

LEGAL UPDATES

INTELLECTUAL PROPERTY

Decree No. 22/2018/ND-CP guiding Law No. 50/2005/QH11 on Intellectual Property and Law No. 36/2009/QH12 amending Law No. 50/2005/QH11 regarding copyrights and copyright related rights

Effective date: 10 April 2018

The Decree clarifies certain issues regarding copyright and copyright related rights as well as procedures for registration of copyright and copyright related rights.

(1) Copyright

Copyright protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.

Copyright in works shall comprise moral rights and economic rights.

(a) Moral rights comprise the following rights:

- (i) to give titles to works;
- (ii) to attach real names or pseudonyms to works; to have real names or pseudonyms acknowledged when works are published or used;
- (iii) to publish works or authorize other persons to publish works; and
- (iv) to protect the integrity of works and to forbid other persons to modify, edit or distort their works in whatever form, causing harm to the honour and reputation of the author.

(b) Economic comprise the following rights:

- (i) to make derivative works;
- (ii) to display works to the public;
- (iii) to reproduce works;
- (iv) to distribute or import the original or copies of works;
- (v) to communicate works to the public by wireless or landline means, electronic information networks or other technical means; and
- (vi) to lease the original or copies of cinematographic works and computer programs.

(2) Copyright related rights

Copyright related rights means rights of an organization or individual to performances, audio and visual fixation, and broadcasts and satellite signals carrying coded programmes.

COMMERCE**Decree No. 40/2018/ND-CP regarding management of multi-level marketing**

Effective date: 2 May 2018

- (1) Multi-level marketing (“**MLM**”) is marketing network of which members are entitled to commission, bonuses and other economic benefits from their business results and other members’.
- (2) MLM applies only to sale of permitted goods unless otherwise provided under laws. The following goods must not be sold by way of MLM:
 - (a) medicines; medical equipment; veterinary drugs; plant protection agents; chemicals, insecticides and anti-bacterial preparations which are prohibited or restricted from being used in household and medical sectors; dangerous chemicals; and
 - (b) digital and information based products.
- (3) MLM companies and participants are prohibited from doing certain activities such as requesting participants to make deposits or purchase goods for the purpose of execution of MLM contracts; providing false information about bonus plans, other benefits or goods; implementing commercial intermediary activities to maintain and expand the network, etc.
- (4) **Registration of MLM**
 - (a) MLM companies must register its MLM activities and obtain a registration certificate from the Ministry of Industry and Trade. The registration certificate is valid for five years from the date of issuance and can be renewed on numerous occasions with duration of five years for each occasion.
 - (b) MLM companies may then be required to register its MLM operation with the local Department of Industry and Trade.
 - (c) MLM companies are required to (i) sign a MLM contract with each MLM participant with compulsory terms and conditions as required by laws and (ii) hold basic training sessions for MLM participants without any fees; the basic training sessions must be registered with the authorities.
- (5) **Deposit.** MLM companies are required to lodge an escrow deposit at a bank in Vietnam. The escrow deposit shall be equivalent to five per cent (5%) of its charter capital but not less than VND10 billion.

ADMINISTRATIVE SANCTION**Decree No. 41/2018/ND-CP regarding sanctions for administrative violations on accounting and independent audit regulations**

Effective date: 1 May 2018

- (1) This Decree provides for sanctions, authority and procedures for applying sanctions in case of violations on accounting and independent audit regulations. The sanctions will be subject to nature of violations and the mitigating or aggravating circumstances.
- (2) The maximum fines is VND50 million applied to individuals and VND100 million applied to organizations.
- (3) Time bar for application of administrative sanctions is:
 - (a) two (02) years for violations on accounting regulations; and
 - (b) one (01) year for violations on independent audit regulations.

INSURANCE**Decree No. 23/2018/ND-CP regarding compulsory fire and explosion insurance**

Effective date: 15 April 2018

- (1) Organisations and individuals considered as prone to fire and explosion are required to take out compulsory fire and explosion insurance for their establishments.
- (2) The insurance policies shall comply with requirements on conditions of insurance, premium and minimum insured sum. Clients and insurance companies may agree on additional conditions of insurance and extra premium.
- (3) Insurance companies may refuse to sell their insurance policies in the following cases
 - (a) the fire prevention and fighting systems of the establishments have not been examined and approved by the authority;
 - (b) there is no minutes regarding fire fighting and prevention issued by the competent authority; or the minutes have been issued more than one year prior to the date of purchase of the insurance policies;
 - (c) Operation of establishments has been terminated due to non-compliance with laws on firefighting and fire prevention.
- (4) Organisations and individuals may include costs incurred from the aforesaid insurance policies in the price of products or services.

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