LEGAL NEWSLETTER

Notable Activities in July, 2024

On July 9, 2024, the Vietnam National Institute of Culture and Arts and the Copyright Office organized a Consultation workshop “**Project on the Strategy for the Development of Vietnam's Cultural Industries to 2030, with a vision to 2045**”. The workshop was attended by representatives of ministries, departments, fields, provincial People's Committees, international organizations, arts and culture organizations, etc. Mr. Nguyen Hung Quang, Managing Partner of NHQuang&Associates attended the workshop as a legal expert.

Mr. Quang presented on “**International experiences in business and cultural improvement districts (BIDs) and proposal of BID models for Viet Nam**”. Accordingly, Mr. Quang proposed that the Ministry of Culture, Sports and Tourism review and develop a mechanism to establish BIDs in localities with favorable conditions to preserve tangible and intangible cultural values, especially old towns and villages, and new zones for cultural development. Mr. Quang also showed the potential of Ha Noi, Ho Chi Minh City, Hue, Hoi An, etc. in developing BIDs based on the world's experiences applied for over 50 years.

SOME NEW POINTS ON THE CONDITIONS FOR FOREIGN LOANS NOT GUARANTEED BY THE GOVERNMENT

MAI PHUONG

In order to ensure relevancy with the characteristics of foreign loan transactions arising from Letter of Credit operations and to support enterprises' payment for imported goods and services, the Governor of the State Bank of Vietnam has issued Circular 19/2024/TT-NHNN (**Circular 19**) amending and supplementing a number of articles of Circular 08/2023/TT-NHNN regulating the conditions for foreign loans not guaranteed by the Government (**Circular 08**). Circular 19 takes effect from July 1, 2024 with some new points as follows:

First, supplementing regulations on foreign loans to make payments for import contracts of goods by debtors that are not credit institutions or foreign bank branches. Circular 19 has supplemented Article 5a related to this content, in particular:

(i) Stipulating the lending conditions for foreign loans to make payments in deferred payment contracts of goods import:

- Regarding the debtor's purpose in applying for foreign loans: To implement investment projects or production and business plans, other debtor projects (which are stipulated in Article 17, Circular 08).
- Regarding foreign loan limits: The debtor is exempted from the foreign medium- and long-term loan outstanding balance by the goods arising from deferred payment contracts of goods import when calculating the foreign loan limit (including determining the principal outstanding balance in case of taking out foreign loans to implement investment projects and the outstanding amount under medium- and long-term domestic and foreign loans of the debtor) at point a, clause 1 and clause 2, Article 18, Circular 08.

(ii) Allowing the debtor to receive credit to make payment for goods import contracts (including compulsory repayment of loans to the issuing bank) under a letter of credit issued by the issuing bank.

Second, recognizing the case where a bank or foreign bank branch is allowed to receive credit arising from the issuance of a Letter of Credit. Accordingly, the bank issuing the letter of credit receives the credit from the reimbursing bank, which is a non-resident organization. The reimbursing bank will pay the beneficiary with its funds before the due date of the letter of credit as agreed in the letter of credit. The letter of credit applied in this case is Usance Payable at Sight Letter of Credit or Usance Payable at Usance Letter of Credit as prescribed by applicable laws. It should be noted that this loan is not supposed to be registered with the State Bank.

In addition, to ensure consistency in legal regulations, this recognition of foreign loans has been supplemented in some regulations such as cases where a foreign loan agreement is allowed to be concluded on the foreign loan drawdown date, or the purposes of foreign loans (with the debtor being a credit institution or foreign bank branch), etc. The above recognition aims to ensure compatibility with the characteristics of foreign loan transactions arising from the letter of credit operations and create favorable conditions for businesses in the payment stage for imported goods and services.

COMMENTS AND RECOMMENDATIONS

The issuance of Circular 19 by the State Bank has contributed to consistent guidance on Letter of Credit operations for consistent application when the Law on Credit Institutions 2024 comes into effect. Enterprises in general, especially those conducting payment activities for imported goods and services, are advised to update the above regulations for prompt compliance with relevant legal regulations and instructions.

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

TRANG NHUNG

On June 30, 2024, the Government promulgated Decree 74/2024/ND-CP prescribing statutory minimum wages paid to employees working under labor contracts (**Decree 74**). Upon its effectiveness, Decree 74 will replace the previous Decree 38/2022/ND-CP prescribing statutory minimum wages paid to employees working under labor contracts (**Decree 38**). Below are some notable contents of Decree 74:

First, the regulations on the applicable subjects are provided more specifically. Basically, the regulations on applicable subjects in Article 2 of Decree 74 inherit the entire Article 2 of Decree 38. In addition, point b, clause 2, Article 2 of Decree 74 has clarified that in the case where an employer is an individual, he/she must have full civil act capacity. This regulation has ensured conformity and consistency with the definition of employer in clause 2, Article 3 of the Labor Code 2019.

