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# Legal news

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## HIGHLIGHTED

### 1. New regulations on the implementation of the Labour Code

*On 12 January 2015, the Government issued Decree No. 05/2015/ND-CP, detailing and providing guidelines for the implementation of a number of contents of the Labour Code (“Decree 05”).*

This Decree provides for rights and responsibilities of employers, employees, organizations representing employees, agencies, organizations, individuals related to the implementation of a number of provisions of the Labour Code with respect to labour contract, collective bargain, collective labour agreement, wage, labour discipline, material responsibilities and settlement of labour disputes.

The working period used for the calculation of severance allowance or job-loss allowance is the total period during which the employee actually worked for the employer minus the period during which the employee has participated in the unemployment insurance in accordance with the law and the working period for which the employee has received severance allowance from the employer.

In some special circumstances, severance allowance and job-loss allowance are particularly specified as follows: In case where an employee who has actually worked for an employer for 12 months or longer loses his/her job, while the working period used for the calculation of job-loss allowance is less than 18 months, the employer will have to pay the employee a job-loss allowance of at least equal to 02-month-wages; In case where the employer terminates the labour contract after the merger, consolidation, division and separation of the enterprise, the employer is responsible for paying the employee a severance allowance or a job-loss allowance for the period during which the employee has worked for the employer and the period during which the employee has worked for the previous employer prior to the merger, consolidation, division and separation of the enterprise or cooperative.

In addition, Decree 05 also stipulates the principles of wage payment as follows: An employee must be paid with a full wage in a direct and timely manner; In special cases in which an employer cannot timely pay an employee’s wage as agreed in the labour contract due to natural calamity, fire or other force majeure reasons though having applied every remedial measure, the employer must not postpone the payment for more than 01 month.

Employees enjoying wages based on time must be paid wages for overtime work for time worked in addition to normal working hours stipulated by the employer in accordance with Article 104 of the Labour Code; Employees enjoying wages based on products must be paid wages for overtime work for time worked in addition to normal working hours to produce more quantities

and volumes of products and work in addition to the quantities and volumes of products and work according to the labour norms agreed with the employer.

Wage for overtime work is calculated according to the wage unit or wage for the employee's current job as follows: On normal days, at least equal to 150%; In weekends, at least equal to 200%; On public holidays and paid leave days, at least equal to 300%, excluding the wage for public holidays and paid leave days of employees who receive daily wages under the Labour Code's provisions.

This Decree shall take effect on 1 March 2015.

## **2. New regulation on the business and supply of interest rate derivatives of commercial banks and foreign banks' branches**

*On 6 January 2015, the Governor of the State Bank of Vietnam issued Circular No. 01/2015/TT-NHNN, providing for the business and supply of interest rate derivatives of commercial banks and foreign bank branches, replacing Decision No. 62/2006/QĐ-NHNN promulgating the regulation on execution of interest-rate swap transactions ("Circular 01").*

Circular 01, consisting of 4 Chapters, 22 Articles, is applied to commercial banks ("banks") and foreign banks' branches carrying out the business and supply of interest rate derivatives; customers using interest rate derivatives, including credit institutions ("CI"), branches of foreign banks established and operating under the Law on Credit Institutions, and legal entities (other than CI and foreign banks' branches) established and operated under Vietnam's laws; organizations and individuals involved in business and supply activities of interest rate derivatives of banks and foreign banks' branches.

The new Circular provides for the business and supply activities of interest rate derivatives on the domestic market and business activities of interest rate derivatives on the international market.

Also, Circular 01 provides for the limitation of the business, supply and use of interest rate derivatives; interest rate, interest rate derivative contract and records of business and supply activities of interest rate derivatives; risk prevention provisions, accounting and reporting.

In addition, the new Circular also specifies the responsibilities of banks and foreign banks' branches carrying out the business and supply of interest rate derivatives and customers using interest rate derivatives.

This Circular shall take effect on 2 March 2015.

