Legal Alert - 13 December 2017

Upcoming Regulations on Compulsory Social Insurance Contribution for Foreign Employees Working in Vietnam

Under Law No. 58/2014/QH13 on Social Insurance issued on 20 November 2014 (***2014 Law on Social Insurance***), starting from 1 January 2018, foreign employees working in Vietnam under a work permit, practising certificate, or practising license issued by a competent body of Vietnam, will be allowed to participate in the compulsory social insurance programme. However, as of the date of this Alert, it is unclear under the 2014 Law on Social Insurance as to whether it would be a right or an obligation of the employers and foreign employees to participate in the social insurance programme.

- While the time for implementing the above regulations is fast approaching, as of the date of this Alert, the Government has not yet issued any official document for guiding its implementation.

  Earlier this year the Government issued a draft decree providing guidance on the implementation of the 2014 Law on Social Insurance (the ***Draft Decree***) and solicited comments from the public.

- According to the Draft Decree, as of 1 January 2018, foreign employees that satisfy the following conditions, together with their employers, will be subject to compulsory social insurance contributions:

  (i) Working in Vietnam under an indefinite-term labour contract, definite-term labour contract, or seasonal or specific job contract with a term of more than one (1) full month with employers based in Vietnam; and

  (ii) Having been granted with either (i) a work permit; (ii) practising certificate; or (iii) practising license.

- Under the Draft Decree, the applicable contribution rates for employers and foreign employees will be the same as those applicable to Vietnamese employees, i.e., currently 8% of salary must be contributed by the employees and 17.5% of salary must be contributed by the employers (3% must be contributed to the illness and maternity fund, 0.5% for the labour accidents and occupational diseases fund, and 14% for the retirement and survivorship fund). These percentages are based on the employee's actual monthly salary, capped at 20 times the applicable General Minimum Wage (currently VND1,300,000, which is roughly equivalent to USD57, noting however that from 1 July 2018 the General Minimum Wage is set to increase to VND1,390,000). Therefore, with respect to salaries being more than 20 times the General Minimum Wage, the monthly compulsory contributions will not exceed VND2,080,000 for an employee (8% of the General Minimum Wage multiplied by 20) and VND4,550,000 for an employer (17.5% of the General Minimum Wage multiplied by 20).

- A lump-sum reimbursement of the social insurance allowance is available for foreign employees if their labour contracts or work permits expire and they do not continue working under the contracts or extend their work permits. To receive this lump-sum payment, a foreign employee must file an allowance request with the relevant social insurance authority within 30 days prior to the expiry date of her/his contract or work permit. Within 10 days from the date of the receipt of a complete request, the insurance authority will be responsible for settling and paying the allowance to the employee. The calculation of the lump-sum social insurance allowance applicable to foreign employees would be the same that is currently applicable to Vietnamese employees according to the 2014 Law on Social Insurance.

- The Government should provide official guidance on the implementation of the 2014 Law on Social Insurance with respect to compulsory social insurance for foreign employees by 1 January 2018. However, pursuant to the provisions of the Law on Promulgation of Legislative Documents, even if the Draft Decree is officially issued before the end of this year, it will only take effect 45 days after the date of its promulgation (and thus after 1 January 2018).

- Many observers have raised serious concerns over the contents of the Draft Decree in its current form.

  Firstly, the Draft Decree has a very broad scope of application, and therefore applies to most foreign workers in Vietnam, even those working on a short-term basis. Most of these short-term employees, may prefer to opt for short-term coverage to cover illness, maternity, and occupational accidents, but would not need coverage for retirement or survivorship. Such an opt-out mechanism could save money for employers as well, considering that retirement and survivorship contributions make up the largest portion (14% out of 17.5%) of the payment obligation of the employers.

  Secondly, many foreign employees are concerned about the regime for the reimbursement of the lump-sum insurance payouts, i.e. whether the procedures will be conducted quickly enough prior to the departure of the employee and whether such payment can be made in the currency of their choice.

  Thirdly, many foreign employees and foreign employers have requested that Vietnam should urgently enter into bilateral agreements with other countries to eliminate the payment of dual social insurance premiums that currently would require many foreign workers (and their multinational employers) to pay social security contributions in both Vietnam and in their countries of origin.

Please contact us at legalenquiries@frasersvn.com if you are interested in receiving advice on the implementation of the 2014 Law on Social Insurance.

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