



Newsletter

10/2020

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RESEARCH AND POLICY ADVOCACY ACTIVITIES



On September 18, 2020, the Ministry of Labor, War Invalids and Social Affairs in coordination with the German Agency for International Cooperation (GIZ) organized the Workshop commenting the draft Report on results of reviewing the legal normative document system under the Ministry of Labor, Invalids and Social Affairs' state management scope.

Mr. Nguyen Hung Quang acted on behalf of the research team to present 2 main contents of the Report, including: (i) Conflicts, shortcomings and overlaps of legal policies in the field of Labor and employment and Merit people with society; (ii) Recommendations on solutions. At the Workshop, representatives of the Departments of Labor, War Invalids and Social Affairs at central and local level also gave comments to complete the Report.



Highlights

Corporate

Amending the regulations on issuance of corporate bonds

Khanh Quynh

Document: Decree 81/2020/ND-CP providing amendments and supplements to Decree 163/2018/ND-CP on issuance of corporate bonds (Decree 81)

Effective date: September 1, 2020

- **Key contents:**

In the context of brisk bond issuance activities, Decree 81 was passed to strictly control the issuance of corporate bonds through private placement with some of the following main contents:

Firstly, supplementing conditions for issuing non-convertible corporate bonds or bonds without warrants¹, specifically:

- (i) Total outstanding debt of corporate bonds issued through private placement at the time of issuance (including the planned amount of bonds to be issued) does not exceed 5 times as high as the owner's equity stated in the financial statements of the latest quarter preceding the time of issuance as approved by a competent authority, unless the corporate bond issuer is a credit institution;
- (ii) The interval between two placements must be at least 6 months; and each placement must be completed within 90 days from the date of information publication; unless the issuer is a credit institution;
- (iii) It is compulsory to have a service contract with an organization (Securities companies, credit institutions and other financial institutions)² providing consultancy on dossiers for bond issuance, unless the issuer is licensed to provide consultancy on bond issuance dossiers.

Secondly, adding the requirements for corporate bond issuance dossiers³:

- (i) A bond issuance plan must clarify the purpose for bond issuance, such as information of the investment programs and projects, production and business activities requiring additional capital, etc.
- (ii) The audited financial statements in the issuance dossiers must be fully accepted; in the case where the acceptance is partial, there must be reasonable explanatory documents and auditors' confirmation that the exception does not affect the issuance conditions;
- (iii) Bond purchase agreement must state the investors' commitment about their full access to the information disclosed prior to the issuance and acceptance of the risks in purchasing bonds.

Thirdly, supplementing the sanctions for violations in corporate bond issuance. Accordingly, violations committed by relevant organizations and individuals during private placement of bonds shall be sanctioned in accordance with the regulations on penalties for administrative violations in securities, securities market and relevant legislation⁴.

- **Comment and recommendation:**

The entities mostly impacted by the enactment of Decree 81 include bond issuers whose financial records are not transparent, especially those that "abuse the gap of laws" to issue bonds at the value many times higher than their equity capital or to continuously mobilize capital through splitting the capital amount required into multiple issuances. Meanwhile, credit institutions are not significantly affected by such regulations, except for the obligation to announce the purpose of bond issuance.⁵

With the current regulations on tightening private placement of corporate bonds, enterprise should take a long hard look and formulate detailed plans for raising capital through private placement so as to meet the statutory conditions; and thus, to avoid being sanctioned for administrative violations. Enterprises can refer to Decree 108/2013/ND-CP providing for the sanction of administrative violations in securities and securities market and Decree 45/2016/ND-CP providing amendment to Decree 108/2013/ND-CP providing for the sanction against administrative violations in securities and securities market.

In addition, bond issuers and bond investors should notice that in respect of corporate bonds issued before Decree 81's effectiveness, their terms and conditions as stated in the bond issuance plan provided to investors shall remain valid⁶. However, bond issuers must periodically deposit, report, publish information and comply with the new regulations of Decree 81 and Circular 77/2020/TT-BTC providing guidelines for some contents of Decree 81.

