

LEGAL NEWSLETTER



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Notable activity in June, 2022

On June 22, 2022, Mr. Nguyen Hung Quang and Ms. Nguyen Ngoc Ha attended the Workshop for consulting the Draft Project on "Building E-Courts in Viet Nam to meet requirements of judicial reform by 2030, with an orientation to 2045" organized by the Supreme People's Court (SPC). The workshop was co-chaired by Assoc. Prof. Dr. Nguyen Hoa Binh, Chief Justice of the SPC and Dr. Nguyen Van Du, Deputy Chief Justice of the SPC, with the participation of members of the Justice Council, leaders of the SPC's departments/units, representatives of other ministries, agencies such as: Supreme People's Procuracy, Ministry of Public Security, Ministry of Justice, Central Committee for Internal Affairs, Government Office, Vietnam Lawyer Association and experts, scientists, researchers.

At the workshop, Mr. Nguyen Hung Quang presented contents of "The current practices and recommendations on legal infrastructure to ensure the E-Court operation", which clarified roles of the E-Court in economic development and ensuring justice, and analyzed the current practices of the legal infrastructure for the E-Court operation to ensure the effectiveness of the Court in economic development and "access to justice". Also, Mr. Quang recommended several practical solutions to improve aspects of legal regulations to implement the E-Court, such as protecting personal and business information during the E-trial process, contacting between Courts and litigants in the process of electronic adjudication, electronic evidence.

REGULATIONS ON STATUTORY MINIMUM WAGES PAID TO EMPLOYEES WORKING UNDER LABOR CONTRACTS

NGOC HA

On June 12, 2022, the Government issued Decree 38/2022/ND-CP prescribing statutory minimum wages paid to employees working under labor contracts (**Decree 38**). Replacing Decree 90/2019/ND-CP (**Decree 90**), this document has some notable contents as follows:

First, regulating hourly statutory minimum wage. The Labor Code 2012 and the Labor Code 2019 both mention hourly statutory minimum wage, but there has been no by-law document providing this content. For the first time, Decree 38 has specifically recognized hourly minimum wages. Accordingly, the hourly statutory minimum wage is the minimum wage used as the basis for any agreement between employers and employees on hourly salary and payment. The job- or position-based salary paid for every working hour to an employee who has fulfilled his/her labor productivity norms or tasks as agreed must not be lower than the statutory minimum wages per hour. In Decree 38, the hourly statutory minimum wage is applied by region as follows:

- Region I: VND 22,500/hour;
- Region II: VND 20,000/hour;
- Region III: VND 17,500/hour;
- Region IV: VND 15,600/hour.

Second, increasing the monthly statutory minimum wage by 6% compared to Decree 90. Specifically, the monthly statutory minimum wage applied by region is specified in Decree 38 as follows:

- Region I: VND 4,680,000/month (increasing by VND 260,000 compared to Decree 90);
- Region II: VND 4,160,000/month (increasing by VND 240,000 compared to Decree 90);
- Region III: VND 3,640,000/month (increasing by VND 210,000 compared to Decree 90);
- Region IV: VND 3,250,000/month (increasing by VND 180,000 compared to Decree 90).

At the same time, Decree 38 has abolished the content that employees doing jobs requiring vocational training (i.e., having vocational degrees, degrees of intermediate schools, colleges, universities) are paid at least 7% higher than the regional statutory minimum wage as prescribed in Decree 90.

Third, adjusting some areas in Regions I, II, III, IV, thereby changing the regional statutory minimum wage in some localities. Specifically:

- Thu Duc City in Ho Chi Minh City is added to Region I.
- Some localities are moved from Region II to Region I, including Ha Long City of Quang Ninh Province, Xuan Loc District of Dong Nai Province.
- Some localities are moved from Region III to Region II: Quang Yen Town, Dong Trieu Town of Quang Ninh Province; Hoa Binh City and Luong Son District of Hoa Binh Province; Vinh City, Cua Lo Town and Nghi Loc and Hung Nguyen Districts of Nghe An Province; Hoa Thanh Town of Tay Ninh Province; Vinh Long City and Binh Minh Town of Vinh Long Province; Bac Lieu City of Bac Lieu Province.
- Some localities are moved from Region IV to Region III: Van Don, Hai Ha, Dam Ha, and Tien Yen Districts of Quang Ninh Province; Quynh Luu, Yen Thanh, Dien Chau, Do Luong, Nam Dan, Nghia Dan Districts and Thai Hoa, Hoang Mai Town of Nghe An Province; Mang Thit District of Vinh Long Province; Hoa Binh District of Bac Lieu Province.



