



LEGAL UPDATE

March 2023

Our monthly Legal Update is to provide the summary of key regulatory news that potentially impact your investment and business activities in Vietnam.

This March Legal Update covers the following:

- *Novelties on bank-guarantee for off-plan housing.*
- *04 remarkable new points of Law on Anti-Money Laundering 2022.*
- *Vietnam to strengthen the management of the collection of tax on businesses applying digital technology.*

1. Novelties on bank-guarantee for off-plan housing

On 30 September 2022, the State Bank of Vietnam issued Circular 11/2022/TT-NHNN ("*Circular 11*") on bank guarantees with several new regulations on bank-guarantee for off-plan housing may affect the operations of many enterprises.

According to Circular 11, the contract on off-plan housing guarantee means a guarantee granting agreement between a commercial bank and a project owner and other related parties (if any), in which, the commercial bank agrees to provide guarantee for the project owner in the sale or lease-purchase of off-plan housing.

Pursuant to Article 13.1 and 13.2, a commercial bank is capable of giving off-plan housing guarantee if its scope of operation as stipulated in its license for establishment and operation (including relevant amendments) covers such activity. Besides, the bank is not prohibited, restricted, or suspended from provision of off-plan housing guarantee. The State Bank of Vietnam shall publish the list of qualified commercial banks in each period on its web portal.

The qualified commercial bank shall consider giving guarantee to the investor if the investor has satisfied all of requirements in Article 11 of Circular 11 (except the cases where a commercial bank issues guarantee for the investor on the basis of a counter guarantee) and the investor's project has satisfied all of requirements for off-plan property to be put on the market as prescribed in Article 55 of the Law on Real Estate Business and relevant laws.

In addition to compulsory contents applied to all bank guarantees, pursuant to Article 13.5 of Circular 11, the contract for off-plan housing guarantee must include:

- The commercial bank is obliged to issue a letter of guarantee to the purchaser upon receipt of the house purchase or lease-purchase contract sent by the project owner before the committed deadline for house handover as specified in the house purchase or lease-purchase contract.
- The commercial bank and the project owner shall specifically agree on the fact that either the commercial bank or the project owner is obliged to send the letter of guarantee to the purchaser after the commercial bank issues the letter of guarantee.
- Financial obligations of the project owner.
- The application for performing the guarantee obligation submitted by the purchaser to the commercial bank must be enclosed with the letter of guarantee granted by the commercial bank.

The off-plan housing guarantee contracts take effect from the date on which it is signed to the date of expiration of guarantee obligations of all letters of guarantee for the purchaser according to Article 23 and all obligations of the project owner to the commercial bank under the contracts have been fulfilled.

In compliance with Articles 3.14 and 13.6 of Circular 11, as a general rule, off-plan housing guarantee can only be granted in the form of a letter which will take effect from the time of issuance until at least 30 days following the deadline for housing handover as specified in the purchase contract or lease-purchase contract. In case the commercial bank and the project owner terminate the off-plan housing guarantee contract prematurely, the letters of guarantee issued to the purchasers will remain valid until termination of the guarantee obligations.

Circular 11 will take effect from 01 April 2023 and replace Circular 07/2015/TT-NHNN and Circular 13/2017/TTNHNN.

2. 04 remarkable new points of Law on Anti-Money Laundering 2022

The National Assembly has approved the Law on Anti-Money Laundering No. 14/2022/QH15 which takes effect on 01 March 2023 (*the "New AML Law"*). Here are 04 remarkable new points of the New AML Law:

(a) New reporting entity^[1]

Compared to the previous regulations, the concept of "reporting entities" under the New AML Law is regulated in a broader manner covering more business activities. Notably, due to recent quick growth of e-wallet in the country, entities conducting interim payment services (*dịch vụ trung gian thanh toán*) are supplemented to the reporting entities under the New AML Law.

(b) The national risk assessment on money laundering^[2]

The New AML Law supplements the regulations on national risk assessment on money laundering with the purpose to cover all the arising activities in the future and restrict the risks of money laundering.

In particulars, State Bank of Vietnam preside over coordination with the relevant ministries to conduct the national assessment of money laundering risks every five (5) years. This shall cover all activities newly classified as sources of money laundering risk.

^[1] Clause 1 of Article 4.

^[2] Article 7.

(c) Features of suspicious transactions^[3]

Compared to the previous regulations, though the New AML Law generally does not change basic suspicious features of a transaction, it does amend suspicious features in the banking sector, life insurance business sector, and securities sector.

For example, in the sector of securities, the followings will be considered as suspicious features:

- A foreign investor residing in a country or territory with the high risks of money-laundering contributes capital to establish securities investment fund or company in Vietnam.
- A non-resident transfers a large sum of money from his securities trading account out of Vietnam.
- A client regularly sells all securities in his/her investment portfolio and requests the securities company to sign a payment order to withdraw cash from commercial banks.

