

## LEGAL UPDATE (January 3rd, 2024)

In this issue, we would like to bring to your attention to the following:

- **Amending regulations on awarding shares in indirect foreign portfolio investment activities**

### **Amending regulations on awarding shares in indirect foreign portfolio investment activities**

1. **The definition “Organization executing the program that awards shares issued in foreign nation” is amended in Article 3, Circular 10/2016/TT-NHNN**

Circular 10/2016/TT-NHNN guiding certain contents in the Government's decree No. 135/2015/ND-CP dated December 31<sup>st</sup>, 2015 providing for regulations on foreign portfolio investment (Circular 10) issued on June 29<sup>th</sup>, 2016 has regulations on the definition of presence of foreign organizations in Vietnam in Clause 3, Article 3 as follows: *“Organization executing the program that awards shares issued in foreign nation refers to a commercial presence of foreign organization in Vietnam...”*

Regarding the above-mentioned definition, the State Bank proposes amendments to ensure compliance with the actual situations that arise during the implementation of regulations when bonus share programs of foreign organizations in reality often for subsidiaries and affiliated companies directly or indirectly owned by the foreign organizations. The specific amendment content drafted by the State Bank is as follows: *“The organization implementing the program that awards shares issued in foreign nations refers to a commercial presence in Vietnam and is directly or indirectly owned by a foreign organization, including: economic organizations with foreign investment capital, branches, representative offices, executive offices of foreign parties in business cooperation contracts and other forms of presence according to the provisions of law (hereinafter referred to as the organization implementing the share awarding program) may participate in the share awarding program of the Foreign organization.*

2. **Circular 10/2016/TT-NHNN supplementing regulations on implementation principles related to the purpose of the share awarding program**

During the process of reviewing and confirming registration documents, realizing that the purpose of the share awarding program is not to encourage and engage employees, so draft Circular 10 supplements regulations on cases where an employee can/not participate in the share awarding program, specifically:

- i. Vietnamese employees **are eligible to** participate in the share awarding program issued by foreign organizations to motivate, encourage, and engage employees with achievements, dedication, and long-term commitment to the organization.

- ii. Vietnamese employees **are not allowed** to participate in the share awarding program issued by foreign organizations with the purpose and nature of being an investment abroad to offer shares to increase capital and support payment accounts for foreign organizations.

We hope this Newsletter would bring you useful information.

Best regards.

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**Contacts:****HO CHI MINH CITY (Head office)**

5<sup>th</sup> Floor, IMM Building  
99-101 Nguyen Dinh Chieu, District 3  
Ho Chi Minh City, Vietnam

**THE BRANCH IN HA NOI CITY**

10th floor, 5 Dien Bien Phu Street,  
Dien Bien Ward, Ba Dinh District,  
Hanoi City, Vietnam

Tel: +84-28-3899 8683

Email: [info@apolatlegal.com](mailto:info@apolatlegal.com)

Website: [www.apolatlegal.com](http://www.apolatlegal.com)

**SINGAPORE (Affiliated office)**

#26-10, SBF Center,  
160 Robinson Road  
Singapore 068914

Tel: +84-93-2014 986

Email: [info@apolatlegal.com](mailto:info@apolatlegal.com)

Website: [www.apolatlegal.com](http://www.apolatlegal.com)

Scan QR code:

