



LEGAL NEWSLETTER

JULY 2024

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Some key highlights of the Law on Bidding 2023

The Law on Bidding 2023, effective from January 1, 2024, brought significant changes to enhance transparency, efficiency, and publicity in the bidding process. These new points are designed to improve bidding procedures, creating favorable conditions for businesses and investors. Here are some detailed highlights of the law:

1. Scope and principles of application

Expanded Scope: The Law on Bidding 2023 extends its application to include activities of selecting contractors for implementing packages which are as follows:

Projects invested by state-owned enterprises, as per the Law on Enterprise, including enterprises wholly owned by the state.

Packages providing infrastructure, technology, machinery, and equipment to support science and technology development from the science and technology development funds of state-owned enterprises

This ensures all bidding activities are strictly controlled and comply with legal regulations, enhancing transparency and fairness. The new law emphasizes principles ensuring compatibility between the Bidding Law and other laws, as well as international treaties Vietnam participates in.



Some key highlights of the Law on Bidding 2023

2. Preferences in contractor selection

Domestic Enterprise Preferences: The new law introduces specific preferential measures as stipulated in Clause 1, Article 10 of the Law on Bidding 2023, listing eight types of entities in contractor selection that can enjoy preferences. It emphasizes on preferences for enterprises producing goods of Vietnamese origin, domestic contractors, and innovative startups. Specific preferences in contractor selection include:

Higher ranking: Preferred contractors will be ranked higher if they are evaluated equally with non-preferred contractors.

Additional evaluation points: Preferred contractors will receive additional evaluation points in fixed price and technical-based methods.

Added amount to bid prices: An additional amount will be added to the bid price of non-preferred contractors in the lowest price methods.

Prioritization of capability and experience: Preferred contractors will be prioritized in evaluating capability and experience.

Priority for small and micro enterprises: Construction packages under VND 5 billion will be reserved for small and micro enterprises. If no suitable contractors are found, the packages will be reorganized and opened to other enterprises.

These preferences aim to encourage the participation of businesses, especially micro, small, and medium-sized enterprises. According to the Law on Bidding 2023, small and medium-sized enterprises are among the entities entitled to preferences in contractor selection. This helps micro and small enterprises have an equal opportunity to participate in bidding, facilitating their development and contribution to the national economy.

3. Forms of contractor selection

Direct Appointment The new law adds cases for direct appointment to expedite important projects, especially urgent ones with significant economic and social impacts. Specifically, Clause 1, Article 23 of the Law on Bidding 2023 includes the following cases for direct appointment:

Packages providing medical services and medical equipment for epidemic prevention and emergency treatment.

Packages need to be performed to protect state secrets.

Packages to purchase goods and services from previously engaged contractors to ensure technological and copyright compatibility that cannot be purchased from other contractors.

Packages involving research, experimentation, intellectual property purchase, broadcasting programs, and the transportation of national reserve goods for emergency relief.

This ensures the timely and efficient implementation of crucial projects.

Some key highlights of the Law on Bidding 2023

Decentralized decision-making: The new law allows ministers and the provincial People's Committee's chairman to make decisions in special cases, reducing administrative procedures and increasing flexibility in the bidding process. This enables local management authorities to take the initiative in implementing bidding projects.

These provisions were previously recognized in Decision No. 17/2019/QĐ-TTg of the Prime Minister but are now detailed in the Law on Bidding 2023.

4. Investor selection

New Regulations: The Law on Bidding 2023 introduces new regulations regarding investor selection forms. The new law separates the regulations for contractor selection and investor selection. Specifically, the form of investor selection is stipulated in Article 34 of the Law on Bidding 2023, which includes: open bidding and limited bidding. Additionally, the new law also includes a specific article on the method of investor selection.

Separating these regulations clearly distinguishes the processes and criteria for contractor and investor selection, making it easier for stakeholders to understand and comply with the regulations. These provisions ensure that the investor selection process is open, transparent, and fair, creating favorable conditions for investors to participate in bidding projects.

