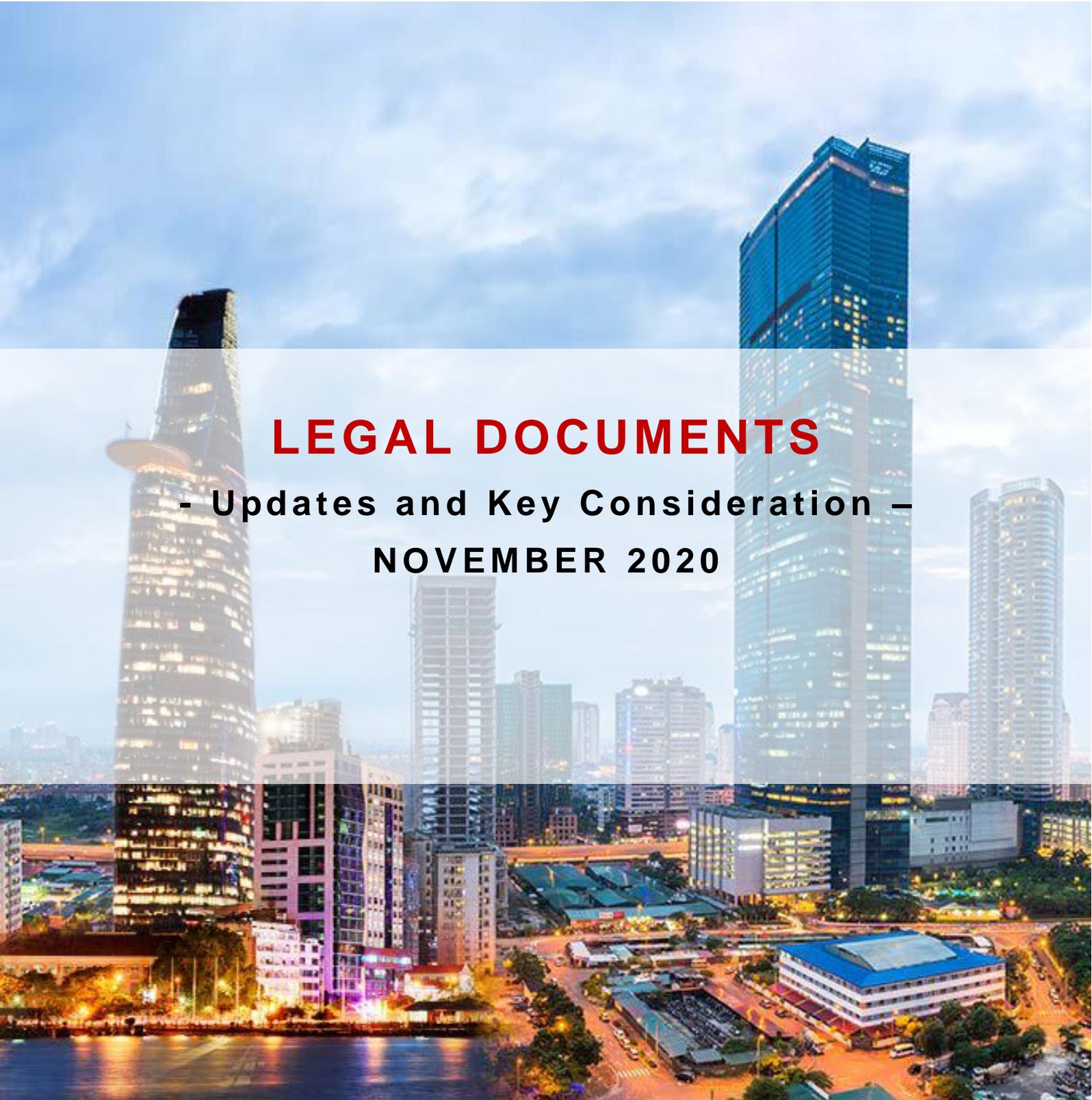




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# **LEGAL DOCUMENTS**

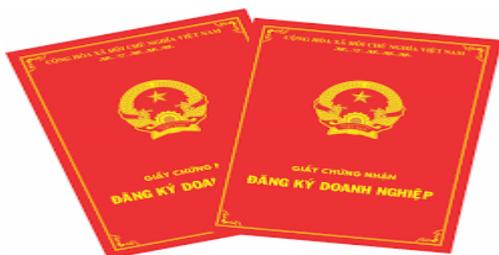
**- Updates and Key Consideration –  
NOVEMBER 2020**



## **1. New Regulation and Forms for Enterprise Establishment Registration**

On 15 October 2020, the Government promulgated Decree No. 122/2020/NĐ-CP Regulating Coordinated and Linked Procedures for Registration of Establishment of an Enterprise, Branch or Representative Office; for Notification of Workers who have been Employed; for Issuance of Social Insurance Code Numbers; and for Registration of the Invoices to be used by the Enterprise (“**Decree 122**”). Decree 122 took effect from 15 October 2020.

In addition to the reduction of unnecessary administrative procedures by creating coordination and linkage in social insurance agency, labour management agency, tax agency in registration and use of invoices, and social insurance agency, this new Decree also issued new standard forms to be used for registration of enterprise establishment.