Besides, bond investors should consider that according to Decree 81, the bond purchase agreement must include the content of "investors' commitment to fully access the information disclosed prior to the issuance and accept the risks in purchasing bonds"⁷. Hence, investors need to capture relevant information before trading and be careful when signing the agreement in order to reduce any risk and dispute arising from purchasing and selling bonds.

Labor

Some new points in occupational accidents and diseases insurance regime

Quoc Khanh

Document: Decree 88/2020/ND-CP providing guidelines on the implementation of the Law on Occupational Safety and Hygiene regarding compulsory insurance for occupational accidents and diseases (**Decree 88**)

Effective date: September 15, 2020

- **Key contents:**

To ensure the social security regimes and share risks with employees, on July 28, 2020, the Government promulgated Decree 88 to replace Decree 37/2016/ND-CP providing details and guidelines for the implementation of some articles of the Law on Occupational Safety and Hygiene about compulsory insurance for occupational accidents and diseases (**Decree 37**). Accordingly, Decree 88 focuses on enhancing the financial support level and simplifying procedures for receiving financial support with some specific provisions as below:

Firstly, facilitating the employers and the employees to receive financial support for medical examination of occupational diseases. Decree 88 abrogates the condition that “the employer performs occupational environmental monitoring” when the employer performs the application procedure for receiving financial support for medical examination of occupational disease for employees⁸.

Secondly, amending the provision on the condition to access financial support for occupational disease treatments and financial support level thereof. Decree 88 abrogates the condition that “the employer has organized occupational disease examination, detection for the employees”⁹. In addition, the maximum financial support amount for each patient is VND 15 million instead of not more than 10 times of statutory pay rate as the former regulation¹⁰.

Thirdly, regulating more specifically about financial support for the organization of occupational safety and hygiene training. The maximum financial support level for occupational safety and hygiene training is raised to 70% of regular training cost instead of 30% as the former regulation¹¹. Besides, the maximum financial support level for each participant in training is determined by the specific amount instead of being based on the statutory pay rate¹². In order to receive financial support, under Decree 88, the employer must fulfill the following conditions¹³:

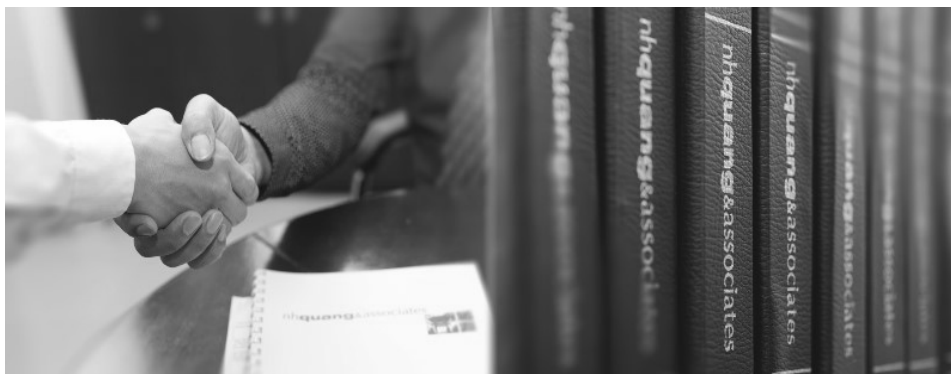
- (i) The employer has continuously paid occupational accident and disease insurance premiums for employees for whom training support is requested for at least 12 months up to the month of request for financial support in occupational safety and hygiene training;

- (ii) The employer hires a qualified training organization as prescribed to provide occupational safety and hygiene training or itself provides the training to employees;
- (iii) The employer has submitted periodic reports on occupational safety and hygiene work and reports on occurrence of occupational accidents of the year preceding the year of request to the Department of Labor, War Invalids and Social Affairs.

- **Comments and recommendations:**

Basically, in comparison with Decree 37, Decree 88 provides more specific and detailed regulations on the support to occupational disease examination and treatment and occupational safety and hygiene training. Also, the Decree creates a favorable mechanism for employees and employers to access financial support. For instance, the requirement on occupational environmental monitoring documents is removed from the application dossier for the financial support of occupational disease examination. The absence of occupational environmental monitoring is the employer's fault, so it is not advisable if an employee could not access financial support because of his/her employer's fault. Moreover, the requirement of having occupational environmental monitoring result at the working time of employee causes difficulty for him/her because it is hard to determine precisely the time of commencement of occupational diseases in the past¹⁴.

