

**CLIENT ALERT**

**08/2021**

## THE 4<sup>TH</sup> WAVE OF COVID-19 IN VIETNAM AND ITS IMPACTS ON THE LEGAL SECTOR

The COVID-19 pandemic has taken all nations on the planet by surprise and continues to trigger multiple impacts on the global stage, Vietnam is no exception. Vietnam is facing with fourth waves of COVID-19, which is the worst COVID-19 outbreak so far. In the fourth wave of COVID-19 since 27/4/2021, there have been more than 170,563 confirmed cases of COVID-19. As such, Government has imposed several drastic actions encompassing reduced workloads, temporary closures and limits on staff numbers due to social distancing requirements, suspension of public transportation services, and quarantine requirements, which impacts daily life as well as socio-economic development. Government restrictions have forced many entities, organizations, state agencies to adjust their operations in order to cope with the new reality.

### General situation

1. Currently, COVID-19 prevention and control measures are intensified with the effort to curb the spreading of this highly contagious virus. Directive No. 16/CT-TTg issued by Prime Minister dated 31 March 2021 ("**Directive 16**") is the strictest social distancing measure, in which all non-essential business and services are banned and people are required to stay home unless for food, medicine, or emergencies. Due to a high number of infections reported, Ho Chi Minh City, Binh Duong, Binh Phuoc, Tay Ninh, Ha Noi, Dong Nai, Khanh Hoa, Vung Tau, and 16 southern localities including the Mekong Delta region have imposed social distancing measures under Directive 16 while other localities have imposed Directive No. 15/CT-TTg ("**Directive 15**")<sup>1</sup> or Directive No. 19/CT-TTg ("**Directive 19**")<sup>2</sup> depending on the development of the pandemic.

<sup>1</sup> **Directive 15 issued by Prime Minister dated 27 March 2021:** Cancellation of events with more than 20 people per room, ban on gatherings of more than 10 people outside offices, schools, and hospitals, keeping a safe distance of 2m, suspension of non-essential business and services, restrictions on travelling to other localities and on transporting passengers from Ha Noi and Ho Chi Minh City to other localities.

<sup>2</sup> **Directive 19 issued by Prime Minister dated 24 April 2020:** Suspension of festivals, religious and sports events, and non-essential large-scale events, ban on mass gatherings outside offices, schools, and hospitals, keeping a safe distance of 1m, closure of entertainment areas, bars, discos, karaoke, beauty salons discotheques and related services.

2. Due to the rapid COVID-19 infection in Hanoi, its People's Committee decided to applied Directive 16 from 24 July 2021. However, the tense situation still does not reduce, as such, the Committee continues issuing Official Letter No. 2468/UBND-KGVX on 31 July 2021 ordering all state agencies and units to arrange work from home regime for their officers and staff. On 06 August 2021, the Hanoi Committee decided to extend the social distancing period to 23 August 2021. Later, Ho Chi Minh City People Committee decided to continue applying social distancing measures under Official Letter No. 2556/UBND-VX for 14 days from 02 August 2021. Accordingly, State agencies and units, and courts re-arrange working time and apply work from home regime. Also, office closures, social distancing and stay-in-place measures became the norm of all business and services, except for urgent and important political and foreign affairs activities, and activities in service of COVID-19 prevention and control. Law firms are not exceptions. Legal staff must try to handle meetings with clients remotely and deliver services virtually. Coupled with the aforesaid limitations, the provision of legal services is, more or less, affected.

