

CLIENT UPDATE 2015 DECEMBER

Recent Legal Developments in Vietnam

1. Decree No. 122/2015/ND-CP on minimum wages for employees

On 14 November 2015, the Government issued Decree No. 122/2015/ND-CP to regulate the region-based minimum wages for employees working for companies, cooperative unions, cooperatives, cooperative groups, farms, households, individuals and organizations hiring employees under labour contracts (“**Decree 122**”) to replace Decree No. 103/2014/ND-CP. The following points in Decree 122 deserve to be highlighted:

- (a) The region-based minimum wages are increased as follows:¹
 - (i) VND 3,500,000 (approx. USD 159)/month shall be applied to enterprises operating in region I (which covers essential areas of Hanoi, Ho Chi Minh City, Hai Phong City, Vung Tau City, Dong Nai Province, and Binh Duong Province);
 - (ii) VND 3,100,000 (approx. USD 141)/month shall be applied to enterprises operating in region II;
 - (iii) VND 2,700,000 (approx. USD 123)/month shall be applied to enterprises operating in region III; and
 - (iv) VND 2,400,000 (approx. USD 109)/month shall be applied to enterprises operating in region IV.

Region I, II, III and IV are specifically categorized in the Appendix of Decree 122.
- (b) The principle to apply the region-based minimum wages is also been amended as follows:²
 - (i) The principle of applying the highest region-based minimum wage to any enterprise that operates in adjacent administrative divisions with different region-based minimum wages is removed; and
 - (ii) The highest region-based minimum wage shall now be applied to every enterprise operating in industrial zones, export-processing zones in administrative divisions with different region-based minimum wages.
- (c) The wages paid to employees working in normal conditions, satisfying normal working hours per month and completing agreed works must:³
 - (i) not be lower than region-based minimum wages for untrained workers doing the simplest tasks; and
 - (ii) be higher than at least 7% of region-based minimum wages for trained workers.
- (d) Decree 122 takes effect from 01 January 2016.

¹ Article 3, Decree 122

² Article 4, Decree 122

³ Article 5.1, Decree 122

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2. Decree No. 115/2015/ND-CP on compulsory social insurance

On 11 November 2015, the Government issued Decree No 115/2015/ND-CP guiding the implementation of the 2014 Social Insurance Law (“**Decree 115**”). The following points in Decree 115 deserve to be highlighted:

- (a) Decree 115 supplements 03 new subjects for compulsory social insurance, which are:⁴
 - (i) Part-time employees in communes, wards and townships;
 - (ii) Vietnamese guest workers defined in the Law on Vietnamese Guest Workers; and
 - (iii) Persons working under labour contracts with a term of between a full 01 month and under 03 months (applied from 01 January 2018).

Decree 115 is only applied for Vietnamese employees. Therefore, there will be another decree dedicated to expatriates, who are also subjects of the 2014 Social Insurance Law.
- (b) Decree 115 details the regulation of 2014 Social Insurance Law in the following sectors:
 - (i) Maternity regime:⁵ Decree 115 stipulates on female employees as surrogate mothers and intended mothers.
 - (ii) Pension regime:⁶ The levels of pension benefit entitlement from 01 January 2016 and 01 August 2018 shall be equal to 45% of the average monthly salary on which social insurance premiums are based.
 - (iii) Survivorship allowance regime:⁷ for relatives of employees who have voluntary social insurance premiums; for persons entitled to a pension benefit and working capacity loss allowance.
- (c) One notable point in social insurance policy is that the amount to be contributed into the social insurance fund shall be calculated as follows:⁸
 - (i) Employee’s monthly salary on which social insurance premiums are based, is their salary plus salary-based allowance as stated in labour contracts.
 - (ii) From 01 January 2018, the monthly salary on which social insurance premiums are based, will be the salary plus salary-based allowance and other additional amounts as stated in labour contracts.
- (d) Decree 115 takes effect from 01 January 2016.

⁴ Article 2, Decree 115

⁵ Article 3 to Article 5, Decree 115

⁶ Article 6 to Article 11, Decree 115

⁷ Article 12 to Article 14, Decree 115

⁸ Article 17, Decree 115

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3. Decree No. 114/2015/ND-CP on industrial parks, export processing zones, and economic zones

On 09 November 2015, the Government issued Decree No. 114/2015/ND-CP to amend and supplement Article 21 of Decree No. 29/2008/ND-CP on industrial parks, export processing zones, and economic zones (“**Decree 114**”). Some points in Decree 114 that deserve to be highlighted are as follows:⁹

