LEGAL NEWSLETTER

November 2023

# Dear Valued Clients and Partners,

ADK Vietnam Lawyers would like to introduce to you the November 2023 Legal Newsletter with the following main contents:

# Legal Spotlight

* 1. **New Legal Regulations on Lending Activities of Credit Institutions**

On June 28, 2023, the State Bank of Vietnam (hereinafter referred to as "**SBV**") issued Circular No. 06/2023/TT-NHNN amending and supplementing certain provisions of Circular No. 39/2016/TT-NHNN dated December 30, 2016, by the Governor of the SBV, regulating lending activities of credit institutions and foreign bank branches with customers (hereinafter referred to as "**Circular 06/2023/TT-NHNN**").

 Accordingly, Circular No. 06/2023/TT-NHNN has addressed the limitations of Circular 39, removing lending restrictions, and enhancing access to capital for business investors. Circular No. 06/2023/TT-NHNN has highlighted the following key issues:

1. **Amendments and additions to cases ineligible for loan:**

Under Circular No. 06/2023/TT-NHNN, the SBV has supplemented and amended the capital needs ineligible for loans, totaling 10 cases specified in this new circular. However, considering the challenging situation faced by many businesses today and in an effort to support the recovering economy, the SBV has taken into account feedback from enterprises and promptly suspended the applicability of 3 out of the 10 cases. Therefore, the cases ineligible for loan will be regulated as follows:

* Loans used for doing business or investing in sectors or activities prohibited by the Investment Law;
* Loans used for paying expenses or meeting financial demands of business or investment in sectors or activities prohibited by the Investment Law and other transactions or activities prohibited by laws;
* Loans used for purchasing or using goods or services in the list of prohibited sectors and activities under the Investment Law;
* Loans used for buying gold bullion;
* Loans used for repaying loan debts owed to lending credit institutions, except those used for paying loan interests arising during the construction process which are accounted for in the total construction cost estimate approved by a competent authority in accordance with regulations of law;
* Loans used for repaying foreign loan debts (excluding foreign loans granted in the form of deferred payment for purchased goods) or repaying loan debts owed to other credit institutions, except for a loan used for making early repayment of an existing loan;
* Loans used for sending money to deposit accounts.
1. **Ability to repay the debt in a currency other than the currency provided for the loan:**

Circular 06/2023/TT-NHNN has added to this provision in cases where credit institutions and customers have agreed to repay debts in a currency other than the one specified. However, this agreement must still comply with the regulations of the relevant legal framework

1. **Additional regulations on principal and interest repayment for overdue loans::**

In accordance, credit institutions will collect overdue debts in the following order: Firstly, they will collect the overdue principal, followed by the overdue interest on the unpaid principal, then the principal due, and finally, the interest on the unpaid principal due.

**Circular 06/2023/TT-NHNN took effect from September 1, 2023.**

1. **Some New Points Regarding the Use of Foreign Labor**

On September 18, 2023, the Government issued Decree No. 70/2023/ND-CP amending and supplementing Decree No. 152/2020/ND-CP regarding the use of foreign labor in Vietnam (hereinafter referred to as "**Decree 70/2023/ND-CP**").

Some new points introduced by Decree 70/2023/ND-CP regarding foreign labor include:

1. **Relaxing the requirements for foreign experts, CEOs, and technical workers:**

Decree 70/2023/ND-CP has made amendments related to the issuance of work permits for foreign workers in Vietnam. Accordingly, the educational and experience requirements for various job positions have been adjusted. For instance, for foreign experts, a minimum bachelor's degree or equivalent and at least 3 years of relevant work experience for the intended position in Vietnam are now required.

Regarding the position of CEO, the individual must fall into specific cases such as heading a branch, representative office, or business location of the enterprise, or managing a significant area within the organization with direct authority from the head of the organization.

For technical positions, the worker needs to be trained for at least 1 year and have a minimum of 3 years of practical experience relevant to the job position in Vietnam

1. **Shorten the deadline for reporting the demand for using foreign labor**

According to the new regulations, before recruiting foreign labor, the employer (excluding contractors) must follow procedures to determine the demand for each position where there are no qualified Vietnamese workers, then report and explain to the Ministry of Labour, Invalids and Social Affairs or the Department of Labour, Invalids and Social Affairs where the foreign labor is expected to work.

The deadline to comply with is at least 15 days before the expected start date of employing foreign labor, instead of the previous regulation of 30 days.

During the implementation, if there are changes in position, title, working method, quantity, or workplace, the employer needs to notify the Ministry of Labour, Invalids and Social Affairs or the Department of Labour, Invalids and Social Affairs at least 15 days before the expected start date of employing foreign labor, instead of 30 days as per the old regulation.