### **Impact of Covid-19 on the shipping activities**

3. Currently, some large seaports in the Southern area of Vietnam, such as Ho Chi Minh City, Vung Tau, Dong Nai, and Khanh Hoa, are applying social distancing measures under Directive 16/CT-TTg of the Prime Minister. In this regard, Vietnam Maritime Administration has issued Official Letter No. 2829/CHHVN-VTDVHH dated 15 July 2021, among others, requiring the compulsory quarantine procedure and not allowing crew members to disembark ashore except crews on duty. Maritime Administration of localities require administrative procedures to be carried out online via their platforms.
4. Moreover, seaports, warehouses, and terminal operators have just posted a notice regarding the requirement of the Certificate on Covid-19 Test Result on their social media, e.g., Saigon Newport Corporation issued Notice No. 2421/TB-TCg to request anyone coming to Tan Cang Cat Lai Port and Tan Cang Hiep Phuoc to obtain the Certificate with negative result of Covid-19 effective within 72 hours.
5. Especially, due to a significant escalation of the Covid outbreak and the severe shortage of facilities for treatment in Ho Chi Minh City, the procedures of crew disembarkation and cargo discharge may be more complex and take time. Pursuant to Official Letter 2279/UBND-VX and Order No. 600/CD-BCD, crews of foreign vessels arrive in Vietnam are, even negative with Covid-19, not allowed to disembark. More importantly, if the crewmen of the foreign vessel have positive test with Covid-19, they must be isolated on board 21 days and the vessels are not allowed to go ashore for discharge. The vessel then must travel back to leaving/loading countries, change all crew members, disinfect, resume the journey to Vietnam and take the test again for the discharge of goods.
6. And all of this is taking place in a context in which COVID-19 is hugely hindering the normal operations of shipping and other related activities such as logistics, port operations, customs, cargo loading and unloading, among others. Also, since there are various temporary prohibitions and restrictions on the normal operations of port and customs to cope with the rage of COVID-19, in some cases, to arrest/release a ship in a port may be delayed or even impossible.

### **Impact of Covid-19 on dispute resolution activities**

7. The pandemic is also likely to have an impact on activities of other agencies, organizations, and entities relating to disputes. Due to the movement restriction, it is unable to work directly with relevant agencies/authorities and entities, e.g., local bailiff, enforcement agents, ports, maritime administrations, and debtors. Accordingly, there

could be fallout from delayed communication that has occurred during this time with some forecasting an obstacle in resolving requests of parties or disputes. To be specific:

8. Following the spirit of fighting with COVID-19, the Supreme People's Court issued an Official Letter No. 232/TANDTC-VP on implementing the COVID-19 prevention and control measures, in which the Supreme People's Court arranges for judges and their officers/staff to work from home and limits the number of people working in the court. There will be no direct submission of petitions, evidence, and other documents/materials in the head office of the Supreme People's Court. Instead, those documents will be lodged online on their website at <https://nopdonkhoikien.toaan.gov.vn/>.
9. Accordingly, the People's Court of Ho Chi Minh City and the People's Court of Hanoi City decide to temporarily suspend receiving direct petitions and refrain from opening court hearings. All petitions and relevant materials must be submitted via couriers. The courts may consider resolving interim applications provided that epidemic prevention and control measures are complied with strictly.
10. In fact, the pandemic has forced certain changes within litigation including the means of submission and work-from-home regime. As a result, disputes shall tend to be long-running and delayed since matters slowed as response times from the courts. Ongoing matters will continue, as such, there is a continuing worry about urgent cases which must apply interim orders such as arresting a ship, or freezing a bank account.
11. Whilst local courts are compelled to temporarily suspend operations, numerous arbitral institutions in Vietnam, such as Vietnam International Arbitration Centre (VIAC), encourage disputing parties to submit the request for arbitrations, statements, opinions and documents via couriers and email. In addition, VIAC has quickly adjusted to the new normal by operating virtual hearings instead of physical hearings. However, to do so, both parties need to consent to virtual proceedings. As a result, in some cases, one of the parties may play dilatory tactics by insisting on face-to-face hearings.
12. Equally so, the current situation in Vietnam could lead to a delay in serving arbitral documents in international arbitrations. Some post offices also have to suspend their services due to the affection of the Covid-19, many areas applied travel restrictions. Therefore, it may take more time to deliver the documents to the Vietnamese parties. Using local bailiffs to serve documents may be impossible in some cities such as Hanoi and Ho Chi Minh. Similarly, this could be considered as an objective obstacle preventing the local parties from meeting the deadlines to file the responses or submission as required by the arbitral tribunals.

