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IDENTIFYING THE TRUE NATURE OF CAPITAL CONTRIBUTION TRANSACTIONS: INSIGHTS FROM PRECEDENT NO. 78/2025/AL

On December 25, 2025, the Supreme People's Court published 10 new precedents under Decision No. 339a/QD-CA issued by the Chief Justice of the Supreme People's Court. Accordingly, these precedents are to be studied and applied in adjudication from February 1, 2026. A remarkable one among them is Precedent No. 78/2025/AL (**Precedent 78**) regarding determination of the purposes of capital contribution to a company, which should be referred during operations of businesses.

Precedent 78 is developed from Cassation Decision No. 17/2022/KDTM-GDT dated December 13, 2022 by the Judge Council of the Supreme People's Court concerning the commercial business case titled "Dispute between company members and the company" between the Plaintiff, Tran Manh H, and the Defendant, D Company Limited (**D Company or the Company**). According to the facts of the dispute, D Company was established by two individuals in 2001. In order to raise additional capital for investment in land and production facilities, the two members of D Company invited the Plaintiff to contribute capital to the Company. In 2001, based on a verbal agreement between the Plaintiff and the individual members of the Company, the parties agreed that three individuals (including the Plaintiff) would each contribute one-third of the Company's capital and would be entitled to profits in proportion to this capital contribution. Over the subsequent twelve-year period, from 2003 to 2015, the Plaintiff received profit distributions from the Defendant. According to the Minutes of meeting of D Company's Members Council dated March 22, 2017, the Plaintiff's capital contribution accounted for 38%, and the Plaintiff and the two other members shared profits equally. The Minutes of the Members Council meeting also indicated that the Plaintiff did not engage in the management or operation of the Company's business. In addition, the Enterprise Registration Certificate of D Company did not record

the Plaintiff as a member of the Company.

In 2008, after his request to be recorded as a member of the Company was rejected, the Plaintiff initiated a lawsuit requesting the Court to determine him as a member of the Company. The Plaintiff also requested the Defendant to carry out the necessary procedures at the competent state authorities to register him as a company member corresponding to the capital amount he had contributed.

The Defendant opposed and argued that the Plaintiff transferred the money to two individual members of the Company just for business cooperation and interest-sharing, not for capital contribution to become a member of the Company.

During adjudication, both the first-instance and the appellate court accepted the Plaintiff's claims, determining that he had become a capital-contributing member of the Company with the contribution ratio of one-third, and asked the Company to carry out the relevant required procedures to register the Plaintiff as a company member corresponding to the Plaintiff's claimed capital contribution ratio of 33.2%. The Defendant continued to request a review of the trial and appellate judgments under the cassation procedure.

The Judge Council of the Supreme People's Court conducting the cassation review made the following judgments:

The Plaintiff failed to provide relevant evidence to substantiate his claims. The Minutes of the Members' Council meeting dated March 22, 2017 only recognized the Plaintiff's capital contribution to the Company. According to the Judge Council of the Supreme People's Court, such Minutes of meeting had no content confirming that such capital was contributed

as part of the charter capital for the establishment of the Company or for increasing the Company's charter capital in accordance with regulations. The Minutes also contained no provisions specifying the obligations and responsibilities of each person corresponding to their capital contribution with respect to the Company's debts and other property obligations in accordance with the Company Charter.

Furthermore, in the Minutes, the Plaintiff acknowledged that he would not participate in the Company's business operations. In fact, there was no record of any registration for charter capital increase of D Company corresponding to the amount contributed by the Plaintiff as it was not registered and no amended Enterprise Registration Certificate was issued in accordance with the Law on Enterprises. According to the Judge Council of the Supreme People's Court, contributing charter capital to become a member of the Company and contributing capital for business purposes are two different matters. As the parties had no agreement and made no registration for the increase of charter capital, the determination in the previous two judgments that the Plaintiff contributed 33.3% of the Company's charter capital lacks a legal basis. There are only grounds to determine that the Plaintiff contributed capital for business purposes.

Precedent 78 raises the issue of clearly determining the legal nature of a capital contribution transaction. In practice, contribution of capital to a company for business cooperation and contributing capital to increase charter capital and subsequently be used for business operations are both very common. However, these activities may easily be confused due to several similarities. With respect to capital contributions for business cooperation, the contributing party does not become a member of the company but is only entitled to share the profits generated from the use of the contributed capital and must also bear the corresponding risks arising from the use of such capital. In contrast, for capital contributions aimed at increasing the charter capital, the contributing individual becomes a member of the company and exercises the rights and obligations prescribed in the Company Charter and relevant laws.

In order to minimize disputes arising from capital contribution transactions, Precedent 78 suggests several key considerations for enterprises when conducting the above forms of capital contribution as follows:

- In the cases where a capital contribution results in a change to the company's charter capital, the enterprise must ensure compliance with the procedures and formalities for adjusting charter

capital as prescribed by law. The enterprise is responsible for registering changes to the contents of the Enterprise Registration Certificate with the Business Registration Office under the Department of Finance where the company's head office is located, regarding the information of adjusted charter capital, within 10 days from the date of the change, in accordance with Clause 1, Article 44 of Decree No. 168/2025/ND-CP.

In addition, enterprises should ensure that internal legal documentation related to the adjustment of charter capital is properly completed. For example, in Precedent 78, with respect to the Defendant being a limited liability company, the evidence proving the company's membership information under the Law on Enterprises as determined by the Court includes Capital Contribution Certificates, Register of Members, the Company Charter.

- Capital contributions for business cooperation or for increasing charter capital should be documented in writing, clearly specifying the rights and interests of the parties according to each type of capital contribution.
- During the implementation of capital contribution transactions, enterprises should also ensure compliance with legal regulations on accounting, accounting records, and the company's financial statements.

In the event that our valued Clients wish to obtain further information on corporate-related regulations, NHQuang&Associates would be pleased to provide consultation, clarification, and support for relevant procedures (if any).

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