

LEGAL NEWS UPDATE – FEBRUARY 2016

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PART I: REGULATION HIGHLIGHTS

1. GUIDELINES ON DERIVATIVES

On 19 January 2016, the Ministry of Finance promulgated the Circular No. 11/2016/TT-BTC on guiding a number of articles of the Decree No. 42/2015/ND-CP of the Government dated 05 May 2015 on derivatives and derivatives market.

Accordingly, there are two derivatives products that are stock index futures contracts and government bond futures contracts. Additionally, the Circular also provides for derivative transactions, and clearing and margin transactions.

This Circular shall commence and take effect from 01 July 2016.

2. 05 CONDITIONS ON ISSUANCE OF LICENSE FOR ESTABLISHMENT OF REPRESENTATIVE OFFICE IN VIETNAM

On 25 January 2016, the Government promulgated the Decree No. 07/2016/ND-CP on the detailed regulation of the Commercial Law on representative offices, branches of foreign traders in Vietnam.

Accordingly, the foreign traders shall be issued the licenses for establishment of representative offices in case of satisfaction of 05 following conditions such as (1) the foreign traders are incorporated and registered according to the laws of countries or territories being parties of the treaties of which Vietnam is a signatory or

is recognized by the aforesaid countries or territories;

(2) the foreign traders have come into operation for at least 01 year from the date of establishment or registration; (3) if an establishment certificate or other equivalent documents of the foreign trader provides on the term of operation, such term must remain at least 01 year as from the date on which the dossier is submitted; (04) The operational scope of the representative office must comply with Vietnam's commitments in the treaties of which Vietnam is a signatory; (05) In case where the operation scope of the representative office doesn't comply with the Vietnam's commitments or the foreign traders are not subject to any countries, territories involving in the treaties of which Vietnam is a signatory, the establishment of representative office shall be approved by the Minister, Head of equivalent ministerial agency.

The License for establishment of representative office of the foreign traders shall be valid for (05) years but not exceeding the remaining term of the business registration certificate or other equivalent documents in case of such documents having valid term.

This Decree is effective from 10 March 2016.

3. REGULATIONS ON REAL ESTATE BROKER LICENSE

On 30 December 2015, the Ministry of Construction promulgated the Circular No.11/2015/TT-BXD on issuance of real estate broker license; guidelines on training, improving the knowledge of real estate brokerage practice; operation, management of the real estate trading floor; establishment and organization of real estate trading floor activities.

Accordingly, the examinee for real estate broker license is required to take the examination on fundamental and professional knowledge.

Additionally, the Circular provides conditions for establishment of real estate trading floor as well.

This Circular is effective from 16 February 2016.

4. THE PRINCIPLES FOR SETTLEMENT OF PROPERTY OF HUSBAND AND WIFE

On 06 January 2016, the Supreme People's Court; the Supreme People's Procuracy; the Ministry of Justice promulgated the Joint Circular No.01/2016/TTLT-TANDTC-VKSNDTC-BTP on guiding a number of articles of the Law on marriage and family.

Accordingly, the husband and wife have a right to agree on all matters (including the

settlement of their property) during the divorce process.

Additionally, the Joint Circular also prescribes the settlement of mutual property of husband and wife upon divorce and application of the statutory matrimonial property regime for settling the property of husband and wife upon divorce. Furthermore, the Court shall consider protecting lawful rights and interests of the wife, minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support them.

This Joint Circular shall be effective as of 01 March 2016.

5. GUIDELINES ON FOREIGN EMPLOYEE IN VIETNAM

On 03 February 2016, the Government promulgated the Decree No.11/2016/ND-CP on the detailed regulation of the implementation of some articles of Labour Code on the foreign employee in Vietnam.

Accordingly, the Decree prescribes some cases in which the foreign employee is not required to apply for work permit. The foreign employee, who is not subject to any aforesaid cases, shall be previously verified at least (07) working days by the Department of Labour, Invalids and Social Affairs of the location where the foreign employee is expected to work, the verified term is no longer than 02 years.

In respect of other cases, the foreign employee not having the work permit shall be expelled from Vietnam within 15 working days as of being detected.

This Decree is effective from 01 April 2016 and substitutes for the Decree No.102/2013/ND-CP dated 05 September 2013.

6. IDENTIFYING THE LATE PAYMENT INTEREST OF SOCIAL INSURANCE

On 03 February 2016, The Ministry of Finance issued Circular No. 20/2016/TT-BTC on guiding the implementation of financial management mechanism on social insurance ("SI"), health insurance ("HI"), unemployment insurance ("UI"), and management costs of SI, HI, UI.

Accordingly, in case of late making payment of SI, HI, UI, the incurred interest amount arising in a month shall be calculated by the late payment amount accumulated to the last day of the previous two months of the month of identifying late payment interest multiplied with the late payment interest rate. In which, the late payment interest rate (%/month) is the average interest rate on a monthly basic released by the Vietnam Social Insurance at the beginning of the year.