## **Other Sectors**

### **Securities**

- On 9 January 2015, the State Securities Commission issued Decision No. 14/QD-UBCK, promulgating the State Securities Commission's Regulation on providing guidelines for the use of Management Data Systems of Fund management companies and Investment funds.
- Circular No. 05/2015/TT-BTC dated 15 January 2015 of the Ministry of Finance, providing guidelines for securities registration, depository, clearing and payment activities.
- On 5 January 2015, the Ministry of Finance stipulated Circular No. 01/2015/TT-BTC, providing guidelines for the registration of unlisted public companies' securities.

### **Taxation**

- Circular No. 07/2015/TT-BTC dated 21 January 2015 of the Ministry of Finance, repealing Circular No. 06/2015/TT-BTC dated 20 January 2015 of the Ministry of Finance, on the amendment of preferential import tax rates applicable to a number of oils and gasoline items under heading 27.10 in the Preferential Import Tariff.
- On 20 January 2015, the Ministry of Finance issued Circular No.06/2015/TT-BTC, on the amendment of preferential import tax rates applicable to a number of oils and gasoline items under heading 27.10 in the Preferential Import Tariff.
- Circular No. 03/2015/TT-BTC dated 6 January 2015 of the Ministry of Finance, on the amendment of preferential import tax rates applicable to a number of oils and gasoline items under heading 27.10 in the Preferential Import Tariff.

### **Trade**

- On 21 January 2015, the Government stipulated Resolution No. 03/NQ-CP, approving the Convention between the Government of the Socialist Republic of Vietnam and the Government of the Republic of India on mutual co-operation and assistance in customs matters.
- Decree No. 08/2015/ND-CP dated 21 January 2015, providing for details and implementation of Customs Law with respect to customs procedures and customs inspection, supervision and control.
- On 16 January 2015, the Government issued Decree No. 07/2015/ND-CP, providing for the functions, duties and powers and organizational structure of Competition Council.

- Decree No. 01/2015/ND-CP dated 2 January 2015, detailing scope of customs operating locations, and co-operative responsibility in prevention of and fighting against smuggling and illegal cross-border transportation of goods.
- On 30 January 2015, the Ministry of Justice stipulated Decision No. 227/QD-BTP, promulgating Plan of monitoring the implementation of law on fighting against smuggling, commercial fraudulences and counterfeit goods.
- Decision No. 01/2015/QD-UBND dated 19 January 2015 of the People's Committee of Hanoi, on the decentralization in licensing karaoke business in the area of Hanoi.
- On 13 January 2015, the Prime Minister issued Decision No. 32/QD-TTg, approving the Programme on synchronous development and upgrade of group of sectors and manufacturing value chain of competitive advantage products: electronics and information technology, textile and garment, food processing, agricultural machines, tourism and relevant services.
- Decision No. 272/QD-BCT dated 12 January 2015 of the Ministry of Industry and Trade, approving Scheme on "Planning for commercial development of the Red River delta until 2020, with orientation to 2030".
- On 12 January 2015, the Ministry of Industry and Trade stipulated Circular No.01/2015/TT-BCT, providing procedures for registration of profession seals of traders who are commercial assessment service providers.

**Labour**

- Decision No. 20/QD-LDTBXH dated 7 January 2015 of the Ministry of Labour, War Invalids and Social Affairs, announcing newly-issued administrative procedures under management functions of the Ministry of Labour, War Invalids and Social Affairs.
- On 23 January 2015, the Ministry of Labour, War Invalids and Social Affairs issued Circular No. 03/2015/TT-BLDTBXH, providing for the adjustment levels of monthly salaries, wages or incomes for which social insurance premiums have been paid.
- Circular No. 02/2015/TT-BLDTBXH dated 12 January 2015 of the Ministry of Labour, War Invalids and Social Affairs, providing for levels of salary of domestic consultants to be taken as the basis for estimating consultancy service provision packages applying the form of time-based contract funded by the State budget.

**Education**

- On 31 January 2015, the Government stipulated Resolution No. 11/2015/ND-CP

providing physical education and sport activities in schools.

- Decision No. 01/2015/QĐ-UBND dated 6 January 2015 of the People's Committee of Ho Chi Minh, promulgating the Regulation on appointment, reappointment and resignation of; and application of labour discipline measures to leading officials and managers who are professor of universities specialized in Medicine or Pharmacy and hold Head or Deputy Head positions of hospitals' departments in the City.
- On 15 January 2015, the Ministry of Education and Training issued Circular No.01/2015/TT-BHDDT, promulgating the Charter of junior colleges.

