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The background image is an aerial view of a modern city skyline at dusk. Several tall skyscrapers are visible, with their windows illuminated. A river is visible in the foreground, reflecting the city lights. The sky is a mix of blue and orange, indicating the time is either dawn or dusk.

LEGAL UPDATES
September 2021

Official Letter No. 5322/CV-BCD of the National Steering Committee for Covid-19 Prevention and Control dated 05 July 2021 providing Guidance for Both Central and Local Authorities on Entrance of Expats and Foreigners during Current Status of Covid-19 Pandemic (“Letter 5322”)

Effective date: 05 July 2021

On 05 July 2021, the National Steering Committee for Covid-19 Prevention and Control issued Official Letter No. 5322/CV-BCD providing guidance for both central and local authorities on the entrance of expats and foreigners during current status of Covid-19 pandemic.

In addition to the general procedures regulated by laws on entrance of foreigners, Letter 5322 sets out certain additional procedures for competent authorities as well as related entities for reducing risk of Covid-19 infection and collaboration between authorities in terms of implementing administrative procedures.

1. Applicants under Letter 5322

- 1.1 There are three major categories of applicants which are under management power of
 - (a) Provincial People’s Committee;
 - (b) Combination of five Ministries (including Ministry of Foreign Affairs, Ministry of Health, Ministry of National Defence, Ministry of Public Security and Ministry of Transport); and
 - (c) Ministry of Foreign Affairs.
- 1.2 Applicants who will be under competence of Provincial People’s Committee, are expats (i.e. technical expats, investors, enterprise managers and skilled-full employees) and their family members (i.e. parents, spouses and children) and other foreigners (i.e. foreign students who are enrolled in Vietnamese school, or foreigners who enter into Vietnam for humane, emergency and treatment purposes).
- 1.3 The Ministry of Foreign Affairs shall review and be in charge of cases where persons enter into Vietnam for the purposes of foreign affairs.
- 1.4 Combination of five Ministries shall be in charge of other cases and applicants.
- 1.5 For each of major categories, the laws require relevant applicants and competent authorities to comply with different sets of procedure.

2. Procedures Applicable to Applicants under Management of Provincial People’s Committee

The general process shall be as follows:

- 2.1 The Provincial People’s Committee shall issue a list of individuals and their family members that are allowed to travel to Vietnam according to the application files for permitting entrance prepared by the applicants.
- 2.2 Applicants in the above list shall then submit visa application files to the relevant Immigration Department.
- 2.3 The Provincial People’s Committee shall then appoint concentrated quarantine facilities, arrange the Covid-19 test and supervise the quarantine of the expats and their family members according to quarantine regulations provided by the Ministry of Health.
- 2.4 For emergency and humane cases where the applicants are staying at Vietnam’s border gates by road, railway or waterway and need to be rushed to the hospital, the Provincial People’s Committee shall consider permitting the entrance as long as there is written opinion from the hospital accepting such cases and appropriate quarantine plans in Vietnam.

LABOUR

Circular No. 06/2021/TT-BLDTBXH of the Ministry of Labour, Invalids, and Social Affairs dated 07 July 2021 Amending and Supplementing A Number of Articles of Circular No. 59/2015/TT-BLDTBXH dated 29 December 2015 (“Circular 59”) Detailing and Guiding Implementation of the Law on Social Insurance (“Circular 06”)

Effective date: 01 September 2021

Circular 06 provides for remarkable changes to the participation in compulsory social insurance (the “CSI”) as highlighted below.

1. Supplement to Subjects Covered by CSI

A new subject that shall be covered by the CSI is employee working part-time at the commune-level administrative units under labour contracts with a term of full one month or more.

2. Sickness Regime

2.1. Compared to Circular 59, Circular 06 supplements the regulation on the sickness allowance for odd days which are not enough to make up a full month of sick leave (i.e. from the date of starting to take sick leave of that month to the preceding day of the following month). Accordingly, the amount of sickness allowance of those days, the maximum of which must not exceed the amount calculated for a full month, shall be calculated with a different formula.

2.2. In case where employees who compulsorily contribute to the sickness and maternity fund get sick or have an accident and a period of such leave is 14 working days or more in a month (including unpaid leave), the sickness allowance will be calculated on a salary used as the basis for the CSI’s contribution of the month preceding the employee’s leave. This regulation also applies to cases where employees continue to get sick and be off work in the following months and does not apply to cases where the accident is a non-occupational accident or where the employees must be off from work to take care of sick children under the age of seven.

3. Maternity Regime

3.1. One of notable points under Circular 06 is the calculation of maternity regime based on the number of children born. The maternity regime shall apply even in case the child was dead.

3.2. In case both the husband and wife participate in social insurance and the wife is not eligible for the maternity regime, the husband who has paid for social insurance for full six months in one year before his wife’s childbirth will be entitled to the lump sum of maternity allowance equal to two months’ basic salary in the month of childbirth for each child.