One of the conditions to receive financial support, according to Decree 88, is that the employee has paid compulsory occupational accident and disease insurance¹⁵. In fact, a massive number of enterprises evade the responsibility of paying compulsory social insurances for the employees, including occupational accident and disease insurance¹⁶. It not only makes such enterprises unable to receive support policy from the Government under Decree 88, but also causes them face legal risks. For enterprises having demand to receive the financial support of occupational accidents and diseases, it is necessary to update the new provisions of Decree 88 about the conditions, dossiers, and procedures for applying for financial support if they are eligible for.



Law Commentary

Some new points of the Law providing amendments and supplements to some articles of the Law on Construction

Ngoc Ha

*In order to overcome problems and shortcomings in regulations of the Law on Construction 2014, on June 17, 2020, the Law providing amendments and supplements to some articles of the Law on Construction (**Construction Law 2020 (amended)**) passed by the National Assembly with many new regulations on reform and simplification of administrative procedures, especially in the field of construction permit. Construction Law 2020 (amended) has received positive responses from the corporate community, especially enterprises operating in the construction and real estate sectors. In this Legal Newsletter, NHQuang would give some comments on prominent regulations related to the reduction of administrative procedures of the Construction Law 2020 (amended) having a direct impact on the enterprises with the following specific contents:*

Additional objects exempted from construction permits

In addition to those exempted from construction permit under clause 2, Article 89 of the Construction Law 2014, Construction Law 2020 (amended) has supplemented a number of cases exempted from construction permits in order to reduce the quantity of cases requiring construction permit. This is one of the important regulations of the new Construction Law in reducing administrative procedures¹⁷. In fact, the works included in this list of construction permit exemption have met the conditions of construction such as having a construction design, having 1/500¹⁸ detailed plan or specific projects governed by other specialized laws¹⁹. Therefore, the procedure to grant construction permit to these works is considered unnecessary and inappropriate, overlapping with specialized legal regulations. The new regulations of Construction Law 2020 (amended) have created an open environment in business investment for enterprises and reduce enterprises' costs and time in implementing administrative procedures, as well as pressure and burden for specialized agencies. Some cases exempted from construction permits under Construction Law 2020 (amended) include:

- Advertisement works not subject to construction permits under the Law on Advertising; passive telecom infrastructure works as prescribed by the Government. The above regulation is given because Law on Advertising 2012 has exempted construction permits for the construction work

of outdoor advertising screens with a single-sided area of less than 20m²; signboards, billboards with a single-sided area of less than 20m² with metal frame structure or similar construction materials attached to available construction works; independent billboards with a single-sided area of less than 40m²;²⁰ but Construction Law 2014 has not updated this regulation. Therefore, the supplementation of advertisement works exempted from construction permits are in order to be consistent and united with the applicable advertising laws.

- Construction works notified about construction design appraisal results by construction professional agency after basic design is eligible for construction design approval and meets the conditions for grant of construction permit in accordance with the Construction Law.
- Works under projects using public investment capital, of which the construction investment is decided by heads of central bodies affiliated to political organizations, Supreme People's Procuracy, Supreme People's Court, State Audit, President Office, National Assembly Office, Governmental agencies, central bodies of the Vietnam Fatherland Front and socio-political organizations. The exemption of construction permit for these works is considered necessary and reasonable, ensuring the compatibility in terms of investment decision-making authority of the heads of central state agencies under Law on Public Investment 2019²¹.

Time limit for granting construction permits shortened

Construction Law 2020 (amended) has shortened the time to grant construction permits in the case of work construction, including construction permits with definite terms, adjusted construction permits, relocation permits, from 30 days²² to 20 days²³; thus, the time has been shortened by 10 days. Particularly, the time limit to grant construction permits for detach houses is still kept at 15 days. This regulation may facilitate corporates' investment in construction sector. However, shortening document processing time will also become a challenge for the competent authorities since they must upgrade the professional quality and competency of the staff who receive and handle dossiers. Simultaneously, in order to accomplish this challenge, State agencies must further promote the application of modern technologies to the procedure of receiving and processing construction permit issuance. This regulation shall create a premise for an open legal corridor, facilitate construction investment activities.²⁴

