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LEGAL UPDATES - FIGHTING COVID-19 SUPPORTIVE MEASURES FOR EMPLOYEES AND ENTERPRISES IN VIETNAM

The current novel coronavirus (Covid-19) outbreak, which began in December 2019, presents a significant challenge for the entire world. Vietnam has declared COVID-19 nationwide epidemic. Measures to curb the spread of the coronavirus such as travel restrictions, events cancellation, and prohibition on gatherings have cut manufacturing and domestic demand sharply in Vietnam. The Vietnam Government has, however, been acting decisively and unveiled measures for employees and enterprises, addressing concerns essentially about economic implications as well as ensuring business continuity.

In the Legal Updates, we continue to address frequently asked questions from employers across industries in light of the continuing Covid-19 crisis. As the situation continues to evolve, we will further update our guidance as appropriate.

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EMPLOYMENT RELATIONSHIP

Labour restructuring

Covid-19 pandemic is having an enormous impact on the employment relationships. Employers have to address the ability to maintain employment relationships or make layoff decisions. As temporary measures, the following can be taken into account:

- (1) reducing working hours and/or salary; or applying unpaid leaves, as for the existing work positions;
- (2) assigning employees to different jobs;
- (3) temporarily ceasing work; or
- (4) temporarily suspending the performance of employment contracts.

It is required to comply with provisions under the Labour Code on new wage, new employment term, advance notification and other requirements. Please refer to the table 1 below for more details on financial liabilities.

Contributions to compulsory funds

1. Contributions to retirement and survivorship funds (22%)

Enterprises may apply for delay in contribution to retirement and survivorship funds until 30 June 2020 (extended to 31 December 2020 depending on development of Covid-19 pandemic), without late payment interest, in case where¹

- 1.1. enterprises engage in passenger transport, tourism, accommodation, restaurants and other special industries;
- 1.2. due to the Covid-19 pandemic, the business is suspended;
- 1.3. due to the Covid-19 pandemic,
 - (a) the numbers of employees participating in social insurance that must temporarily cease to work constitutes at least 50% of the total numbers of employees at the time before business suspension; or
 - (b) enterprises suffer from loss value of which is more than 50% of the total value of assets (excluding the value of land use right).

2. Contributions to other compulsory funds (10%). During the aforesaid delay time under Item (1), enterprises are required to maintain their contributions to other funds including sickness and maternity fund, labour accident and occupational disease fund, health insurance fund and unemployment insurance fund².

3. Contributions to trade union fund. Enterprises may delay in making contributions to the trade union fund until 30 June 2020 (extended to 31 December 2020 depending on development of COVID-19 pandemic) in case where at least 50% of employees participating in the compulsory social insurance temporarily cease to work due to COVID-19 pandemic.³

¹ Official Letter No. 797/LDTBXH-BHXH dated 09 March 2020 of the Ministry of Labour, Invalids and Social Affairs; Official Letter No. 860/BHXH-BT dated 17 March 2020 of Vietnam Social Security

² Official Letter No. 797/LDTBXH-BHXH dated 09 March 2020 of the Ministry of Labour, Invalids and Social Affairs; Official Letter No. 860/BHXH-BT dated 17 March 2020 of Vietnam Social Security

³ Official Letter No. 245/TLD dated 18 March 2020 of Vietnam General Confederation of Labour

Table 1 - Financial liabilities in certain cases

	Quarantined employees (with or without reducing working hours/salary or assigning to different jobs or unpaid leaves)		Affected employees	Ordinary employees (with or without reducing working hours/salary or assigning to different jobs)		Any employees	Any employees	Any employees
	Able to work	Not able to work	Under treatment Not able to work	Working at office	Working from home	Temporarily ceasing work ⁴	Temporarily suspending the performance of labour contracts ⁵	Unilaterally terminating labour contracts with causes ⁶
Mutual agreements with employees on amendments/termination of labour contracts	<ul style="list-style-type: none"> Reducing working hours/salary: Yes Assigning to different jobs: Yes if the assignment exceeds accumulative 60 days a year⁷ 	<ul style="list-style-type: none"> Reducing working hours/salary OR unpaid leaves: Yes Assigning to different jobs: Yes if the assignment exceeds accumulative 60 days a year⁸ 	No Must comply with order of the Government	<ul style="list-style-type: none"> Reducing working hours/salary: Yes Assigning to different jobs: Yes if the assignment exceeds accumulative 60 days a year⁹ 	<ul style="list-style-type: none"> Reducing working hours/salary: Yes Assigning to different jobs: Yes if the assignment exceeds accumulative 60 days a year¹⁰ 	Yes	Yes	No