3.3. Circular 06 provides for a new guidance on the circumstance where the period of maternity leave coincides with the period of annual leave, personal leave, unpaid leave. In that case, the period of the annual leave, personal leave, unpaid leave will not be counted to determine whether the maternity regime is applied or not.

4. Exclusion of Benefits to be Covered by CSI

Circular 06 excludes some regimes and benefits to determine the monthly salary on which the CSI is based, including:

4.1. bonus;

4.2. initiative bonus;

4.3. mid-shift meal;

4.4. allowances for petrol, phone, travel, housing, childcare, and child-rearing;

4.5. allowances for dead/ married family members of employees, birthdays of employees;

4.6. allowances for employees in difficult circumstances when suffering from occupational accidents and diseases; and

4.7. other allowances provided in a separate item in the labour contract.

5. Survivorship Allowance

Family members of the employees who are dead due to a labour accident or occupational disease or are dead during treatment due to an occupational accident or disease shall be entitled to monthly survivorship allowance if satisfying certain conditions (e.g. such employees have paid social insurance for at least full fifteen years and have yet received the lump sum of social insurance; the family members (which may include child under the age of 18, wife over the age of 55 or husband over the age of 60) of such employees have income lower than the base salary, etc.).

- 5.1. Circular 06 supplements the regulation on considering age of employees' family members to determine their entitlement to enjoy the monthly survivorship allowance. The time point to consider age of employees' family members shall be the end of the last day of the month of the employee's death. In case no documents indicate the date of birth, 01 January of the year of birth shall be used for the settlement of survivorship regime.
- 5.2. Also under Circular 06, in case employees' family members have been settled monthly survivorship allowance but then have income higher than the base salary, they will still be entitled to such allowance.
- 5.3. When employees participate in or reserve the period of payment of social insurance and are concurrently entitled to monthly occupational accident or disease allowance, employees' family members may select the survivorship allowance with a higher benefit between either of the above.

Decree No. 70/2021/ND-CP of the Government dated 20 July 2021 Amending and Supplementing Several Articles of Decree No. 181/2013/ND-CP of the Government dated 14 November 2013 Elaborating Regulations on the Law on Advertising (“Decree 70”)

Effective date: 15 September 2021

Decree 70 provides for amendments to several provisions in relation to cross-border advertising services under Decree No. 181/2013/ND-CP of the Government dated 14 November 2013 Elaborating Regulations on the Law on Advertising (“Decree 181”). Below are the notable points of Decree 70.

1. New Definitions

Decree 70 supplements two new definitions on cross-border advertising services as follows:

- 1.1 *Providing advertising services* shall be considered cross-border activities if foreign organisations and individuals use websites to provide advertising services business for users in Vietnam via systems located outside of Vietnam and have revenue generated from such services.
- 1.2 *Websites providing cross-border advertising services* are information system of using one website or more in the form of symbols, numbers, letters, images, sounds and other information forms to provide the users with services of storing, providing, using, searching and exchanging information, sharing audios and images/videos, creating forums and online chatting for purpose of advertising services.

2. New Rights and Obligations of Certain Subjects Participating in Cross-Border Advertising Services in Vietnam

- 2.1 Decree 70 generally requires domestic and foreign advertising service providers, advertisement publishers, and advertisers participating in providing cross-border advertising services in Vietnam to (i) comply with the Vietnamese laws on advertising, regulations on cybersecurity, on management, provision and use of internet services and online information, and (ii) pay tax in accordance with the laws on taxation.
- 2.2 In addition to the above, foreign advertising service providers conducting cross-border advertising activities in Vietnam must:
 - (a) notify the Ministry of Information and Communications (“MIC”), instead of the Ministry of Culture, Sports and Tourism under Decree 181, of their contact information within 15 days prior to its initial provision of cross-border advertising services in Vietnam;
 - (b) not display the contents of advertising products which are in violation of the laws of Vietnam as mentioned in the laws on cybersecurity and laws on intellectual property (e.g. contents of distorting history, denying revolutionary achievements, appropriating copyright in a literary, artistic or scientific work, impersonating an author, etc.);
 - (c) upon the request of the MIC and other competent authorities, prevent and remove violated contents and provide information about relevant organisations and individuals involved in such violations; and
 - (d) not cooperate with other foreign advertising service providers, advertisement publishers, and advertisers to advertise products via violated websites which have been publicly announced by the MIC.
- 2.3 Advertisement publishers, and advertisers entering into contracts with advertising service providers (including both domestic and foreign organisations and individuals) are also entitled to require such advertising service providers to:
 - (a) not display the contents of advertising products which are in violation of the laws of Vietnam as mentioned in the laws on cybersecurity and laws on intellectual property;

- (b) provide technical solutions to enable advertisers and advertisement publishers in Vietnam to control and remove violated contents on their service provision system.
- 2.4 Domestic advertising service providers cooperating with foreign advertising service providers in relation to cross-border advertising services must submit to the MIC an annual report (prior to 31 December of each year) or an extraordinary report on the provision of cross-border advertising services in Vietnam. Such reports may be submitted directly, by post or via electronic means.

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