



## **LEGAL NEWS**

### **Enterprise**

#### **Regulations of foreign enterprises in Enterprise Law 2020**

Although Law on Enterprise 2020 has no provisions or regulations that have direct impact on foreign enterprises but having many new points that have a great impact on the management and operation of foreign enterprises in Vietnam. In particular:



#### **1. Enterprise can establish the enterprise without informing the seal sample**

In accordance with Article 44 of the Law on Enterprise 2014, the enterprise must inform the seal sample with the business registration agency when publish in the National enterprise registration portal

However, these regulations have been formally repealed in the Law on Enterprise 2020. Accordingly, the Article 43 of the Law on Enterprise prescribes that:

- The seal of an enterprise may be a seal made at a seal-carving establishment or a seal in the form of a digital signature as specified by the law on e-transactions (*new regulations supplemented in the Enterprise Law 2020*).
- An enterprise may decide on the type, quantity, shape, and content of seals of the enterprise and its branches, representative offices, and other units. (*supplemented*)
- The management and preservation of seals must comply with the company charter or regulations issued by enterprises or their branches, representative offices or other units having seals. Enterprises shall use seals in transactions in accordance with law. (*supplemented*)

Foreign investors when receiving the Enterprise Registration Certificate must not send the seal form to the Business Registration Department and self-decide the form and number of seals.



## **2. Limited Liability Company can issue a bond**

Clause 4, Article 46 and Clause 1, Article 74 of the Law on Enterprise 2020 have new regulations that on Limited liability company with two or more members shall be eligible for issuing bond. Enterprise Law 2020 allows limited liability companies to get capital mobilization by issuing bond. This is the new regulation compared with the previous laws.

Therefore, foreign enterprises under the form of limited liability companies can get capital mobilization as follows:

- Increase the contributed capital from members;
- Receive new membership;
- Transform to the joint-stock company;
- Issuing bond.

## **3. Change conditions to get the General Meeting of Shareholders**

The General Meeting of Shareholders shall be conducted if it is attended by shareholders representing more than 50% of the total votes (Article 145 of the Enterprise Law 2020) instead of 51% in previous regulations.

This regulation is very good for large-scale foreign enterprises, especially corporations or parent companies. Because the difference between is 1% of the total vote compared with the old regulations and new regulations is relatively great for the foreign enterprises with many shareholders,

## **4. Managers with joint and several liability with company's damage**

Clause 2, Article 165 of the Enterprise Law prescribes Members of the Board of Directors, the Chief Executive Officer, and other managers of the company who violate the provisions specified in Clause 1 of Article 165 shall be personally or jointly liable for compensating for the lost interests, returning the received interests and compensating for the damage of the company and third parties.

Besides. Article 12 of the Enterprise Law prescribes:

*In case the division of rights and obligations among at-law representatives is not specified in the company charter, every at-law representative may act as a fully competent representative of the company before a third party; all at-law representatives shall bear joint responsibility for damage caused to the company in accordance with the civil law and other relevant laws. [More](#)*



**Labor – Salary**



**8 subjects entitled to monthly social allowances**

The subjects entitled to monthly social allowances and the specific allowances are prescribed in Article 5, 6, Decree No. 20/2021/ND-CP as follows:

| No. | Social protection beneficiaries are entitled to monthly social allowances  | Support level  |
|-----|--|--|
| 1   | <p>Children under 16 years old having no nurture source subject to one of the cases prescribed:</p> <ul style="list-style-type: none"> <li>• Being abandoned and not yet adopted;</li> <li>• Being an orphan who has lost both parents;</li> <li>• Being an orphan, whose mother or father has died, and the remaining parent is missing;</li> <li>• Being an orphan whose mother or father has died, and the remaining parent is receiving the care and nurture benefits at social protection establishments or social houses;</li> <li>• Being an orphan whose mother or father has died, and the remaining parent is serving prison term in jail or is exercising the decision on handling of administrative violation at reformatories, compulsory educational establishments, and compulsory detoxification establishments;</li> <li>• Both parents are missing as prescribed by the law provisions;</li> <li>• Both parents are receiving the care and nurture benefits at social protection establishments or social houses,</li> </ul> | <ul style="list-style-type: none"> <li>- For those under 4 years old; VND 900,000/month</li> <li>- For those who are full 4 years old or older: VND 540,000/month</li> </ul> |



