**LEGAL UPDATES**

**VOL 42, MAY 2022**

**Dear Valued Clients and Partners,**

ADK Vietnam Lawyers would like to introduce to you the Legal Updates, Vol 42 of May 2022 with new legal provisions with notable contents as follows:

1. **Draft Circular on requirements for taking foreign loans applied to companies not guaranteed by the Government**

The State Bank of Vietnam is developing the Draft Circular on requirements for taking foreign loans applied to companies not guaranteed by the Government(hereinafter referred to as the “Draft”) and collecting comments from the subjects of application. The Draft focus on developing the general requirements for borrowers and the additional requirements for borrowers named credit institutions and other than credit institutions.

The purpose of the Draft is to develop strict loan requirements, anticipate the risk of each borrower, ensure the foreign loan limits for self-pay loan, which are annually approved by the Prime Minister, but still support the needs of using foreign loans effectively, create added value for the economy, contribute to achieve the development goals in each specific period. Simultaneously, the Draft ensures transparency of regulations on loan requirements so that the enterprises and credit institutions can lawfully take foreign loans for self-pay loan principle and ensure compliance with the provisions of law; ensuring transparency is also the basis for agencies to check and inspect the compliance with regulations. The draft has the following highlights:

Regarding the ceiling level of foreign loan expense, the State Bank has decided the ceiling level according to whether the loans use the reference interest rate or not in order to determine the interest rate:

1. For loans using reference interest rates, the Draft decides a ceiling of +8%/year
2. For loans that do not use a reference interest rate, the Draft decides a ceiling of SOFR Term Rate + 8%/year. The SOFR Term Rate specified in the Draft is the 6-month SOFR Term interest rate published by CME on the CME's official website, determined at the nearest time before the date of signing the loan agreement and amendments and supplements related to foreign loan costs.
3. For foreign loans in Vietnam Dong: Interest rate of Vietnamese government bonds + 8%/year. The interest rate of Vietnamese government bonds specified in this Draft is the interest rate of 10-year government bonds in Vietnam dong at the nearest time before the date of signing the foreign loan agreement and amendments and supplements related to foreign loan costs.

Regarding the execution of foreign currency derivative transactions, this is a new regulation in the Draft aimed at forming the habit of hedging foreign currency risks for borrowers, limiting negative impacts on the State Bank's management of exchange rates and foreign currency markets. The principles on foreign currency derivatives transactions are specified in Article 10.1 of the Draft, it should be noted that if the borrower will not have to execute foreign currency derivative transactions if it is one of the following subjects:

1. Credit institutions and branches of foreign bank are allowed to trade and provide foreign exchange services according to the provisions of current law.
2. The borrower is expected to have enough foreign currency revenue to repay the loan.

Moreover, the Draft provides the requirements on secured transactions for foreign loans, additional requirements for the borrowers being credit institutions, branches of foreign bank and not credit institutions, branches of foreign bank.

1. **The requirements for enterprises to be supported for loan interest rates of 2%/year**

On May 20, 2022, the Government issued Decree 31/2022/ND-CP on interest rate support from the State budget for loans of enterprises, cooperatives and business households, in which, support interest rate 2%/year.

Accordingly, enterprises, cooperatives and business households that want to receive 2%/year interest rate support must meet the following requirements:

1. Must be the regulated entities to interest rate support as prescribed in Article 2 of Decree 31/2022/ND-CP (collectively referred to as Client);
2. Clients request for interest rate support, meet loan requirements in accordance with current laws on loans of credit institutions, branches of foreign bank;
3. The loan with interest rate support is a loan in Vietnam Dong, signed a loan agreement and disbursed during the period from January 1, 2022 to December 31, 2023;
4. Clients use capital for proper purposes as prescribed in Clause 2, Article 2 of Decree 31/2022/ND-CP and have not received interest rate support from the state budget according to other policies.

The loan will not continue to receive interest support in the following cases:

1. Loans with overdue principal balance and/or late payment interest balance is not eligible for interest support for interest payment obligation at the interest payment term that the time of repayment is within the period of the overdue principal balance and/or the late payment interest balance. The loan can only continue to receive interest support for the next interest payment terms after the clients have fully paid the overdue principal balance and/or the late payment interest balance.
2. Loan extension will not be supported with interest for the debt extension period.

Decree 31/2022/ND-CP takes effect from May 20, 2022.

1. **The regulations on assistance for small and medium enterprises startups.**

Circular 06/2022/TT-BKHDT dated May 10, 2022 (hereinafter referred to as “Circular”) guiding a number of articles of Decree 80/2021/ND-CP dated August 26, 2021 on elaboration of some articles of the law on provision of assistance for small and medium enterprises.

Accordingly, the content of assistance includes: Consulting; human resource development; assistance for small and medium enterprises (“SMEs”)startups; assistance for SMEs participating in industry clusters and value chains; management of SME assistance activities.

The regulated entities are enterprises that are established, organized and run in accordance with regulations of Law on Enterprises, satisfy criteria for identification of SMEs specified in Chapter II Decree 80/2021/ND-CP.

Regarding assistance for SMEs startups, the Circular clarifies that SMEs startups are received contents and levels of assistance specified in Article 22 Decree 80/2021/ND-CP, the Circular has the following highlights:

1. Assistance in advanced training courses for SMEs ’s employees participating in domestic and foreign according to Clause 5 Article 22 Decree 80/2021/ND-CP, including: tuition fees, materials, meals, accommodation, travel (including air tickets) as specified in Clause 1 Article 15 of the Circular.
2. Assistance in maintenance of accounts on domestic and international e-commerce platforms according to the provisions of Point c Clause 6 Article 22 Decree 80/2021/ND-CP specified in Clause 2 Article 15 of the Circular.
3. Assistance in participation in international startup competitions according to Point dd Clause 6 Article 22 Decree 80/2021/ND-CP specified in Clause 3 Article 15 of the Circular.

This Circular takes effect from June 25, 2022.

We hope you found this brief legal update informative.

Kind regards./.

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