### **Impact of Covid-19 on the operation of businesses**

13. Since outbreaks in industrial parks, markets and crowded residential areas during the fourth wave have much more negative impacts on daily life as well as socio-economic development than the previous waves, the Government imposes many measures in an effort to curb the spread of the virus under the spirit of the "dual goals" both drastically preventing and controlling the epidemic and focusing on socio-economic recovery and development. Accordingly, all factories in several cities/provinces (e.g., Ho Chi Minh City, Binh Duong, Dong Nai, An Giang, Dong Thap, etc.) are now required to allow workers to stay within the premises to operate (called the "**3 on-site**") or gathering workers in a place and then transiting them straight to the factories (called "**1 shuttle route, 2 pick-up points**"). Businesses unfollowing those two rules are required to suspend their operation.

14. Recently, Binh Duong province has issued directions and specific requirements on implementing those rules under its Official Letter No. 3297/UBND-TH dated 16 July 2021, in which the authority requires employers in case of applying the “3 on-site” rule to satisfy the following requirements:
  - (is) the risk of spreading the virus is below 30% by the self-assessment of the business entities; in case of the risk is from 31% to 50%, the production scale must be reduced by at least 20%;
  - (ii) all workers/employees involving must have a negative test result for COVID-19;
  - (iii) having the consent of workers/employees; and
  - (iv) ensuring a dining hall, a space to rest and sleep, and a place for personal hygiene; and ensuring the regulation in food safety, security and order, and production safety.
15. Having the same guidance, the authority of Dong Thap, An Giang, Dong Nai, Ho Chi Minh City also require workers to have negative results for the COVID-19 test to join those plans. Additionally, employers must provide sufficient conditions to carry out “3 on-site” or “1 shuttle route, 2 pick-up points”. Yet, there are some provinces/cities that have officially been required to apply those rules, this practice will happen country-wide for all industries.
16. Moreover, it should be taken into account that some business entities are unable to keep operating due to positive COVID-19 cases within its workforce leading to the delay in performing contractual obligations. As a result, innumerable suppliers declare force majeure on their performance and apply for the liability exemption.

### **Our recommendation**

17. The local authorities in different cities and provinces would adjust the regulations and actions to be in line with their situation at that time. Accordingly, we would have some recommendations for our valued clients to minimize the negative impact of the pandemic as below:
  - (i) Shipping lines should liaise with local agents to request for latest updates of the pandemic and its corresponding government policy as well as the list of necessary documents relating to the health condition of the crew needed to be provided before its arrival.
  - (ii) The crews should take Covid-19 tests at the latest ports before the arrival in Vietnam to minimize the risk that there are crew members positive with Covid-19 when the vessels enter into Vietnamese water. Yet, this measure could not guarantee to remove all risks as the local health authorities shall request for a test again before the discharge. Moreover, each and every vessel must by itself equip medical supplies, as well as mechanical and electronic parts for vessels before its departure to Vietnam for the worst-case scenario.
  - (iii) Relevant documents and petitions should be prepared carefully and couriered as soon as possible to avoid any impact on the statutory time limit or other possible matters in case of courier delay. Also, it is recommended to set up tracking alerts to keep a close eye on the progress of your delivery, especially cross borders delivery.
  - (iv) The parties to the dispute should liaise with local lawyers to get the latest update from relevant authorities/agencies/organizations. Regarding arbitration, a party should persuade the counterparty to agree with a virtual hearing since the award shall be set aside where one or both parties object to a virtual hearing.



- (v) Businesses should plan to carry out the “3 on site” rule or “1 shuttle route, 2 pick-up points” rule and strictly comply with the requirements of the localities to be permitted to keep operating. Importantly, all anti-epidemic measures should be implemented seriously together with the complication of the regulations on occupational safety and hygiene to ensure the workplace to the employees.
- (vi) Consulting with local lawyers to determine whether business partners are required to suspend its operation under competent authorities, thereby considering plans to deal with the situation, especially in case of liability exemption by force majeure/ objective obstacles.

We hope the above information is beneficial to you. It is necessary to consider taking appropriate actions to respond to the restrictions of localities in order to minimize the negative impact of the pandemic and get well with the new normal.




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