5. Prohibited acts in bidding

The Law on Bidding 2023 supplements and clarifies prohibited acts in bidding activities to ensure transparency and fairness in the bidding process. The prohibited acts added include:

Collusion: Supplementing cases where contractors or investors with the capability and experience have participated in the tender and met the document requirements but intentionally fail to provide the necessary documents when requested for clarification or verification, thus creating conditions for another party to win the tender.

Obstruction: Supplementing acts of obstruction, including: (i) Intentionally filing false complaints, denunciations, or petitions to obstruct bidding activities; (ii) Violating laws on safety and cybersecurity to interfere with or obstruct online bidding activities.

The Law on Bidding 2023 aims for a more transparent, efficient, and fair bidding environment, creating favorable conditions for businesses and investors while ensuring national interests in economic development. These changes not only improve the quality and efficiency of bidding activities but also contribute to building an open, transparent, and fair bidding system, promoting sustainable development of the national economy.

What are the highlights of Decree No. 52/2024/ND-CP?

On May 15, 2024, the Government has just established Decree No. 52/2024/ND-CP regulating non-cash payments (effective from July 1, 2024) ("**Decree 52**"), replacing Decree No. 101/2012/ND-CP (amended and supplemented). Decree 52 is an important legal document regulating non-cash payment activities, including the opening and use of payment accounts; non-cash payment services; payment intermediary services; organization, management, and supervision of payment systems.

1. Highlights of Decree 52

- (i) Supplementing regulations on electronic money;
- (ii) Supplementing regulations on international payment;
- (iii) Supplementing cases of non-cash payment accounts freeze;
- (iv) Supplementing many prohibited acts in non-cash payment.

Details of each highlight are outlined below.

2. Supplementing regulations on electronic money

According to Clause 12, Article 3, Decree 52 on Interpretation of terms, Electronic money refers to the value of Vietnam Dong stored in electronic means provided based on the amount prepaid by clients to banks, foreign bank branches, and e-wallet payment intermediary service providers.

According to Clause 1, Article 6, Decree 52 on E-wallets and prepaid cards, E-wallets and prepaid cards are means of e-money storage.

Electronic money suppliers include the State Bank of Vietnam (hereinafter referred to as SBV), banks, foreign bank branches, people's credit funds, microfinance organizations, and public postal service providers.

Decree 52 has clearer regulations on electronic money, e-wallets, and subjects allowed to provide electronic money. When opening bank accounts at credit institutions, they can carry out procedures to link with the e-wallet service provided by the credit institution. Thus, people will be prevented from linking illegal payment methods by unlicensed organizations.



What are the highlights of Decree No. 52/2024/ND-CP?

3. Supplementing regulations on international payment

Clause 8, Article 3 of Decree 52 has supplemented regulations to clarify the definition of international payment and international payment system. Specifically: International payment refers to payment transactions implemented for an organization or individual with a payment account or payment instrument outside of Vietnam's territory.

Article 5 of Decree 52 regulates Foreign currency payment and international payment (i.e. service provision activities from abroad to Vietnam and from Vietnam to abroad), specifically:

(i) Foreign currency payment and international payment shall comply with this Decree, foreign exchange management, users' data protection, cybersecurity, and tax administration laws, anti-money laundering, terrorism financing, and financing of proliferation of weapons of mass destruction laws, and international treaties and agreements that Vietnam is a signatory. The application of commercial practices shall comply with Article 3 of the Law on Credit Institutions.

(ii) Commercial banks and foreign bank branches may participate in international payment systems when they meet the requirements prescribed in Article 21 of Decree 52.

(iii) The provision of payment services and payment intermediary services for clients not residing in Vietnam and foreigners residing in Vietnam to implement payment transactions of goods and services in Vietnam of foreign service providers shall be carried out through commercial banks or foreign bank branches approved by SBV to participate in international payment systems of such foreign service providers.

(iv) Financial switch service providers may connect to international payment systems to carry out international financial switch services when they meet the requirements prescribed in Article 22 of Decree 52.

(v) Payment intermediary service providers (excluding financial switch service providers) may provide their services for clients for the implementation of payment transactions of foreign goods and services; the payment and settlement of such international transactions shall be carried out through commercial banks or foreign bank branches approved by SBV to engage in foreign exchange on international markets.

