



## LEGAL UPDATE

### NEW GUIDANCE OF THE LAW ON HANDLING ADMINISTRATIVE VIOLATIONS

On 18 March 2025, the Government adopted and issued Decree No. 68/2025/ND-CP (“**Decree 68**”) amending Decree No. 118/2021/ND-CP dated 23 December 2021 (“**Decree 118**”) guiding the Law on Handling Administrative Violations. Decree 68 takes effect from 02 May 2025, introducing amendments, repealing several provisions of Decree 118 and replacing 9 attached forms.

This legal update highlights some notable points about Decree 68.

#### 1. Administrative sanctions in the field of state management

Decree 68 mandates that decrees on administrative sanctions in the field of state management must simultaneously prescribe remedial measures, including the obligation to pay an amount equivalent to the value of confiscated objects or means that have been illegally consumed, dispersed, or destroyed. This applies in cases where the violation is subject to the confiscation of such objects or means.

This additional regulation strengthens enforcement mechanisms by providing authorities with a clear legal basis to impose enforcement measures when organizations or individuals fail to voluntarily comply with additional penalty measures.

#### 2. Guidance on the application of regulations on administrative penalties

To resolve inconsistencies in adjudication regarding the selection of legal documents for administrative sanctions, the jurisdiction determination, procedures, and sanctioning forms, Decree 68 introduces new regulations clarifying the application of legal documents. Specifically, it stipulates that the legal provisions in effect at the time of case review and handling must be applied when determining jurisdiction, procedures, and sanctioning forms for administrative violations.

In addition, Decree 68 introduces additional principles for determination of administrative violations and imposition

of fines and fairness in enforcement. These principles include:

- i. Administrative violations with different levels of violation or consequences associated with different penalties, as stipulated in various points or clauses within the same article or in different articles of the same decree, shall be considered as a single violation;
- ii. If multiple administrative violations are considered as aggravating circumstances and fall under the provisions of point (i) above, the highest penalty framework, the longest suspension period, or the longest revocation of licenses or professional certificates shall be applied as stipulated for that violation across the repeated offenses;
- iii. The decree aligns with Article 23 and Article 25 of the Law on Handling Administrative Violations, providing flexibility in determining penalty severity based on aggravating and mitigating circumstances specific to each case; and
- iv. To align with Decision No. 06/QĐ-TTg on the application of population data and administrative procedure simplification, Decree 68 includes provisions for updating license and practice certificate retention information in the national database, ensuring efficient regulatory enforcement.

#### 3. Administrative sanctions in inspection activities

The current regulations on handling administrative violations are lacking regulations on the authority to correct, amend, supplement, annul, or enforce the implementation of administrative sanction decisions issued by the Head of a specialized inspection team after the inspection period has expired. Decree 68 addresses this issue by adding the principles for determining the authority to correct, amend, supplement or annul decisions of the head of a specialized inspection team after the inspection period has expired.

#### 4. Making an administrative violation record

In addition to the working minutes, Decree 68 adds records and documents recognizing violations detected during



inspections, examinations, state management activities, or legal proceedings can serve as bases for making an administrative violation record.

Key updates to the process of recording administrative violations include:

- i. The preparation of an administrative violation records in cases where a criminal procedure agency transfers the case file for administrative sanctioning but does not meet the requirements under Clause 1, Article 63 of the Law on Handling Administrative Violations (lacking one of the procedural decisions); and
- ii. The necessary contents in the request for administrative sanctioning issued by the competent criminal procedure agency.

Under Decree 68, the standard time limit for preparing an administrative violation record has been increased from 2 working days (under Decree 118) to 3 working days from the date of detecting the violation. For the special cases requiring additional steps such as expert assessment, testing or examination, the time limit has been extended from 3 working days to 5 working days.

## **5. Cancellation and promulgation of new decisions on administrative penalties**

Decree 68 refines regulations on the grounds for cancellation of administrative sanctioning decisions to address the issue of improperly or incompletely applying remedial measures. Accordingly, instead of completely annulling the sanctioning decision in all cases, only the specific incorrect or inappropriate contents will be adjusted. This approach improves fairness and ensures compliance with the Law on Handling Administrative Violations, and prevents abuse or unnecessary difficulties in law enforcement.

Key supplements in Decree 68 regarding cancellation and promulgation of new decisions include:

- i. A specific stipulation of the types of decisions in administrative sanctions that are subject to annulment and reissuance under this article. Accordingly, decisions on preventive measures and measures ensuring the handling of administrative violations are excluded;

- ii. Principles for determining the authority to amend, supplement, correct, or annul decisions in cases where the person who issued the administrative sanction decision undergoes changes in duties, powers, or organizational structure, resulting in the loss of sanctioning authority or the non-existence of that position in practice; and
- iii. The issuance of a new decision in cases where there is a court judgment or decision annulling the entire sanctioned decision that was subject to a lawsuit.

Under Decree 68, the duration and statute of limitations for the enforcement of rectification, amendment, supplementation decisions, or new decisions shall be applied in accordance with the provisions of the Law on Handling Administrative Violations. Specifically, for administrative sanctioning decisions, the statute of limitations is calculated from the date of issuance of these decisions until the termination of their enforcement validity, as stipulated in Article 74 of the Law on Handling of Administrative Violations, for the administrative sanctioning decisions that have been rectified, amended, or supplemented.

In cases where individuals or organizations are granted a deferral, reduction, exemption from fines, or allowed to pay fines in installments as stipulated in Articles 76, 77, and 79 of the Law on Handling Administrative Violations, the decisions on deferral, reduction, exemption, or installment payments must be forwarded to the authority responsible for receiving the sanctioning decision for enforcement.

## **6. Determination of authority to impose administrative sanctions**

Decree 68 amends and supplements regulations on determining the authority to impose administrative sanctions and apply remedial measures, ensuring consistency with the Law on Handling Administrative Violations. The key updates include:

- i. Additional principles for determining sanctioning authority in cases where an administrative violation case is being handled by a competent person from a centrally organized agency operating at the local level, but must be transferred to the competent sanctioning authority. Based on this principle, priority is given to transferring the case to officials



- with professional expertise and authority at the local level;
- ii. Regulations on cases where an administrative violation case involves multiple violations in different areas of state management, including at least one violation that does not fall under the sanctioning authority of the Chairman of the People's Committee; and
  - iii. Expanding the titles authorized to handle cases where the exhibits or means of administrative violations involve prohibited goods for storage or circulation, with undetermined value.

## 7. Conclusion

Regulations of Decree 68 enhances legal certainty and uniformity in administrative sanctioning, ensuring that

enforcement authorities follow a consistent legal framework. This minimizes discrepancies in the interpretation and application of relevant regulations, thereby improving transparency, predictability, and efficiency in administrative enforcement.

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