

Technical Update

January 2022

1. New regulations on the business of electronic gaming with prizes (“EG”) for foreigners

On 27 December 2021, the Government approved Decree 121/2021/ND-CP on the business of EG for foreigners (“**Decree 121**”). Decree 121 will be effective from 12 February 2022, replacing Decree 86/2013/ND-CP dated 29 July 2013 (amended, supplemented by Decree 175/2016/ND-CP and Decree 151/2018/ND-CP) (“**Decree 86**”).

Since the business of EG is a conditional business line and not encouraged by the government, Decree 121 was issued to tighten the investment and business conditions, specifically as follows:

- Amends the requirements for business locations of EG (“**Business Location**”), by requiring, enterprises engaged in the EG business to organize their business in a number of connected rooms, but in a separate area in a tourism accommodation establishment and to be licensed by competent state authorities to implement the business of EG.
- Increases the minimum time to archive footages from electronic equipment and surveillance cameras in the Business Location to 180 days from the date of recording instead of 15 or 30 days (depending on the position) as prescribed in Decree 86.
- Specifies the ways to calculate the quantity of EG machines put into operation at the Business Location (maximum 01 EG machine per 05 accommodation rooms) based on the total number of accommodation rooms put into business.
- Raises the requirements on financial capability for enterprises conducting business of EG by requiring such enterprise to have a minimum charter capital of VND500 billion (instead of VND200 billion as prescribed in Decree 86) and be able to demonstrate profitability in the fiscal year immediately preceding the year in which the application for the Certificate of satisfaction of business conditions is submitted.

2. New regulations on penalties for administrative offences in planning and investment sector

Decree 122/2021/ND-CP on penalties for administrative violation in planning and investment sector has been approved by the Government on 28 December 2021, and came into effect on 01 January 2022 (“**Decree 122**”) and replacing Decree 50/2016/ND-CP dated 01 June 2016 of the Government (“**Decree 50**”).

Some highlights in Decree 122 are as follows:

- Raises the level of penalties for many administrative violations in the planning and investment sector compared to that of Decree 50, for instance: the monetary fine for commencing the implementation of a project before an investment registration certificate issuance is now upto VND200 million (increased from VND80 million) and for the act of breaching regulations on report proposing investment policy, or pre-feasibility or feasibility study report is a maximum of VND50 million (increased from VND15 million).

- Supplements some new administrative violation, notable as below:
 - over-declaration of the enterprise’s charter capital. This violation shall carry a monetary fine from VND20 million to VND100 million depending on the amount of charter capital that is over declared, and the enterprise will be required to amend the incorporate certificate to record the actual contributed amount;
 - failure to provide an escrow deposit or a bank guarantee on the escrow obligation required to secure the implementation of an investment project in which the State allocates or leases land or permits to change the land use purpose. This violation shall carry a monetary fine from VND50 million to VND70 million.

3. New Circular of the Ministry of Labour, War Invalids and Social Affairs on working hours and resting hours applicable to employees doing seasonal production work and processing works under orders

On 15 December 2021, the Ministry of Labour, War Invalids and Social Affairs issued the Circular No. 18/2021/TT-BLDTBXH on working hours and resting hours applicable to employees doing seasonal production work and processing works under orders (“**Circular 18**”), coming into effect from 01 February 2022 and replacing Circular No. 54/2015/TT-BLDTBXH dated 16 December 2015 (“**Circular 54**”).

Some key points in Circular 18 are as follows:

- Circular 18 is only applicable to employees who have signed contracts of 12 months or more to do seasonal production work in the fields of agriculture, forestry, fishery, salt industry, and process of goods under orders without limiting the fields of processing works.
- Standard daily working hours and overtime are relaxed as follows:
 - The maximum standard working hours and overtime within a day shall not exceed 12 hours.
 - Weekly or monthly standard can be selected by the employers: either (i) the maximum standard working hours and overtime on weekly basis shall not exceed 72 hours or (ii) the maximum overtime on monthly basis shall not exceed 40 hours.
 - The maximum annual overtime shall not exceed 300 hours.
- The employer, based on the annual production and business plan, can actively decide whether to apply the regime of working hours and resting hours in accordance with the provisions of the Labour Code OR as prescribed in Circular 18. If Circular 18 is applied, it is necessary for employers to consult the representative organization of employees at the work place; notify the employees of the working hours plan at least 30 days prior to the implementation date and periodically report to the local Department of Labour, War Invalids and Social Affairs on such plan in the occupational safety and hygiene report.

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