

Technical Update

March 2022

1. New regulations on supervision and assessment for foreign investment activities in Vietnam

On February 14, 2022, the Ministry of Planning and Investment promulgated Circular No. 02/2022/TT-BKHDT providing guidance on the investment supervision and assessment for foreign investment activities in Vietnam ("**Circular 02**"), taking effect from April 1, 2022. Circular 02 will replace Circular 09/2016/TT-BKHDT dated June 30, 2016.

Circular 02 retained three inspection measures applicable for foreign investment activities in Vietnam (i.e. periodic, extraordinary and specialized inspection), however supplemented a new basis for extraordinary inspection, which is *"showing signs of violations in investment activities of foreign-invested economic organizations and foreign-invested projects"*.

Furthermore, the disbursement progress of registered investment capital is now included as an inspection item applicable for economic organizations and foreign-invested projects.

Another new feature of Circular 02 is the reduction of manner of inspection by the competent authority from 6 methods to 3 methods. The competent authority may carry out inspection utilising a single or a combination of the methods, which can entail inspection via the National Investment Information System; reports and organization of inspection team/working team.

2. New regulations on administrative sanctions applicable to violations in the field of labor and social insurance.

Decree No. 12/2022/ND-CP of the Government prescribing the administrative penalties for violations in the field of labor, social insurance, Vietnamese workers abroad under contract ("**Decree 12**"), taking effect from January 17, 2022 replaces Decree 28/2020/ND-CP. Particularly, the decree supplements the following:

The notable points of Circular 01 consist of:

- *"act of sexual harassment at work which does not involve criminal liability"* is added and is subject to up to VND 60 million fine.
- Additional sanctions for violations of regulations on female workers and ensuring gender equality:
 - A monetary fine of up to VND 40 million if the employer fails to organize a breast milk pumping and storing room at workplace having 1,000 or more female employees.
 - A monetary fine of up to VND 20 million if the employer fails to ensure the implementation of gender equality and measures to promote gender equality such as recruitment, job arrangement, training, working hours, break time, salary, etc.
- Violations of regulations on communication in the workplace are specified, including failure to develop, issue or amend, supplement democratic regulations, with the applicable monetary fines increased to VND 20 million, compared to the previous highest level of VND 2 million.

3. Official Letter of the General Department of Customs providing guidance on conditions for customs inspection and supervision applicable to export processing enterprises

On 2 March 2022, the General Department of Customs issued Official Letter No. 697/TCHQ-GSQL guiding the implementation of Clause 10, Article 1 of Decree No. 18/2021/ND-CP ("**Official Letter 697**") on conditions for customs inspection and supervision for export processing enterprises ("**EPEs**").

Particularly, Official Letter 697 prescribes the following notable points:

- There is no requirement on the minimum acreage of EPEs.
- Guidelines on specifications of hard fences of EPEs in export processing zones, export processing subdivisions in industrial and economic zones. Specifically, in the case of export processing zones and export processing subdivisions include ordinary enterprises (non-EPEs), each EPE must satisfy the conditions of having its own hard fence separating that EPE from the outside area and ensure that the transportation of goods only goes through the separate gate of the EPE. This condition does not apply if the export processing zone or export processing subdivision includes no ordinary enterprises. In case the EPE leases a location from another EPE, the conditions on the hard fence will apply to the shared area, on the condition that the goods of the EPEs are separated.
- Supplementing management regulations applicable to dependent branches of EPEs established in a customs management area different from where its head office is located. Specifically, the EPE and the branch of the EPE must both be shown on the Investment Registration Certificate (IRC). However, this guidance of the General Department of Customs may not be consistent with the regulations and practice of issuing the IRC of not recording the information of the dependent branch/unit. Consequently, enterprises may need to consult their local licensing authority for more specific instructions.

4. Resolution of the Government approving the promulgation of the Draft Decree on Personal Data Protection.

On 7 March 2022, the Government promulgated Resolution No. 27/NQ-CP, taking effect on the same day ("**Resolution 27**"), which approved the content of the draft Decree on Personal Data Protection and assigned the Ministry of Public Security to seek for the opinions of the National Assembly Standing Committee on the draft before its official promulgation.

In addition, in Resolution 27, the Government approved the proposal of the Ministry of Public Security on cases where personal data could be processed without the consent of the data subjects, specifically:

- To respond to an emergency that threatens life, health or safety of the data subject or another individual (the data processing party, the data management and processing party, the third party shall be responsible to provide evidence in this case);
- The disclosure of personal data in accordance with the law;
- For the purpose of national defense and security requirements;
- Implemented by the competent authority to investigate and handle violations of law; and
- Personal data is processed by a competent authority for the purpose of serving the operation of the state agency in accordance with the law.

According to the Prime Minister's Decision No. 06/QĐ-TTg dated January 6, 2022, the Personal Data Protection Decree is expected to be issued in May 2022. Furthermore, the Ministry of Public Security is responsible for researching and providing consultation on the development of the draft Law on Personal Data Protection in 2024.

Contact us

Hanoi

46th Floor, Keangnam Landmark 72,
E6 Pham Hung, Me Tri, Nam Tu Liem

T: +84 (24) 3946 1600

Ho Chi Minh City

10th Floor, Sun Wah Tower,
115 Nguyen Hue, Ben Nghe, District 1

T: +84 (28) 3821 9266

Da Nang

D3, 5th Floor, Indochina Riverside Towers,
74 Bach Dang, Hai Chau I, Hai Chau

T: +84 (236) 351 9051

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2022 KPMG Limited, KPMG Tax and Advisory Limited, KPMG Law Limited, KPMG Services Company Limited, all Vietnamese one member limited liability companies and member firms of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.



Scan to visit our website: kpmg.com.vn

Email: kpmghcmc@kpmg.com.vn