Comments and recommendations

In the current context of increasingly high inflation, Decree 38 has been issued as a support by the Government for employees to ensure the minimum living standards of employees and their families, and at the same time improve their income, especially those who are paid based on regional minimum wages. Decree 38 takes effect from July 1, 2022, thus businesses need to be well prepared to increase salaries for employees who are receiving wages based on regional statutory minimum wages under Decree 90, avoiding any administrative sanction for paying employees under the minimum wages. At the same time, enterprises should increase the respective amount of payment for social insurance, health insurance, unemployment insurance, and trade union contributions for relevant employees. In addition, enterprises need to review the agreements in their labor contracts, collective labor agreements and the employer' rules and regulations to adjust and supplement relevant contents to be more beneficial to employees compared to those in Decree 38.

GUIDELINES ON SUPPORT FOR SMALL AND MEDIUM-SIZED ENTERPRISES

GIA KHANH

On May 10, 2022, the Minister of Planning and Investment promulgated Circular 06/2022/TT-BKHDT guiding the implementation of Decree 80/2021/ND-CP providing details for the Law on Support for Small and Medium-Sized Enterprises (SMEs) (Circular 06). The Circular comes into effect from June 25, 2022 with the following noteworthy contents:

First, the Circular guides the procedures of SMEs support and specifies components of the dossier proposing support needs to be submitted by SMEs to the competent support agencies/organizations for consideration. The dossier includes:

- A declaration under the form stipulated in Appendix 1 Decree 80/2021/ND-CP providing details for the Law on Support for SMEs (Decree 80), which clearly states the contents and budget requested for support and quotations by suppliers (if any).
- Documents, dossier relative to the proposal for support: documents identifying innovative start-up SMEs under clause 1, clause 2, Article 14 of Circular 06; documents proving that the SMEs engage in industrial clusters, value chains in manufacturing and processing area under Article 16, Article 17 of Circular 06; other directly related documents (if any).

Besides, Circular 06 provides additional regulations on phases of support review and decision, whereby SMEs support agencies/organizations will review the proposal dossier, summarize enterprises' proposed support needs and approve the SMEs support plan annually or quarterly.

Second, certain SMEs support contents have been supplemented. Specifically, in addition to the applicable provisions on support contents and amounts under Decree 80, Circular 06 supplements the contents of:

- Technology support: costs to hire and purchase digital transformation solutions that have been announced on the Portal or website of the

Ministry of Information and Communications or website of the suppliers.

- Human resource development support: offline training courses on corporate governance including basic and intensive corporate governance training courses; online training courses via available online teaching tools such as Zoom Cloud Meeting, Microsoft Teams, Google Classroom and other similar tools.
- Innovative start-up SMEs support: support for students from SMEs to participate in domestic and foreign in-depth training and coaching courses, including: tuitions, materials, meals, accommodation, transportation (including airfare); support for SMEs to maintain accounts on e-commerce platforms; and support for SMEs to participate in international competitions on innovative start-ups, including: costs and fees for competition participation; meals, accommodation in the host country; transportation (including airfare); transportation of documents, products, equipment for competition.
- Support for SMEs to participate in industrial clusters, manufacturing and processing value chains: In-house training support; support for students from SMEs to participate in domestic and foreign training courses and support for SMEs to maintain accounts on e-commerce platforms.

Third, the Circular also provides in detail the trainings related to business start-up and corporate governance for SMEs through both offline and online methods. Accordingly, specific regulations are stipulated on training topics; training duration; target students; minimum number of students per course; the procedure of organizing training courses in support areas namely (i) business start-up; (ii) basic corporate governance; (iii) in-depth corporate governance; (iv) direct training in manufacturing and processing enterprises. Online trainings will be conducted through the E-Learning online training system and online teaching tools applied to the training topics of business start-up, basic and in-depth corporate governance.