|   |  |  |
|---|--|--|
|   | <ul style="list-style-type: none"> <li>• Both parents are serving the prison term in jail or are exercising the decisions on handling administrative violations at reformatories, compulsory educational establishments, and compulsory detoxification establishments;</li> <li>• The mother or father is missing and the remaining parent is receiving the care and nurture benefits at the social protection establishments or social houses;</li> <li>• The mother or father is missing, and the remaining parent is serving a prison term in jail or is exercising the decision on handling administrative violations at reformatories, compulsory educational establishments, and compulsory detoxification establishments;</li> <li>• The mother or father is receiving the care and nurture benefits at the social protection establishments or social houses, and the remaining is serving a prison term in jail or is exercising the decision on handling of administrative violation at the reformatories, compulsory educational establishments, and compulsory detoxification establishments;</li> </ul> |  |
| 2 | <p>Persons in case 01 of this Article who are enjoying monthly social allowance, but reach full 16 years of age and are studying in high schools, vocational schools, professional secondary schools, colleges, or universities of the first degree, shall continue to enjoy social assistance policies until the end of their education, but not more than the age of 22.</p>   | <p>VND 540,000/month</p>   |
| 3 | <p>Children infected with HIV in poor households.</p>  | <ul style="list-style-type: none"> <li>- For those who are under 4 years old<br/>VND 900,000/month</li> <li>- for those who are between full 4 years old and under 16 years old: VND 720,000.</li> </ul> |

|   |   |  |
|---|---|--|
| 4 | <p>Poor people who are raising children: Persons belong to poor or near-poor households who are not married; those who are married but the wife or husband has died or is missing and they are raising children under 16 years old or children between 16 and 22 years old who are in high schools, vocational schools, professional secondary schools, colleges or universities of first degree.</p> | <p>Raising only one child:<br/>VND 360,000/month</p>   |
| 5 | <p>The elderly persons belong to poor households that do not have any person to serve them or have such persons but they are receiving monthly social allowances.</p>   | <p>+ From 60 - 80 years old: VND 540,000/month<br/>- For those who are full 80 years old or older: VND 720,000/month</p> |
|   | <p>The elderly persons from full 75 to 80 years old belong to poor or near-poor households, living in communes and villages in ethnic minority areas and mountainous areas with special difficulties;</p> <p>The elderly persons from full 80 years old or older, who have no monthly pension, social insurance allowance, or social allowance;</p>   | <p>VND 360,000/month</p>   |
|   | <p>The elderly persons belong to poor households who do not have any person to serve them; have no condition to live in the community, and meet the conditions to be admitted to the social protection establishments or social houses but there are other persons who wish to take care of them in community.</p>  | <p>VND 1.8 million</p>   |

[More](#)



## LEGAL UPDATES

### Finance - Banking

#### **3 requirements of bank guarantee issuance for borrowers**

**On September 30, 2022, the State Bank of Vietnam issues the Circular No. 11/2022/TT-NHNN on bank guarantee**

Accordingly, credit institutions, or foreign bank branches, shall consider and decide the issuance of the guarantee, counter-guarantee or guarantee confirmation to customers as long as customers meet the following requirements:

- Have the full capacity to have civil rights or the full capacity to act on those civil rights;
- Guaranteed financial obligations must be legal;
- Obtain the assessment which proves that they have the capability of repaying sums that credit institutions or foreign bank branches giving guarantees have paid to fulfill the financial obligations in favor of them.

Credit institutions or foreign bank branches are not allowed to guarantee the payment obligations of enterprise bond issuance for the purposes as follows: Capital contribution and share purchases at other enterprises and increase working capital; restructuring debts of the issuing enterprises.

The commercial banks shall have full capacity to guarantee for future-acquired houses, when: Bank guarantee is prescribed in the establishment and operation licenses, and not prohibited, restricted, suspended, or temporarily suspended for future-acquired houses.

Circular 11 takes effect on April 01, 2023.



## **Foreign exchange administration for foreign borrowing, foreign debt repayment**

On September 30, 2022, the State Bank of Vietnam issues Circular No. 12/2022/TT-NHNN providing several instructions on foreign exchange administration in respect of enterprises' foreign borrowing and foreign debt repayment of enterprises.

The foreign loan is a generic term that means foreign loans that are not guaranteed by the Government and those that are guaranteed by the Government by means of foreign borrowing through borrowing contracts, deferred payment contracts for import of goods, lending entrustment contracts, contracts for finance leasing or debt instrument issuance on the international market of the borrower...

This Circular prescribes procedures for registration, registration for change of foreign loans that are not guaranteed by the Government. At the same time, the Circular prescribed in the issues:

- Opening and use of loan accounts, and repayment of foreign debts at the institutional organizations which are permitted to operate in Vietnam.
- Fund withdrawal, debt repayment, and other fund transfer transactions in relation to the arrangement of foreign loans;
- Foreign exchange administration in respect of transactions relating to guarantee for foreign loans in Vietnam, transfer of guarantee for foreign loans, reimbursement of compulsory indebtedness between borrowers, and the party of guarantee of foreign loans that are guaranteed by the Government.

Provision, use, and administration of information posted on the website for administration of foreign borrowing and repayment of foreign loans which are not guaranteed by the Government (hereinafter referred to as website);

The mechanism for making statistical reports on enterprises' foreign borrowing and repayment of foreign loans which are not guaranteed by the Government.

Circular No. 12/2022/TT-NHNN takes effect on November 15, 2022.





