of Case Law No. 43/2021/AL on the validity of the mortgage agreement in the case where the collateral is a property which has been transferred by the mortgagor but has not paid the full amount to the seller

The time of transfer of the ownership or right to use an asset is the time when the owner of the asset or the person entitled to use the asset is determined. Current regulations refer to the time of transfer housing ownership and residential land use rights. However, the issuance of Case Law No. 43/2021/AL ("Case Law No. 43") also caused some problems in application, such as determining the time of transfer of the ownership of housing with differences in regulations between periods. In the following article, TNTP shares its comments on Case Law No. 43 and regulations on the time of transfer of land ownership and housing use rights under current law.

THE SUMMARY OF CASE LAW NO. 43

1. According to the contents of the case, in 2009, the plaintiff, Bank A, lent 8,000,000,000 VND to the defendant, Mrs. Nguyen Thi L ("Mrs. L") – the owner of a private commercial service enterprise with a annual interest rate of 16%/year, overdue interest rate of 150% of the term interest rate, a loan term of 12 months. The collateral for the above loan includes:

The house and residential land use right with the area of 298.3m² at plot No. 7, map sheet No. 93 at No. 26D, Ward Q, District P, Ho Chi Minh City;

The house and residential land use right with the area of 113.16m² at plot No. 82, MPT 79, map No. 89 located at No. 20/2T, Ward Q, District P, Ho Chi Minh City.

2. Mrs. L mortgaged the assets above under the Contract of property mortgage No. 6360-LCP-2009-00949 on December 1st, 2009 which was notarized and registered as collateral in accordance with the law.

3. Bank A disbursed a total amount of 8,000,000,000 VND but at the end of the commitment period, Mrs. L did not pay in full. Bank A initiated a lawsuit requiring Mrs. L to pay the outstanding amount as of December 7, 2012 which is 14,780,416,666 VND, including the principal debt of 8,000,000,000 VND, the interest within the term of 2,879,083,333 VND, and the overdue interest of 3,901,333,333 VND. If Mrs. L defaults on the debt, she will request the release of collateral to recover the debt .

4. However, two houses are mortgaged at Bank A purchased by her from Mr. Duong Quoc K ("Mr. K"), Mrs. Pham Thi Kim H ("Mrs. H") in 2008 for 5,500,000,000 VND. Mrs. L has paid 3,000,000,000 VND and owes Mr. K and Mrs. H 2,500,000,000 VND. The two parties completed purchase and sale procedures in accordance with the law and she was listed as the owner's name on the certificate of house ownership and residential land use right for the above-mentioned real estate, Mr. K and Mrs. H are still managing the use of these two houses because the two parties have not made the handover of the houses.

5. At the end of 2010, Mr. K and Mrs. H initiated the lawsuits in Court to requesting payment of Mrs. L's debt, if Mrs. L could not pay it, she will reclaim the house.

Analysis of Case Law No. 43/2021/AL on the validity of the mortgage agreement in the case where the collateral is a property which has been transferred by the mortgagor but has not paid the full amount to the seller

ASSESSMENT OF THE COURT

1. In the first instance business and commercial judgment No. 287/2013/KDTM-ST dated March 19th, 2013 of the People's Court of Ho Chi Minh City decided to accept the plaintiff's entire claim, forcing Mrs. L to pay Bank A the total debt 13,367,083,333 VND as of March 19th, 2013 in which, loan debt is 8,000,000,000 VND, interest within the term is 921,750,000 VND, overdue interest is 4,445,333,333 VND and interest arising from March 20th, 2013 until the date of repayment of the debt capital at the overdue debt interest rate of 24%/year. The payment period is within 6 months after the judgment takes legal effect. If Mrs. L fails to pay or fails to pay in full, Bank A is entitled to request the release of the mortgaged assets of Mrs. L's two properties to recover the debt.

