Technical Update

March 2023

1. Decree amending the regulations on private placement and trading of privately placed corporate bonds in the domestic market and offering of corporate bonds to the international market

The Government has promulgated the Decree No.08/2023/ND-CP amending, supplementing, and ceasing the effect of a number of articles in the decrees regulating the private offering and trading of corporate bonds ("**Decree 08**"). This Decree came into effect on 5 March 2023 with some new points expected to open the market. The three new significant points of Decree 08 are highlighted below:

- In the event of difficulty in repayment of bond principals and interests, bond issuers may negotiate with investors to pay with their lawful assets. This is based on compliance of civil law and relevant laws, with the agreement of the investors, and the bond issuers must ensure the legality of the assets as well as the disclosure of the relevant information.
- In the event of facing difficulties, bond issuers may negotiate with investors to extend the bonds' term. The maximum extension period is two years upon the agreement with the investors. If the investors reject such extension, the enterprise shall be required to fulfill its obligations based on the provisions of the plan announced previously.
- Suspending the effect of the regulation defining the status of professional securities investors as individuals; regulating the credit ratings for issuers, and regulating the issuance time for a tranche of bonds until 31 December 2023.

2. Resolution on continuing implementation of solutions for ensuring drugs and medical equipment

The Government has recently promulgated Resolution No. 30/NQ-CP on the continuing implementation of solutions for ensuring drugs and medical equipment ("**Resolution 30**"). This resolution came into effect on 4 March 2023 and has introduced a number of new points, essentially eliminating the problems of current medical facilities. Notable points of Resolution 30 include:

- Permitting to continue payment of the medical examination and treatment expenses covered by health insurance for technical services performed by machines provided by the contractor, after winning the bid for materials and chemicals according to the contractor selection results approved by the competent authority in accordance with the Bidding Law. Specifically, contracts signed before 5 November 2022 shall continue to be performed according to the contract's term. The contracts signed from 5 November 2022 shall continue to be performed until there are relevant legal documents issued (no longer valid until 5 November 2023), including contracts signed in the form of direct procurement.
- Permitting medical facilities to carry out a pilot adoption of guidelines on developing bid package price in 2023. Specifically, when developing bid package price, if different manufacturers manufacture the same type of medical equipment, the medical facilities shall review and decide to assign their Science council to determine features and configurations depending on specific needs, from which to obtain quotations and determine the bid package price. Therefore, Resolution 30 aims to ensure the selection of products (by medical facilities) that meet professional requirements in the first place, then develop quotation to reduce the price of the bid package, whilst ensuring the exclusion of products that do not meet the quality standards.

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- Allowing medical facilities to use medical equipment, which is donated, gifted, sponsored or contributed by domestic and foreign individuals, organizations (including medical equipment of joint venture and cooperation where the contract has expired) and has not been established under public ownership for medical examination and treatment. Technical services performed in relation to medical equipment shall be paid for by the health insurance fund. Regulating the socialization in medical examination and treatment activities, which allows private investment and investment in the form of public-private partnership to establish of medical facilities; ability to get loans, rent medical equipment, etc.

3. Decree defining the functions, missions, authority and organizational structure of the Viet Nam Competition Commission

On 10 February 2023, the Government issued the Decree No. 03/2023/ND-CP defining the functions, missions, authority and organizational structure of the Viet Nam Competition Commission ("**Decree 03**"). Decree 03 shall come into effect on 1 April 2023 and replaces Decree No. 07/2015/ND-CP dated 16 January 2015 of the Government regulating the same matters.

Although the Vietnam Competition Commission was mentioned to be set up in the Law on Competition 2018, the Vietnam Competition Commission had not been officially established nor come into operation. According to Decree 03, Vietnam Competition Commission is an authority under the Ministry of Industry and Trade being in good standing and having its own seal, which shall perform the following tasks:

i. carrying out competition lawsuit,

ii. controlling economic concentration,

iii. deciding on exemptions for prohibited cartels,

iv. settling complaints about competition case-handling decisions in accordance with law, and

v. advising and assisting the Minister of Industry and Trade in performing the state management of competition, protection of consumer rights and management of multi-level marketing activities.

- Regarding organizational structure, the Vietnam Competition Commission has an assisting apparatus including: (i) Investigation Body for competition cases; (ii) Secretariat of Councils for handling of competition cases; and (iii) Competition Supervision Board. These agencies will be empowered to handle all competition-related matters within the jurisdiction of the Vietnam Competition Commission.
- The Vietnam Competition Commission shall have a maximum of 15 members, including the Chairperson appointed by the Minister of the Ministry of Industry and Trade. Assisting the Chairperson is one or more Vice Chairpersons and other members.

Currently, the key positions of the Vietnam Competition Commission will be appointed soon by the Minister of the Ministry of Industry and Trade. When it comes into operation, the Vietnam Competition Commission will actively perform its assigned tasks, especially investigating economic concentration transactions with the support of other authorities, which is unprecedented due to the absence of a regulatory body over the past few years.

4. Draft of amended Law on Social Insurance

Ministry of Labour - Invalids and Social Affairs has coordinated with ministries and sectors and is currently collecting opinions from agencies, ministries, sectors, localities, and citizens to finalize the draft amended Law on Social Insurance ("**Draft LOSI**"), replacing the Law on Social Insurance No. 58/2014/QH13 ("**LOSI 2014**") before submitting to the Government and the National Assembly.

