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Legal Update on Decree 10/2020/ND-CP

Highlights on requirements for transport services by cars

The Government of Vietnam promulgated Decree No. 10/2020/ND-CP dated 17 January 2020, effecting from 01 April 2020 on requirements on car transport business (**Decree 10**) to supersede Decree No. 86/2014/ND-CP dated 10 September 2014 (**Decree 86**). In general, Decree 10 was issued following the expiry of Decision 24/QD-BGTVT (piloting the application of connecting software for passenger transport business of electronic contracts for cars under 9 seats) (**Decision 24**) to create an official legal framework for the application of connectivity software in the road transportation services.

In this legal update, we will discuss some noteworthy changes under Decree 10 which will take effect from April 2020 that, from our point of view, business owners should stay alert.

1. Overview of new requirements

1.1. Definition of transport services

Decree 10 specifies the definition of the car transport services, which is the *implementation of at least one of the main stages of transport activities (directly operating vehicles and drivers or determining fares) to transport passengers or goods on the road for profit*. It appears that Decree 10 has widened the definition of transport services in comparison to that of Decree 86. To be specific, any activity which includes at least one of the main stages of transport activities will be deemed transport services under Decree 10 whereas, in Decree 86, transport services must include both directly operating vehicles and drivers, and determining fares.

On the other hand, to be purely a transport connection services provider, the provider must not directly operate vehicles or drivers and determine fares. As a result, the business model of ride-hailing companies like Grab, Go-Viet or Be is no longer viable in Vietnam. Under Decree 10, they have to either comply with requirements for transport services or make certain changes to their business model to qualify as a transport connection services provider. We will further discuss this issue in Section 2.1 below on ride-hailing services.

1.2. Requirements for the transport services

Decree 10 provides stricter conditions for a transport services provider which are:

- (i) cars must be owned or otherwise under the use right of the provider (Article 13.1);
- (ii) cars must have tracking devices (Article 12);
- (iii) cars must have cameras or devices of the similar (Article 13.2); and
- (iv) the provider must obtain a Transport Services Certificate (Article 17).

Of the above, cars must have a camera is a new condition. Accordingly, cars having 09 seats or more (including the driver seat) must have cameras that can record and store images

inside the cars (including the driver seat and doors) for at least 24 or 72 hours. The data can be provided to the traffic police, inspectors and licensing competent authorities for inspection. The transport services provider must complete the installation of the camera no later than 01 July 2021.

2. Passenger transportation services by contracted car

2.1. Ride-hailing services

Passenger transport business by contracted car, recently, has attracted public attention, especially after the blooming of ride-hailing services in Vietnam. Due to the lack of an official legal framework other than Decision 24, a wide range of issues relating to transport connection application arose; for example, conflicts between traditional transport services providers and ride-hailing companies or uncontrolled activities of “technology taxi”, etc. By issuing Decree 10, the regulator aims to partially solve those issues.

Particularly, Decree 10 does not accept the ride-hailing business model (*i.e.*, technology companies provide transport connection services while directly operate vehicles or drivers and determine fares via. its platform/application). Companies like Grab, Go-Viet or Be now have to choose between being classified as a transport services provider (as opposed to being a technology company under Decision 24) and giving up their rights to directly operate vehicles or drivers and determine fares via. its platform/application to remain a technology company.

Furthermore, to level the competition between traditional transport services providers (such as taxi companies) and ride-hailing companies, ride-hailing cars are required to have the logo “CONTRACTED CAR” on the front and back windshield which is similar to the “TAXI” logo requirements. Additionally, the requirement to have a “TAXI” roof sign is now an optional choice as an alternative for the “TAXI” logo requirement.

The ride-hailing application must also have an internal interface displaying the name or logo of the transport services provider, and phone number to contact in an emergency. In

addition, the ride-hailing application must also enable the transport services provider to send an invoice to the passengers as well as to the relevant tax authority. Ride-hailing company (*i.e.*, a technology company which provides transport connection services via its platform/application) must also store the data of the transport contract between the transport services provider and the passenger for at least 3 years.

2.2. Internal transport

Another notable point in Decree 10 is that companies' internal transport (*e.g.*, employee shuttles or school bus) could qualify as a transport service if the companies derive profit from such activities. Accordingly, if a company transports its employees, officers or students (i) using internal cars (ii) driven by drivers on the companies' payroll (iii) for profit, that company could be deemed to have provided transport services, and thus must comply with the requirements on transport services. It appears to be stricter regulation in comparison to Decree 86. In particular, Decree 86 does not consider internal transport as a type of transport services whether for profit or not if the transport services provider is the company in question (who is the employer or school).

Such tighter regulation could impact a wide range of companies and schools that are offering transportation for their employees and students. Kindly note that, however, Decree 10 does not define exactly the term "for profit". It is arguable that if the companies and schools do not make any gain from such transport activities but only receive reimbursement for their costs and expenses, such "internal transport" will not be considered as a transport service.

It is also noteworthy that there will be a new Circular of the Ministry of Transport to regulate internal transport not for profit. Therefore, we are of the view the legal implication of Decree 10 on internal transport is not definite and shall be subject to such an upcoming Circular of Ministry of Transport.

Key contact

If you have any questions or would like to know how this might affect your business, please contact the key contact.



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