

LEGAL UPDATES (October 26th, 2021)

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

- Several important points of Decree 85/2021/ND-CP on e-commerce.
- 05 new points of the Law on Vietnamese employees working abroad under contracts.

1. **Several important points of Decree 85/2021/ND-CP on e-commerce**

On September 25th, 2021, the Government issued Decree No. 85/2021/ND-CP amending and supplementing a number of articles of Decree No. 52/2013/Nd-CP dated May 16th, 2013, on e-commerce. Accordingly, Decree No. 85/2021/ND-CP amends and supplements several important articles as follows:

- Supplementing e-commerce activities of foreign traders and organizations:

This is a completely new regulation of Decree 85/2021/ND-CP. Accordingly, a foreign trader or organization that has a website providing e-commerce services in Vietnam is a trader or organization involved in one of the following forms of operation: (i) E-commerce website under the Vietnamese domain name; (ii) E-commerce website whose display language is Vietnamese; (iii) E-commerce website with over 100,000 transactions from Vietnam within a year.

- Amending and supplementing the operation forms of the e-commerce trading floor:

Including: (i) Website allowing users to open shops to display and introduce goods or services; (ii) Website allowing users to open accounts to enter into contracts with customers; (iii) Website having a sale and purchase section/function, which allows users to post information about their goods and services; and (iv) A social network involved in one of the above activities and the users directly or indirectly pay fees for the performance of such activities.

- Providing detailed regulations on registration procedures for authentication of e-contracts:

Regarding the authentication of e-contracts, according to Clause 4, Article 63 of Decree 52/2013/ND-CP, the Ministry of Industry and Trade is responsible for stipulating in detail the procedures for establishment and operation regulations of traders and organizations providing e-contracts authentication services; providing cases of revocation of operating licenses; and procedures and sequences for amending, supplementing and withdrawing operation licenses of these traders and organizations.

Until now, the new Decree 85/2021/ND-CP has first provided the detailed registration procedures for providing e-contracts authentication services. Accordingly, the submission, receipt and handling of registration applications for providing e-contract authentication services will be carried out online by the Ministry of Industry and Trade through the e-commerce management portal of the Ministry of Industry and Trade at www.online.gov.vn.

- The seller's responsibility for providing information about their goods and services:

According to the new regulations, the information about goods and services for sales e-commerce websites must be provided in detail by sellers, specifically as follows:

- (i) For goods and services published on the website, the seller must provide information so that the customer can accurately identify the characteristics of the goods or services in order to avoid misunderstandings when entering into a contract.
- (ii) Information about goods published on the website must contain contents required to show on labels of goods in accordance with the laws on good labels, except for product-specific information such as: year, month, date of manufacture; expiry; production batch number; the frame of the machine.
- (iii) Sellers must meet the investment and business conditions on the list of conditional investment and business lines and must publish the number, date and place of issuance of the eligibility license, confirmation on qualifications, written confirmations, or other forms of documents as prescribed by law on business conditions of that industry.

- Adding the subject of e-commerce activities is the provider of logistics service:

Traders providing logistics services are officially recognized as a subject of e-commerce activities. Along with that, the responsibilities of logistics service providers to transactions on e-commerce platforms are also mentioned in Clause 14, Article 1 of Decree 85/2021/ND-CP.

Decree No. 85/2021/ND-CP will be of full force and effect as of January 1st, 2022.

2. 05 new points of the Law on Vietnamese employees working abroad under contracts.

On January 1st, 2022, the Law on Vietnamese employees working abroad under contracts ratified by the National Assembly of Vietnam on November 13th, 2020 will be officially of full force and effect. Accordingly, several notable new points of this Law are as follows:

- (1) Employees are entitled to unilaterally terminate the contract if being abused or sexually harassed:

According to point dd, Clause 1, Article 6, it clearly provides that: An employee may unilaterally terminate the contract when being abused or forced to work by the employer, or perceived of a clear and direct threat to life and health, or being sexually harassed while working abroad.

Moreover, employees working abroad are also entitled to the following additional rights: (i) To receive advice and support to exercise their rights and obligations and enjoy benefits in the labor contract, vocational training contract; (ii) Do not have to pay social insurance or personal income tax twice in Vietnam and in the working abroad country or territory if Vietnam and that country or territory have signed a treaty agreement on social insurance or double taxation; (iii) Get advice and support to have a job or start a business after returning Vietnam and to access voluntary psychosocial counseling services, etc.

(2) Supplementing and amending conditions for obtaining operating licenses:

Conditions to obtain the operation license to provide services for sending workers to work abroad under a contract have been modified by this new Law in Article 10. Accordingly, an enterprise needs to meet the following conditions:

(1) Having a charter capital of 05 billion VND or more, with the owner, all members and shareholders being domestic investors; (2) The legal representative must have at least 05 years of experience (compared to the current condition of 03 years) in the field of sending Vietnamese employees to work abroad under contracts or employment services; (3) Having a sufficient number of professional staff to carry out the activities of sending Vietnamese employees to work abroad under contracts; (4) Having facilities that meet the requirements of orientation education for Vietnamese employees to work abroad under contracts; (5) Having the own website, etc.

(3) Providing additional regulations on the list of prohibited working areas abroad:

According to Article 7.13, the Law has provided additionally a list of prohibited areas for working abroad or sending Vietnamese to work abroad: (1) Areas that are at war or in danger of chance of war; (2) Areas being contaminated with radiation; (3) Area contaminated with toxic; (4) Areas with dangerous epidemics.

(4) Employees do not have to refund brokerage fees:

The new Law has abolished the regulation that "Employees are responsible for refunding to service providers a part or all of the brokerage money as prescribed by the Ministry of Labor, War Invalids and Social Affairs" mentioned in Article 20.1 of the 2006 edition of this Law. As such, from the 2022 year onwards, Vietnamese employees working abroad under contracts will not need to refund brokerage fees to service providers, thereby helping employees reduce service costs when working abroad.

(5) Amending and supplementing regulations on brokerage contracts:

Supplementing the concept of a brokerage contract which is a written agreement between a service provider and an intermediary organization or individual on introducing a foreign employer to employ Vietnamese employees under a labor-supply contract in accordance with this Law (Article 22.1); substituting the concept of "brokerage money" with the concept of "remuneration under the brokerage contract" and stipulating that: "Remuneration under the brokerage contract shall be agreed upon by both parties and clearly stated in the contract but shall not exceed the ceiling level specified in Clause 3 of this Article" (Article 22.2).

Moreover, the Law also additionally provides a number of regulations related to the application of technology, digitization of information on migrant employees in state management, reform of administrative procedures through coordination, communication exchange between agencies in charge of enterprise management.

The Law on Vietnamese employees working abroad under contracts will be of full force and effect as of January 01st, 2021.

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

Best regards.

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