

LEGAL UPDATES (August 25th, 2020)

In these legal updates, we would like to send clients the legal updates on some following issues:

- Vietnam Social Insurance has issued Official Dispatch No. 2533/BHXXH-BT guiding on continuing to suspend of contribution to the pension fund and death benefit fund until the end of December 2020.
- Government has issued drafted decree amending the Government's Decree No.99/2015/ND-CP dated October 20th, 2015, detailing and guiding the implementation of some articles of the Housing Law, to overcome the shortcomings on handing over of funds for maintenance of shared areas of multi-owner apartment buildings in current regulations.
- The "Manufacturing" industry of newly established enterprises is currently under more rigorous evaluation by the Vietnamese authorities.

1. Vietnam Social Insurance has issued Official Dispatch No. 2533/BHXXH-BT guiding on continuing to suspend of contribution to the pension fund and death benefit fund until the end of December 2020.

On August 10th, 2020, Ministry of Labor - Invalids and Social Affairs issued Official Dispatch No. 2533/BHXXH-BT on continuing to suspend of contribution to the pension fund and death benefit fund, effective from August 10th, 2020.

Previously, on May 4th, 2020, the Ministry of Labor - Invalids and Social Affairs issued Official Dispatch No. 1511/LĐTBXXH-BHXXH guiding the suspension of contribution to the pension fund and death benefit fund for the employers suspending of production and business at least 01 month or more due to difficulties in changing structure or technology, crisis or recession of economic, or execution of State policies; or encounter difficulties due to natural disasters, fires or epidemics if the conditions specified in this Official Dispatch are satisfied. Specifically:

- Unable to arrange the works for employees, the quantity of suspended employees having social insurance is at least 50% or more of the total number of employees before the suspension.
- The loss caused by the epidemic is over 50% of total assets.
- Social insurance premiums have been fully paid until the end of January 2020 by employers and employers have been suffered from epidemic leading to the quantity of employees who have social insurance is decreased by at least 50% or more. Some specified cases such as employees have terminated the employment contracts; employees whose employment contracts are suspended, take unpaid leave, have employment contracts ceased for at least 14 or more working days per month.

To implement the Government's Resolution No.42/NQ-CP on measures to support people facing difficulties caused by the Covid-19 epidemic, the Ministry of Labor - Invalids and Social Affairs issued Official Dispatch No. 1511/LĐTBXH-BHXXH guiding the suspension of contribution to the pension fund and death benefit fund up to the end of December 2020 for the following objects:

- Employers facing difficulties due to the Covid-19 epidemic have temporarily stopped contributing to the pension fund and death benefit fund but are still facing difficulties.
- Employers are facing difficulties due to the Covid-19 epidemic, meeting the conditions for suspension of contribution to the pension fund and death benefit fund according to Official Dispatch 1511/LĐTBXH-BHXXH, shall comply with current regulations and documents on Instructions of the Vietnam Social Insurance to implement the suspension.

2. Draft decree amending the Government's Decree No. 99/2015/ND-CP dated October 20th, 2015 detailing and guiding the implementation of some articles of the Housing Law.

It stems from inadequacies in the provisions of Decree 99/2015/ND-CP on handing over of funds for maintenance of shared areas of multi-owner apartment buildings, leading to many disputes about the handing over between Apartment Management Board and Investor in many projects. Specifically, according to the provisions of Decree 99/2015, the investors must open a payment account at a credit institution operating in Vietnam to receive maintenance money, to pay this maintenance fee. The person who buy or lease-purchase apartments can transfer maintenance fee into the account specified in the contract or paid directly to the investors to transfer into such account. It is an opportunity for many investors to use these maintenance funds for the wrong purposes, resulting in the deficiency of money in the opened payment account to transfer to the Apartment Management Board. Besides, this Decree stipulates that when the investors do not carry out the handing over, the competent authorities and related parties have the rights to enforce through the handling of the investor's bank account or assets to recover maintenance fees. However, it has not given specific measures to apply property treatment yet.

Therefore, the draft Decree amending and supplementing Decree 99/2015/ND-CP, has outlined the provisions to overcome the above shortcomings as follows:

- The investors must open a specialized capital account to receive maintenance fees instead of a payment account.
- Before receiving the apartment, the buyers or lease-purchasers must pay 2% of the maintenance fee to the opened specialized account, not directly to the investor as current regulations.
- Stipulating that in case there is a decision issued by the competent authorities to enforce the investor's property to recover the maintenance fee, the property shall be auctioned in accordance with the law on property auction.

- The Government is still collecting comments from the people about this new draft via email (quanlynha2019@gmail.com) or by writing to the Housing and Real Estate Market Management Department - Ministry of Construction - No. 37 Le Dai Hanh - Hai Ba Trung - Hanoi until October 10th, 2020.

3. The “Manufacturing” industry of newly established enterprises is currently under more rigorous evaluation by the Vietnamese authorities.

On August 20th, 2019, Ministry of Political issued Resolution No. 50-NQ/TW on the orientation to perfect institutions and policies, improve the quality and effectiveness of foreign investment cooperation until 2030, directing not considering to expand and extend operations for projects using outdated technology, potentially causing environment pollution and resource-intensive risks.

To implement the guidance of Ministry of Political, for investors and companies would like to register the establishment or expansion on the operation of business code “Manufacture”, the Government and Standing Committee of the Ho Chi Minh City People’s Committee, Ho Chi Minh City’s Department of Planning and Development requested investors and companies explain clearly on the operation of business code “Manufacture”.

- In cases having not operated, Investors and Companies clarify the future orientation of Companies on manufacture operations. Foreign companies must carry out Investment register procedures in accordance with laws.
- In cases manufacturing, Investors and Companies clearly reports ongoing operations, implementation sides, size and capacity. Particularly on ongoing operations: business implementation methods, manufacturing premises, raw materials and intended place to consume products, manufacturing technologies, manufacturing machinery systems, labour using demands, etc. On manufacturing technology, Investors and Companies explain on name, origin, technology process diagram, list, technical specification status of machinery and equipment; standards, quality of products, raw materials, fuels and materials for technological lines; technical training programs, investment costs, etc.

We hope this short Letter of legal updates would bring you useful information.

Best regards.

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