(vi) Parties involved in international payment shall adequately, accurately, and promptly provide information and meet the requirements of state management authorities according to Vietnamese law.

Regulations in Article 5 of Decree 52 show that state management agencies are increasingly enhancing the role of domestic credit institutions and promoting cooperation with foreign credit institutions to support people in making international payments more conveniently.

What are the highlights of Decree No. 52/2024/ND-CP?

4. Supplementing cases of cashless payment accounts freeze

According to Article 11 Decree 52, Payment accounts shall have their balances partly or wholly frozen in the following cases:

- (i) When there are prior agreements between owners of payment accounts and payment service providers or requests from owners of payment accounts.
- (ii) When there are decisions or written requests from competent authorities as prescribed by the law.
- (iii) When payment service providers detect mistakes or errors when taking credit notes into payment accounts of clients or carry out refund orders of money transfer service providers due to mistakes and errors compared to payment orders of transferring parties after taking credit notes into payment accounts of clients. The frozen amount on a payment account shall not exceed the mistaken or erroneous amount.
- (iv) When there are requests to freeze the account from one of the owners of a general payment account, excluding cases where there are prior written agreements between the payment service provider and the owners of such a general payment account.



What are the highlights of Decree No. 52/2024/ND-CP?

5. Supplementing various prohibited acts in cashless payment

Compared with Decree No. 101/2012/ND-CP and Decree 80/2016/ND-CP, Article 8 of Decree 52 has supplemented many prohibited acts in cashless payments, specifically:

- (i) Providing payment intermediary services without licenses to provide payment intermediary services issued by SBV. Providing payment services without being payment service providers.
- (ii) Performing, organizing, or enabling the following acts: using or taking advantage of payment accounts, payment instruments, payment services, or payment intermediary services to commit gambling, organize gambling, rig, deceive, and commit illegal trading and other illegal acts.
- (iii) Erasing and altering contents of licenses to provide payment intermediary services and purchasing, selling, transferring, leasing, lending, and forging such licenses.
- (iv) Authorizing or assigning other organizations or individuals to carry out licensed operations of agents according to licenses to provide payment intermediary services.
- (v) Falsifying or forging documents proving eligibility for the issuance of licenses to provide payment intermediary services in applications for licenses.
- (vi) Operating contrary to contents prescribed in licenses to provide payment intermediary services.
- (vii) An owner of a payment account at a specific payment service provider that provides information for or commits to not having a payment account at another provider of payment services for parties with relevant rights and obligations according to the law on the disbursement of loans of credit institutions and foreign bank branches.

In the context of increasingly developing technology and information technology along with the trend of international integration, Decree 52 was issued as a solution to solve problems with cashless payments, ensuring people can secure payments and prevent violations of the law in the field of electronic money.

Case law no.42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement

In practice, when entering into a purchase or sale of goods or services with a supplier, consumers often meet in contracts (usually standard form contracts) a provision selecting arbitration as the method to settle disputes arising. There is even a contract that stipulates the dispute settlement body is a foreign arbitrator. Therefore, when a dispute occurs and the consumer wishes to bring the dispute to a competent Court for settlement, what is the legal basis for the Court to accept and settle the civil case when the dispute settlement clause of the standard form contracts is another agency? In this article, TNTP's lawyers will analyze and clarify the content of Case law No. 42/2021/AL to provide solutions and apply them to other similar cases in trial practice.

1. Summary of the case

a) On February 26, 2017, Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S entered into a vacation ownership Contract No. PBRC-S-064621 with V Resort Company Limited. Accordingly, the value of the vacation ownership Contract is 388,110,000 VND; Week off: Week 16; Type of apartment: Type A.

b) As of March 15, 2017, Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S have deposited 300,488,000 VND.

c) At the time of signing the contract, due to time constraints, Ms. T and Mr. S did not carefully read the signed vacation ownership Contract. On April 26, 2017, after receiving an email from V Resort Company Limited, Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S carefully reviewed the signed contract and found that there were unreasonable terms in the contract, so they proactively proposed to terminate the contract, but V Resort Company Limited did not accept.

d) Therefore, to protect their rights, Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S filed a lawsuit in Court with the following content: Requesting the Court to declare the vacation ownership Contract No. PBRC-S- 064621 dated February 26, 2017 is invalid, and refund to Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S the paid amount of 300,488,000 VND. Specific reasons are:

V Resort Company Limited deceived customers by opening tourism seminars but not implementing the seminar program content; lying about the project investor, Israeli billionaire named Mr. I; lying on investment capital to create confidence for those who want to buy a vacation to sign a contract and make a deposit.

