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This issue covers the following topics:

Indonesia

Insurance Requirement for Short-Term Foreign Workers in Indonesia

外国人労働者の存在は、インドネシアの技術進歩や地域社会の発展にとって不可欠であるという認識のもと、外国人労働者にとってより働きやすい環境を実現するために、近年、短期就労者に対する保険適用の範囲が拡充されてきた。現行制度では労災保険だけでなく健康保険及び死亡保険までカバーすることが雇用主には義務づけられている。

Introduction

As a follow-up to the insurance requirements for short-term foreign workers in Indonesia, the Ministry of Manpower of the Republic of Indonesia ("**MOM**") through the Director General of Manpower Placement and Expansion of Employment Opportunities issued Decree No. 3/144/PK.04/V/2022 on the Implementation of Insurance Program for Foreign Workers Working Less Than Six Months ("**Decree No. 3**").

Prior to the issuance of Decree No. 3, the requirement of the insurance program for short-term foreign workers in Indonesia has been regulated under Government Regulation No. 34 of 2021 on Employment of Foreign Workers ("**GR No. 34**"). Under Article 8 of GR No. 34, employers that hire foreign workers (*Tenaga Kerja Asing* or "**TKA**") to work in Indonesia for less than six months are required to register their TKA in the insurance program that at least guarantees protection for work accidents. Subsequently, MOM enacted Decree No. 146 of 2021 on Insurance Program for Foreign Workers Working Less Than Six Months, which extended the insurance program's coverage to include guarantees for health and death. Also, MOM mandated the implementation of insurance programs to be further regulated under Director General of Manpower Placement and Expansion of Employment Opportunities decree, which is now known as Decree No.3.

Decree No. 3 provides more clarity on the criteria and obligations of the insurance company, participation data of the TKA and the insurance premium amount.

Key Provisions

Under Decree No. 3, the employers must provide TKA employed for less than six months with the insurance program that includes guarantees on work accidents, health, and death. The insurance company where the employers enroll their TKA must be licensed by the Financial Services Authority (*Otoritas Jasa Keuangan*). The insurance company organizing and managing this program shall also provide participation data in the system connected and integrated with the TKA online system at the Directorate of Foreign Workers Utilization Control of MOM. Decree No. 3 requires the implementation of the insurance program for short-term TKA to be evaluated

every six months or anytime as necessary.

The Appendix of Decree No. 3 regulates the premium amount to be paid for the insurance program, which depends on the coverage period: (i) IDR 762,000 for one month; (ii) IDR 1,715,000 for three months and (iii) IDR 2,477,000 for six months. However, it is unclear whether the TKA or employer shall be responsible to pay the insurance premium.

The insurance coverage is limited to a maximum of IDR 200,000,000 for death and permanent disability due to work accident, with an additional maximum of IDR 25,000,000 to return the deceased's body to the country of origin.

Implementation in Practice

In order to support the implementation of Decree No. 3, the government of the Republic of Indonesia has established Astaka (https://astaka.id/), an online platform that facilitates the insurance program for TKA in Indonesia who work in less than six months. Through Astaka, the employer will be able to process the registration and issuance of insurance policies, claim, refund, activation of policies and any other related matters online.

Furthermore, starting from 1 September 2022, the employers of short-term TKA who have not yet applied for the Foreign Workers Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* or "**RPTKA**"), will be required to submit an Electronic Policy Certificate from Astaka with every new application to RPTKA. As for the employers with existing RPTKA, Article 39(1)(b) of GR No. 34 provides that if such employers fail to register their TKA in an insurance program, they may be subject to administrative sanction in the form of temporary suspension of RPTKA.

Conclusion

Employers in Indonesia hiring short term TKA must take note of the above requirements and complete the necessary formalities in a timely manner.

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Vietnam

Regulations on Offshore Loans

ベトナムでは現地法人の資金調達の手段として親会社からのオフショアローンがよく使われるが、今般その資金使途や上限額などに関する規制の改正案が公表されている。本稿では、その内容について解説する。

Background

As interest rates of loans granted by domestic banks or branches of foreign banks in Vietnam are significantly higher than that in the international market, most foreign invested enterprises ("**FIEs**") rely on offshore loans such as loans from their parent companies or foreign banks. The Government and the State Bank of Vietnam ("**SBV**") have issued the following key regulations to manage offshore loans:

- Decree 219/2013/ND-CP dated December 26, 2013 on management of offshore lending and borrowing by enterprises without the Government's guarantee ("**Decree 219**");
- Circular 12/2014/TT-NHNN dated March 31, 2014 on conditions applicable to offshore loans ("**Circular 12**");
- Circular 03/2016/TT-NHNN dated February 26, 2016 guiding foreign exchange management in offshore lending and borrowing, as amended by Circulars 05/2016/TT-NHNN and Circular 05/2017/TT-NHNN ("**Circular 03**"). Circular 03 stipulates the procedures to register an offshore loan with SBV.

