

# Technical Update

April 2024

## 1. Decree detailing several articles of the Law on Medical examination and treatment

On 30 December 2023, the Government issued Decree No. 96/2023/ND-CP detailing a number of articles of the Law on Medical Examination and Treatment No. 15/2023/QH15 ("**LOMET 2023**"), which was recently passed by the National Assembly XV on 09 January 2023 and effective from 01 January 2024 ("**Decree 96**"). Decree 96 also takes effect from 01 January 2024 with the following notable contents:

- (a) Specifying the transitional provisions applicable to Medical Examination and Treatment Operation Licenses ("**Operation Licenses**") issued under the Law on Medical Examination and Treatment No. 40/2009/QH12 and its guiding documents ("**LOMET 2009**"), namely:
  - (i) Medical examination and treatment establishments operating under Operating Licenses issued in accordance with the LOMET 2009 are allowed to continue operating with their current form of organization pursuant to their existing Operating Licenses;
  - (ii) Where these medical examination and treatment establishments wish to adjust and align with the new forms of organization under the LOMET 2023, the procedures for amending Operating Licenses as prescribed in Decree 96 shall be applied.
- (b) Specifying the authority level to issue, re-issue, and amend Operation Licenses within the period from 01 January 2024 to 31 December 2026, in which:
  - (i) The Minister of Health shall have the authority to issue, re-issue, and amend Operation Licenses of medical examination and treatment establishments which are under direct management of the Ministry of Health and of private hospitals;
  - (ii) The provincial Department of Health (i.e. the authority specialized in health under the provincial People's Committee) shall have the authority to issue, re-issue, and amend Operation Licenses of medical examination and treatment establishments which are located in the management area of such provincial Department of Health, except for those which are (a) under the direct management of the Ministry of Health, the Ministry of National Defense or the Ministry of Public Security, and (b) private hospitals.
- (c) Specifying the regulations on self-classification of the technical expertise level of hospitals which have obtained an Operation License before 01 January 2024, whereby:
  - (i) Such hospitals shall implement the procedure requesting for technical expertise level classification ("**Classification Procedure**") before 01 January 2025; and
  - (ii) Where the period from the issuance date of the Operation Licenses to the date of implementing the Classification Procedure is less than 02 years, such hospitals may submit only the Application for implementing the Classification Procedure (i.e., instead of a full application dossier under Decree 96) to obtain a temporary classification at a basic level with a 02-year term.

Thereafter, within the last 60 days of the 02-year temporary classification term, such hospitals shall submit a full application dossier for an official Classification Procedure.

## 2. Decree regulating high-tech zones

On 01 February 2024, the Government issued Decree No. 10/2024/ND-CP regulating high-tech zones ("**Decree 10**"), which shall replace Decree No. 99/2003/ND-CP dated 28 August 2003 of the Government regulating the same matter ("**Decree 99**"). Decree 10 took effect on 25 March 2024 with the following notable contents:

- (a) Decree 10 sets out separately the principles applicable for investment projects performing high-tech activities in
  - (i) high-tech zones and
  - (ii) agricultural zones applying high technologies by the Law on High Technologies 2008.
- (b) Specifying the types of high-tech activities in:

- (i) High-tech zones, which include: high-tech research and development (R&D); high technology application; high-tech incubation, high-tech business incubation; training high-tech human resources; fairs, exhibitions, high-tech demonstrations, demonstrations of high-tech products from research results, high-tech applications, and high-tech transfer; manufacturing and trading high-tech products; providing high-tech services; and
  - (ii) Agricultural zones applying high technologies, which include applied research, testing, and demonstration of high-tech agricultural production models; linking research activities, high-tech Applications, and production of high-tech applied products in the agricultural sector; training high-tech human resources in the agricultural sector; and fairs, exhibitions, and demonstrations of high-tech agricultural products.
- (c) Specifying the principles applicable to high-tech investment projects in high-tech zones/ agricultural zones applying high technologies:
- (i) A high-tech investment project must satisfy the following principles:
    - (1) The objectives and operational contents of the project must be consistent with the tasks of high-tech zones/ agricultural zones applying high technologies under the Law on High Technologies 2008;
    - (2) The project must apply environmentally friendly and energy-saving measures. As for projects in agricultural zones applying high technologies, there is a commitment to reduce greenhouse gas emissions and a roadmap to achieve net emissions of "zero";
    - (3) The project must be consistent with the planning capacity to provide the technical and social infrastructure of the high-tech zones/ agricultural zones applying high technologies;
    - (4) The investors must have the sound financial capability and/or capability to mobilize lawful resources for project operation and possess technical and managerial capability to construct and implement the projects in a timely manner; and
    - (5) For projects in high-tech zones, projects with a higher investment capital ratio (project investment cost per unit of land area) than the average shall be prioritized.
  - (ii) In addition to the above principles, different criteria applicable specifically to each type of high-tech activity may also apply (e.g., an R&D project must-have technologies and products under the "List of high technologies prioritized for development investment" or "List of hi-tech products encouraged for development" issued by the Prime Minister).
- (d) Specifying the policy applicable to export processing enterprises in hi-tech zones, whereby export processing enterprises in hi-tech zones, if satisfying the conditions on customs inspection, shall be eligible for both (i) the investment incentives applicable to investment projects in high-tech zones, and (ii) other incentives applicable to an export processing enterprise operating in the industrial zone and economic zone.

