

LEGAL NEWS UPDATE – DECEMBER 2016

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1. AMENDMENT AND SUPPLEMENT TO THE LIST OF THE CONDITIONAL BUSINESS LINES

One 22 November 2016, The National Assembly approved the Law No. 03/2016/QH14 on amendment and supplement to article 6 and annex 4 on the conditional business lines of the Law on Investment.

Accordingly, this Law contains 243 business lines, including a number of new business lines such as trading camouflage equipment, software used for recording, video recording and positioning; trading container freight station business; manufacturing, assembling and importing automobiles; liquidation and safeguarding of assets of enterprises and cooperatives in the pending time of bankruptcy; manufacturing, repairing bottles of liquid petroleum gas (LPG bottle); energy auditing; trading services of management and operation of cremation operation... In which, the regulation on conditional lines of business including: trading camouflage equipment, software used for recording, video recording and positioning; manufacturing, assembling and importing automobiles shall take effect from 01 July 2017.

Besides, the Law also add firecracker to a list of prohibited business lines.

This Law shall take effect from 01 January 2017 and the Clause 1 of Article 19 of the Law on Bidding No. 43/2013/QH13 and the Article 151 of the Law on Construction No. 50/201/QH13 are abolished.

2. THE REGULATIONS ON INDUSTRIAL PROPERTY FEES AND CHARGES

On 14 November 2016, the Ministry of Finance promulgated the Circular No. 263/2016/TT-BTC stipulating the rates, collection, remittance, management and use of industrial property fees and charges.

Accordingly, the fee for filing applications for registration of protection of industrial property rights: Fees for filing application (including applications for separation or transfer of ownership) is VND150,000; Fees for extension of time limit for response to the notification of the charge and fee collector (for each time of permission for extension) is VND120,000. The circular defines the fee for issuance of Protection certificates is VND120,000 and fee for issuance of Certificates of registration of industrial property right transfer contracts is VND120,000; Fee for registering decisions on granting certificates of industrial property representative practice, certificates of industrial property assessor is VND200,000... National Office of Intellectual Property providing protection of industrial property rights shall be in charge of collecting charges and fees of industrial property.

This Circular shall take effect from 01 January 2017 and replace the Circular No. 22/2009/TT-BTC dated 04 February 2009.

3. GUIDELINES ON INSURANCE THE WORK PERMITS TO FOREIGN WORKERS

On 25 October 2016, the Ministry of Labor, War Invalids and Social Affairs promulgated the Circular No. 40/2016/TT-BLDTBXH guiding for implementation of a number of articles of the Decree No. 11/2016/ND-CP dated 03 February 2016 of the Government detailing a number of articles of the Labor Code in respect of foreign workers in Vietnam.

Accordingly, at least 30 days ahead of the expected date of recruitment, the employer (other than contractors) shall submit a written explanation about demand for utilization of foreign workers using official form to the Ministry of Labor, War Invalids and Social Affairs or President of the People's Committee of provinces. In case of changes in demands for utilization of foreign workers, the employer shall submit a written explanation using official form to the approving authority at least 30 days ahead of the expected date of recruitment.

The approving authority shall inform the employer of whether or not utilization of foreign workers is approved within 15 days from the date of receipt of the explanation or explanation about changes in demand for utilization of foreign workers.

In case of adjustments and supplementation to the number of foreign

workers, the contractor shall submit a document to the President of the People's Committee of the province where the contractor executes their contract.

In case a foreign workers already granted a work permit which have yet to expire is designated and dispatched to take up the same job position in a province other than where they are now working for at least 10 consecutive days, they shall be exempted from application for a new work permit. However, that foreign worker's employer shall submit a certified true copy of the existing work permit and inform the Department of Labor, War Invalids and Social Affairs of the province where the foreign worker's new workplace is located.

This Circular is effective on 12 December 2016 and replaces the Circular No. 03/2014/TT-BLDTBXH dated 20 January 2014.

4. INCREASING THE BASE SALARY TO VND1,300,000 PER MONTH

On 11 November 2016, the Nation Assembly approved the Resolution No. 27/2016/QH14 on State budget estimates of 2017.

Accordingly, adjusting the base salary from VND1,210,000 per month to VND1,300,000 per month, adjusting the retirement pension, social insurance allowance and benefit to people meritorious by increasing the base salary which shall take effect from 01 July 2017.

The central government's budget shall guarantee the funding for adjustment of retirement pension, social insurance allowance (covered by the state budget) and benefit to people meritorious; support partially the extra pay for a number of poor localities whose budgets cannot be balanced according to regulations of the Government.

Besides, the Nation Assembly required the Government conduct and implementation of laws on tax and promptly provide guidance on the conversion of a number of types of charge to service prices according to law; strengthen the investigation and inspection of taxation, prevent the loss of revenue, smuggling, trade frauds, production and trade of counterfeits, price transfer and tax evasion; promptly discover and handle the unconformable declaration, fraud or evasion of taxes; minimize the promulgation of new policies which lead to the decrease of the State budget revenue...

5. SUPPLEMENTING A NUMBER OF ARTICLES ON PENALTIES FOR ADMINISTRATIVE VIOLATIONS AGAINST REGULATIONS ON INVOICES

On 31 October 2016, the Ministry of Finance promulgated the Circular No. 176/2016/TT-BTC on amendments and supplements to a number of articles of Circular No. 176/2016/TT-BTC dated 17 January 2014 the Ministry of Finance guiding on penalties for administrative violations against regulations on invoices.

Accordingly, adding the regulation of a fine of from VND2,000,000 to VND4,000,000 shall be imposed on the ordering of invoices when the tax agency has notified in writing that the organization, enterprise is not eligible to order the invoice printing, unless the tax agency did not express its opinions in writing after receiving the application for use of the printed invoices by organization, enterprise according to the instructions of the Ministry of Finance.

When submitting notification of modification of contents of the notice of invoice issuance to supervisory tax authority or submitting the list of unused invoices to the tax agency of the place where the enterprise moves to another place causing the change of supervisory tax authority after 10 days of starting to use of the invoices at the new address or Use of the invoices have been issued notices to the tax authorities but not to the expiry date (05 days from the date of notification issued) which shall be imposed a fine of from VND500,000 to VND1,500,000.

In case of making issuance notice with insufficient contents according to regulations or failing to post up the notice of invoice issuance according to regulations shall be imposed a fine of from VND2,000,000 to VND4,000,000. In case of having a mitigating circumstance which shall be imposed a minimum fine of VND2,000,000.

This Circular is effective on 15 December 2016.

6. THE PILOT ISSUANCE OF ELECTRONIC VISAS FOR FOREIGNERS

On 11 November 2016, The Nation Assembly approved the Resolution No. 30/2016/QH14 on the pilot issuance of electronic visas for foreigners entering Vietnam.

Accordingly, electronic visas shall be granted to citizens of countries that comply with the requirements as follows: having the diplomatic relation with Vietnam; being suitable for Vietnam's socio-economic development and external relation policies in each period; do not prejudice to national defense and security and social order and safety of Vietnam.

The foreigners who have passports and are not in any case stipulated in Article 21 of the law on entry, exit, transit and residence of foreigners in Vietnam.

The electronic visa is issued via an electronic transaction system and shall be valid only once for no longer than 30 days. The Government shall approve the list of countries whose citizens are granted electronic visas; list of checkpoints for the entry and exit of foreigners having electronic visas.

The pilot issuance of electronic visas will be carried out for 02 years as from 01 February 2017.

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