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Legal Updates

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LEGAL UPDATES

February, 2016

Part I: Legal Briefing.....Page 3-7

Administrative.....Page 3

1. Circular No. 20/2015/TT-BTP dated 29 December 2015 giving details and providing guidelines for implementation of a number of articles of the Decree 23/2015/ND-CP dated 16 February 2015 issuing copies from masters registers, certification of true copies from originals, authentication of signatures and contracts

Insurance.....Page 4

2. Circular No. 59/2015/TT-BLDTBXH detailing and guiding the implementation of some articles of the Law on Social Insurance on compulsory social insurance
3. Circular No. 09/2015/TTLT-BCA-BYT-BTC guiding implementation of health care insurance applicable to employees, students, relations of solidier of People’s Public Security of Vietnam

Labor.....Page 7

4. Decree No. 11/2016/ND-CP providing guidelines for implementation of Labor Code on foreigners working in Vietnam

Banking & Finance.....Page 7

5. Circular No. 36/2015/TT-NHNN on restructuring of credit institutions

Part II: Issues in Focus.....Page 8-11

1. Representative offices and branches of foreign businesses under the new decree detailing the law on commerce
2. Derivative securities and derivative securities market under new circular

Part I: Legal Briefing
Part II: Issues in Focus

No.	Legal documents	Sector	Effective date	Highlights	Comments/Impacts
1.	<p>Circular No. 20/2015/TT-BTP giving details and providing guidelines for implementation of a number of articles of the Decree 23/2015/ND-CP dated 16 February 2015 issuing copies from masters registers, certification of true copies from originals, authentication of signatures and contracts</p> <p>(Circular 20)</p>	Administrative	15 February 2016	<p>Circular 20 has provided the guidelines for implementation of a number of articles on certification of true copies from originals, authentication of signatures, notarization of contracts, transactions, in particular:</p> <p>Decree 23 has simplified the procedure on notarization of contracts. However, due to the unfamiliarity with new administrative procedures, some of local authorities themselves invent additional provisions or require additional documents in the notarization dossier. The Circular 20 has addressed this shortcoming: in receipt and settlement of the notarization requests, the notary is not allowed to invent any additional step, or request for more documents other than those stipulated in the Decree 23. Circular 20 also regulates that if the notary fails to settle the notarization requests within 15 hours and fails in producing results within one day or having to extend the settlement schedule under Article 21, 33, 37 of Decree 23, a clear appointment letter is required to be sent to the requester.</p>	Circular 20 expectedly settles the problems arising from implementation of Decree 23 such as the lack of templates and inconsistency of required dossier.

				Besides the cumbersome in notarization, Decree 23 has not also detailed the template of testimonies on document of legacy inheritance, document of legacy refusal. Consequently, the competent authorities were confused and even refused to authenticate. Therefore, Circular 20 has given details for this matter in Article 3.1 and issued a template attached with the Circular. In addition, Circular 20 also attached a sample of authentication testimony of signatures to ensure the consistency of application of the Circular.	
2.	Circular No. 59/2015/TT-BLDTBXH detailing and guiding the implementation of some articles of the Law on Social Insurance on compulsory social insurance (Circular 59)	Insurance	15 February 2016	Circular 59 has various remarkable points as follows: (i) Circular 59 supplements the provision on the payment of compulsory social insurance drawing from the monthly wage, allowances (from 1st January 2016 to 31th 2017), in which such allowances are the ones to offset the factors of working conditions, the complexity of work, activity conditions, level of labor attraction for which the agreed wage in labor contract is not calculated or incompletely calculated such as allowances of position, title, responsibility, heaviness, hazardousness, dangerousness, seniority, region, mobility, attraction and the like. Besides, the monthly wage paid for compulsory social insurance shall not include the other benefits and welfare, initiative bonus, meals between shifts, gasoline, telephone, travel, accommodation and child care allowances; assistance upon the death of employees' relatives, the marriage of employees' relatives, employees' birthday, subsidy to the employees in	Circular 59 has provided a means for realization of the Law on Social Insurance and Decree No. 115/2015/ND-CP. The Circular is expected to protect tens millions employees and financial resources of entities engaging in social insurance.