The Draft LOSI is designed to include 9 chapters (the number of chapters remains unchanged) and 133 articles (8 more articles compared to the LOSI 2014). The main amendments focus on five major groups of policies approved by the Government and the National Assembly, including: (i) Building a flexible, multi-layered social insurance system; (ii) Expanding the coverage of social insurance participants; (iii) Expanding the coverage of beneficiaries of social insurance (pension, monthly social insurance and social retirement allowance); (iv) Supplementing regulations on management of collection and payment of social insurance premiums; and (v) Diversifying the portfolio and investment structure of the social insurance fund in accordance with the principles of safety, sustainability and efficiency.

With the goal of fundamentally and comprehensively amending the LOSI 2014, the Draft LOSI has a number of main amendments which is highlighted below:

4.1 Expanding the coverage of compulsory social insurance ("SI") participants

The Draft LOSI adds 3 groups of Vietnamese workers to the list of subjects eligible to participate in compulsory social insurance, including: (i) Owners of household business; (ii) Managers of the enterprise, the executive manager of the cooperative without salary; and (iii) Part-time employees.

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4.2 *Regarding the salary used as the basis for the payment of compulsory social insurance*

The Draft LOSI proposes 2 plans for the regulation of the salary used as the basis for payment of compulsory social insurance for employees paying SI premiums in accordance with the salary regime as decided by the employer:

Plan 1. The salary used as the basis for payment of SI premiums is the monthly salary, including salary and allowances, *other additional amounts determined by the specific amount stated in the labor contract in accordance with the labour legislations*.

Plan 2. The salary used as the basis for payment of SI premiums is the monthly salary, including the salary and allowances, *other additional amounts in accordance with the labour legislations.*

In addition, the Draft LOSI also amends the regulations/regimes related to the statutory pay rate in the direction of using a specific amount (equal to the current absolute rate) and will be detailed by the Government.

4.3 *Electronic SI book*

Electronic SI book will replace the paper SI book and the SI card to track the payment, benefits, and serve as the basis for settling the compulsory SI and voluntary SI regimes by means of electronic transactions.

4.4 *Supplementing sanctions for handling violations of the law on SI*

The Draft LOSI specifically stipulates that the act of evading compulsory SI payment and supplement handling measures when avoiding payment of compulsory SI, including: (i) payment of an amount equal to 0.03%/day of the evaded payment due; (ii) cease of the official invoice usage in case the employer avoids payment for 06 months or more and (iii) temporary block on departure from Vietnam in case the employer avoids payment for 12 months or more.

The sanction specified in point (iii) does not clearly state whether it will apply only to the employer being an individual or to the legal representative of the employer being a legal entity. According to the Draft LOSI, this will be promulgated by the Government in detail.

4.5 *Supplementing the social pension benefit regime*

The Draft LOSI supplements a chapter on social pension benefit regime. Accordingly, individuals who are at least 80 years old and who do not have other monthly pensions or SI allowance will be entitled to social pension benefits. Particularly, employees who are not eligible for pension and are not of age to receive social pension benefits are entitled to monthly allowances for the period before reaching the age of social pension benefits. The monthly allowance depends on the time of payment, the salary paid for SI previously, but at least equal to the social pension allowance. During the benefit period, the employee is still entitled to health insurance.

4.6 *Reducing the number of years of SI contributions and increase the age entitled to pension regime*

The minimum number of years of SI contributions entitled to the pension regime is reduced from 20 years to 15 years. Accordingly, employees are eligible for pension benefits when they have paid full 15 years of SI and reached the age entitled to pension regime. However, the retirement age under the Draft LOSI shall increase under roadmap to be consistent with the Labor Code of 2019. Specifically, the retirement age for men is full 61 years and 3 months and for women is full 56 years and 8 months; each year thereafter, the pension age increases by 3 months for men until they reach 62 years old in 2028 and an additional 4 months for women until they reach 60 years old in 2035.

4.7 *Proposing 02 plans for lump-sum SI allowance for employees stop paying SI premiums from 12 months*

Plan 1. Retaining the current regulations, accordingly, employees are entitled to lump-sum SI allowance after 12 months not being eligible for compulsory SI, not participating in voluntary SI and having a SI contribution period of fewer than 20 years.

Plan 2. The maximum entitlement of lump-sum SI allowance must not exceed 50% of the total time of contribution to the pension or death fund. The remaining time to pay SI is reserved for the employee to enjoy the SI regime later when reaching retirement age.

4.8 *Supplementing plan on calculation method of lump-sum benefit at retirement*

The Draft LOSI supplemented Plan 2 stipulating that when an employee is eligible for a pension but continues to pay SI, each year of SI contribution after the retirement age is higher than the number of years corresponding to the pension enjoyment rate of 75%, the lump-sum benefit is calculated as 2 times of the average salary as the basis for paying SI.

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4.9 *Other SI regimes*

The Draft LOSI adds maternity and occupational accident insurance to voluntary SI. In addition, the Draft LOSI also amends a number of contents on sickness, maternity and death regimes in the direction of consistency with the legal system and to be more consistent with practical application.

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