## **Health**

- Resolution No. 10/2015/NĐ-CP dated 28 January 2015 of the Government, providing for technique of giving birth by fertilization in vitro technique and conditions of surrogacy with humanitarian purposes.
- On 30 January 2015, the Ministry of Health stipulated Decision No. 327/QĐ-BYT, announcing newly-issued administrative procedures under management functions of the Ministry of Health.
- Decision No. 507/QĐ-UBND dated 30 January 2015 of the People's Committee of Hanoi, promulgating the Regulation on expenses of Hanoi HIV/AIDS preventing and combating support Foundation.
- On 27 January 2015, the People's Committee of Ho Chi Minh City issued Decision No. 06/2015/QĐ-UBND, providing for attraction and support policies applicable to officers and employees working at medical facilities in the field of Preventative Medicine of Ho Chi Minh City.
- Decision No. 206/QĐ-BYT dated 22 January 2015 of the Ministry of Health, promulgating the List of medical plants enjoying development priority in the period from 2015 to 2020.
- On 16 January 2015, the Ministry of Health stipulated Decision No. 125/QĐ-BYT, providing for State inspection on safety of imported foods within the scope of management of the Ministry of Health.
- Decision No. 03/2015/QĐ-UBND dated 13 January of the People's Committee of Ho Chi Minh City, promulgating the Process of issuing health insurance cards to people under social protection in communities of Ho Chi Minh City.
- On 13 January 2015, the People's Committee of Hanoi issued Decision No.149/QĐ-UBND, on the amendment of the duties of receiving, managing, monitoring diagnose, reducing, detoxifying, health recovery and mental consulting for people who have non-stable domicile during the time of conducting procedures for applying the measure of putting into compulsory

addiction cessation facility method in Treatment – Education – Social Labour Centres No. I, II, III and V under Labour, War Invalids and Social Affairs Department.

- Circular No. 10/2015/TT-BTC dated 29 January 2015 of the Ministry of Finance, detailing the implementation of Decision No. 54/2014/QD-TTg dated 19 September 2014 of the Prime Minister, on the exemption of import tax applicable to components imported to produce and assemble medical equipment enjoying priority in research and manufacture.

## **Transport**

- On 16 January 2015, the Ministry of Agriculture and Rural Development stipulated Decision No. 113/QD-BNN-TCTL, promulgating the Regulations on management, distribution and issuance of dike-watch vehicle signals in order to undertake emergency duties of preventing and combating acts of God.
- Decision No. 30/QD-BGTVT dated 7 January 2015 of the Ministry of Transport, announcing a number of temporarily-added transportation routes for goods in transit through Vietnam territory.
- On 5 January 2015, the Ministry of Transport issued Decision No. 02/QD-BGTVT, announcing the List of expired legal documents on transport in 6 last months of 2014.

## **Construction**

- Decision No. 121/QD-BXD dated 30 January of the Ministry of Construction, announcing List of legal documents in the fields under the State management of the Ministry of Construction, which have been wholly or partly expired from 01 January 2014 to 15 January 2014.
- On 30 January 2015, the People's Committee of Hanoi stipulated Decision No.510/QD-UBND, approving the unit prices for payment of urban public service products in the area of Hanoi in 2015.
- Decision No. 134/QD-TTg dated 26 January 2015 of the Prime Minister, approving the Scheme on Restructure of Construction sector associated with transformation of development model towards improving quality, efficiency and competitiveness in the period from 2014 to 2020.

## **Land**

- On 23 January 2015, the Prime Minister issued Decision No. 130/QD-TTg, providing for relocation measures and roadmap and land fund use after relocation of industrial production facilities, hospitals, higher education facilities, vocational

education facilities, and other agencies and units in the area of Hanoi.