Amendment of conditions for construction work commencement

Construction Law 2020 (amended) has abolished one of the mandatory conditions to commence construction works under Article 107 of Construction Law 2014 "*Allocating sufficient capital according to the work construction process*". Therefore, when commencing construction, investors do not need to prove the allocation of sufficient capital according to the construction progress. Regulations on capital used to be considered one of the conditions that create much pressure on construction enterprises since they will have to allocate capital sources before commencement of a project with available funds, loans, etc. The abolition of this condition has addressed the difficulty of several construction investors. The alleviation of this condition is also a step forward in administrative procedure reform, enabling investors to commence construction smoothly and quickly²⁵.

However, it should be noted that Construction Law (amendment) 2020 supplements the responsibilities of investors in "*notification of the construction commencement date to the local construction*

*management agency at least 3 working days before commencement*²⁶. This regulation has enhanced specialized agencies' inspection and supervision over construction activities, as well as required investors' compliance during construction.

Effectiveness of Construction Law 2020 (amended)²⁷

Construction Law 2020 (amended) shall take effect from January 1, 2021. However, some regulations shall be applied from August 15, 2020, including those on construction permits:

- Construction works with construction design appraised by specialized construction body after basic design **before August 15, 2020** and request for construction permit under Construction Law 2014, shall continue to obtain construction permits in accordance with the regulations;
- For construction works requiring appraisal, appraisal for construction design adjustment after basic design by specialized construction body **from August 15, 2020 to December 31, 2020**, when carrying out such appraisal, the specialized construction body shall be responsible for coordinating with local construction state management agencies to review and assess the fulfillment of conditions for granting construction permits under Construction Law 2014 to get exemption for construction permits in accordance with Construction Law 2020 (amended); in the case where construction permits have been granted to the work, no adjustment will be required.

From the above analysis and comments, it can be seen that Construction Law 2020 (amended) has institutionalized the policies of the Party and State in administrative procedure reform to “*remove barriers, administrative measures directly interfering in the production and business market, creating inequality in access to social resources with a focus on capital and land, business opportunities affecting competitiveness of the private economy*”²⁸. In the process of project implementation, corporates need to pay attention to reviewing other legal regulations of Construction Law 2020 (amended) and promptly updating future legal guiding documents for effective application of these laws.

Note:

All analyses and comments herein are for reference only. This article is not considered as an official legal opinion to apply in any specific case. For further particular advices, please contact us directly.

List of newly promulgated legal documents

No.	Document	Release date	Effective date
1.	Decree 103/2020 /ND-CP on the certification of fragrant rice types exported to the European Union	04/09/2020	04/09/2020
2.	Decree 113/2020/ND-CP guiding Point dd Clause 3 Article 3 of the Construction Law (amended) on construction design appraisal carried out after basic design and construction permit exemption	18/09/2020	18/09/2020
3.	Decree 114/2020/ND-CP guiding Resolution 116/2020/QH14 on reduction in corporate income tax payable by 2020 for enterprises, cooperatives, non-business units and other organizations	25/09/2020	03/08/2020
4.	Circular 21/2020/TT-BTTTT on certificate issuance of free sale for goods in information technology and communication field	07/09/2020	26/10/2020
5.	Circular 22/2020/TT-BTTTT on technical requirements for digital signature software, checking digital signature software	07/09/2020	01/11/2020
6.	Circular 21/2020/TT-BCT on order and procedures for electricity activity license issuance	09/09/2020	26/10/2020
7.	Circular 10/2020/TT-BNNPTNT on the list of permissible and banned using agrochemicals in Viet Nam	09/09/2020	25/10/2020

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¹ Decree 81, Article 1, clause 3

² Decree 81, Article 1, clause 7

³ Decree 81, Article 1, clause 5

⁴ Decree 81, Article 1, clause 1

⁵ Hang Kim, *How does Decree 81 impact enterprises, banks and the market?*, Review of Finance, July 19, 2020. See further at <http://tapchitaichinh.vn/nghien-cuu-trao-doi/nghi-dinh-81-tac-dong-the-nao-toi-doanh-nghiep-ngan-hang-va-thi-truong-325702.html>

