

# Legal Update

February 2020

## **DECREE 10/2020/ND-CP (“DECREE 10”) (17 JANUARY 2020) COMES INTO EFFECT FROM 1 APRIL 2020, REPLACING DECREE 86/2014/ND-CP (“DECREE 86”) (10 SEPTEMBER 2014) IN RELATION TO THE REGULATION OF AUTOMOBILE ROAD TRANSPORTATION SERVICES.**

This new Decree 10 updates regulations on the operation of entities engaged in road transportation services; in particular, it introduces rules governing automobile ride-hailing platform providers.

The following key laws are introduced:

### **1. Clarification on the scope and subjects involved in automobile road transportation services (“Road Transportation Services Entities”)**

Decree 86 defines Road Transportation Services Entities as those entities which “use cars to transport cargo and passengers on roads for profit-making purposes; including direct fee-collection road transportation services and indirect fee-collection road transportation services”. In addition, Road Transportation Services Entities may legally own transportation vehicles used in business operations. These entities may also lease vehicles from financial leasing organizations or organizations or individuals which have the legal right to lease such assets.

Decree 10, however, states that a business entity will be deemed to be engaged in road transportation services if it “performs at least one of the main steps

of transportation activities (i.e. directly manages vehicles, chauffeurs or determines transportation fares) in order to transport passengers or cargo on roads for profit-making purposes.” With respect to transportation vehicles used in the business operations, road transportation services entities may either legally own those vehicles or have lawful rights to use them under written vehicle leasing contracts or business cooperation contracts signed between the Transportation Service entities and business organisations or individuals.

Decree 10 confirms that where an automobile ride-hailing platform provider (“**Ride-hailing Platform Provider**”) performs at least one of the transportation activities defined above (i.e. directly manages vehicles, chauffeurs or determines transportation fares), it will be deemed a Road Transportation Services Entity and therefore must satisfy the conditions as prescribed under Decree 10 and relevant regulations.

Further, under Decree 10, internal passenger transportation activities and indirect fee-collection cargo transportation activities will no longer be deemed as a form of road transportation services and will thus not be governed by Decree 10.

### **2. Removal of the limitation on the term of a transportation services license**

According to Decree 86, a transportation services license (“**TBL**”) issued by the provincial Department of Transportation has a term of seven years, and may be re-issued prior to expiry.

Under Decree 10, there is no limitation on the term of a TBL. A TBL is only amended/re-issued in case of changes to content or revocation by the relevant authority in accordance with current laws.

### 3. More requirements for transportation vehicles- badges and signs

According to Decree 10, transportation vehicles used for road transportation services must be granted a badge and/or sign corresponding with its relevant business operation. Each vehicle will only be granted one type of badge and/or sign.

For a “taxi”, “car transporting under contract” or “tourist car,” in addition to complying with badge or sign requirements as stated above, Road Transportation Services Entities must also display the name of each vehicle type on the front and back windshields. For a “taxi”, Road Transportation Services Entities can opt to display the name of the vehicle type or alternatively attach a light box on the roof of the vehicle as prescribed by law.

The term of badges and signs granted for each vehicle is seven years or based on the request of the business entity, but must not exceed the service life of the vehicle. Badges and signs shall be re-granted upon expiry, loss or damage, change of vehicle owner or change of business entity.

Badges and signs are to be granted by the local Department of Transportation where the transportation services entity obtained their initial TBL. For passenger transportation vehicles (including “taxi,” “car transporting under contract” or “tourist car”), badges and/or signs are to be issued by the local Department of Transportation where vehicles have more than 70% of the total time of operation in a month in that locality.



### 4. Further regulations on the business operations of Road Transportation Services Entities

- **Passenger transportation services on fixed routes:** According to Decree 10, passenger transportation on multi-provincial fixed routes, regardless of route distance, must start and end at the legally prescribed operating station. According to Decree 86, only transportation on multi-provincial fixed routes with a route distance of 300 km or more must comply with such requirements.
- **Transportation services by taxis:** Prior to engaging in business, must notify the relevant local Department of Transportation of the intended method of calculation to be used when determining taxi fares.
- **Passenger transportation services under contract and tourist transportation services:**
  - Each month, each vehicle must not make more than 30% of the total number of trips with a duplicate starting or destination point. Duplicate points are to be defined as one place or more on the same street or alley in an urban area.
  - Regardless of vehicle weight, Road Transportation Services Entities must provide written notice to the local Department of Transportation of all requisite content included in the relevant consumer transportation contract. Under Decree 86, only vehicles having a weight intended for 10 or more passengers must undertake such notification.

### 5. Further regulations on the business operations of Ride-hailing Platform Providers

Ride-hailing Platform Providers are only permitted to act in an intermediary role in the provision of transportation activities (i.e. to moderate the implementation of an agreement between a transportation services entity and its customers).

Ride-hailing Platform Providers are subject to the following additional obligations:

- prohibited from directly managing vehicles and chauffeurs or determining transportation fares;
- required to retain transaction history for a minimum period of two years in relation to services provided;
- provide authorities with the lists of transportation business entities, vehicles and chauffeurs that they have cooperated with or grant the relevant authorities rights of access to such information; and

- prohibited from providing ride-hailing platform services to entities engaged in passenger “transportation services under contracts” and “tourist transportation” where such entities are engaged in passenger reservation, ticket sale or money collection activities.

## 6. Abolishing mandatory compensation amounts

According to Decree 86, compensation for damage, loss or deficiency of cargo during transportation is to be agreed between the Road Transportation Services Entity and its customers under the relevant

transportation contract. If there is no such contractual agreement between the parties or agreement on the compensation amount cannot be reached, the Road Transportation Services Entity may apply a deemed compensation amount of VND70,000/kilogram for damaged, lost or deficient cargo, unless otherwise decided by a court or arbitration body

Decree 10 abolishes such mandatory compensation amounts. According to Decree 10, compensation amounts will be subject to contractual agreement between the parties, or otherwise as decided by a court or arbitration body.

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