⁴ Article 98(3) of Labour Code No. 10/2012/QH13

⁵ Article 32(5) of Labour Code No. 10/2012/QH13

⁶ In case where

(a) the employee is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months in the case of an indefinite term labour contract, or 6 consecutive months in the case of a definite term contract, or more than 1/2 the duration of the contract in the case of a seasonal or specific job labour contract with a duration of less than 12 months, pursuant to Article 38(1)(b) of Labour Code No. 10/2012/QH13;

(b) as a result of a natural disaster, fire or for any other reason of force majeure as prescribed by law, the employer, despite having taken all necessary measures to remedy the problem, still needs to narrow production and reduce the number of jobs, pursuant to Article 38(1)(c) of Labour Code No. 10/2012/QH13; and

(c) as a result of economic reasons pursuant to Article 44(2) of Labour Code No. 10/2012/QH13.

⁷ Article 31 of Labour Code No. 10/2012/QH13

⁸ Article 31 of Labour Code No. 10/2012/QH13

⁹ Article 31 of Labour Code No. 10/2012/QH13

¹⁰ Article 31 of Labour Code No. 10/2012/QH13

	Quarantined employees (with or without reducing working hours/salary or assigning to different jobs or unpaid leaves)		Affected employees	Ordinary employees (with or without reducing working hours/salary or assigning to different jobs)		Any employees	Any employees	Any employees
	Able to work	Not able to work	Under treatment Not able to work	Working at office	Working from home	Temporarily ceasing work ⁴	Temporarily suspending the performance of labour contracts ⁵	Unilaterally terminating labour contracts with causes ⁶
Salary of employees	Paid by company	Paid by company ¹¹	Covered under the compulsory social insurance funds ¹²	Paid by company	Paid by company	Paid by company	No	No
Contributions to the compulsory social, health, unemployment insurances	Yes	Yes (save for when employees do not work and enjoy salary for at least 14 days in a month ¹³)	No ¹⁴	Yes	Yes	Yes	No	No

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¹¹ Article 98(3) of Labour Code No. 10/2012/QH13

¹² Article 25(1) of Law on Social Insurance No. 58/2014/QH13

¹³ Article 85(3) of Law on Social Insurance No. 58/2014/QH13

¹⁴ Article 42(5) of Decision No. 595/QĐ-BHXH dated 14 April 2017 of Vietnam Social Security on procedures for collection of contributions to social insurance, health insurance, unemployment insurance, occupational accident and occupational disease insurance; management of social insurance books and health insurance cards

FINANCIAL SUPPORT

The Vietnam Government has announced various financial measures to help enterprises and employees cope with Covid-19 pandemic¹⁵. Notable contents are as follows:

Enterprises/employees	Conditions	Financial supports ¹⁶
Employees temporarily suspending performance of labour contracts or taking unpaid leave ¹⁷	<ul style="list-style-type: none"> (a) starting between 01 April 2020 and 01 June 2020 and lasting for at least 01 month during the period from 01 April 2020 to 30 June 2020; (b) participating in compulsory social insurance scheme immediately prior to temporarily suspending performance of labour contracts or taking unpaid leave; and (c) enterprises where they are working being unable to pay salaries due to Covid-19 pandemic. 	VND1.8 million per month for a maximum of 3 months from 01 April 2020
Employees ineligible for unemployment benefits upon termination ¹⁸ of labour/work contracts	<ul style="list-style-type: none"> (a) having entered into labour/work contracts prior to 01 April 2020; (b) participating in compulsory social insurance scheme; (c) having labour/work contracts terminated during the period from 01 April 2020 to 15 June 2020 but being ineligible for unemployment benefits; and (d) having no income or income below near-poverty line. 	VND1 million per month for a maximum of 3 months from April to June 2020
Employees without labour contracts losing jobs ¹⁹	<ul style="list-style-type: none"> (a) losing jobs and having income below the near-poverty line during the period from 01 April 2020 to 30 June 2020; (b) legally residing in a locality; and (c) working in non-agriculture sectors such as street vendors, collecting scraps, loading and unloading, transporting goods; riding motorbikes, cyclos for passenger transport; mobile lottery retail; being self-employed or working for business households in restaurant, accommodation, tourism and health care industries. 	