				<p>difficult situation in case of work accident, occupational disease and other allowances and assistance recorded in separate items in the labor contract.</p> <p>(ii) Circular 59 provides conditions to enjoy an one-time subsidy upon birth giving as follows: (a) In case only the father participates in the social insurance, the time of payment must be from full 06 months or more within the period of 12 months before birth giving; (b) For the husband of the mother requesting surrogacy, the social insurance payment must be from full 06 months or more within a period of 12 months to the time of child receipt.</p> <p>(iii) Under Circular 59, when applying monthly pension, a rate of 2% of monthly pension shall be reduced for each year of retirement prior to the prescribed age, which is higher than the rate of 1% under Circular 03/2007//TT-BLDTBXH.</p> <p>(iv) The rate of entitlement to enjoy one-time social insurance of the employees having the time of social insurance payment of less than 01 year is equal to 22% of the rates of monthly wage of social insurance payment; the maximum rate is equal to 02 months of the average monthly wage of social insurance payment.</p>	
3.	Circular No. 09/2015/TTLT-BCA-BYT-BTC	Insurance	11 February	Noticeably, Circular 09 details the scope of employees whose health insurance is contributed by the local Public Security and the employee	This Circular has come into effect from 11 February 2016. However, the provisions on

	<p>guiding implementation of health care insurance applicable to employees, students, relations of soldier of People's Public Security of Vietnam</p> <p>(Circular 09)</p>		<p>2016</p>	<p>themselves, and the ones whose health insurance is contributed by state budget. Accordingly, the relations of soldier, students of Public Security cultural school and foreign students who are granted scholarship at Public Security school shall enjoy the health insurance covered by the state budget.</p> <p>Regarding the contribution responsibility in special cases, Circular 09 prescribes that within the time of sick leave from 14 days onward, in which the sick leave benefit is applicable, employees and their employers are not required to contribute into the health insurance while the health insurance benefit is still applicable.</p> <p>Circular 09 provides that within the time of detention, in custody or temporarily suspended from their work before being investigated or judged guilty or not guilty of their offences, ratio applicable to health care insurance contribution shall be 4.5% of 50% of the monthly salary subject to social insurance contributions as stipulated by laws. The remaining contribution shall be contributed in case it is concluded that there is no violation accordingly.</p> <p>Employees who are currently living and working abroad are not subject to health care insurance contribution within the period of being aboard. The period of being abroad shall be counted as uninterrupted in application of health care insurance contribution.</p>	<p>contribution level, contribution liability, and contribution method in respect of health insurance have been effective since 1 January 2015.</p>
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<p>4.</p>	<p>Decree No. 11/2016/ND-CP providing guidelines for implementation of Labor Code on foreigners working in Vietnam</p> <p>(Decree 11)</p>	<p>Labor</p>	<p>1 April 2016</p>	<p>The scope of foreigners who are exempted from work permit is extended to include experts, individuals being the chief executive officials or those holding management positions or technicians who work in Vietnam for less than 30 days per period and the total accumulated working day in Vietnam is no more than 90 days per year. Further, method for determination of an expert, a chief executive official and management positions is also detailed in this Decree.</p> <p>Confirmation of demand for use of foreign employees by Chairman of provincial people’s committee is not required in particular cases, noticeably for foreign employees with abovementioned working period in Vietnam.</p> <p>With respect to the application for obtaining work permit, in case a foreigner has been residing in Vietnam, only criminal record issued by competent authority in Vietnam is required. However, there is still no further clarification for applying this provision, i.e. how to determine that a foreigner has been residing in Vietnam. In addition, processing time for the issuance of work permit is shortened from 10 to 7 working days from full submission.</p>	<p>Decree 11 simplifies the process of work permit and facilitates favorable conditions for foreigners working in Vietnam.</p>
<p>5.</p>	<p>Circular No. 36/2015/TT-NHNN on restructuring of credit institutions</p> <p>(Circular 36)</p>	<p>Banking and Finance</p>	<p>1 March 2016</p>	<p>Inheriting positive points of Circular 04 and being amended, supplemented to qualify requirements on restructuring of bank system and sustainable development of credit institutions system, Circular 36 has the following notable points:</p>	<p>Circular 36 is expected, by supplementing regulations regarding conversion of legal form of credit institution and improving regulations</p>

				<p>(i) The Circular 36 applies to credit institutions being commercial banks and finance companies only.</p> <p>(ii) In addition to merger and consolidation, conversion of legal form of credit institutions is also be governed as one of restructuring form. Accordingly,</p> <ul style="list-style-type: none"> • a commercial bank or finance company may convert from a limited liability company into a shareholding company, or vice versa; and a commercial bank or finance company may convert from a single member LLC into a multiple member LLC, or vice versa. • In case of conversion, the credit institution must have a conversion plan approved by its competent body and satisfy other requirements in accordance with laws. <p>(iii) It is strictly prohibited to disperse assets in any form.</p>	<p>regarding merge and consolidation of credit institution, to create a bank system fully complying with current market principles.</p>
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Part I: Legal Briefing
Part II: Issues in Focus

**REPRESENTATIVE OFFICES AND BRANCHES OF
FOREIGN BUSINESSES UNDER THE NEW DECREE
DETAILING THE LAW ON COMMERCE**

On 25 January 2016, the Government issued Decree No. 07/2016/ND-CP which shall come into effect on 10 March 2016 (“**Decree 07**” or “**new Decree**”) and replaces the Decree No.72/2006/ND-CP (“**Decree 72**”) on providing implementation of the Commercial Law’s regulations on establishment, operation, rights and obligations of representative offices (“**ROs**”) and branches of foreign businesses in Vietnam.