V Resort Company Limited advertises products designed according to the model that won the Asia-Pacific award, but does not follow the advertised model when built it; the advertising model and the actual model are not the same; the tourist apartment is only designed for two people, but the apartment is advertised for 5 people; the project is located in Nha Trang.

V Resort Company Limited violates the law's prohibition that foreign-invested enterprises are not allowed to send Vietnamese people abroad; determines the deposit when it is not in their possession.

The progress of construction and putting the project into official operation is slower than committed, causing damage to those who have purchased vacation property.

Case law no.42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement

g) According to the self-declaration, conciliation minutes, and at the trial, the defendant's authorized representative, Ms. Pham Thi Kieu H presented:

The vacation ownership Contract No. PBRC-S-064621 has the form and content completely comply with the law. The person entering into the contract has full capacity and authority, is not forced, and has voluntarily signed this contract.

V Resort Company Limited does not agree to the reasons given by the plaintiff as a basis to believe that vacation ownership Contract No. PBRC-S-064621 is null and void. The reasons are as follows:

- Firstly, the plaintiff's claim that the Company deceived consumers is a false assessment based on subjective opinions. The Company affirmed that it did not fabricate or provide false information to consumers. V Resort Company Limited has 02 capital contributing members including Mr. Duong Tuan A and Company E. In which Company E is among the businesses controlled and owned by Mr. I and his businesses. Thus, Mr. I is an investor of the Company, making investments through companies under his control.
- Secondly, at the introduction meeting, the Company clearly explained that this was a vacation purchase, not a real estate purchase, so there was no confusion about the contract; When working with customers, the Company explains and clearly states in the contract the ordinal number of vacation to buy and what type of hotel.
- Thirdly, the Company does not take customers abroad, which means that if the customer does not like staying in the country, they can exchange vacations with other customers to go abroad for vacation. This is just a customer activity, the Company does not do business in taking Vietnamese people abroad to travel but only provides customer support.
- Fourthly, regarding the deposit, the law does not limit the agreement on the use of the deposit. The Company's purpose of using the deposit does not violate the prohibition of law.
- Fifth, the construction progress and official opening date are clearly specified in Article 8 of the Contract, which is 36 months from the date of issuance of the project's final construction permit and has the right to extend for 6 months. Currently, the final License was issued in October 2018.
- If the plaintiff continues to perform the concluded vacation ownership contract, the defendant may consider reducing the price or supporting some other benefits.

Case law no.42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement

2. Opinion of the Court

2.1. In Article 12.3 of the Vacation Ownership Contract No. PBRC-S-064621 dated February 26, 2017, the parties agreed to choose the body and method of dispute settlement, which is the Singapore International Arbitration Center (SIAC) under SIAC's arbitration rules are in force at the time of dispute resolution.

2.2. However, Article 17 of the Commercial Arbitration Law and instructions in Clause 5, Article 4 of Resolution No. 01/2014/NQ-HDTP dated March 20, 2014 of the Council of Judges of the Supreme People's Court prescribes for the Arbitration agreement is not possible:

"The goods/service seller and consumers have an overall agreement on provision of goods/services that contain arbitration terms drafted by the seller as prescribed in Article 17 of LCA, but the consumers refuse to have the dispute that arises resolved by an arbitral tribunal."