## Tax – Fee – Charge

### **Strengthen the tax administration for e-commerce**

**On October 01, 2022, the Prime Minister issues Telegram No. 889/CD-TTg on strengthening the efficiency of tax collection administration for e-commerce and digital business.**

With the development of the digital economy, the digital business is more popular, the revenue of Vietnam's e-commerce is estimated to be USD 13,7 billion, increased by 16% compared with 2020 and take 6.5% compared with the total retail revenue.

The rapid development of many new forms of e-commerce and digital business make new challenges in state management, including tax collection administration.

In order to continue to improve the efficiency of tax collection administration in e-commerce and digital business activities, the Prime Minister requires to focus on performing a number of tasks.

- The Ministry of Finance takes prime responsibility and coordinates with the Ministries and agencies to implement a number of solutions for the implementation of the Strategy for reform of the tax system through 2030 prescribed in the Decision No. 508/QĐ-TTg dated April 23, 2022, within that, including the solutions for strengthening the tax administration for e-commerce.

At the same time, strengthen the propagation, support individuals in business and e-commerce to declare and pay taxes in accordance with law provisions, guide foreign suppliers to comply with the legal regulations during the time of doing business in Vietnam; set up a tax administration database for e-commerce...

- The Ministry of Justice urgently comments on drafting the Decree on amending the Decree 126/2020/ND-CP detailing a number of articles of the Law on Tax Administration which prescribes the amendments on tax administration for e-commerce.

- The Ministry of Information and Communications shall cooperate with the Ministry of Finance and relevant agencies in building the legal normative document system in order to complete the legal base for suspending and revoking the online operation license for units that have tax violations.

- The Ministry of Industry and Trade shall research and complete the legal base for creating favorable conditions for the tax administration in individual's business activities on the e-commerce trading floor; cooperate with the Ministry of Finance to share a database, and connect information for state management on e-commerce activities.



## LIST OF UPDATED LEGAL NORMATIVE DOCUMENTS

| <b>Investment</b>             |   |  |
|-------------------------------|---|--|
| 1                             | Resolution No. <a href="#">124/NQ-CP</a> dated September 15, 2022 of the Government on major tasks and solutions to promote disbursement of public investment capital in remaining months of 2022                               | Issuing date: 15/09/2022<br>Effective date: 15/09/2022<br>Effect status: In force        |
| <b>Finance - Banking</b>      |   |  |
| 2                             | Circular No. <a href="#">05/2022/TT-BKHHCN</a> dated May 31, 2022 of the Ministry of Science and Technology guiding the use of Science and Technology Development Funds of enterprises  | Issuing date: 31/05/2022<br>Effective date: 01/06/2022<br>Effect status: In force        |
| <b>Policy</b>                 |   |  |
| 3                             | Resolution No. <a href="#">78/NQ-CP</a> dated June 18, 2022 of the Government promulgating the Government's Action Program on implementation of the Political Bureau's Resolution No. 13-NQ/TW                                  | Issuing date: 18/06/2022<br>Effective date: 18/06/2022<br>Effect status: In force        |
| <b>Transport</b>              |   |  |
| 4                             | Decree No. <a href="#">70/2022/ND-CP</a> dated September 27, 2022 of the Government amending and supplementing a number of articles of the Decrees regulating commercial road activities  | Issuing date: 27/09/2022<br>Effective date: 01/11/2022<br>Effect status: Not yet applied |
| <b>Transport</b>              |   |  |
| 5                             | Circular No. <a href="#">129/2021/TT-BCA</a> dated December 31, 2021 of the Ministry of Public Security on amending and supplementing a number of articles of the Circular No. 28/2020/TT-BCA                                   | Issuing date: 31/12/2021<br>Effective date: 14/02/2022<br>Effect status: In force        |
| <b>Agriculture - Forestry</b> |   |  |
| 6                             | Circular No. <a href="#">03/2022/TT-BNNPTNT</a> dated June 16, 2022 of the Ministry of Agriculture and Rural Development amending and supplementing a number of articles of the Circular No. 05/2018/TT-BNNPTNT of May 15, 2018 | Issuing date: 16/06/2022<br>Effective date: 01/08/2022<br>Effect status: In force        |



*Thank you for your reading!*

**VIETNAM LAW COMMUNICATION JOINT STOCK COMPANY**

**In Hanoi:** 1A Floor, IC Building, No. 82 Duy Tan Street, Dich Vong Hau Ward, Cau Giay District, Hanoi

**Tel:** 0938 36 1919

**In Ho Chi Minh City:** 5<sup>th</sup> Floor, Orchard Parkview, No. 130 - 132 Hong Ha, Ward No. 9, Phu Nhuan District, HCMC

**Tel:** 028.39950724 - 028.39950262

**Email:** [cskh@luatvietnam.vn](mailto:cskh@luatvietnam.vn)

**Hotline:** 0938 36 1919

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