Comments and recommendations

The detailing of Decree 80 is expected to facilitate SMEs in accessing support policies from the Government. During the socio-economic recovery period after the Covid-19 pandemic, SMEs are suggested to actively research and exploit available support programs in order to boost their labor force quality and also approach new technologies in the digital transformation era to maintain operations and scale up their businesses. Document templates under Section 2, Appendix 3.3 of Circular 06, Appendix of Decree 80 should be taken into account for application by SMEs to receive supports.

GUIDANCE ON THE USE OF THE SCIENCE AND TECHNOLOGY DEVELOPMENT FUND OF ENTERPRISES

HAI LINH

To remove some obstacles and difficulties for enterprises in using the Science and Technology (S&T) Development Fund, the Ministry of Science and Technology has issued Circular 05/2022/TT-BKHCN guiding the use of the Science and Technology Development Fund of enterprises (**Circular 05**). Circular 05 takes effect from June 1, 2022, replacing and abrogating several regulations set forth in Joint Circular 12/2016/TTLT-BKHCN-BTC guiding the allocation and management of S&T Development Fund of enterprises (**Joint Circular 12**) and shall apply to the use of S&T Development Fund from the corporate income tax period of 2022. Some new highlights of Circular 05 include:

Firstly, specifying the scope of fund payment to perform S&T tasks of enterprises. Accordingly, based on the S&T Regulations of enterprises, S&T tasks of enterprises shall be performed by the method of selection, direct assignment or other manners as prescribed in Clause 2, Article 28 of the Law on S&T such as consideration of state-funded sponsorship in the field of S&T. Previously, Joint Circular 12 only stipulates that S&T tasks of enterprises are carried out according to the S&T Regulations of enterprises without any specific guidance on implementation methods.

Secondly, supplementing regulations on fund payment to support S&T development of enterprises. Specifically, Circular 05 supplements regulations on price determination, payment methods and the expenses incurred directly related to the purchase of ownership and use rights. Accordingly, the price determination and payment methods when purchasing use rights and ownership rights related to technology transfer shall comply with Article 4, Decree 76/2018/ND-CP, and the expenses incurred directly related to the purchase of ownership and use rights of subjects specified in Circular 05 shall be included in the value of use rights and ownership

of such subjects.

Thirdly, supplementing regulations on fund allocation for technology transfer activities. Circular 05 provides more specific regulations on expenses for technology transfer, including: (i) Expenses for implementation of projects in sectors and industries eligible for investment incentives, and areas eligible for investment incentives to receive technology transfer from S&T organizations; (ii) Investment expenditure, reciprocal investment capital for innovative start-ups; technological innovation, technology incubation, investment in physical and technical facilities for technology decoding activities, etc.; (iii) Expenses for procurement and import of samples for technology decoding activities, expenses for hiring experts to conduct technical consulting, searching and supporting technology, technical labor for technology decoding activities, etc.; (iv) Support for S&T organizations of enterprises that have activities associated with local technology application and transfer organizations; (v) Training to improve the ability to absorb and master technology, etc. Meanwhile, the contents of payment for on technology transfer activities previously specified in Joint Circular 12 are not yet clear, which only includes: (i) Purchase of machinery and equipment accompanying with technology transfer subjects; (ii) S&T cooperation activities in the form of technology transfer under technology transfer contracts.



Comments and recommendations

According to the feedback of several enterprises, in nearly 6 years since Joint Circular 12 took effect, many enterprises cannot disburse the finance extracted for S&T Funds due to difficulties in practical implementation of Joint Circular 12. The promulgation of Circular 05 has overcome the obstacles in the use and management of S&T Fund of enterprises, thereby improving the development and application of S&T activities in enterprises. Circular 05 has abrogated and/or replaced 10 articles out of 18 articles of Joint Circular 12, thus a few basic provisions of this Joint Circular remain relative to the financing and financial management of S&T Fund, report on the extract for establishment, transfer, and use of S&T Fund, etc. Enterprises should update and study the provisions of Circular 05 as well as review the expired regulations of Joint Circular 12 to use and manage S&T Fund in accordance with the regulations of laws.

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