LEGAL NEWSLETTER

IN THIS LEGAL NEWSLETTER

Notable Activities in March, 2024

To prevent work accidents, the laws have stipulated clear and specific provisions of the responsibilities of both employees and employers. However, various accidents are still reported and have led to many disputes between relevant parties. The cause of those painful events can come from the fault of enterprises, of the employees, or a fault on both sides.

Regarding this issue, the Business and Law Program - under the framework of the interdisciplinary legal support program for small and medium-sized enterprises for 2021-2025 chaired by the Ministry of Justice, has discussed with experts on the topic: ***Ensuring labor safety***. Mr. Phung Quang Cuong - Partner of NHQuang&Associates Law Firm and mediator of the Vietnam International Commercial Mediation Center is one of two guests of the program.

See the full program at: https://vtv.vn/video/kinh-doanh-va-phap-luat-dam-bao-an-toan-lao-dong-665083.htm

SOME NEW POINTS ABOUT CONTRACTOR SELECTION

HAI LINH

On February 27, 2024, the Government issued Decree 24/2024/ND-CP providing guidelines for the Law on Bidding on contractor selection (**Decree 24**). This Decree repeals some legal documents and regulations related to bidding and centralized procurement, including Decree 63/2014/ND-CP providing details for the implementation of some articles of the Law on Bidding on contractor selection (**Decree 63**). The following are some new regulations of Decree 24 that may affect related enterprises.

Firstly, amending and supplementing regulations related to incentives in bidding. Previously, Decree 63 only provided incentives in 3 cases: (i) incentives for international biddings, (ii) incentives for domestic goods, and (iii) incentives for domestic biddings. Currently, Decree 24 supplements the following cases of incentives, including (i) Incentives for domestic innovative startups, (ii) Incentives for domestic contractors producing made-in-Viet Nam products, and (iii) Incentives for products and services certified with eco-labels, energy labels, and other equivalent certificates. For each incentive, Decree 24 supplements/specifies the conditions for enjoying incentives, the form of incentives as well as the method of determining incentives. For example, when bidding on innovative products that meet one of the conditions for incentives for made-in-Viet Nam products, domestic innovative startups will not have to meet requirements on the revenue, number of years operating in the same industry within 6 years from the first time the product is produced and eligible for launching.

Secondly, supplementing new regulations on online contractor selection. Compared to Decree 63, Decree 24 supplements 2 contents: (i) online price offering, and (ii) online procurement, specifically:

- Online price offering: This is a repeated process where contractors use electronic means to offer new prices or new values for non-price factors that can be quantified according to evaluation standards in the bidding documents. The offering prices or values will be the basis for ranking or re-ranking bids on the National Bidding Network System. The online price offering can be implemented under the regular process or the simplified process on a case-by-case basis.

- Online procurement: This is the direct procurement of goods and services on the National Bidding Network System from the contractor who has won the contract to provide those goods and services through centralized procurement. Online procurement must be approved in the contractor selection plan and is applied to goods and services of the bidding package included in the procurement estimate and the bidding package price does not exceed 100 million Viet Nam dong; it is also applied to bidding packages for procurement of goods and services under investment projects of state-owned enterprises, enterprises with 100% charter capital owned by state-owned enterprises and investment projects under the Law on Public Investment and the bidding package price does not exceed 1 billion Viet Nam dong.

Thirdly, regulating cases of adjusting contract price, volume, and other contents in a contract without having to amend the contract or sign any addendum to the contract (when the adjustments meet the conditions regulated in clause 5, Article 70, the Law on Bidding 2023), including:

- Amending the contract price due to inflation and deflation in contracts based on adjusted unit prices, time-based contracts, and output-based contracts (if any) according to clause 2 and clause 3, Article 107, Decree 24;
- Increasing or decreasing the volume in contracts based on fixed unit price, contracts based on adjusted unit prices; regarding goods or non-consulting procurement packages of which the contracts are based on fixed unit price or adjusted unit prices, the supplement of volumes under the additional purchase option will require contract amendment according to point d, clause 2, Article 106, Decree 24;
- Increasing or decreasing the duration in time-based contracts; increasing or decreasing direct implementation costs for charge-plus cost-based contracts; increasing or decreasing the

base value to calculate the percentage of costs in percentage-based contracts; increasing or decreasing the level of payment deduction or the increase of payment value in output-based contracts;

- Other cases under legal regulations and agreements between the parties.

It should also be noted that in the case that the amendments above lead to failure to meet one or more conditions to adjust the contract price, volume, and other contents specified in the contract without having to sign an addendum to the contract, they must be reported to the authorized person to obtain the permit for such amendments.