- (a) Export processing zones and export processing enterprises are permitted entitlement for application of provisions that are applicable to non-tariff areas, except for the exclusive incentives applicable to non-tariff areas of border economic zones.
- (b) Enterprises may purchase construction materials as well as goods, food, foodstuffs, consumer goods domestically to build necessary facilities and serve the daily-life activities of workers.
- (c) Export-processing enterprises may sell liquidated properties to the Vietnamese market according to provisions on investment and trade. At the time of sale, there will be no application of policies on management of exportation and importation, unless the goods are subject to management under specialist conditions or specialist inspection that has not been carried out during the import period. Goods managed by license must be approved in writing by the competent agency.
- (d) This Decree does not require enterprises in processing zones to establish separate branches in the inland area to perform the export, import rights provided that enterprises in the applicable processing zones meet the following conditions:
 - (i) Opening an accounting book to separate the revenue and expenses of purchase and sale activities under the import and export rights; and
 - (ii) Arranging storage areas to perform the import and export rights, separated from the storage areas of goods serving the production activity of the export processing enterprises.

Otherwise, the enterprises in processing zones will be required to establish a separate branch located outside the export-processing enterprises and zones to carry out such activities.

- (e) Decree 114 takes effect from 25 December 2015.

⁹ Article 1, Decree 114
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4. Decree No. 118/2015/ND-CP guiding the Law on Investment

On 12 November 2015, the Government issued Decree No. 118/2015/ND-CP detailing and guiding a number of regulations of the 2014 Law on Investment ("**Decree 118**"). Some notable points of Decree 118 are as below:

- (a) Previously, the Investment Certificate would be obtained concurrently with the Business Registration Certificate, while under Decree 118, the foreign investor must now obtain the Investment Registration Certificate first and then proceed to obtain the Enterprise Registration Certificate to implement the project and business activities.¹⁰
- (b) The former regulations did not regulate on escrow requirements with respect to the investor, but merely referred to other laws and only applied a limit to a number of sectors where the investor was required to establish an escrow (e.g., education and health sectors). However, with changes in the 2014 Law on Investment, the investor must now establish an escrow when receiving land, leasing land, or seeking permission to change the land use purpose from the competent authorities, except in the following cases:¹¹
 - (i) The investor is the successful bidder for the land use right to execute the investment project and receives land assigned by, or leases land from, the State with a lump sum payment for the entire land use period;
 - (ii) The investor is a successful bidder for an investment project using land according to regulations of the Law on Bidding;
 - (iii) The investor receives land or leases land from the State on the basis of transfer of an investment project and has paid the escrow or completely contributed capital, and/or raised capital complying with the schedule in the Investment Registration Certificate or decision on investment policies;
 - (iv) The investor receives land or leases land from the State to execute an investment project on the basis of receipt of land use right or property attached to land from another land user;
 - (v) The investor is a revenue-earning public service agency, a hi-tech zone development company established under a decision of a competent authority to execute investment projects that receive land or lease land from the State to develop infrastructure of industrial parks, export-processing zones, hi-tech zones, or specialized areas in economic zones.
- (c) Decree 118 has also issued a new list of investment sectors with investment incentives and special investment incentives.¹²
- (d) Decree 118 takes effect from 27 December 2015.

¹⁰ Article 44.1, Decree 118

¹¹ Article 27, Decree 118

¹² Annex 1, Decree 118

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5. **Circular No. 20/2015/TT-BKHDT on enterprise registration**

On 14 November 2015, the Ministry of Planning and Investment issued Circular No. 20/2015/TT-BKHDT providing application forms used in enterprise registration ("**Circular 20**"). The following points in Circular 20 deserve to be highlighted:

- (a) Where enterprises have been issued the investment certificates under the old regulations (i.e., the 2005 Law on Enterprises and the 2005 Law on Investment), these enterprises, as well as their branches, representative offices, and business locations, may separate the business contents (the information not related to investment) from the investment certificates to obtain new certificates according to the 2014 Law on Enterprises. These procedures will be conducted at the Business Registrar Office where the enterprise's head offices or its branches, representative offices, and business locations are located. Where enterprises have not separated the investment certificates, but intend to change the business contents (the information not related to investment), they may put both procedures for separation and change of contents into only one step.¹³
- (b) If an enterprise's resolution is ratified in the form of gathering written opinions, the meeting minutes in the application dossiers shall be replaced by the report on voting results (for an LLC) or the record on vote counting (for a JSC). This new mechanism shall save time for enterprises. Accordingly, the members/shareholders are now able to remotely send their opinions in order to quickly conduct the enterprise registration procedures, instead of collecting every single signature on the meeting minutes as previously required.¹⁴
- (c) Enterprises are obliged to register to change the operating contents for all of its branches, representative offices and business locations in any of following cases:¹⁵
 - (i) A State enterprise being converted to an LLC or a JSC;
 - (ii) An LLC being converted to a JSC and vice versa; and
 - (iii) A private enterprise being converted to an LLC.
- (d) Circular 20 takes effect from 15 January 2016.

