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Recent Legal Developments in Vietnam

1. Decree No. 96/2015/ND-CP guiding the Law on Enterprises

On 19 October 2015, the Government issued Decree No. 96/2015/ND-CP to provide further guidance on the Law on Enterprises (“**Decree 96**”). The following points in Decree 96 deserve to be highlighted:

- (a) A company may decide the form, content, quantity, and is responsible for the management of, the seal, provided that it does not violate the restrictions regulated by law.¹ For enterprises established before 1 July 2015 the regulations apply:²
 - (i) Enterprises no longer need to register their current seal with the business registration authority. If such enterprises wish to use duplicate seals or change the ink color of the seal, registration is required;
 - (ii) If enterprises wish to use another new seal, enterprises shall return the current seal and the certificate of seal registration to the issuing police department. The police authority shall issue a note of receipt when receiving such seal; and
 - (iii) If the seal and/or certificate of seal registration are lost, enterprises may use a new seal and must notify the issuing police department of such loss.
- (b) Cross-ownership is restricted.³ Subsidiaries may not purchase share/capital contribution in the parent company or in the subsidiaries of that parent company. In addition, subsidiaries of a State-owned enterprise (of which at least 65% shareholding is owed by the state) shall not together make capital contribution to establish an enterprise.
- (c) Decree 96 takes effect from 8 December 2015.

2. Decree No. 85/2015/ND-CP promulgating policies for female employees

On 1 October 2015, the Government issued Decree No. 85/2015/ND-CP detailing a number of articles in the Labor Code regarding policies for female employees (“**Decree 85**”), which outlines some particular points relating to policies for female employees, in particular:

- (a) Employers who hire (1) 10 to 99 female employees where the number of female employees makes up at least 50% of total employees; (2) 101 to 999 female employees where the number of female employees makes up at least 30% of total employees; or (3) at least 1,000 female employees shall be entitled to the following incentives:⁴
 - (i) Such employers are eligible for reduction of enterprise income tax according to law provisions on enterprise income tax; and

¹ Articles 12, 13, and 14, Decree 96

² Article 15, Decree 96

³ Article 16, Decree 96

⁴ Articles 3.1 and 11.2, Decree 85

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- (ii) Additional expenses for female employees will be deductible when determining revenues subject to paying enterprise income tax.
- (b) Taking care of female employees' health:⁵
 - (i) Female employees are allowed to take 30 minutes time-off per day for at least three days per months during menstruation and still receive wages for such time-off; and
 - (ii) Female employees are allowed to take 60 minutes time-off in working time in order to take care of children aged ybder 12 and still receive wages for such time-off.
- (c) Pregnant female employees may unilaterally terminate their labor contracts or temporarily suspend their labor contracts if a competent health establishment certifies that continuing their work shall affect their fetus. Time of prior notice shall follow the directions of the heath establishment. Female employees are required to submit certification of health establishment to employers.⁶
- (d) Decree 85 takes effect from 15 November 2015.

3. Decree No. 83/2015/ND-CP on outward investment

On 25 September 2015, the Government issued Decree No. 83/2015/ND-CP on outward investment replacing Decree No. 78/2006/ND-CP on offshore direct investment ("**Decree 83**"). Decree 83 is about to open new opportunities for outward investment activities in Vietnam. Accordingly points that deserve to be highlighted are as follows:

- (a) In order to conduct the offshore investment activities, investors must obtain an outward investment registration certificate ("**OIRC**") instead of an investment certificate as regulated previously. Within 15 days prior to submit application dossiers to the Ministry of Planning and Investment ("**MPI**"), investors shall make an online declaration of investment project information on the National Investment Information System on Foreign Countries in Vietnam and Outward Investment from Vietnam and receive an electric code. After receiving the application dossiers for the investment project, the licensing authority will issue a temporary account so that the investors can access and follow up handling of the application dossiers on issuing/adjusting the OIRC on National Investment Information System on Foreign Countries in Vietnam and Outward Investment from Vietnam.⁷
- (b) Degree 83 specifies the forms of abroad investment capital such as foreign currency, Vietnam Dong, machinery, raw materials, goods or value of industrial property rights, technical know-how, technological processes, technical services, intellectual property rights and brand, etc.⁸

⁵ Article 7, Decree 85

⁶ Article 8, Decree 85

⁷ Article 18, Decree 83

⁸ Article 4, Decree 83

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- (c) Decree 83 details the procedures for appraisal of outward investment projects, issuance, adjustment and invalidation of OIRC, in particular:
 - (i) It specifies the documentation and procedures required to apply for and adjust OIRC;⁹ and
 - (ii) Time limitation for the MPI to grant OIRC where the Prime Minister's approval is required shall be around 45 working days;¹⁰ and shall be around 15 working days for other investment projects.¹¹
- (d) The transfer of foreign currency, goods, machinery, and equipment abroad shall comply with the provisions of the respective laws relating to foreign exchange, export, customs and technology.¹² Foreign currency transferred overseas prior to issuance of OIRC for investment project preparation activities cannot exceed 5% of total outbound investment capital and cannot exceed USD 300,000, as part of the total outward investment capital.¹³
- (e) Decree 83 also requires documents validating the site of projects for overseas investment in the fields of energy, agro-forestry-fisheries farming, exploitation and processing, and mineral survey, exploration, exploitation and processing and manufacturing, processing and engineering and real estate and infrastructure.¹⁴
- (f) Decree 83 takes effect from 25 September 2015.

4. **Circular No. 16/2015/TT-NHNN regarding restrictions on use of foreign currencies in Vietnam**

On 19 October 2015, the State Bank of Vietnam ("SBV") issued Circular No. 16/2015/TT-NHNN which amends and supplements new guidelines on restrictions on use of foreign currencies in Vietnam ("Circular 16"). Some points in Circular 16 that deserve to be highlighted are as follows:

- (a) The circumstances which need the approval of the Governor of the SBV to use foreign exchange in the territory of Vietnam are now considered on case-by-case basis and limited to some specific cases regarding national defence and security, petroleum, and other necessary cases.¹⁵
- (b) The new rules for making and sending the application for permission to use foreign currencies in Vietnam is summarised below:¹⁶

9 Articles 9 to 18, Decree 83
10 Article 10, Decree 83
11 Article 17, Decree 83
12 Article 19.3, Decree 83
13 Article 19.4, Decree 83
14 Article 8.1, Decree 83
15 Article 1.1, Circular 16
16 Article 1.2, Circular 16

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- (i) Applications must be made in Vietnamese. Translated documents from foreign languages need to come with the translator's signatures in compliance with Vietnamese law or the certification of the applicant's duly authorised representative;
- (ii) For documents being copies, the applicant may choose between submitting certified true copies, copies from the master register, or copies bearing corporate authentication. Failing this, if the application is made directly to the State Bank of Vietnam, the originals must be presented for comparison.
- (c) Within 45 days from receipt of a satisfactory application, the State Bank of Vietnam shall consider granting the permission.¹⁷
- (d) Decree 78 takes effect from 3 December 2015.

¹⁷ Article 1.2, Circular 16
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