¹⁵ Resolution No. 42/NQ-CP dated 09 April 2020 of the Government on measures to support those facing difficulties due to Covid-19 pandemic ("Resolution 42"); and Decision No. 15/2020/QĐ-TTg dated 24 April 2020 of the Prime Minister regulating implementation of measures to support those facing difficulties due to the Covid-19 pandemic ("Decision 15")

¹⁶ Section II of Resolution 42

¹⁷ Article II.1 of Resolution 42 and Article 1 of Decision 15

¹⁸ Article II.4 of Resolution 42 and Article 5 of Decision 15

¹⁹ Article II.4 of Resolution 42 and Article 7.1 of Decision 15

Enterprises/employees	Conditions	Financial supports ¹⁶
Enterprises borrowing money to pay salaries to employees who temporarily cease their works ²⁰	<ul style="list-style-type: none"> (a) having from 20% or 30 employees participating in compulsory social insurance scheme that cease working for at least 01 month; (b) having paid at least 50% of salaries to those employees from 01 April 2020 to 30 June 2020; (c) having financial difficulties; not being able to pay salaries and using up salary reserve fund; and (d) having no bad debts at credit institutions and foreign bank branches as at 31 December 2019. 	<p>Preferential loans extended by Vietnam Bank of Social Policies:</p> <ul style="list-style-type: none"> (a) without collateral and interest; (b) maximum loan tenure of 12 months; (c) loan purpose: to pay the remaining salaries; (d) maximum loan amount: 50% of regional minimum wage (as set out under Table 2 below) per employee for a maximum salary payment period of 3 months.

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²⁰ Article II.2 of Resolution 42 and Article 13 of Decision 15

Table 2 - Regional minimum salary rates²¹

Regions (applicable to enterprises in the relevant regions)	Regional minimum salary rates
I (e.g. Gia Lam District, Dong Anh District in Hanoi City; Cu Chi District, Hoc Mon District in Ho Chi Minh City; Vung Tau City in Ba Ria – Vung Tau Province)	VND4,420,000 per month
II (e.g. Hai Duong City in Hai Duong Province; Hue City in Thua Thien Hue Province; Nha Trang City in Khanh Hoa Province; Can Gio District in Ho Chi Minh City)	VND3,920,000 per month
III (e.g. Duc Trong District in Lam Dong Province; Sapa District in Lao Cai Province)	VND3,430,000 per month
IV (regions other than Region I, II and III)	VND3,070,000 per month

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²¹ Decree No. 90/2019/ND-CP dated 15 November 2019 of the Government stipulating the regional minimum wages applied to employees working under labour contracts

BANKING LIABILITIES

Credit institutions and branches of foreign banks may apply the following 3 measures to their clients affected by Covid-19: rescheduling of loan repayment, exemption or reduction of interest and/or fees and maintenance of loan category.²²

1. **Rescheduling of loan repayment** is applicable to principal balances and/or interest (including balances of loans governed by Decree No. 55/2015/ND-CP on credit policies to support agricultural and rural development) (i) arising from lending and financial leasing activities, (ii) of which the repayment of principal and/or interest is due within the period from 23 January 2020 until the date immediately following the end of 3 months from the declaration on elimination of Covid-19 by the Prime Minister and (iii) of which the clients are unable to repay the principal and/or interest on time as agreed due to decrease in revenues and incomes caused by Covid-19.

The above loan balances must fall into either of the following circumstances:

- 1.1 not becoming overdue yet or becoming overdue within 10 days from the due date as agreed in lending or financial leasing agreements; or
 - 1.2 becoming overdue (except for cases at Item 2.a above) within the period from 23 January 2020 until the date immediately following the end of 15 days from the effective date of this Circular. Total rescheduling time upon extension must not exceed 12 months from the expiry date of loan or financial lease tenure.
2. **Exemption or reduction of interest and/or fees** is applicable to loan balances (i) arising from credit extension activities (excluding purchase of and investment in corporate bonds), (ii) of which the repayment of principal and/or interest is due within the period from 23 January 2020 until the date immediately following the end of 3 months from the declaration on elimination of Covid-19 by the Prime Minister and (iii) of which the clients are unable to repay the principal and/or interest on time as agreed due to decrease in revenue and income caused by Covid-19.
 3. **Category of a loan** classified at the latest time prior to 23 January 2020 may be maintained in relation to loan balances subject to the rescheduling of loan repayment at Item 2 and the exemption or reduction of interest and/or fees at Item 3. Such loan balances also include any loan balance (a) rescheduled or (b) of which the interest has been exempted or reduced or (c) of which the loan category has been re-classified during the period from 23 January 2020 until the date immediately following the end of 15 days from the effective date of this Circular.

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²² Circular No. 01/2020/TT-NHNN dated 13 March 2020 of the State Bank of Vietnam governing rescheduling of loan repayment, exemption or reduction of interest and/or fees and maintenance of loan categories by credit institutions and branches of foreign banks in order to support clients affected by Covid-19

SERVICE FEES

1. **Securities Service Fees.** Governmental fees in relation to certain securities services at the Stock Exchanges and Vietnam Security Depository Center have been exempted (applied to initial public offering, stock lending, etc.) or reduced (applied to management of listed securities, trading of corporate bonds, auction, etc.)²³.
2. **Banking Service Fees.** Fees for payment transactions made via the Inter-banking Electronic Payment System are discounted 50%²⁴. Also, certain commercial banks have cut transaction fees for payments and other certain banking services.

