

FRASERS NEWSLETTER - DECEMBER 2018

In this edition of our newsletter we report on the following:

- (i) New Decree providing for **region-based minimum wage** levels for employees working under labour contracts;
- (ii) Official Announcement on the Effectiveness of the Comprehensive and Progressive Agreement for **Trans-Pacific Partnership**;
- (iii) New Decree No. 163/2018/ND-CP on the **issuance of corporate bonds**;
- (iv) Draft Circular amending Circular No. 19/2014/TT-NHNN dated 11 August 2014 guiding the **foreign exchange management for foreign direct investment** in Vietnam; and
- (v) Draft Circular implementing the new Decree No. 63/2018/ND-CP on **public private partnerships**.

1 **New Decree providing for region-based minimum wage levels for employees working under labour contracts**

On 16 November 2018, the Government issued Decree No. 157/2018/ND-CP providing the regional minimum area wage (**RMS**) for employees working pursuant to a labour contract (**Decree 157**).

By law, the RMS is generally the minimum monthly salary level applicable to employees who perform the simplest work which does not require any training or qualification. As from 1 January 2019, under Decree 157, the RMS is divided into different categories based on the

location of the employers as follows:

No.	Region	Minimum Wage in VND	Minimum Wage in USD
1	Region I	4,180,000	180
2	Region II	3,710,000	160
3	Region III	3,250,000	140
4	Region IV	2,920,000	126

The Appendix to this Decree 157 contains the List of Geographical Areas in each Region I, II, III and IV. Most districts in Hanoi and Ho Chi Minh City fall within Region I.

It should be noted that RMS is used to determine a cap amount in calculating unemployment insurance contributions for both employers and employees. Specifically, the salary which is used to calculate the unemployment insurance contribution is capped at 20 times the RMS. An increase in RMS therefore will lead to an increase in the unemployment insurance contribution, and accordingly, an increase in the labor costs borne by employers.

Decree 157 will come into effect as from 1 January 2019, and will replace Decree No. 141/2017/ND-CP issued by the Government on 7 December 2017 and regulating the same matter (**Decree 141**).

2 Official Announcement on the Effectiveness of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

On 7 December 2018, the Ministry of Foreign Affairs issued Notice No. 50/2018/TB-LPQT (**Notice 50**) on the Effectiveness of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CP-TPP**).

Specifically, under Notice 50, the Ministry of Foreign Affairs officially announces the date of effectiveness of the CP-TPP for Vietnam, being 14 January 2019.

According to the World Bank, the CP-TPP will bring direct benefits to Vietnam, from trade liberalisation and improved market access, which will boost productivity and GDP growth. The garments, footwear, food and beverage sectors are expected to be the biggest beneficiaries, since the majority of import tax rates for these sectors' products will be reduced to zero per cent by member countries when the CP-TPP enters into force.

The full texts of the CP-TPP in English, French and Spanish are also attached to Notice 50, for any need of reference.

3 Decree No. 163/2018/ND-CP on the issuance of corporate bonds

On 4 December 2018, the Government issued Decree No. 163/2018/ND-CP, providing legal regulations on the issuance of corporate bonds (**Decree 163**). Decree 163 shall take effect as

from 1 February 2019 and shall replace its preceding legislation being Decree No. 90/2011/ND-CP of the Government, dated 14 October 2011, on the same matter (**Decree 90**).

Below are some highlights of the key changes under Decree 163 as compared to the current Decree 90.

- **Loosen condition for issuance of bonds**

Among the conditions for the issuance of bonds, Decree 163 removes the requirement that the issuing company must have registered profits in the year immediately preceding to the issuance year (which is instead required in the current Decree 90).

- **Specifying conditions for the issuance of bonds in multiple tranches in the domestic market**

Decree 163 provides the set of conditions for a company to issue bonds in multiple tranches under a single approval of the relevant State authority, while Decree 90 remains silent on the same matter.

A company conducting a multiple issuance shall ensure that each issuance tranche shall last for no more than 90 days and each subsequent issuance shall be commenced within no more than 12 months as from date of the first issuance.

- **Introducing specialised bonds exclusively for enterprises operating in environmental protection projects**

Decree 163 introduces the new 'green corporate bonds' (or 'green bonds'), being the corporate bonds issued for investment in environmental protection projects under the provisions of the Law on Environmental Protection.

Funds raised from the issuance of green bonds shall be accounted and managed separately and disbursed to environmental protection projects only. The company issuing green bonds shall also regularly prepare the environmental impact assessment report for the purpose of periodic information disclosure.

- **Introducing the website providing information on corporate bonds in the market**

The stock exchanges, as assigned by the Ministry of Finance, shall be responsible for the operation of the website providing information on corporate bonds. Investors and bond issuers will have access to the corporate bonds information website to find out information about the corporate bonds issuance status in both the domestic and international market.

4 Draft Circular amending Circular No. 19/2014/TT-NHNN dated 11 August 2014 guiding the foreign exchange management for foreign direct investment in Vietnam

The State Bank of Vietnam recently issued a Draft Circular guiding the foreign exchange management for foreign direct investment in Vietnam (**the Draft Circular**) amending and supplementing the current Circular No. 19/2014/TT-NHNN dated 11 August 2014 (**Circular 19**). Below are some noteworthy developments contained in the Draft Circular as

compared to the current Circular 19:

- **Clarification of the definition of the term “Foreign Direct Investment (FDI) enterprises”**

Under Circular 19, FDI enterprises are enterprises in which a foreign investor participates by contributing capital for the establishment [and/or] management of the enterprise and to conduct investment activities in Vietnam.