- Decision No. 89/QD-UBND dated 13 January 2015 of the People's Committee of Ho Chi Minh City, providing for the authorization to act as the Chairman of the City's Land Price Assessment and Appraisal Council.
- On 5 January 2015, the Ministry of Finance issued Circular No. 02/2015/TT-BTC, on the amendment of and supplement to Circular No. 48/2012/TT-BTC dated 16 March 2012 of the Minister of Finance, providing guidelines for determination of starting price and financial regime in the auction of land use rights auction in service of the allocations of land with the collection of land use levies or the leases of land.

### **Natural Resources - Environment**

- Decree No. 03/2015/ND-CP dated 6 January 2015, providing for the determination of environmental damages.
- On 28 January 2015, the People's Committee of Ho Chi Minh City stipulated Decision No. 05/2015/QD-UBND, promulgating the unit prices of environmental monitoring and environmental analysis activities in the area of Ho Chi Minh City.
- Decision No. 120/QD-TTg dated 22 January 2015 of the Prime Minister, approving the Scheme on protection and development of coastal forests adapting to the climate change for the period from 2015 to 2020.
- On 20 January 2015, the Prime Minister issued Decision No. 04/2015/QD-TTg, providing for the management of safety in oil and gas activities.
- Decision No. 04/2015/QD-UBND dated 15 January 2015 of the People's Committee of Ho Chi Minh City, promulgating the Regulations on the management of mineral activities and the protection of unexploited minerals in the area of Ho Chi Minh City.
- On 6 January 2015, the Prime Minister stipulated Decision No. 07/QD-TTg, approving the Planning for management of solid wastes in Dong Nai river valley until 2030.
- Circular No. 01/2015/TT-BTNMT dated 9 January 2015 of the Ministry of Natural Resources and Environment, promulgating econo-technical norms for monitoring and forecasting the water resources.

### **Information - Communications**

- On 28 January 2015, the Prime Minister issued Decision No. 152/QD-TTg, approving the estimate for implementing the plan of information technology application in operations of Social Insurance branch in the period from 2012 to



2015.

- Decision No. 125/QD-BTTTT dated 28 January 2015 of the Ministry of Information and Communications, promulgating the List of wholly or partly-expired legal documents in the fields within the scope of State administration of the Ministry of Information and Communication in 2014.
- On 27 January 2015, the People's Committee of Hanoi stipulated Decision No.411/QD-UBND, promulgating the Regulation on assumption of information safety in information technology application activities of State agencies of Hanoi.
- Decision No. 01/2015/QD-TTg dated 7 January 2015 of the Prime Minister, amending and supplementing Decision No. 22/2009/QD-TTg dated 16 February 2009 of the Prime Minister, approving the plan of transmission, radio and television broadcasting until 2020.

### **Administration - Judiciary**

- On 15 January 2015, the Judges' Council of the Supreme People's Court issued Resolution No. 02/2015/NQ-HDTP, amending and supplementing a number of articles of Resolution No. 01/2012/NQ-HDTP dated 13 June 2012 of the Judges' Council of the Supreme People's Court, providing guidelines for the application of a number of provisions of Law on court costs and court fees.
- Resolution No. 01/2015/NQ-HDTP dated 15 January 2015 of the Judges' Council of the Supreme People's Court, amending and supplementing a number of articles of Resolution No. 02/2011/NQ-HDTP dated 29 July 2011 of the Judges' Council of the Supreme People's Court, providing guidelines for the implementation of a number of provisions of Administrative Proceedings Law.
- On 30 January 2015, the Ministry of Justice stipulated Decision No. 229/QD-BTP, announcing the list of wholly or partly-expired legal documents in the fields within the scope of State management of the Ministry of Justice in 2014.
- Decision No. 43/QD-BNV dated 23 January 2015 of the Ministry of Home Affairs, announcing the list of wholly or partly-expired legal documents in the fields within the scope of State management of the Ministry of Home Affairs in 2014.
- On 22 January 2015, the Ministry of Justice issued Decision No. 114/QD-BTP, promulgating the Criteria for evaluation of the implementation of codification of the legal system.
- Decision No. 111/QD-UBND dated 12 January 2015 of the People's Committee of Hanoi, promulgating the Regulation on co-ordination in State management on judicial expertise in the area of Hanoi.
- On 8 January 2015, the Prime Minister stipulated Decision No. 19/QD-TTG,

approving “Experimental scheme on issuance of criminal records via postal service and online registration for issuance of criminal records”.