The new Decree provides some tighter conditions on establishment and operation of the ROs and branches of foreign businesses in Vietnam compared to Decree 72 as follow:

- (i) In respect of the number of the RO/Branch, a foreign business is not allowed to open more than one RO or branch having the same name in centrally governed cities and provinces.
- (ii) In respect of condition for establishment of the RO/Branch, in case the business registration certificates or equivalent documents of foreign businesses regulate the operation duration, such duration must have at least one year of validity from the date of application submission. In addition, foreign businesses have to be established and registered in accordance with law of the countries and territories engaging to international treaties to which Vietnam is a member or be recognized by such countries and territories. Furthermore, contents of the operation of the RO/Branch must comply with the commitment of Vietnam in the international treaties to which Vietnam is a member and the contents of the operation of the branch must also comply with the business lines of the foreign business. Where the foreign business is not from a country or territory engaging to international treaty with Vietnam, the establishment of the RO/Branch must be approved by the Minister of relevant ministry.
- (iii) In respect of the head of RO/Branch, if the head of a RO/Branch is absent from Vietnam for more than 30 days, he/she must authorize another person in writing to act in his/her role during his/her absence; otherwise the foreign business must appoint a new head of the RO/Branch.

Besides, Decree 07 also has some other changes compared to Decree 72. In particular, compulsory notification procedures on establishment and operation of a RO/ Branch as mentioned in Article 8 of Decree 72 are abolished. In addition, licensing competence is extended to management boards of industrial zones, export processing zones, economic zones, high-tech zone who shall grant, re-grant, adjust, extend and revoke licenses of establishment of ROs and termination of operation of ROs which are located in such locations if the establishment of the ROs are not regulated in any specialized law. Moreover, permitted operation of the RO seems to be narrowed. Accordingly, operation of monitoring

and supervising implementation of contracts which are signed between foreign business with Vietnamese partners or which relate to Vietnamese market is removed from permitted scope of operations of a RO.

In summary, Decree 07 is expected to clarify policies and procedures on establishment and operation of ROs and branches of foreign businesses in Vietnam, to upgrade outdated regulations of Decree 72 which was issued from 2006 when Vietnam had not joined WTO, and, together with various new laws, to improve the investment environment in Vietnam.

DERIVATIVE SECURITIES AND DERIVATIVE SECURITIES MARKET UNDER NEW CIRCULAR

On 19 January 2016, Ministry of Finance issued Circular No. 11/2016/TT-BTC (“**Circular 11**”) guiding a number of articles of the Decree No. 42/2015/ND-CP dated 5 May 2015 of the Government on derivative securities and derivative securities market. With 07 Chapters, 34 Articles, Circular 11 details guidance on organizing derivative securities market, trading of derivative securities, clearing member, trading member, trading activities, payment, clearing and activities of investors.

Under Circular 11, several investment tools for the investors who participate in Vietnam security market are provided, including the index future contract, the government bonds future contract.

The index future contract is defined as future contract whose underlying assets are index security. The index security is made by the Stock Exchange based on their establishment and control principles of index which is approved by State Securities Committee beforehand. On the other hand, government bonds future contract is the future contract whose underlying assets are trading Government bonds or supposed Government bonds which have a number of basic characteristics of Government bonds.

In order to make transaction of derivative security, the investors have to open a derivative security trading account at trading member and a margin account at the appointed clearing member. In case the investor has already had a general security trading account opened at a security company concurrently being a derivative security trading member, the investor is permitted to use this trading account in order to execute derivative security transaction after opening margin account at the appointed clearing member.

Regarding business organization of derivative securities, in addition to requirement stipulated in Decree 42/2015/ND-CP, Circular 11 lays down further criteria for the grant of Certificate of competence in trading derivative securities, such as compliance with the regulations on reserved funds; no losses in the last two years; at least 220% capital available in 12 consecutive months and other requirements on auditing. Regarding clearing services and payment of derivative security trading, while the similar criteria are applied to security companies except for a higher requirement in available capital of 260%, commercial bank and branch of foreign bank are required to satisfy capital safety ratio prescribed by the law on credit institutions in the last 12 months.

Circular 11 shall come into effect on 1 July 2016 and is expected to positively impact the security market. Beside the provision of useful transaction tools, Circular 11 implies an encouragement for development of business organizations, security companies and banks so as to meet the high-standard requirements for participation in the Vietnamese derivative security market. In addition, under Circular 11, the supervision scheme of the State under Circular 11 shall keep the activities of organization operating in the derivative security market on the right track and minimize the risk of market dysfunction.

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