Second, the regulations on the hourly and monthly statutory minimum wages are changed. Accordingly, the statutory minimum wages specified in Decree 74 are increased by an average of 6% compared to the level prescribed in Decree 38 (in accordance with the plan that the National Wage Council unanimously recommended to the Government in Report No. 02/BC-HDTLQG dated January 12, 2024), specifically:

(i) The hourly statutory minimum wages of each Region under Decree 74 compared to Decree 38 are increased as follows:

- The wage for Region I is increased from VND 22,500/hour to VND 23,800/hour;
- The wage for Region II is increased from VND 20,000/hour to VND 21,200/hour;
- The wage for Region III is increased from VND 17,500/hour to VND 18,600/hour;
- The wage for Region IV is increased from VND 15,600/hour to VND 16,600/hour.

The above hourly statutory minimum wages are determined based on the method of monthly minimum equivalent conversion and standard working time according to the provisions of the Labor Code 2019. This method is recommended to Viet Nam by experts of the International Labor Organization (ILO) and has been used for calculating the hourly statutory minimum wages in 2022.

(ii) The monthly statutory minimum wages of each Region under Decree 74 compared to Decree 38 are increased as follows:

- The wage for Region I is increased by VND 280,000, from VND 4,680,000/month to VND 4,960,000/month;
- The wage for Region II is increased by VND 250,000, from VND 4,160,000/month to VND 4,410,000/month;
- The wage for Region III is increased by VND 220,000, from VND 3,640,000/month to VND 3,860,000/month;
- The wage for Region IV is increased by VND 200,000, from VND 3,250,000/month to VND 3,450,000/month.

The adjusted increase of monthly statutory minimum wages in Decree 74 is from VND 200,000 to VND 280,000 as compared to the level prescribed in Decree 38. According to the assessment by the National Wage Council, this adjustment has shared and harmonized the interests of both employees and enterprises, while paying attention to improving the lives of employees, and at the same time ensuring the maintenance of enterprises' production and business development.

Third, some areas applying the minimum wage according to Regions I, II, III, and IV are readjusted. The readjustment of areas has changed the regional minimum wage in some localities, specifically as follows:

- Some localities are moved from Region II to Region I: Uong Bi City, Mong Cai City and Quang Yen Town, Dong Trieu Town of Quang Ninh Province; Hai Duong City of Hai Duong Province; Thong Nhat City of Dong Nai Province; Tan An City and Duc Hoa District, Ben Luc District, Can Giuoc District of Long An Province;
- Some localities are moved from Region III to Region II: Kinh Mon Town and Cam Giang District, Nam Sach District, Kim Thanh District, Gia Loc District, Binh Giang District, Tu Ky District of Hai Duong Province; Thai Binh City of Thai Binh Province; Thanh Hoa City, Sam Son City, Nghi Son Town, Bim Son Town of Thanh Hoa Province; Ninh Hoa Town of Khanh Hoa Province; Soc Trang City of Soc Trang Province;
- Some localities are moved from Region IV to Region III: Thai Thuy District, Tien Hai District of Thai Binh Province; Trieu Son District, Tho Xuan District, Yen Dinh District, Vinh Loc District, Thieu Hoa District, Ha Trung District, Hau Loc District, Nga Son District, Hoang Hoa District, Nong Cong District of Thanh Hoa Province; Ninh Phuoc District of Ninh Thuan Province.

The region adjustment of the above localities is to create a reasonable balance in labor prices among neighboring areas due to the strong development of these regions in the labor market. In particular, these localities have successfully developed modern industrial parks and industrial clusters, significantly improving their infrastructure. This has generated a close bond with neighboring regions, where the minimum wage is defined at a higher level.

COMMENTS AND RECOMMENDATIONS

Decree 74 took effect from July 1, 2024, thus enterprises need to review the agreements in their labor contracts, collective labor agreements, and the employers' rules and regulations to adjust and supplement relevant contents to be more beneficial to employees as compared to those in Decree 38. In addition, enterprises need to be well prepared to increase salaries for employees who are receiving wages based on the regional statutory minimum wages under Decree 74 to avoid any administrative sanction for paying employees under the minimum wages; at the same time, increase the respective amount of payment for social insurance, health insurance, unemployment insurance, and trade union contributions for relevant employees.