2.3. **Content of Case Law:** Vacation ownership contract No. PBRC-S-064621 is a type of pre-written contract issued by a service provider, with a pre-written arbitration agreement, now the plaintiff is a consumer who disagrees to choose arbitration and requests the People's Court of Nha Trang City to resolve it is consistent under Article 38 of the Law on Protection of Consumers' Rights, Article 17 of the Law on Commercial Arbitration and instructions in Clause 5, Article 4 of the Resolution. No. 01/2014/NQ-HDTP dated March 20, 2014 of the Council of Judges of the Supreme People's Court. Therefore, the People's Court of Nha Trang City accepts and resolves the dispute within its jurisdiction according to Clause 3, Article 26, Clause 1, Article 35 of the Civil Procedure Code and is still within the statute of limitations for initiating a lawsuit prescribed in Article 429. Civil Code 2015, Article 184 of the Civil Procedure Code.

2.4. According to the Vacation Ownership Contract No. PBRC-S-064621 dated February 26, 2017, the plaintiff registered to buy the 16th-week vacation, the resort apartment type is A; The period starts from the year of the official opening date until the end of the Project term. Mr. Nguyen Hoang S and Ms. Nguyen Thi Long T can sell or transfer to others or exchange vacations in some places around the world (Optional vacation rights). Buyers must pay in installments according to project construction progress. Specifically, Ms. Nguyen Thi Long T and Mr. Nguyen Hoang S have paid 3 installments of deposit with the amount of 310,488,000 VND (preferential of 10,000,000 VND).

2.5. The official opening date is determined according to Article 8 of the Contract, which is within 36 months from the date of issuance of the final construction permit and can be extended for 6 months, the Company will send a completion notice to the customer.



Case law no.42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement

2.6. In addition, every year from the official opening date, customers must pay maintenance or management fees according to Article 3 of Appendix C attached to the contract stipulating the rights and obligations of the parties, terms of payment, deposit, transfer, and obligations arising from the contract.

2.7. The Trial Council found that:

During the investment and implementation process of the project, V Resort Company Limited organized introduction sessions about the resort model in several localities, including Ho Chi Minh City.

The plaintiff is one of many customers invited by V Resort Company Limited to attend the event on February 26, 2017.

At the event, the plaintiff directly entered into the Vacation Ownership Contract No. PBRC-S-064621 dated February 26, 2017 with V Resort Company Limited. As of March 15, 2017, the plaintiff has paid a deposit of 310,488,000 VND, of which the preferential policy is 10,000,000 VND, the actual amount deposited was 300,488,000 VND.

While waiting for the official opening date, the plaintiff believes that the vacation ownership contract No. PBRC-S-064621 dated February 26, 2017 has many inappropriate provisions, causing damage to the rights of the plaintiff so they met V Resort Company Limited many times to negotiate to terminate the contract, but received no response from V Resort Company Limited. Therefore, the plaintiff sued and requested the Court to consider declaring Vacation Ownership Contract No. PBRC-S-064621 dated February 26, 2017 null and void due to deception, confusion, violation of legal prohibitions, and delay in putting the project into use.

2.8. Considering that:

First of all, it is necessary to realize that this is a new ownership concept in Vietnam, in which the owner can exercise his or her rights within a certain period (07 days) at the place where the vacation was purchased. It is not, by any means, real estate ownership. Ownership of the real estate remains with the investor, V Resort Company Limited, during the period of valid license.

Thus, owning the vacation that Mr. Nguyen Hoang S and Ms. Nguyen Thi Long T made a deposit to reserve is considered a type of asset (right) to be formed in the future. But after the contract is signed, when the tourist area is officially used, it will be owned by Mr. Nguyen Hoang S and Ms. Nguyen Thi Long T. The parties' deposit and reservation to own the vacation (performance of the contract) are consistent with the provisions of Clause 2, Article 108, Article 328 of the 2015 Civil Code.

V Resort Company Limited has 02 capital contributing members including Company E and Mr. Duong Tuan A. In which, Company E is among the businesses controlled and owned by Mr. I and his businesses. Thus, it is true that Mr. I is an investor (not the owner) of the Company, making investments through companies under his control.

Case law no.42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement

The model design issue has been approved for change by the People's Committee of Khanh Hoa province in Official Letter No. 3590/UBND-XDND dated May 27, 2016 and has been notified to vacation owners.