2. However, on April 2nd, 2013, Bank A and Mrs. L appealed the first instance business and commercial judgment. In Business and Commercial Appeal Judgment No. 171/2013/KDTM-PT dated October 10th, 2013, the Supreme Court of Appeal in Ho Chi Minh City. HCMC amended the judgment of first instance, declaring the mortgage agreement for the house ineffective.

3. Then, Bank A refused, requesting a trial of the Cassation;

4. The Council of Judges of the Supreme People's Court said that the mortgage contract between the parties is notarized and legally registered as a security transaction and Mr. K and Mrs. H knew and agreed to let Mrs. L mortgage, so the contract has legal effect. The fact that Mrs. L and the owner of the property in dispute can be sued in another case. The Court of Appeal declared the invalidity of the above contract to be improper, affecting the legitimate rights and interests of Bank A.

Accordingly, the Chief Justice of the Supreme People's Court appeals against the appellate business and commercial judgment of the Court of Appeals of the Supreme People's Court in Ho Chi Minh City; request the Council of Judges of the Supreme People's Court to try the cassation



Analysis of Case Law No. 43/2021/AL on the validity of the mortgage agreement in the case where the collateral is a property which has been transferred by the mortgagor but has not paid the full amount to the seller

COMMENTS ON CASE LAW NO. 43

It can be seen that both the Law on Housing 2005 and 2014 allow the parties in the contract to agree on the time of transfer of housing ownership, however, in case the parties do not have an agreement, the regulations regarding the time of transfer of housing ownership are differ.

In case at the time of establishment of a housing purchase and sale contract, the contract is regulated by the provisions of the Civil Code 2005 and the Law on Housing 2005, the ownership of housing shall be transferred to the buyer, the donor, the tenant-buyer, the recipient of the exchange of houses from the time the contract is notarized for the housing transaction between individuals, the buyer has the right to mortgage this asset.

In case similar circumstances of the case occur at the time of application of the Law on Housing 2014 when the buyer has not paid the purchase amount in full and has not received the handover of the housing, he is not the owner of the house. Since then, pursuant to Clause 4 Article 3, Article 123 Civil Code 2015, it has led to invalid mortgage transactions and land use rights.

Case Law No. 43 was established to outline a course of action, recognizing the validity of a mortgage agreement in cases where:

Accordingly, in case Mrs. L mortgages the house to Bank A, has registered the mortgage in accordance with the law, and Mr. K and Mrs. H know and agree to let Mrs. L mortgage the property, the mortgage contract will not be void when establishing the mortgage contract;

The Court's recognition of the validity of the mortgage agreement based on the above-mentioned facts is entirely reasonable and persuasive. In particular, the circumstance "The seller knows and agrees to let the buyer mortgage" is an important circumstance, it helps to overcome the problem of the ownership of the property that has not been transferred to Mrs. L because Mr. K and Mrs. H have not handed over the house.

The application of case law helps to unify the approach and handling of cases with similar circumstances. It can be seen that the conclusions mentioned in Case Law No. 43 play an important role in protecting the legitimate rights and interests of the owner, who has the right to use, especially the right to mortgage the property.

LEGAL NEWSLETTER SEPTEMBER 2023

TNTP & ASSOCIATES INTERNATIONAL LAW FIRM

Ho Chi Minh Office:

Suite 1901, 19th Floor, Saigon Trade Building, 37 Ton Duc Thang Street, Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam

Contact: (+84) 903 503 285 - (+84) 282 220 0911

Email: tra.nguyen@tntplaw.com

Ha Noi Office:

No. 2, Alley 308, Tay Son Street, Nga Tu So Ward, Dong Da Dist, Hanoi City, Vietnam

Contact: (+84) 931 798 818

Email: ha.nguyen@tntplaw.com

Da Nang Office:

31 Tran Phu Street, Hai Chau District, Da Nang, Vietnam

Contact: (+84) 903 503 285

Email: tra.nguyen@tntplaw.com

 /dscd.com.vn/ & /tntplaw.vn/

 Dispute Settlement And Debt Collection