⁶ Decree 81, Article 2, clause 2

⁷ Decree 81, Article 1, clause 5

⁸ Decree 88, Article 16; Decree 37, Article 11, clause 1

⁹ Decree 88, Article 20; Decree 37, Article 15, clause 1

¹⁰ Decree 88, Article 21, clause 1; Decree 37, Article 15, clause 1

¹¹ Decree 88, Article 34; Decree 37, Article 24, clause 2

¹² Decree 88, Article 34, clause 1; Decree 37, Article 24, clause 1

¹³ Decree 88, Article 32; Decree 37, Article 23

¹⁴ Statement on promulgation of Decree replacing Decree 37/2016/NĐ-CP providing details and guidelines for the implementation of some articles of the Law on Occupational Safety and Hygiene regarding compulsory insurance for occupational accidents and diseases of the Ministry of Labor, War Invalids and Social Affairs, page 2. See further at:

[http://duthaovanban.molisa.gov.vn/duthao/van-ban-lien-quan/To%20trinh%20CP%20N%C4%90%20s%E1%BB%ADa%20%C4%91%E1%BB%95i%20N%C4%9037%20l%E1%BA%A7n%20hai%20\(1\).doc](http://duthaovanban.molisa.gov.vn/duthao/van-ban-lien-quan/To%20trinh%20CP%20N%C4%90%20s%E1%BB%ADa%20%C4%91%E1%BB%95i%20N%C4%9037%20l%E1%BA%A7n%20hai%20(1).doc)

¹⁵ Decree 88, Article 2, clause 1

¹⁶ Truong Tuan, *The enterprises dodge the law, evade paying social and health insurance premiums*, Electronic Journal of People's Court, November 14, 2019. See further at: <https://tapchitoaan.vn/bai-viet/kinh-te/dn-lach-luat-tron-dong-bhxx-bhyt>

¹⁷ Statement No. 366/TTr-CP dated August 28, 2019 of the Government on project of Law amending and supplementing some articles of the Construction Law, page 2

¹⁸ Ngan Ha, *Several beneficial regulations for enterprises in the amended Construction Law 2020*, Law Propaganda and Dissemination Portal, August 20, 2020. See further at: https://pbgdpl.hanoi.gov.vn/tin-moi/-/asset_publisher/sxBNLsQSLyY8/content/nhieu-quy-inh-co-loi-cho-doanh-nghiep-tai-luat-xay-dung-sua-oi-nam-2020

¹⁹ Statement No. 366/TTr-CP dated August 28, 2019 of the Government on project of Law amending and supplementing some articles of the Construction Law, page 10

²⁰ Law on Advertising 2012, Article 31, clause 2

²¹ Law on Public Investment 2019, Article 4, clause 4

²² Construction Law 2014, Article 102, clause 1, point e

²³ Construction Law 2020 (amended), Article 1, clause 36, point b

²⁴ Ngan Ha, *Several beneficial regulations for enterprises in the amended Construction Law 2020*, Law Propaganda and Dissemination Portal, August 20, 2020. See further at: https://pbgdpl.hanoi.gov.vn/pho-bien-giao-duc/-/asset_publisher/sxBNLsQSLyY8/content/nhieu-quy-inh-co-loi-cho-doanh-nghiep-tai-luat-xay-dung-sua-oi-nam-2020

²⁵ Ngan Ha, *Several beneficial regulations for enterprises in the amended Construction Law 2020*, Law Propaganda and Dissemination Portal, August 20, 2020. See further at: https://pbgdpl.hanoi.gov.vn/pho-bien-giao-duc/-/asset_publisher/sxBNLsQSLyY8/content/nhieu-quy-inh-co-loi-cho-doanh-nghiep-tai-luat-xay-dung-sua-oi-nam-2020

²⁶ Construction Law 2020 (amended), Article 1, clause 39

²⁷ Construction Law 2020 (amended), Article 3, clause 2

²⁸ Resolution of the fifth Meeting of Viet Nam Communist Party's Central Committee, Session XII No. 10-NQ/TW dated June 3, 2017 on developing private economy into an important driving force of the socialist-oriented market economy