

LEGAL UPDATES

February 2022

What's new this month?

—
Administrative
penalties in relation to
labour

—
Goods Labelling

—
Prize-winning
electronic games



- Contributed by Benjamin Yap Soon Tat and Le Thi Kim Quy -

New Regulations Governing Labour and Commerce Related Matters

being effective from February 2022

Among decrees recently issued by the Government, there are some that are worth to be paid attention to, including those issued to guide administrative penalties in relation to labour, govern goods labelling and prize-winning electronic games for foreigners in Vietnam. All the three mentioned decrees shall either replace or amend the existing decrees governing the same matters.

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Supplement to and increase of administrative penalties applicable to violations of labour, social insurance, Vietnamese workers working abroad under contracts



Picture from: <https://www.indiatoday.in/education-today/jobs-and-careers/story/9-things-employees-look-for-in-a-job-html-1412143-2018-12-18>

The Government just issued on 17 January 2022 a new Decree with immediate effect on the same day which is Decree No. 12/2022/ND-CP of the Government on Penalties on Administrative Violations in the Field of Labour, Social Insurance, Vietnamese Workers Working abroad under Contracts (Decree 12), to replace previous Decree No. 28/2020/ND-CP (Decree 28), under which some acts are now also subject to administrative sanctions.

In particular, in addition to the acts as set out under previous Decree 28, new Decree supplemented a few more acts which shall also be subject to administrative sanctions with particular level of fines such as act of sexual harassment at work but not to the extent of being subject to criminal prosecution (subject to a fine of up to VND60 million); act of recruiting trainees to work for a training period exceeding three months (subject to a fine of up to VND150 million); act of handling trainees to work for a training period exceeding three months (subject to a fine of up to VND150 million); and failure to ensure implementation of gender equality and measures to promote gender equality in recruitment, arrange, employment arrangements, educate, working hours, relax time, or salary (subject to a fine of up to VND20 million).

Besides, the administrative fines for several acts (which already existed in the replaced Decree 28) have been raised. Some notable big changes relate the act of intentionally deducting wages instead of handling labour discipline (changing from VND 20 - 30 million to VND 40 - 80 million); handling labour discipline for employees whose violations are not specified in the internal labour regulations or not agreed upon in the signed labour contract or not provided for by the labour law (changing from VND 20 - 30 million to VND 40 - 80 million); act of not allowing female workers to take a break of 30 minutes per day during menstruation (changing from VND 1 - 2 million to VND 20 - 40 million); and failing to notify labour regulations to all employees or post the main contents of labour regulations at the workplace (changing from VND 1 - 2 million to VND 2 - 6 million).

Amendment to goods labelling regulations

Decree No. 111/2021/ND-CP (Decree 111) which was issued by the Government on 9 December of last year 2021 also brings some amendments. It should be noted that this new Decree 111 will totally replace Decree No. 43/2017/ND-CP dated 14 April 2017 by the Government (Decree 43) governing the same matter as from 15 February 2022.

Firstly, Decree 111 made adjustment to the governing scope as well as applicable entities, as compared to the previous Decree 43. In particular, Decree 111 expands the governing scope to exported goods and consequently, the exporters also now become the applicable entities of this regulation. That means from the effectiveness date of Decree 111, exporters shall have to comply with provisions on goods labelling as other manufacturers, traders and importers of goods. Regardless of that, Decree 111 excludes from its governing scope the exported goods which are not subject to domestic consumption. In other words, those types of products are not required to be labelled in Vietnamese, which is one of requirement on labelling of products consumed in Vietnam.



Picture from: <https://www.foodlabels.com/>

Regarding original label of imported goods, Decree 111 requires that original label of goods imported into Vietnam must, during customs clearance, present in foreign languages or Vietnamese the contents including the name or abbreviated name of goods; origin of goods; and the address of the foreign manufacturer or foreign company responsible for importing those goods.

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In addition, while Decree 43 only allows origin of goods on the label to be presented using the terms such as “made in”; “manufactured in”; manufacturing country”; “origin”; “manufactured by;” Decree 111 requires to supplement on the label term of “product of” followed by name of the country or region where the goods are manufactured; or the origin of goods on the label to be presented in accordance with legal regulations on origin of goods. Where the goods origin cannot be identified as above, Decree 111 provides that the place of the last finishing phase of manufacturing shall be presented. Such place shall be presented through one or a combination of the following terms: of “assembled in”; “bottled in”; “mixed in”; “finished in”; “packaged in”; “labelled in” followed by name of the country or region of the last finishing phase of manufacturing.