This Circular is effective from 20 March 2016, is applied from budget year of 2016.

7. THE STATUTE ON EXAMINATION FOR THE RECRUITMENT OF JUDGES

On 03 February 2016, the Supreme People's Court promulgated the Circular No.02/2016/TT-TANDTC on enactment of the statute for recruitment of primary-level judges, intermediate-level judges and high-level judges.

Accordingly, applicants must satisfy any conditions, standards provided for the position they applied to; the applicant shall also satisfy for any standards is provided for being appointed as Judge according to the laws and ensure their assignment period is longer than (01) the Judge's tenure calculated as from an appointment date (the first tenure is 05 years). Additionally, the applicant must satisfy other conditions prescribed for every specified examination by the Examination Council.

The Circular prescribed on the time-limit for registration dossier appraisal, appraisal report and submitting to the Chief Justice of the Supreme People's Court. Besides, the statute for recruitment of the primary-level judges, intermediate-level judges and high-level judges is also stipulated in this Circular.

This Circular is effective from 17 March 2016.

8. THE OPERATIONAL STATUTE OF EXAMINATION COUNCIL RECRUITING JUDGES

On 03 February 2016, the Supreme People's Court promulgated the Circular No.03/2016/TT-TANDTC on enactment of the operational statute of Examination Council recruiting the primary-level judges, intermediate-level judges and high-level judges.

The Circular provides on the duties and authorities of the Examination Council recruiting the primary-level judges, intermediate-level judges and high-level judges.

The Examination Council shall include: the Chief Justice of the Supreme People's Court acts as President; (01) Deputy Chief Justice of the Supreme People's Court and the representative of the Ministry of National Defense, Ministry of Home Affairs act as commissioners. The specified list of Examination Council's members shall be stipulated by the Chief Justice of the Supreme People's Court.

This Circular is effective from 17 March 2016.

9. THE EXEMPTION FROM PERSONAL INCOME TAX FOR FOREIGN EXPERTS

On 22 February 2016, the Prime Minister promulgated the Decision No. 06/2016/QĐ-TTg on the exemption from Personal Income Tax for foreign experts implementing programs, projects of foreign non-government aid in Vietnam.

Accordingly, policies of the exemption from Personal Income Tax shall be applied to the foreign experts who are selected to directly implement activities of the programs, projects on foreign non-government aid in Vietnam, on the basis of agreement between foreign non-government organizations and Vietnam's governing body as prescribed in the programs and projects that has been approved according to laws on management and use of foreign non-governmental aid.

Conditions for foreign experts being received benefits from policy are also stipulated in this Decision.

The tax-free income of foreign experts according to the above regulation is direct income from the implementation of the activities of the programs, projects on foreign non-government aid.

This Decision is effective from 01 May 2016.

PART II: LIST OF NEW LEGAL DOCUMENTS

No.	NAME OF DOCUMENT	EFFECTIVE DATE
THE MINISTRY OF FINANCE		
1	<i>Official Letter No. 990/BTC-TCHQ</i> dated 20 January 2016 of the Ministry of Finance on handling tax debt	20/01/2016
THE GENERAL DEPARTMENT OF TAXATION		
1	<i>Official Letter No. 388/TCT-HTQT</i> dated 26 January 2016 of the General Department of Taxation on determination of Corporate Income Tax for Copyright Income	26/01/2016
2	<i>Official Letter No. 289/TCT-CS</i> dated 21 January 2016 of the General Department of Taxation on Tax policy	26/01/2016
3	<i>Official Letter No. 287/TCT-CS</i> dated 21 January 2016 of the General Department of Taxation on Tax policy	21/01/2016
4	<i>Official Letter No. 286/TCT-CS</i> dated 21 January 2016 of the General Department of Taxation on Tax policy	21/01/2016
5	<i>Official Letter No. 279/TCT-CS</i> dated 21 January 2016 of the General Department of Taxation on Value Added Tax	21/01/2016
6	<i>Official Letter No. 277/TCT-CS</i> dated 20 January 2016 of the General Department of Taxation on Excise Tax policy	20/01/2016
7	<i>Official Letter No. 235/TCT-KK</i> dated 19 January 2016 of the General Department of Taxation on Value Added Tax refund	19/01/2016
8	<i>Official Letter No. 232/TCT-CS</i> dated 19 January 2016 of the General Department of Taxation on Corporate Income Tax policy	19/01/2016
9	<i>Official Letter No. 231/TCT-CS</i> dated 19 January 2016 of the General Department of Taxation on Corporate Income Tax policy	19/01/2016
10	<i>Official Letter No. 223/TCT-TNCN</i> dated 19 January 2016 of the General Department of Taxation on Personal Income Tax policy	19/01/2016

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