### 3. Circular amending and supplementing several articles on capital adequacy ratios for the operation of banks and foreign bank branches

On 29 December 2023, the State Bank of Vietnam issued Circular No. 22/2023/TT-NHNN amending and supplementing several articles of Circular No. 41/2016/TT-NHNN dated 30 December 2016 of the State Bank of Vietnam ("**Circular 41**") regarding capital adequacy ratios for the operation of banks and foreign bank branches ("**Circular 22**"). Circular 22 will take effect on 01 July 2024 with the following notable contents:

- (a) Defining "house mortgage loan" more specifically than that under Circular 41. In particular, a "house mortgage loan" refers to a loan secured by real estate for an individual to purchase houses and includes two types:
  - (i) A loan secured by real estate for an individual to purchase houses ("**Ordinary House Loan**") which satisfies the following conditions:
    - (1) Debt repayment resource must not be generated from the rental of such house;
    - (2) Such house has been completed and ready for hand-over;
    - (3) The banks/ foreign bank branches must have all lawful rights to enforce the mortgaged house as collateral for discharging the repayment obligations owing by the borrower to such banks/ foreign bank branches; and
    - (4) Independent valuation of the house must be sought.

The condition stated in point (2) above has been updated compared to its predecessor under Circular 41, which was "*having been completed pursuant to the house purchase agreement*". However, the above amendment is understood solely for banks and foreign bank branches' loan classification, which is the basis for applying credit risk weight to the calculation of the consolidated capital adequacy ratio. Thus, such an amendment should not be interpreted as an obstacle to the provision of a loan for purchasing an off-plan house or the provision of a loan secured by an off-plan house under normal banking activities.
  - (ii) A loan for purchasing social houses and houses under the Government's support programs ("**Social House Loan**") and must satisfy the conditions as mentioned in point (1), (3), and (4) above.
- (b) Supplementing the credit risk weights applied to a Social House Loan, which are overall lower than those applied to an Ordinary House Loan. This is a welcomed supplementation that is expected to facilitate the credit line for social housing and increase the accessibility to finance for low-income households.

#### 4. Circular amending and supplementing document forms related to investment activities in Vietnam

On 31 December 2023, the Ministry of Planning and Investment issued Circular No. 25/2023/TT-BKHDT amending and supplementing several articles of Circular No. 03/2021/TT-BKHDT dated 09 April 2021 ("**Circular 03**") regulating document forms related to investment activities in Vietnam, offshore investment from Vietnam to overseas and investment promotion ("**Circular 25**"). Circular 25 takes effect from 15 February 2024. Circular 25 has some notable regulations as follows:

- (a) Introducing several minor changes to the investment forms applicable to investors and the competent authority under Circular 03. Though these changes are insignificant, any ongoing application received and processed by the competent authority before the effective date of this Circular may be requested to be submitted under the new templates, which may lead to a delay in anticipated timelines.
- (b) In terms of the Application to register for capital contribution/ purchase of shares/ contributed capital by foreign investors (commonly known as M&A Approval application) (i.e., Form A.I.7), Circular 25 made a noticeable update in terms of the transaction price whereby Circular 25 now requires the actual transaction price ("*giá trị giao dịch thực tế*" in Vietnamese) to be specified, while only proposed transaction price ("*giá trị giao dịch dự kiến*" in Vietnamese) was requested under Circular 03. Considering the lengthy of getting the M&A Approval in practice, theoretically, this change stems from uncertainty and causes unnecessary burdens as the transactional parties are now required to fix the transaction price before submitting the Application.
- (c) In terms of the Escrow Agreement to guarantee the implementation of the investment project (i.e., Form A.II.11) between the competent authority and the investor (or the organization implementing the project), Circular 25 separates the cases of an escrow provided by the investor and an escrow provided by a guaranteeing bank. Further, the revised Escrow Agreement supplements several articles on (i) Measures to be implemented in cases where a non-refundable escrow amount is contributed to the State's budget, (ii) Rights, liabilities, and responsibilities of the parties, (iii) Dispute resolution, and (iv) General provisions. These additions allow the investor to negotiate specific critical terms of the Escrow Agreement with the competent State authority, given the substantiality of the escrow amount, instead of utilizing a pro-forma agreement (whose terms are fundamental and limited) as before.

#### 5. Draft circular amending and supplementing several articles on offshore issued bonus share scheme

On 19 December 2023, the State Bank of Vietnam published the first Draft of a circular amending and supplementing several articles of Circular No. 10/2016/TT-NHNN dated 29 June 2016 guiding the several contents of Decree No. 135/2015/NĐ-CP dated 31 December 2015 on offshore indirect investment ("**Draft**"). Accordingly, the Draft provides several amendments to the provisions relating to offshore issued bonus share scheme ("**Bonus Scheme**"), with the following notable amendments:

- (a) Supplementing a principle regarding the participation of Vietnamese employees in foreign issuer's Bonus Scheme. Specifically, Vietnamese employees may only take part in a Bonus Scheme that encourages and promotes long-term service and outstanding performance, but not for the purpose (**in essence**) of a foreign offshore investment to raise the issuer's capital.
- (b) Revising the definition of the bonus form of Option, being "Option with the preferential condition [and] not generating outbound cash flow". The other form of direct bonus is kept intact.
- (c) Abolishing the provisions on registration for implementation of the Bonus Scheme with the State Bank of Vietnam.
- (d) Revising the reporting mechanism applicable to the organization implementing the Bonus Scheme in Vietnam from quarterly to monthly.
- (e) Supplementing the transitional provision applicable to the Bonus Scheme, which the State Bank of Vietnam has approved. In particular, the Draft provides that the registered Bonus Scheme under the form of Option shall only be implemented if satisfying the condition of tagging along with preferential condition [and] not generating outbound cashflow.

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