



LEGAL UPDATE

February 2023

Our monthly Legal Update is to provide the summary of key regulatory news that potentially impact your investment and business activities in Vietnam.

This February Legal Update covers the following:

- *Government cuts land rents by 30% for Covid-hit businesses.*
- *Criteria for determining components exempt from import tax for the production of IT products.*
- *New guidance on one-way money transfers from Viet Nam.*
- *Management of environmental risks in credit granting activities of credit institutions, and foreign bank branches.*

1. Government cuts land rents by 30% for Covid-hit businesses

The Government has decided to cut land and water surface rents by 30 per cent for those affected by the Covid-19 pandemic.

Under Resolution No. 07/NQ-CP dated 30 January 2023, beneficiaries include organizations, units, enterprises, households, and individuals who directly lease land from the State under State agency decisions or contracts and make rent payments annually.

The reduction is not applied to the rent in previous years that hasn't been paid or rent arrears.

Dossiers and procedures for the reduction are stipulated in Decision No. 01/2023/QD-TTg dated 31 January 2023.

2. Criteria for determining components exempt from import tax for the production of IT products

On 31 December 2022, the Minister of Information and Communications issued Circular 25/2022/TT-BTTTT on determining imported raw materials and components exempt from import tax to directly serve production of IT products, digital content, and software.

Accordingly, raw materials and components exempt from import tax need to satisfy the following criteria:

- Being imported directly for the production of products which are:
 - In the list of software, hardware, and electronic products specified in Circular 09/2013/TT-BTTTT and Circular 20/2021/TT-BTTTT, or
 - In the list of digital content products as prescribed by the Ministry of Information and Communications. Upon the development situation and management policies in each period, the Ministry of Information and Communications will update and adjust the lists accordingly.
- Not in the list of machinery, equipment, raw materials, and components of the telecommunications and IT industry, digital content, and software that can be produced domestically in Appendix 8 issued with Circular 05/2021/TT-BKHDT.

Dossiers and procedures for tax exemption are required to comply with the provisions stipulated in Articles 30 and 31 of Decree 134/2016/ND-CP and amended in Decree 18/2021/ND-CP.

This Circular will be effective from 15 February 2023.

3. New guidance on one-way money transfers from Viet Nam

The Governor of the State Bank of Viet Nam issued Circular No. 20/2022/TT-NHNN providing guidance for and integrating the substances related to the one-way money transfers from Viet Nam to overseas, and the payment or the money transfers for other current transactions by residents being institutions or individuals, as stipulated in the Ordinance on Foreign Exchange (as amended and supplemented) and Decree No.70/2014/ND-CP dated July 17, 2014 of the Government providing details for the implementation of a number of Articles of the Ordinance on Foreign Exchange, the Ordinance amending and supplementing a number of Articles of the Ordinance on Foreign Exchange, and other relevant legal documents ("*Circular 20*").

Circular 20 comprises of 05 Chapters and 19 Articles with the following main substances:

- Chapter I mentions the scope of regulation; the subjects of application; the explanation of terms and terminology.
- Chapter II mentions the cases of purchasing, transferring or carrying foreign currencies to overseas for the purpose of one-way money transfer by institutions; the sources of foreign currencies being transferred or carried to overseas; the purchase of foreign currencies to be transferred or carried to overseas; transferring or carrying foreign currencies to overseas from the foreign currency source on a payment account.
- Chapter III mentions the cases of purchasing, transferring or carrying foreign currencies to overseas for the purpose of one-way money transfer by residents who are Vietnamese citizens; the sources of foreign currencies being transferred or carried to overseas; the purchase of foreign currencies to be transferred or carried to overseas; transferring or carrying foreign currencies to overseas from their own foreign currency sources; the regulations related to the amounts of foreign currencies to be purchased, transferred or carried to overseas for each legitimate purpose.
- Chapter IV provides guidance for the payment activities, the money transfers for other current transactions.

- Chapter V stipulates the reporting requirements; the responsibilities of the authorized banks; the responsibilities of relevant institutions and individuals; the regulations on the abolishment and amendment of a number of relevant documents; the implementation.

Circular 20 will take effect on 15 February 2023.

4. Management of environmental risks in credit granting activities of credit institutions, and foreign bank branches

On 23 December 2022, the State Bank of Vietnam issued Circular No. 17/2022/TT-NHNN ("*Circular 17*") guiding the implementation of environmental risk management in credit extension activities of credit institutions, and foreign bank branches with some below main points.

Firstly, pursuant to Clause 2 and Clause 3 of Article 3 of Circular 17, "*environmental risks of an investment project*" is defined as the possibility of adverse impacts on the environment during the implementation of an investment project, leading to additional costs, reducing income or causing damage to capital and assets of customers who are the project owners while "*environmental risks in credit extension activities*" are the credit risks for a credit institutions arising when a customer who receives the credit extension encounters environmental risks when implementing an investment project.

Secondly, Circular 17 lists out investment projects to be managed in terms of environmental risks when they are considered for credit extension including:

- Investment projects of group I have a high risk of adverse impacts on the environment specified in Article 28.3 of the Law on Environmental Protection No. 72/2020/QH14 (*the "LEP"*);
- Investment projects of group II have a risk of adverse impacts on the environment specified in Article 28.4 of the LEP, except for the projects specified in item (i) above; and
- Investment projects of group III have a low risk of adverse impacts on the environment specified in Article 28.5 of the LEP, except for projects specified in (i), and (ii) above.

Thirdly, Article 4 of Circular 17 stipulates a number of principles for environmental risk management in credit extension activities, specifically:

- Credit institutions must carry out environmental risk assessment in credit extension activities for investment projects to identify credit risks, determine

the conditions on credit extension and manage credit risks for the loans granted to their customers.

- Credit institutions must conduct an environmental risk assessment themselves for investment projects or use the assessments of environmental risks provided by organizations providing environmental risk assessment services or by other credit institutions as agreed in the service provision contract.

When assessing investment projects with environmental risks before granting any loans, credit institutions should negotiate with customers to include in the credit extension contract the measures that customers must apply to limit the environmental risks.

- Customers are responsible for providing information for environmental risk management in credit extension activities at the request of the CI and are liable for the accuracy of the provided information.

In accordance with Article 5 of Circular 17, the provided information includes but not limited to, the decision on approving the report on preliminary environmental impact assessment, the environmental impact assessment report as prescribed by law, the environmental permit, and environmental registrations (if any).

Circular 17 will take effect from 01 June 2023.

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