ESSENTIAL FACILITY PRICES

1. The Ministry of Industry and Trade ordered the delay in the increase of petrol price and power price for the first two quarters of 2020²⁵.
2. The Ministry of Industry and Trade decided to reduce power price charged to users, notably including manufacturing and business sectors (10% discount on retail power price), tourist accommodation establishments (enjoying discounted retail power price applied to manufacturing sector), commercial, service and domestic complexes (10% discount on wholesale power price) and industry zones (10% discount on wholesale power price)²⁶.

The reduction will be effective for 03 months commencing from the next billing period and/or subject to further guidance from the local authorities on case by case basis.

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²³ Circular No. 14/2020/TT-BTC dated 18 March 2020 of the Ministry of Finance revising Circular No. 127/2018/TT-BTC dated 27 December 2018 of the Minister of Finance regarding fees of securities services at the Stock Exchanges and Vietnam Security Depository Center to support organizations and individuals facing difficulties in Covid-19 pandemic

²⁴ Circular No. 04/2020/TT-NHNN dated 31 March 2020 of the State Bank of Vietnam amending and supplementing a number of articles of Circular No. 26/2013/TT-NHNN dated 05 December 2013 of the State Bank of Vietnam stipulating charges for payment services offered via the State Bank of Vietnam

²⁵ Direction No. 06/CT-BCT dated 11 March 2020 of the Ministry of Industry and Trade regarding measures to fight Covid-19 and support enterprises

²⁶ Official Letter No. 2698/BCT-DTDL dated 16 April 2020 of the Ministry of Industry and Trade regarding reduction in power price and power bill applicable to customers using power affected by Covid-19 pandemic

TAX LIABILITIES

Exemption from import duty

Certain goods imported for the purpose of fighting and preventing Covid-19 pandemic will be exempted from import duty until the date of official declaration on elimination of Covid-19 pandemic, such as medical masks, hand sanitizers, materials for producing medical masks, water based antiseptics, protective suits and nonwoven fabric for producing protective suits²⁷.

Extension on payment of tax and land rental

1. The following enterprises, organizations, household businesses and individuals may apply for extension on payment of value added tax (VAT), corporate income tax (CIT), personal income tax (PIT) and land rental:²⁸
 - 1.1. enterprises, organizations, household businesses and individuals engaging in certain businesses such as agriculture, forestry and aquaculture; foods manufacturing and processing; textiles; automobile manufacturing; manufacturing products from rubber and plastic; construction; warehouse services; accommodation and restaurant services; education and training; medical services; real estate business; tourism; sporting and recreational activities; manufacturing of prioritized ancillary industry products or key mechanical products, etc.;
 - 1.2. small or micro enterprises; and
 - 1.3. credit institutions and branches of foreign banks applying supportive measures to clients affected by Covid-19 pandemic.
2. Extension will be as follows:²⁹
 - 2.1. Payment of VAT (excluding import VAT) of March 2020, April 2020, May 2020 and June 2020 (in case of monthly declaration) and Quarter 1 and 2 of 2020 (in case of quarterly declaration) of enterprises and organizations: extended to 05 months from the respective due date.
 - 2.2. Payment of CIT of 2019 and provisional CIT of Quarter 1 and 2 of 2020: extended to 05 months from the respective due date.
 - 2.3. Payment of VAT and PIT of 2020 of household businesses and individuals doing business: extended to 31 December 2020.
 - 2.4. Payment of the 1st instalment of land rental in 2020 (in case of leasing land directly from the State with annual land rental payment): extended to 31 October 2020.
3. Request for extension must be submitted no later than 30 July 2020³⁰.
4. In addition, enterprises which are unable to pay taxes on time due to impacts of Covid-19 pandemic may have tax payment deadlines extended and be exempted from late payment fees after obtaining permissions from the local tax authorities³¹.

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²⁷ Decision No. 155/QD-BTC dated 07 February 2020 of the Ministry of Finance; Decision No. 436/QD-BTC dated 27 March 2020 of the Ministry of Finance

²⁸ Article 2 of Decree No. 41/2020/ND-CP dated 08 April 2020 of the Government regarding time extension for payment of tax and land rental ("**Decree 41**")

²⁹ Article 3 of Decree 41

³⁰ Article 4(1) of Decree 41

³¹ Official Letter No. 897/TCT-QLN dated 03 March 2020 of the General Department of Taxation regarding tax payment deadline and tax exemption; Articles 31(1), 31(3), 31(5)(a), 35(1) and 35(3) and 35(4) of Circular No. 156/2013/TT-BTC dated 06 November 2013 of the Ministry of Finance guiding implementation of the Law on Tax Management (as amended from time to time)

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