COMMENTS AND RECOMMENDATIONS

Decree 24 takes effect from February 27, 2024. Relevant enterprises and individuals need to research and update the provisions of the Decree for appropriate application during their participation in bidding for contractor selection. It should be noted that the request for expression of interest, invitation for prequalification, bidding documents, and request documents issued before January 1, 2024 will continue to be implemented according to the provisions of the Law on Bidding 2013; Decree 63, Decree 32/2019/ND-CP regulating the assignment of tasks, ordering or bidding to provide public products and services using the state budget from regular expenditure sources, Decision No. 17 /2019/QD-TTg dated April 8, 2019 of the Prime Minister regulating some bidding packages and procurement contents to maintain regular operations for which the form of contractor selection in special cases is applied under Article 26 of the Law on Bidding 2013 and Circulars guiding the implementation of the Decree.

NOTABLE REGULATIONS ON MANAGEMENT AND DEVELOPMENT OF INDUSTRIAL CLUSTERS

THANH MAI

On March 15, 2024, the Government issued Decree 32/2024/ND-CP regulating the management and development of industrial clusters (**Decree 32**). Decree 32, upon its effectiveness on May 1, 2024, will replace Decree 68/2017/ND-CP and Decree 66/2020/ND-CP amending and supplementing a number of articles of Decree 68/2017/ND-CP (hereinafter collectively referred to as **Decree 68**). The following are some notable regulations set forth in Decree 32:

Firstly, adjusting the industries, business lines, and business and production establishments encouraged to make their investment in and relocate to industrial clusters. Accordingly, Decree 32 stipulates that industries, business lines, and business and production establishments encouraged to make their investment in and relocate to industrial clusters include:

i. Processing and manufacturing industries serving agriculture; mechanical industry; supporting industry; textile and apparel and footwear industry;
ii. Information technology and communications, electronics industry; smart energy; digital technology, automation, high-end equipment, new materials, biotechnology;
iii. Industries and cottage industries at the locality that need to be preserved and developed; warehousing services, packaging, transport of goods, repair and maintenance of industrial machinery and equipment, and other services directly serving local industrial and cottage industry production with a total area not exceeding 10% of the industrial cluster area;
iv. Other industries employing high, clean, and energy-efficient technologies resulting in high value and sustainable development;
v. Industrial and cottage industrial production establishments that cause pollution or are likely to cause pollution in craft villages and residential areas are encouraged to be relocated to industrial clusters.

In comparison with Decree 68, basically, there are some adjustments regarding industries, business lines, and business and production establishments encouraged for investment in and relocation to industrial clusters under Decree 32 such as (a) some industries have been removed, including agricultural, forestry and fishery processing industries; production of consumer products using local raw materials, local labor, (b) Decree 32 supplements industries and business lines with high and technology of low energy consumption, bringing high added value and sustainable development. In addition, the Decree also supplements the regulation on authorization to the People's Committees at the provincial level to decide on specific industries, and business lines in industrial clusters in accordance with the industrial cluster development plan under the provincial planning, which is reflected in the Decision on establishment and expansion of industrial clusters.

Secondly, supplementing regulations related to the selection of investors to build the industrial cluster's technical infrastructure. Accordingly, in order to select investors, the People's Committees at the provincial level shall establish an Assessment Council to select a qualified investor to build the industrial cluster's technical infrastructure. The Council shall score the following criteria on a 100-point scale: (i) Investment plan for technical infrastructure construction (maximum 15 points); (ii) Environmental protection and management plan (maximum 15 points) of the industrial cluster; (iii) Capacity and experience of enterprises and cooperatives (maximum 30 points) and (iv) Financial plan for investment in technical infrastructure construction (maximum 40 points). Based on actual local conditions and relevant laws, the Council shall agree on the working principles and methods, contents of each criterion, and the appropriate corresponding maximum point.

Thirdly, amending and supplementing the obligations of investors to build industrial cluster infrastructure. Accordingly, Decree 32 supplements the provisions that investors must establish a unit to manage and operate industrial cluster infrastructure construction projects. Additionally, the regulation on the obligation to arrange water sources to serve onsite fire fighting and electrical safety of investors as specified in Decree 68 has been generalized in Decree 32 to be the obligation to comply with the provisions of laws on environmental protection, water resource conservation, fire prevention, and fighting, as well as rescue and relief.