Besides, the New AML Law newly add regulations namely Article 29 on suspicious signs in the interim payment services.

(d) Term of reporting of suspicious transactions^[4]

The New AML Law amends a number of relevant contents to the term of the report, in particulars:

- For high value transactions and wire transfers, the time limit for reporting:
 - + Within 01 working day from the date on which transactions arise in the case of electronic data; or
 - + Within 02 working day from the date on which transactions arise in the case of paper reports.
- For suspicious transactions:

^[3] Article 27 to Article 33.

^[4] Article 37.

- + Within 03 working days from the date on which the transactions arise; or

- + Within 01 working day from the date on which the reporting entities detect the suspicious transactions.

3. Vietnam to strengthen the management of the collection of tax on businesses applying digital technology

According to the Resolution No. 10/NQ-CP dated 03 February 2023 on the periodic meeting of the Government of Vietnam in January 2023, the Ministry of Finance of Vietnam shall take charge and cooperate with relevant agencies:

- To urgently complete Directives of the Prime Minister of Vietnam in compliance with Notification No. 330/TB-VPCP dated 18 October 2022 within March 2023 to utilize surplus revenues of the state budget more efficiently on the basis of accelerating digital transformation, application of information technology, data connection and sharing for the development of e-commerce.

- To strengthen the tax collection regarding several specific professions and fields, especially food and beverage services, based on the application of digital technology and identify it as the focal task in 2023.

Additionally, the State Bank of Vietnam shall urgently submit presentations to the Government for the promulgation of a Decree that amends Decree No. 31/2022/ND-CP within February 2023 to solve difficulties and problems, accelerate the disbursement of the 2% interest rate support package via systems of commercial banks.

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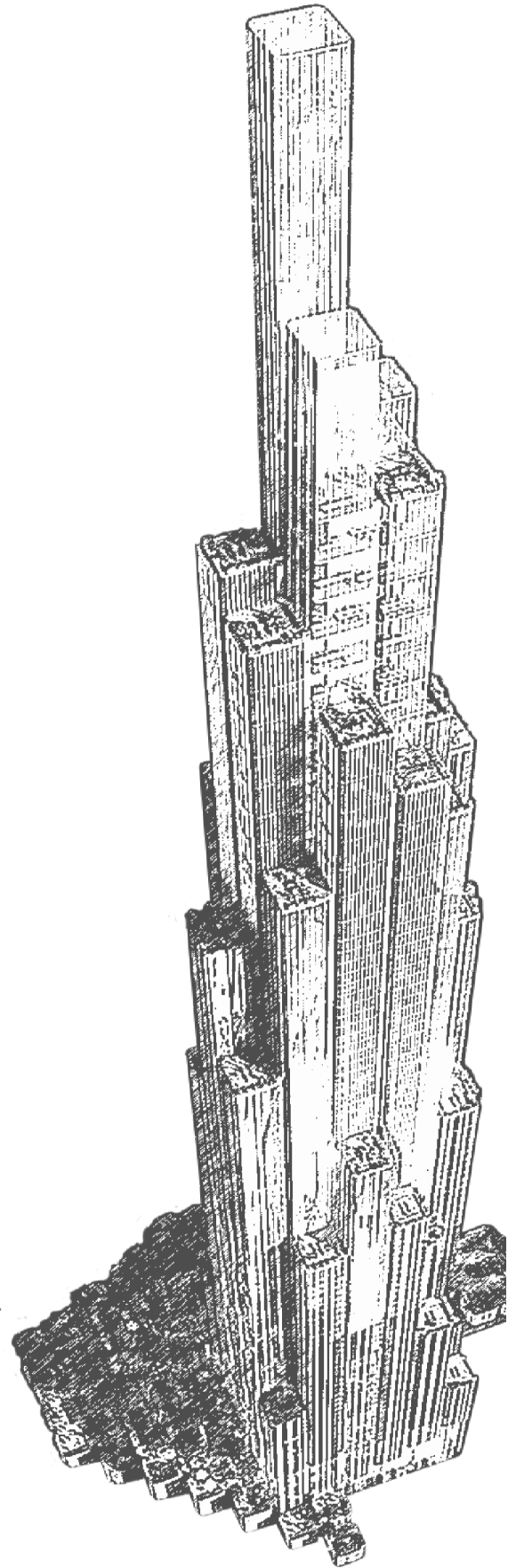


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Head office:
C2-02.OT04. Central 2, Vinhomes Central Park, 720A Dien Bien Phu, Ward 22, Binh Thanh District, Ho Chi Minh City.



info@bizlegalgroup.com



www.bizlegalgroup.com

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