From issuance date until effective date of Decree 111 (which is 15 February 2022), the manufacturers and importers should pay attention to transitional provisions, following which goods with labels in accordance with Decree 43 and manufactured, imported, and circulated prior to the effective date of Decree 111 may continue to be circulated and be used until the expiration date presented on the goods labels or used in case such goods are not required to present the expiration date; and commercial goods labels and packaging in accordance with Decree 43 and manufactured or printed prior to the effective date of Decree 111 may continue to be used in production of goods, but no more than two years from the effective date of this Decree 111.

Subjects allowed to play prize-winning electronic games in Vietnam, principles and requirements to be complied with

The limitation to subjects entitled to play prize-winning electronic games in Vietnam is a remarkable point of Decree 121. In particular, from 12 February 2022, foreigners and abroad-residing Vietnamese, who legally enter Vietnam with their passports or valid international travel documents issued by foreign competent authorities and still valid for residence in Vietnam, are the only subjects allowed to participate in any prize-winning electronic games at business locations in Vietnam. The above subjects must have full civil act capacity as prescribed by Vietnamese laws and voluntarily abide by the game rules and the provisions of Decree 121. The process of playing electronic games takes place completely automatically between the player and the prize-winning electronic game machines. Enterprises trading in prize-winning electronic games are responsible for monitoring and controlling all subjects allowed to enter and exit the business to ensure compliance with the State's strict regulations on permitted subjects playing this type of entertainment.

To ensure compliance in laws and protect the social security, Decree 121 also sets out principles of prize-winning electronic game business. Those principles include the setting-out that doing business in prize-winning electronic games is a conditional business activity, and is subject to strict control by competent State managerial authorities to ensure that the compliance by its operation with the provisions of the laws. At the same time, the prize-winning electronic game business must be associated with the enterprise's main business activities to promote tourism development and must ensure social security, order and safety; the organization and participation in prize-winning electronic games must ensure transparency, objectivity, honesty, and protect the rights and interests of the participating parties. Additionally, Decree 121 also governs qualification and requirements for the manager and operator of the prize-winning electronic game business location who must have at least a university degree or higher, and having at least three years of experience in managing and operating prize-winning electronic game business. The manager and operator of the business location, who must work full time at this area, are responsible for regularly managing, operating and monitoring all prize-winning electronic game business activities at the business location to ensure compliance with relevant laws.



Picture from: www.freepik.com

Another noteworthy point of Decree 121 is the supplement of definition of a prize-winning electronic game business location. One of the criteria to define a prize-winning electronic game business location, among others, is whether there is a room or a number of rooms connected together into a separate area in a tourist accommodation establishment inside a location licensed to do business by a State managerial authority and that prize-winning electronic game business location is arranged isolated from other business areas of the enterprise.

Last but not least, Decree 121 was issued by the Government with aim at enhancement of the effectiveness of state management, stricter supervision of the business activities of prize-winning electronic games for foreigners, and to ensure security and social order. Particularly, in addition to the notification obligation to the competent State authorities at least 15 days before the date of opening, enterprises trading in prize-winning electronic games for foreigners, before carrying out their business activities, have duties to make reports or to notify relevant State managerial authorities (for example the Ministry of Finance, the State Bank, the Provincial Police Department, the Department of Finance, the Department of Culture, Sports and Tourism and the local Tax Department) including without limitation to submitting internal regulations on anti-money laundering; sending reports on the number and types of machines, types of prize-winning electronic games and percentage of actual operated prize-winning electronic game machines, and any change to those contents; sending game rules, pay-out rates to be monitored and managed. Furthermore, in order to ensure compliance with regulations on

anti-money laundering, enterprises are responsible for developing and promulgating internal regulations on prevention of money laundering, internal regulations on prevention, combating and financing the proliferation of weapons of mass destruction according to the provisions of the Law on Prevention of Money Laundering, the Law on Preventing and Countering Proliferation of Weapons of Mass Destruction and other amendments, supplements, instructions. Along with that, enterprises are responsible for disseminating internal regulations on anti-money laundering to relevant departments, officers and employees.

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