

LEGAL UPDATES

September 2022

What's new this month?

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What should be noted about data localization and commercial presence

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Noteworthy updates on compulsory insurance in construction activities

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Remarkable supplements to regulations on international bonds issuance



- Contributed by Benjamin Yap Soon Tat and Dang Thi Tuong Vi -

New Guidance and Notable Updates on Regulations on Cybersecurity, Construction Insurance, and Bond

to be effective from September and October 2022

Among several legal instruments coming into effect in the following months with the aim to ensure more progressive regulatory frameworks, there are some that are worth to be paid attention to, including those issued to further elaborate existing regulations on cybersecurity and mandatory insurance in construction activities, as well as to replace unsuitable ones regarding issuance of bonds to the international market.

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Picture from: <https://fptcloud.com/cyber-security/>

What should be noted about data localization and commercial presence

After more than three years of drafting and consideration, on 15 August 2022, the Government finally adopted Decree No. 53/2022/ND-CP (“**Decree 53**”) detailing certain articles of Law No. 24/2018/QH14 on Cybersecurity (“**Law on Cybersecurity**”) which will become fully effective on 1 October 2022. This Decree 53 provides much-awaited regulations that will enable the authorities in Vietnam to enforce, among others, the requirements on data localization and commercial presence under the prevailing Law on Cybersecurity, which will significantly impact operation of both onshore and offshore enterprises in the near future.

Notably, Decree 53 introduces types of data that must be stored in Vietnam, commencing from receipt of the competent authority’s request until the end of such request but in all cases not less than 24 months, comprising of:

- Data on personal information of service users in Vietnam;
- Data generated by service users in Vietnam, including account name, duration of service usage, credit card information, email address, network (IP) address of the latest log-in and log-out, registered phone number associated with the account or data; and
- Data on the relationships of service users in Vietnam, including friends and groups with which users connect or interact.

While all local enterprises, no matter what businesses they are engaged in, are subject to the data localization requirement once Decree 53 takes effect, such requirement will only be triggered to an offshore service provider in case it is doing business in Vietnam in 10 sectors as stipulated by Decree 53* and has not taken proper measures to deal with breaches of the Vietnam laws on cybersecurity as requested by the competent authority. In addition, such foreign entity may be required to establish and maintain a branch or representative office until it ceases to operate in Vietnam or provide the regulated services in Vietnam.

* Including (i) telecom services; (ii) services of data storage and sharing in cyberspace (cloud storage); (iii) supply of national or international domain names to service users in Vietnam; (iv) e-commerce; (v) online payment; (vi) intermediary payment; (vii) service of transport connection via cyberspace; (viii) social networking and social media; (ix) online electronic games; (x) services of providing, managing, or operating other information in cyberspace in the form of messages, phone calls, video calls, email, or online chat.



Picture from: <https://www.entrepreneur.com/article/382018>

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Noteworthy updates on compulsory insurance in construction activities



Picture from: <https://www.insureon.com/blog/types-of-construction-insurance>

The Ministry of Finance has issued Circular No. 50/2022/TT-BTC guiding the implementation of the prevailing decrees on compulsory insurance in construction activities (“**Circular 50**”). Circular 50 will take effect from 1 October 2022 and replace Circular No. 329/2016/TT-BTC (“**Circular 329**”).

Outstanding changes of Circular 50 against the current Circular 329 are as follows:

- Insurance companies will be required to issue a separate insurance certificate containing certain major contents of the insurance policy.
- An insurance contract may no longer be terminated due to the insurance purchaser's failure to pay the insurance premium in full or within the agreed payment period.
- The current Circular 329 only provides for general cases when liability of insurance companies is exempted. Circular 50 alternatively distinguishes general cases as well as specific cases of insurance liability exemption for each type of issuance, such as insurance during construction period, insurance in case of construction investment consultancy, insurance for on-site workers, and third-party liability insurance.
- In case the project investor and the construction contractor have agreed to include the insurance premium for construction works in the price of construction contract, the construction contractor will be responsible for purchasing the compulsory insurance for the construction works during construction period.

Remarkable supplements to regulations on international bonds issuance

Matters relating to foreign exchange control on issuance of non-Government guaranteed bonds to international market is governed by Circular No. 17/2013/TT-NHNN. From 15 September 2022, such matters will be guided by new Circular No. 10/2022/TT-NHNN (“**Circular 10**”).



Picture from: <https://corporatefinanceinstitute.com/resources/knowledge/finance/international-bonds/>

Generally, Circular 10 features no significant modifications in comparison with the previous one, except for the followings to improve enforcement in practice:

- Circular 10 provides for the legal basis for confirmation on international bonds issuance registration. In particular, the State Bank of Vietnam shall only accept the registration of international bonds issuance that are within the overall quota of foreign loans as approved by the Prime Minister of Vietnam on the annual basis. The State Bank of Vietnam will also take into account the compliance by the bond issuers with the regulations on conditions and foreign exchange control for non-Government guaranteed foreign loans and laws on international bonds issuance.
- Another notable clause is that the issuer will no longer need to register with the State Bank of Vietnam certain changes in relation to international bonds issuance, such as changes in time of principal drawdown/ repayment within 10 working days; changes in plan for payment of interest/fees provided that the formula for determining the same remains unchanged; etc. Alternatively, a written notice to the State Bank of Vietnam is sufficient.

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