### **1.1. Coordinated and Linked Procedures of Enterprise Registration**

Prior to Decree 122, the business-related administrative procedures of different authority agencies are not consistent, and the cooperation and communications between such agencies are insufficient, all of those resulted in superfluous procedures that require enterprises to provide the same information for each different agency. It will be less burdensome and costly to the enterprises if they could provide their registration information for only one agency once, and that information are shared among government bodies.

To solve the mentioned issue as well as to improve the business environment for attracting foreign investment, the Government enacted Decree 122 with immediate enforcement from the date of its signing (i.e. 15 October 2020).

In details, the four separate procedures for (i) registration of establishment of an enterprise, branch or representative office; (ii) notification of workers who have been employed; (iii) issuance of social insurance code numbers; and (iv) registration of the invoices to be used by the enterprise, are now consolidated and integrated into one single procedure implementing at the government registration office for the new registration of establishment of an enterprise, branch or representative office.

Noticeably, when carrying out procedures relating to administrative procedures at the State administrative agencies for labour, the social insurance and tax, enterprises shall not be requested to provide copies of (i) their enterprise registration certificates or (ii) certificates of operation of their branch or representative office, or (iii) information about enterprise registration. Only enterprise name and enterprise code number are required to be provided to relevant State administrative agencies for relevant procedures.

### **1.2. New Standard Forms to be Applied**

The Appendices I-1, I-2, I-3, I-4, I-5 and I-11 issued in conjunction with Decree 122 provides new standard forms of Request for Enterprise Registration and of Notification on Registration of Operation of a Branch or a Representative Office.

Generally, standard forms provided in the above Appendices of Decree 122 are identical with those set out in Appendices of Circular No. 02/2019/TT-BKHĐT dated 08 January 2019, except for the following new additional sections of “registration for use of invoices” and “information on payment of social insurance premiums” in each form. Particularly:

- (a) Section “registration for use of invoices”

This Section allows enterprises to select the type of the enterprise’s invoice to be used, including (i) self-printed invoices; (ii) placing an order for invoices to be printed; (iii) use of E-invoices; and (iv) purchase of invoices from the Tax Office.

- (b) Section “information about payment of social insurance premiums”

This Section allows enterprises to select one of the listed methods of payment of social insurance premiums, including (i) monthly; (ii) quarterly; and (iii) semi-annual.

For those who registered their main business line as agriculture, forestry, fisheries or salt production and pays salary by product or contract pieces, the selection of the three said methods is optional. For those have other main business lines, only monthly payment method of social insurance premiums is allowed.

## **2. New Regulation on Electricity Operation**

On 9 September 2020, the Ministry of Industry issued Circular No. 21/2020/TT-BCT (“**Circular 21**”) to replace Circular No. 36/2016/TT-BCT dated 16 October 2018 and its amendments on the licensing procedures for the electricity operating license (“**Circular 36**”) from 26 October 2020.



Keeping up with the current digital technology trend, Circular 21 fulfils Circular 36 with more comprehensive, improved licensing procedures for the online granting, modification and supplementation of electricity operation licenses for ease of usage by organisations and individuals.

Previously, under Circular 36 and its amendment, the regulations on circumstances for revocation of electricity operation licenses were referred back to the Law on Electricity. This caused duplication when a matter is regulated in two different regulations, the Law on Electricity and Circular 36. Circular 21 dealt with this matter by removing regulations on circumstances under which organisations and individuals may have

their electricity operation licenses revoked and also procedures for such revocation. However, the elimination of procedures for revoking electricity operating license in Circular 21 still shows a deficiency in the practical implementation where there is still no guidance on procedures for revocation circumstances set out in the Law of Electricity.

## **3. New Criteria for Issuance of High-tech Application Certificate**

On 28 September 2020, the Ministry of Science and Technology (the “**MOST**”) promulgated new Circular No. 04/2020/TT-BKHCH (“**Circular 04**”) to amend Circular No. 32/2011/TT-BKHCH (“**Circular 32**”) regarding the criteria for issuance of High-tech Application Certificate (the “**HAC**”) with effectiveness from 15 November 2020.

The crucial criteria which were amended by this Circular 04 are relating to (i) qualification of the labour force for projects and (ii) expenses for research and development activities.

This new Circular 04 provides more details on criteria that help to classify types of high-tech projects based on more specific and different sizes. Unlike Circular 04, the previous Circular 32 stipulates solely general criterion on employees’ qualification and expenses for all high-tech projects regardless of their scale, which caused difficulties and constraints in identifying exhaustive high-tech projects. More details on amended criteria are set out in the table below.

Another noteworthy directive is the application of new criteria to the verification process of also the application files which have been submitted prior to the effective date of Circular 04 and have not been appraised by the MOST.

**Table – Amendment on Criteria**

Criteria	Minimum Requirements			Unit
	Projects having invested capital of at least <u>VND6,000 billion</u> and total employees meet a minimum of <u>3,000 persons</u>	Projects having invested capital of at least <u>VND100 billion</u> and total employees meet a minimum of <u>200 persons</u>	Other projects	
<u>Employees'</u> <u>Qualification:</u> Holders of college or higher educational degree engaging in research and development activities(*)	1 %	2.5 %	5 %	of total employees of project
<u>Expenses</u> for research and development activities (**)	0.5 %	1 %	2 %	of (the total net revenue minus the input value of imported and domestically purchased raw materials)

(\*) The number of employees with college degrees as prescribed at this point must not exceed 30% of the total number of employees directly engaging in the research and development activities.

(\*\*) Expenses considered as expenses for research and development activities have also experienced a number of minor amendments.

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