NEW REGULATIONS OF THE DRAFT DECREE AMENDING DECREE 01/2021/ND-CP ON ENTERPRISE REGISTRATION

HONG NHUNG

After a period of implementation, Decree 01/2021/ND-CP on enterprise registration (**Decree 01**) has generated positive impacts on administrative procedure reform in the field of enterprise registration but also revealed certain shortcomings. Therefore, the Ministry of Planning and Investment is currently developing a draft to amend and supplement several provisions of Decree 01 (**Draft**) in order to tackle the drawbacks of this Decree and to continue promoting administrative procedure reform, thereby streamlining and perfecting the legal framework for enterprise registration. The following are some remarkable points of the Draft:

Supplementing regulations on the interconnection and sharing of business registration information

Based on the contents mentioned in Decree 122/2020/ND-CP, the Ministry of Planning and Investment has proposed adding the regulations on cooperation and interconnection in enterprise registration to the Draft. The interconnection and sharing of enterprise registration information help to minimize the repeated provision of information to various competent authorities, specifically as follows:

First, regarding the principles for interconnection and sharing of enterprise registration information: The cooperation and interconnection for information sharing are carried out based on the following principles:

(i) Method of implementation: through digital data connection and sharing among information technology systems; and
(ii) Scope of application: The interconnection and sharing of enterprise registration information are applied to certain procedures, including handling applications for registration of enterprises, branches, and representative offices; declaration of labor use; and issuance of unit code for social insurance engagement.

Second, regarding the obligations of enterprises in the process of interconnection and sharing of enterprise registration information: When carrying out administrative procedures with labor authorities and social insurance agencies, enterprises, branches, and representative offices only need to provide their name, and the code of the enterprise, branch, or representative office. The obligation to provide copies of the Enterprise Registration Certificate, Branch Operational Registration Certificate, or Representative Office Operational Registration Certificate, as well as other enterprise registration information, which is shared by business registration authority through interconnection and sharing of enterprise registration information, will no longer be imposed on these entities.

Third, regarding the responsibilities of state management authorities in the process of interconnection and sharing of enterprise registration information: The business registration authority is the focal point for receiving and sharing/updating enterprise registration information. Social insurance agencies and labor authorities act as recipients of information shared by the business registration authority. For example, when there is a change in the registration information of an enterprise, a branch, or a representative office, the business registration authority shall share the information about the Enterprise Registration Certificate, Branch Operational Registration Certificate, or Representative Office Operational Registration Certificate with the relevant social insurance agency and labor authority.

Thus, in accordance with the Draft, the obligation to notify, and update the enterprise registration information is transferred from enterprises to the business registration authority. This regulation is intended to simplify administrative procedures, reduce the time required for enterprises to complete procedures, and facilitate the inspection, auditing, and review processes by state management agencies.

Supplementing regulations on the legal status of branches, representative offices, and business locations of enterprises

The Draft supplements the provision on the legal status of branches, representative offices, and business locations in the National Business Registration Portal, including: (i) Temporarily suspending business; (ii) Not operating at the registered address; (iii) Having their licensed certificate revoked due to tax enforcement measures; (iv) Undergoing procedures for termination of operation; (v) Having ceased operation; and (vi) Operating. Such legal statuses are described in detail in the Draft so that both state management agencies and enterprises are fully aware of the legal status of branches, representative offices, and business locations.

This new regulation is to determine the operational status of branches, representative offices, and business locations according to the registration dossier and legal status of enterprises. This also makes the information related to the legal status of branches, representative offices, and business locations public and transparent, ensuring the accuracy and legal validity of information provided regarding their legal status. Simultaneously, this regulation also contributes to the consistency of statistical data between the business registration authority and the tax authority concerning state management.

Amending the content of the Application form for capital contribution, share or stake purchase of foreign investors

In accordance with the investment law, the registration dossier for capital contribution, share, or stake purchase submitted to the investment registration authority (**Dossier**) includes an application form that requires information on the "*estimated transaction value*" of the capital contribution, share, or stake purchase contract. However, under the Draft, this requirement has been replaced with a regulation that economic organizations with capital contribution, share, or stake purchase by foreign investors must clearly state the "*actual transaction value*" of the capital contribution, share, or stake purchase contract.

The proposal for such amendments is based on the following reasons:

(i) Being the result of the local viewpoints collected during the practical implementation of procedures;
(ii) Standardizing terminology to accurately reflect the substance of investment activities in the form of capital contribution, share, or stake purchase;
(iii) Synchronizing information updated by enterprises on the National Investment Information System when carrying out capital contributions, share purchases and ensuring clarity and convenience for state investment management;
(iv) Supporting the management of statistical data and reports, providing a basis for evaluating the actual cash flow of foreign investment in the form of capital contribution and share purchase out of the total foreign direct investments into Viet Nam.

Decree 01 has had positive impacts during the drastic administrative procedure reform of the Government. However, its shortcomings have been pointed out from the practice when enterprises face many difficulties when interacting with competent authorities and resolving the issues not yet guided by Decree 01, such as the interconnection and sharing of enterprise registration information; the legal status of branches, representative offices, and business locations, etc. Therefore, new regulations in the Draft towards specific amendment and supplement are expected to partially address the drawbacks of Decree 01, improve the management efficiency of competent authorities and support enterprises in implementing related procedures. Enterprises should study and update the progress of the Draft development to promptly access to the changes in relevant legal regulations.

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