Under Article 3.2 of the Draft Circular, the term “FDI enterprises” is modified to specifically include (i) economic organisations with a foreign investor being member or shareholder, and in which the foreign investor is subject to the procedures for obtaining the investment registration certificate (*IRC*); (ii) economic organisations with a foreign investor contributing capital, purchasing shares, capital contribution of economic organisation either participating in business lines conditional for foreign investors, or for which, after such contribution or purchase, 51% or more of the charter capital of the economic organisation is held by foreign investors; and (iii) project enterprises established by foreign investors to implement public private partnership (*PPP*) project in accordance with the provisions of the investment law.

- **Clarifications with respect to entities having an obligation to open a Direct Investment Capital Account (DICA)**

Under Circular 19, the entities having an obligation to open a DICA include: (i) FDI enterprises and (ii) foreign investors participating in a business cooperation contract (*BCC*).

Under Article 5.1 of the Draft Circular, beside the two abovementioned types of entities, entities having an obligation to open a DICA shall also include foreign investors implementing PPP projects in case of project enterprises that are not established in accordance with the investment law.

In addition, since the term “FDI enterprises” under the Draft Circular is already broadened (as analysed above), it is understood that the type of entities having an obligation to open DICA will also be expanded under the Draft Circular.

- **Clarification on the transactions of transferring capital contribution, purchasing shares and capital contribution that need to be conducted through a DICA**

Article 11.1 of the Draft Circular clarifies this point by providing that only the transactions to pay the value of transferring capital contribution, purchasing shares and capital contribution of economic organisations provided at Article 3.2 (b, c) of the Draft Circular between a non-resident and a resident or *vice versa* shall be conducted through a DICA. However, when such transactions take place between two investors being non-residents, or between two investors being residents, they are not required to be conducted through a DICA.

- **Transitional requirements for opening a DICA**

Under the Draft Circular, within 90 days from the effective date of the Draft Circular, foreign investors, who (i) have directly invested in the forms of capital contribution or

share purchase but (ii) have not been issued with an IRC and (iii) have up to now opened and used an indirect investment capital account, shall need to open a DICA.

5 Draft Circular implementing the new Decree No. 63/2018/ND-CP on public private partnerships (PPP)

In June 2018, the Ministry of Planning and Investment (*MPI*) issued a draft circular (*the Draft Circular*) to implement Decree No. 63/2018/NĐ-CP (*Decree 63*) issued by the Government on 4 May 2018, providing guidance on the investment in the form of public private partnership (*PPP*). The Draft Circular shall replace the current Circulars, including Circular No. 02/2016/TT-BKHDT, dated 1 March 2016 (*Circular 02*) and Circular No. 06/2016/TT-BKHDT, dated 28 June 2016 (*Circular 06*).

The Draft Circular does not contain significant changes as compared to the current Circular 02 and Circular 06 with respect to the requirements and procedures for the preliminary selection of PPP projects, the preparation and appraisal of the pre-feasibility study, the feasibility study and in-principle approval for PPP projects, and the project contracts.

The MPI has specifically requested for comments and contributions from the public on the following issues:

- **Determination of the initial working capital for developing and operating the project**

Under Decree 63, the initial working capital is an important element having a great impact on the investors' capacity to conduct PPP investment projects. The Draft Circular intends to provide a much clearer definition of the concept of "initial working capital" as compared to the definition previously provided under Circular 02.

In the current draft, there are two proposals for the determination of the initial working capital of a PPP investment project, including:

- (i) **Proposal 1:** the "initial working capital" shall be defined as the expected minimum expenses in the first year for the operation, trading, and development of the project (inclusive of expenses for operation, pilot programme, management, trading, capital, etc.); and
- (ii) **Proposal 2:** the "initial working capital" shall be defined as the expected minimum expenses for the operation, trading, and development of the project (inclusive of expenses for operation, pilot programme, management, trading, capital, etc.) until the time when the project is able to generate its revenue.

- **Actual difficulties in the implementation of PPP regulations**

The MPI emphasized its intention to consider any of the difficulties in the implementation of the current PPP regulations (specifically with respect to the issues governed by the Draft Circular) as submitted by relevant parties, and requested that any such submission should be sent to the MPI for the completion and finalisation of the Draft Circular.

The deadline for submission of any comments or contributions to the Draft Circular was 30 July 2018. It is understood that the MPI is in the process of evaluating the comments received from the public. However, to date, the official circular has not yet been issued by the MPI.

We trust that you find this edition of our newsletter an interesting read and welcome any feedback or comments you may have on any of our topics. Our address for comments is legalenquiries@frasersvn.com.

Whilst we aim to provide a useful update on new legislation, Frasers' Newsletter does not constitute formal legal advice. Should you feel that you require further information on any of the issues in this edition of the Newsletter, please contact us at the address above or via your usual Frasers' legal adviser.

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