When participating in an event and officially signing a contract, participants must know what event they are participating in, what contract they are signing, and where they are investing? The location where the tourist area will be built is publicly announced by V Resort Company Limited ; The documents and transaction papers also show the location of the ALMA Nha Trang area. It cannot be said that V Resort Company Limited using the name ALMA Nha Trang or the conference invitation to switch to introducing models and products is a deception to customers.

From there, there is no evidence that one of the contracting parties was deceived as stipulated in Article 127 of the Civil Code 2015. Therefore, Vacation Ownership Contract No. PBRC-S-064621 dated 26 /02/2017 and the appendices attached to the contract has the legal effect.

Prescribed in Clause 4.4, Article 4 of the Contract on Optional Resort Rights, Section 2 Appendix B terms and conditions of vacation rights are essentially exchanges for ownership of vacations at other Resorts around the world, operating in the same manner as the Resort, participating exchange network together.

In fact, if a resort guest does not stay at the resort they purchased their vacation from, they can exchange the vacation with another resort guest, including vacations abroad. This is the activity of a resort guest selecting an alternative vacation opportunity from a range of vacation opportunities that the exchange Company can offer. V Resort Company Limited is not in the business of taking Vietnamese people abroad for tourism but only supports resort guests in connecting tourist destinations.

The plaintiff also could not provide evidence to prove that V Resort Company Limited had illegally sent people abroad.

According to the provisions of Clause 5.2, Article 5, Vacation Ownership Contract No. PBRC-S-064621 dated February 26, 2017, Clause 2.2, Article 2, Appendix C attached to Vacation Ownership Contract No. PBRC-S-064621 days February 26, 2017 regulations on deposits and payment schedule, the amount that Mr. Nguyen Hoang S and Ms. Nguyen Thi Long T paid is a deposit. When and only after the official opening date will the paid amount become part of the payment.

Thus, the deposit of Mr. Nguyen Hoang S and Ms. Nguyen Thi Long T is to perform the contract according to the provisions of Article 328 of the Civil Code 2015.

Case law no.42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement

Right on the cover page of the Contract, "vacation ownership" is identified, Article 3 of Vacation Ownership Contract No. PBRC-S-064621 dated February 26, 2017 reads "Resort guests, according to this contract, agree to rent a room from the Company..." and in Appendix A part III, IV the plaintiff also confirmed the reservation of the resort apartment, the vacation week, and the payment of room rental without ownership of the real estate, or payment of real estate. Such clear provisions in the contract cannot be confused with real estate ownership. The plaintiff's reason for mistaken ownership of the real estate is unacceptable.

The plaintiff assumed that, when signing the contract, the marketing staff of V Resort Company Limited did not give the plaintiff reasonable time to study the contract, thus constituted a violation of Article 17 of the Law on Protection of Consumers' Rights. However, spending time studying the contract is the consumer's right, and the plaintiff's failure to use this right is considered a waiver of his or her rights. Therefore, the fact that the plaintiff voluntarily signed the contract is true and at trial, the plaintiff's representative still affirmed that entering into the contract was completely voluntary. Therefore, the contract becomes valid.

Regarding project implementation progress: The official opening date, determined according to Article 8 of the Contract, is within 36 months from the date of issuance of the final construction permit and can be extended for another 6 months (if any), the Company will send a completion notice to the customer. Currently, the dossiers show 2 construction permits:

- Construction permit No. 67/GPXD-SXD dated April 28, 2017.
- Construction permit No. 133/GPXD-SXD dated October 24, 2018.

Thus, as of the date of trial, if based on the Construction Permit dated April 28, 2017, it has not been more than 36 months from the date of issuance of the construction permit. Meanwhile, on October 24, 2018, V Resort Company Limited continued to be granted a construction permit. Therefore, there is no basis to believe that V Resort Company Limited violated the construction schedule, delayed putting the project into operation, and violated the deadline for handing over the vacation to the owners.