1. **Change in authority to issue documents approving the use of foreign labor**

This could also be considered the latest change in Decree 70/2023/ND-CP and is of particular interest to businesses.

According to Article 1.2 of Decree 70/2023/ND-CP, the Ministry of Labour, Invalids and Social Affairs, or the Department of Labour, Invalids and Social Affairs, will be the competent authorities to issue approval or disapproval documents regarding the use of foreign labor for each specific position as reported by the employer.

In this regard, the deadline for issuing this document is within ten (10) working days from the date of receiving the explanatory report or the report explaining the changes in the demand for the use of foreign labor.

Previously, the authority to approve or disapprove the use of foreign labor belonged to either (i) the Ministry of Labour, Invalids and Social Affairs or (ii) the People's Committee of the province. However, since the effective date of Decree 70/2023/ND-CP, the provincial People's Committee has been replaced by the Department of Labour, Invalids and Social Affairs to carry out the issuance of approval or disapproval documents for the use of foreign labor.

1. **Addition of cases where foreign workers are not required to apply for a work permit**

Through the adjustment of regulations in Article 7 of Decree 152/2020/ND-CP, Decree 70/2023/ND-CP has added several cases of foreign workers coming to Vietnam for work without the need for a work permit. These cases include:

* Foreigners sent to Vietnam by competent foreign authorities to work as lecturers or as managerial executives in educational institutions established in Vietnam by foreign diplomatic missions or intergovernmental organizations;
* Foreigners confirmed by the Ministry of Education and Training to work in Vietnam as managerial executives, directors, principals, or vice-principals in educational institutions established in Vietnam by foreign diplomatic missions or intergovernmental organizations.
1. **Abolishing certain regulations on the management of industrial zones and economic zones.**

Decree No. 70/2023/ND-CP also abolishes certain provisions in Decree No. 35/2022/ND-CP on the management of industrial zones and economic zones:

Accordingly, Decree No. 70/2023/ND-CP removes the authority of the Management Board of Industrial Zones and Economic Zones regarding the issuance, reissuance, extension, and revocation of work permits and confirmation of foreign workers not requiring work permits for working in industrial zones and economic zones.

Therefore, at the local level, the Department of Labour, Invalids and Social Affairs will unify the management of foreign workers within the locality based on the proposals of the Ministry of Labour, Invalids and Social Affairs.

**Decree No. 70/2023/ND-CP took effect from September 18, 2023.**

# Some prominent legal instruments take effect from October 2023

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Name of legal instrument** | **Date of Issue** | **Date of Effective** |
| **DECREE** |
|  | Decree No. 60/2023/ND-CP regulates the inspection, certification of safety and technical quality, and environmental protection for imported cars and imported components in accordance with international conventions of which Vietnam is a member | 16/08/2023 | 01/10/2023  |
| **DECISION** |
|  | Decision No. 1137/QD-BGTVT announces the issuance of four new administrative procedures in the field of vehicle registration within the scope of the management functions of the Ministry of Transport | 08/09/2023 | 01/10/2023 |
| **CIRCULAR** |
|  | Circular No. 16/2023/TT-BYT regarding the registration for circulation of contract-manufactured drugs and technology transfer drugs in Vietnam | 15/08/2023 | 01/10/2023 |
|  | Circular No. 54/2023/TT-BTC provides guidance on the positions of specialized financial officials within agencies and organizations under the financial sector | 15/08/2023  | 01/10/2023 |
|  | Circular No. 16/2023/TT-BCT providing guidelines on contracts for the purchase and sale of electricity for household purposes | 31/08/2023 | 16/10/2023 |

We hope this Legal Newsletter has a lot of useful information.

Best Regards.

|  |  |  |
| --- | --- | --- |
|  | This document has been only prepared for general information purposes and makes no representations or warranties, express or implied, as to the accuracy, timeliness, or completeness of such information. This legal update is not intended to be relied upon as accounting, tax, legal, or other professional advice.If you have or suspect that you may have a particular problem, you should contact us or your lawyer for specific advice on the matter.**ADK VIET NAM LAWYERS** **Ho Chi Minh Office**: Ground Fl. HBT Tower, 456-458 Hai Ba Trung Str., Tan Dinh Ward, District 1, HCM City, VN **Ha Noi Office**:  OF-04, Level 2, Block R4, Royal City, 72A Nguyen Trai Str., Thuong Dinh Ward, Thanh Xuan District, Hanoi City, VN     Hotline Telephone: (+84) 28 66 79 79 66 or (+84) 939 107 387Email: info@adk-lawyers.comWebsite: [www.adk-lawyers.com](http://www.adk-lawyers.com)  |  |