Fourthly, amending regulations on incentives and support policies for the development of industrial clusters. Under Decree 32, the application of investment support and incentives in industrial clusters to industrial cluster infrastructure construction projects, and production and business investment projects in industrial clusters shall comply with the provisions of the law on tax, land, finance, and other relevant regulations. In respect of investment support for industrial clusters' technical infrastructure construction, Decree 32 clearly stipulates that the state budget will support no more than 30% of the total investment capital of the industrial cluster's infrastructure construction project. The financial assistance shall be excluded from the total investment of the project to determine the land sublease rents, and infrastructure usage fees for investment projects in industrial clusters. The technical infrastructure investor shall be responsible for managing, repairing, and regularly operating the technical infrastructural works provided with financial assistance to serve common activities of the industrial cluster. Previously, Decree 68 had no specific provisions on the state budget financial assistance.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 32 has contributed to the completion of the legal framework and policies on the management and development of industrial clusters, serving as a basis for organizations and individuals investing in infrastructure construction, production, and business in industrial clusters to implement the State's policies and regulations on industrial cluster development. Particularly, Decree 32 has developed new regulations compared to Decree 68, such as the regulations on scoring investors, or specific regulations on using the state budget to support investment projects in technical infrastructure construction in industrial clusters. The newly promulgated regulations will create a positive motivation in attracting organizations and individuals that are planning to invest in industrial clusters in the future.

SOME KEY ASPECTS OF THE DRAFT LAW ON SOCIAL INSURANCE

QUYNH NHUNG

After a decade of implementation, besides certain advantages, the Law on Social Insurance 2014 has gradually revealed numerous deficiencies and limitations and is no longer suitable for the current socio-economic development. Therefore, the Draft Law on Social Insurance (**the Draft Law**) is being prepared and discussed with a focus on overcoming current shortcomings of the Law on Social Insurance 2014. Some new points possibly affecting the internal operations of enterprises in the Draft Law will be analyzed in this volume of Legal Newsletter by NHQuang&Associates.

Extending the scope of subjects covered by compulsory social insurance

The Draft Law has added 5 subjects covered by compulsory social insurance as follows:

i. Employees who do not enter into any labor contracts or comply with agreements under other names but containing the contents of paid employment, salary, management, administration, and supervision of one party (except for probation contracts by provisions of labor laws);
ii. Part-time staff working in hamlets and residential groups;
iii. Employees working under indefinite-term labor contracts, definite-term labor contracts with a term of full 1 month or more (including case (i) above) but not working full time, having monthly salary equal to or higher than the salary used as the basis for paying the lowest premium of compulsory social insurance according to legal provisions;
iv. Owners of business households subject to apply for business registration;
v. Enterprise managers, controllers, representatives of the state capital, representatives of an enterprise's investment in the company and the holding company, operation managers of cooperatives, and union of cooperatives without salary.

This provision complies with Resolution 28-NQ/TW on social insurance policy reform (**Resolution 28**), which is to "*review, extend the scope of subjects covered by compulsory social insurance for business household owners; non-salaried enterprise managers, and operators of cooperatives; employees working under flexible regimes*", contributing to ensuring the right to engagement in and enjoyment of compulsory social insurance for other subjects that have not been engaged in compulsory social insurance according to the applicable Law on Social Insurance 2014.

Adding social retirement allowances to social insurance benefits

The Law on Social Insurance 2014 currently regulates 3 types of retirement benefits under compulsory social insurance, voluntary social insurance, and supplementary retirement scheme. The Draft Law has added the concept of "retirement allowance", which is applied to Vietnamese citizens meeting both requirements of (i) being full 75 years of age or older, and (ii) not having pensions, monthly social insurance allowances, and other monthly social allowances under the Government's provisions. The above-mentioned subjects shall receive monthly social retirement allowances in compliance with the Government's provisions and engage in health insurance under the law on health insurance. In the case where the persons receiving the retirement allowance pass away, the persons in charge of their funeral shall receive a lump-sum funeral allowance according to the law on the elderly. The order and procedures of social retirement allowance shall be provided in detail by the Government.

Besides the beneficiaries mentioned above, the Draft Law also regulates benefits for employees who reach retirement age but are not eligible for pensions and do not meet the age condition to receive social retirement allowance. In particular, if these subjects have paid social insurance before and long to receive an allowance, they will still receive a monthly allowance and health insurance before they reach the required age for social retirement allowance. The benefit period and monthly benefit level will depend on the employees' total payment time and number of months of social insurance payment. In the case where the employees receiving monthly allowance pass away, their relatives shall receive a lump-sum allowance for the months that have not yet been paid and also a funeral allowance if qualified. To meet the requirements to receive social retirement allowances, employees must submit relevant dossiers to social insurance agencies according to the Draft Law's provisions.

It can be seen that the supplementation of the social retirement allowance aims to realize Resolution 28's objectives, namely, about 60% of people passing the age of retirement can receive pensions, monthly social insurance, and social retirement allowances by 2030, and the satisfaction index of subjects participating in social insurance is enhanced. According to some statistics, this rate is about 35% at the end of 2022.