2.9. For requests to return the deposit amount:

The nature of the booking confirmation is a deposit contract. According to the agreement, the above deposit amount will be converted into the first installment payment upon the official opening date. Thus, at the time of establishing the Booking Confirmation, the above amount is the deposit for booking to ensure the performance of the service contract.

In section 4.1 of the Contract, it is also prescribed: "The Resort Guest, under this Contract, undertakes to not irrevocably terminate and agrees to make a reservation to enjoy the Resort Rights in accordance with the terms and conditions of this Contract. To make a reservation, the resort guest will pay a deposit to the Company under Article 5.2 Appendix C". The defendant did not violate the contract, nor did the plaintiff have evidence to prove that the defendant breached the deposit contract, and the parties have agreed that the Contract is irrevocable; The "vacation ownership contract" was not void as requested by the plaintiff, therefore, the plaintiff's request to refund the deposit of 300,488,000 VND is unfounded.

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3. Comment on Case law

First, we need to understand what type of contract a vacation ownership contract is. According to Clause 1, Article 405 of the Civil Code 2015 prescribes *"Standard form contract means a contract containing terms and conditions which are prepared by a party based on a standard form requiring the other party to reply within a reasonable period of time. If the offeree accepts, it shall be deemed to have accepted the entire contract provided by the offeror."*

According to Clause 5, Article 3 of the Law on Protection of Consumers' Rights 2010 prescribes *"Form-based contract is a contract composed by organizations or individuals trading goods and/or services to do business with consumers."*

Based on the case, it can be seen that Vacation Ownership Contract No. PBRC-S-064621 is a standard form Contract prepared by V Resort Company Limited to enter into with the buyer. Typically, this type of contract contains terms pre-written by the supplier and is rarely adjusted according to the requirements of the provided party. Therefore, this type of contract will have legal risks or disadvantages or bind the provided party (in this case, Ms. T and Mr. S) to perform according to the signed contract, which means that Ms. T and Mr. S have completely agreed with the terms and conditions in the standard form contract (specifically, Vacation Ownership Contract No. PBRC-S-064621).



Case law no.42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement

In Vacation Ownership Contract No. PBRC-S-064621, there is a clause expressing the content of the parties' agreement to resolve disputes in arbitration. Therefore, if one of the parties brings the case to the Court for settlement, the Court will refuse to accept the case because the parties have an arbitration agreement.

However, Article 38 of the Law on Protection of Consumers' Rights 2010 prescribes *"Organizations or individuals trading goods and/or services must notify of the arbitration terms and condition before concluding the contract and the notification must be accepted by consumers. Where the arbitration term and condition is incorporated into the form-based contract or the general transaction condition by organizations or individuals trading goods and/or services, if any disputes happen, consumers as individual have the right to select other modes to resolve the dispute."*

At the same time, Article 17 of the Commercial Arbitration Law 2010 prescribes: *"For disputes between goods or service providers and customers, though an arbitral clause has been included in general conditions on goods and service provision drafted by goods or service providers, consumers may select arbitration or a court to settle these disputes. Goods or service providers may initiate lawsuits at arbitration only if so consented by consumers."*

Accordingly, the law has regulations that prioritize and comply with the spirit of protecting consumers' rights by allowing consumers to freely choose dispute settlement methods, even when the standard form contract has regulations on selecting a dispute settlement agency. If the supplier wants to sue at Arbitration according to the standard form contract, it must obtain the consumer's consent.

However, in reality, due to different views among the Courts, many cases are refused to accept consumers' requests by the Court because the signed contract contained an arbitration agreement. Therefore, Case law No. 42 was created to contribute to better protecting the consumers' rights when they have the right to sue at the Court even where the model contract has an arbitration agreement clause. This has helped consumers be given priority, their legal rights and interests protected, and also made it more convenient and easier for them to choose a dispute settlement agency to protect their rights.

Above is an article by TNTP's lawyer *"Case law No. 42/2021/AL regarding the consumer's right to choose the Court to settle disputes in case the standard form contracts have an arbitration agreement"*. We hope this article will be helpful to our readers.

Sincerely,

LEGAL NEWSLETTER JULY 2024

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 *Dispute Settlement And Debt Collection*