¹³ Article 8, Circular 20

¹⁴ Article 4, Circular 20

¹⁵ Article 6.1, Circular 20

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6. Circular No. 23/2015/TT-BKHCN on importation of used machinery, equipment, and technological lines

On 13 November 2015, the Ministry of Science and Technology promulgated Circular No.23/2015/TT-BKHCN guiding the importation of used machinery, equipment and technological lines into Vietnam (“**Circular 23**”). The following points in Circular 23 deserve to be highlighted:

- (a) Used machinery, equipment and technological lines importable under Circular 23 shall have HS Codes starting with 84 or 85 (e.g., HS Codes of 84.aa or 85.xx.yy.zz);¹⁶
- (b) These products can be imported into Vietnam when its age does not exceed 10 years and these products meet Vietnam’s regulations or standards for safety, energy saving and environmental protection set by the Group of Seven (G7) countries. However, in some special cases in which an enterprise has to import equipment whose age exceeds 10 years to sustain its business operation, the Ministry of Science and Technology and other competent authorities will consider granting exceptions based on the enterprises’ submitted proposal and documents;¹⁷
- (c) Import activities of any used machinery, equipment and technological lines that are discarded/banned from use in other countries due to obsolescence, low quality or environmental pollution is prohibited.¹⁸ Used parts and components may only be imported when the manufacturing enterprise needs to replace or repair its current operating equipment.¹⁹
- (d) In addition to the import documents required under the provisions of the custom regulations, enterprises who import used machinery, equipment and technological lines must now have one of the following two technical documents showing the year of production and manufacturing standards applied to the used equipment:²⁰
 - (i) 01 (one) original copy of manufacture’s certificate;
 - (ii) 01 (one) original copy of inspection certificate issued by an inspecting authority.
- (e) Apart from the import documents under the Law on Customs, the importer who imports used parts and/or components must submit a set of the following additional documents:²¹
 - (i) 01 original copy of the enterprise’s description regarding the necessity of the import of such parts and/or components;
 - (ii) 01 original copy of an authorization letter in case the enterprise imports under an authorization; and
 - (iii) 01 copy of technical documents regarding the parts and/or components (if any).
- (f) Circular 23 takes effect from 01 July 2016.

¹⁶ Article 1, Circular 23
¹⁷ Articles 6 and 13, Circular 23
¹⁸ Article 4.3, Circular 23
¹⁹ Article 6.3, Circular 23
²⁰ Article 7, Circular 23
²¹ Article 9, Circular 23
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7. **Circular No. 24/2015/TT-NHNN on foreign currency loans for residents**

On 08 December 2015, the State Bank of Vietnam issued Circular No. 24/2015/TT-NHNN on the provision of foreign currency loans by credit institutions and foreign banks' branches to clients who are considered residents under the law ("**Circular 24**"). Some points in Circular 24 that deserve to be highlighted are as follows:

- (a) The conditions for borrowing foreign currency loans from commercial banks in 2016 are similar to those specified in the years before 2016. Accordingly, the borrowing of foreign currency in the following cases does not require approval from the State Bank of Vietnam:²²
 - (i) For loans to pay overseas imported goods and services fees when clients have enough foreign currency from production and business operation;
 - (ii) For short-term loans to pay overseas transactions for imported petrol and oil according to the assigned norm when clients do not have enough foreign currency from its production and business operation;
 - (iii) For short-term loans to carry out production plans and/or goods trading where exporting through Vietnam's border gates, in which clients have enough foreign currency from production and business operation. The borrowers shall have to sell foreign currency via spot transaction to credit institutions and foreign banks' branches upon loan repayment. This provisions shall be carried out till the end of 31 March 2016; and
 - (iv) For loans to perform overseas investment provided those are projects of national importance
- (b) Apart from the above, production and business project categorized as prioritized or encouraged development are also entitled to borrow foreign currency loans provided that such projects are approved by the State Bank of Vietnam.²³
- (c) On the type of currency to repay, loans should be repaid in the same currency as they were borrowed. However, for loans to pay for overseas import of petrol, credit institutions and foreign banks' branches who are the lender, may sell foreign currency to the borrower to repay the principal and interest.²⁴
- (d) Circular 24 takes effect from 01 January 2016.

²² Article 3.1, Circular 24

²³ Article 3.2, Circular 24

²⁴ Article 5, Circular 24

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