Adding maternity benefits to voluntary social insurance policies

According to the Law on Social Insurance 2014, voluntary social insurance consists of 2 types: retirement and survivorship. The Draft Law has added maternity benefits to voluntary social insurance policies. Accordingly, employees participating in voluntary social insurance shall be entitled to maternity benefits if they fulfill the requirements: (i) being female employees who give birth to children or male employees currently paying social insurance, whose wives give birth to children, and (ii) having paid social insurance for a period of full 6 months or more within 12 months before giving birth to children. As a result, female employees giving birth to children, and male employees whose wives giving birth to children shall be entitled to VND 2,000,000 for a newborn baby. The level of this allowance may be amended to be consistent with the socio-economic development conditions and state budget capacity in each period.

Within 45 days since giving birth to children, employees shall submit the dossier prepared according to legal provisions to receive maternity benefits. Within 5 business days since receiving the full dossier required, social insurance agencies are responsible for settling and making payment to the employees. In the case that the dossier is rejected, the social insurance agencies must notify the employees in writing and clearly state the reason thereof. This benefit is supplemented in accordance with Resolution 28's policy and aims to increase people's benefits and encourage their engagement in voluntary social insurance.

Adding the provisions on management of the collection and payment of compulsory social insurance and voluntary social insurance premiums

To ensure publicity and transparency during management as well as to guarantee social insurance obligations of related subjects, the Draft Law has added some provisions on the management of the collection and payment of compulsory social insurance and voluntary social insurance premiums.

Firstly, determining the basis for compulsory social insurance and voluntary social insurance premium payment

The Draft Law provides the basis for paying compulsory social insurance and voluntary social insurance. For instance, insurance contributions by Vietnamese guest workers working under contracts shall depend on their monthly salary paid to compulsory social insurance agencies before working abroad. In terms of the basis for voluntary social insurance premiums, employees participating in this type of insurance can select the level of income to be the basis for voluntary social insurance premiums, therein, the lowest amount must be equal to half of the monthly lowest region-based minimum wage, and the highest amount must not be higher than 8 times of the monthly highest region-based minimum wage as announced by the Government. It can be seen that these provisions may provide social insurance participants with a certain legal basis to determine payable social insurance premiums, as well as overcome the situation of insufficient social insurance premium payment, which affects the legitimate rights and interests of social insurance participants.

Secondly, regulating the act of delaying, shirking compulsory social insurance payments, and violation handling sanctions

Delaying and shirking the payment of compulsory social insurance is one of the acts strictly prohibited by the Law on Social Insurance 2014. The Draft Law has inherited this provision and concretized the above-mentioned acts through certain cases. The acts of delaying compulsory social insurance premium payment are stated as follows:

- Employers have registered compulsory social insurance for their employees but have not paid or not paid the full registered social insurance premiums before the deadline for compulsory social insurance premiums payment.
- Employers submit compulsory social insurance dossiers of their employees within 90 days after the

deadline for submission.

The Draft Law also regulates cases of shirking compulsory social insurance premium payments as follows:

- Employers have not submitted or submitted the dossier to register compulsory social insurance for their employees after 90 days from the deadline of submission.
- Employers register and pay compulsory social insurance premiums with an amount lower than the salary used as the basis for paying compulsory social insurance premiums according to legal provisions.
- Employers have registered compulsory social insurance for their employees but have not paid or paid the premiums insufficiently even though it is overdue, while they are capable of paying.

In the case where employers violate the above regulations, if the employers have not paid compulsory social insurance premiums when it is overdue, they have to pay not only the full amount delayed, or shirked but also an interest equal to 0.03% per day on the amount delayed, shirked and will be handled for violations according to the provisions of law. Competent authorities shall have the right to implement several measures against employers who delay or shirk paying compulsory social insurance premiums, such as suspending from using invoices, making decisions on exit restrictions for the employers' legal representatives, and filing lawsuits against the employers (depending on the degree of violation). It should be noted that, if there is any sign of committing the crime of shirking social insurance premium payment according to the Criminal Code, the employers shall be prosecuted by the law. Furthermore, to ensure employees' interests, the Draft Law has added employers' responsibilities to compensate their employees if the compulsory social insurance premiums are not paid or paid insufficiently and promptly, affecting the employees' legitimate rights and interests.

Besides the issues analyzed above, the Draft Law on Social Insurance also has some new points that aim towards simplifying administrative procedures, ensuring convenience for social insurance participants and beneficiaries, for instance, using information technology applications, establishing the national database on social insurance, etc. In general, the Draft Law has inherited and developed the current provisions that are consistent with the practice and also amended limited regulations, ensuring the feasibility, and long-term purposes, as well as the synchronism and consistency of the legal system. Accordingly, the Draft Law has extended the subjects and facilitated employees to participate and receive social insurance benefits. The Law on Social Insurance will soon be promulgated in the future. Therefore, enterprises should research and update the Draft Law's provisions to have an early approach to the amendments of relevant legal provisions.

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