- Decision No. 08/QD-TTG dated 6 January 2015 of the Prime Minister, promulgating the Plan of simplification of the focused administrative procedures in 2015.
- On 16 January 2015, the Ministry of Justice issued Circular No. 02/2015/TT-BTP, providing for a number of document forms of lawyers and practice of law.

### **Agriculture – Forestry**

- Decision No. 606/QD-BCT dated 21 January 2015 of the Ministry of Industry and Trade, promulgating the Roadmap for setting up raw material zones or implementing joint production and consumption of rice by rice export traders in the period from 2015 to 2020.
- On 13 January 2015, the Ministry of Agriculture and Rural Development stipulated Decision No. 86/QD-BNN-TT, announcing newly-issued administrative procedures and repealed administrative procedures under the settlement authority of the Ministry of Agriculture and Rural Development.
- Decision No. 02/2015/QD-UBND dated 9 January 2015 of the People’s Committee of Ho Chi Minh City, promulgating the Price list of crops in the area of Ho Chi Minh City.
- On 27 January 2015, the Ministry of Agriculture and Rural Development issued Circular No. 02/2015/TT-BNNPTNT, providing guidelines for the establishment of projects and overall plans of arrangement and innovation of agriculture or forestry companies in accordance with Decree No. 118/2014/ND-CP dated 17 December 2014, on arranging, innovating and developing, and improving the operational efficiency of agriculture or forestry companies.
- Circular No. 03/2015/TT-BNNPTNT dated 29 January 2015 of the Ministry of Agriculture and Rural Development, promulgating the List of plant protection drugs permitted for use and banned from use in Vietnam and announcing HS codes of plant protection drugs permitted for use and banned from use in Vietnam.
- On 22 January 2015, the Ministry of Agriculture and Rural Development stipulated Circular No. 01/2015/TT-BNNPTNT, promulgating the additional List of plant varieties permitted for producing and trading in Vietnam.

### **Miscellaneous**

- Decree No. 02/2015/ND-CP dated 2 January 2015, amending and supplementing a number of Decree No. 162/2006/ND-CP dated 28 December 2006, on the

regimes on salary and costumes of cadres, public officials and public servants of State Audit and the regime on priority enjoyable by State auditors.

- On 29 January 2015, the Ministry of Finance issued Circular No. 09/2015/TT-BTC, providing guidelines on the financial transactions of enterprises in accordance with Article 6 of Decree No. 222/2013/ND-CP dated 31 December 2013, on payments in cash.
- Circular No. 01/2015/TT-BLDTBXH dated 6 January 2015, of the Ministry of Labour, War Invalids, and Social Affairs, providing guidelines on the management of cases of handicapped persons.

## Contact Details

### Hanoi Office

Mr. Pham Nghiem Xuan Bac

*Managing Partner*

Mr. Luu Tien Ngoc

*Director, Business Development*

Mr. Pham Minh Hai

*Partner, Consulting Practice*

Ms. Le Quynh Anh

*Executive Partner, Legal Practice*

Ms. Le Thi Kim Dzung

*Partner, Intellectual Property Practice*

Unit 308-310, 3<sup>rd</sup> Floor, Hanoi Towers  
49 Hai Ba Trung, Hanoi, Vietnam

Tel: 84-4-3934 0629/ 3826 4797 Fax: 84-4-3934 0631

E-mail: [vision@vision-associates.com](mailto:vision@vision-associates.com)

### Ho Chi Minh City Office

Mr. Luu Tien Ngoc

*Director, Business Development*

Mrs. Nguyen Thi Van

*Head of Ho Chi Minh City Office*

Unit 905, 9<sup>th</sup> Floor, CitiLight Tower  
45 Vo Thi Sau, District 1, Ho Chi Minh City, Vietnam.

Tel: 84-8-3823 6495 Fax: 84-8-3823 6496

E-mail: [hcmvision@vision-associates.com](mailto:hcmvision@vision-associates.com)

**[www.vision-associates.com](http://www.vision-associates.com)**