Currently, SBV is drafting circulars to amend both Circular 12 and Circular 03. In this article, we set out a summary of the current regulations and the amendments proposed in the draft circular amending Circular 12 ("**Draft Circular**").

Purpose of loan

Under Circular 12, a borrower is only permitted to use an offshore loan for the following purposes:

a. to implement its production or business plan, or investment project that has been duly approved by the competent authorities and in line with its constitutional documents (e.g. Investment Registration Certificate);

b. to implement the production or business plan, or investment project of the enterprise in which the borrower is a shareholder, provided that the ratio of offshore loan to total loans mobilized for the business plan or project must not exceed the borrower's shareholding ratio in such enterprise;

c. to restructure another offshore loan of borrower provided that it does not increase the borrowing costs (i.e., interest and all costs and fees that the borrower must pay for the restructured loan).

Thus, it is impossible to use an offshore loan to restructure/refinance a domestic loan. In general, the SBV also tends to reject the registration of medium- or long-term offshore loan to fund the shares acquisition by the borrower in another enterprise if the borrower is not an investment fund or an organization licensed to conduct shares trading business. This has been reflected in the Draft Circular by requiring that the use of offshore loan must be in line with the borrower's registered business lines.[1] Besides, the Draft Circular substantially narrows down the permissible purposes of offshore loans, in particular:

a. it is required that the short-term offshore loans may only be used to pay off obligations payable within 12 months from the date of offshore loan agreement, excluding onshore loans and loans for acquisition of shares, securities, real estate, or projects. In its present form, Circular 12 does not limit the use of short-term loan for short-term or long-term finance purposes and in practice, short-term loans with flexible terms and conditions that are not required to be registered with the SBV are commonly used;

[1] Under the Law on Enterprises, the business line is a compulsory content of the business registration contents that an enterprise must notify the Business Registration Office.

b. it is silent on the use of loan for the production or business plan, or investment plan of the enterprise of which the borrower is a shareholder, which seems impermissible in the future.

Borrowing limits

Every year the Prime Minister approves the national offshore borrowing limit that is divided into the limit of loans being guaranteed by the Government and offshore loans which are not guaranteed by the Government. Save for giant projects, such limit would not affect the registration of non-Government guaranteed offshore loans. However, in certain years, the delay in approving the borrowing limit by the Prime Minister may delay the loan registration by the SBV at the beginning of a year.

Additionally, there are specific borrowing limits applicable to certain sectors (e.g. real estate sector, banking sector) or types of enterprises (e.g. FIEs).

Real estate business: The investor(s) in a real estate project must ensure that the equity capital ("*vốn chủ sở hữu*" in Vietnamese) is not less than 20% of the total investment capital for a project using less than 20 hectare of land, and not less than 15% of the total investment capital for a project using 20 hectare of land or more.[2] The determination of equity capital is based on the results of the most recent audited financial statements or the results of independent audit reports of the operating enterprise in the immediately preceding year or actual contributed charter capital of newly established enterprise.[3]

The regulation on the financial sources for commercial residential houses project does not refer to offshore loans.[4] In its official letter No. 156/BXD-QLN dated 15 June 2017 responding to the SBV's official letter No. 3933/NHNN-QLNH dated 25 May 2017 regarding the possibility to use offshore loans for commercial residential houses projects, the Ministry of Construction highlighted that the loans must be granted by credit institution or financial institutions licensed to operate in Vietnam. Accordingly, it may be interpreted that offshore loans cannot be used to finance a commercial residential house project.

For projects for which an Investment Registration Certificate ("IRC") has been issued (e.g. project of foreign investors): The IRC of each project specifies its investment capital and contributed capital. The total of offshore loans that the company implementing the project may mobilize for such project will be limited to the difference between its investment capital and charter capital.

For projects without obtaining an IRC: The total medium- and long-term loans (including outstanding domestic loans) must not exceed the total loan demand in the production or business plan, or investment project approved by the competent authority.

The Draft Circular retains the above-mentioned limits and adds the following severe conditions:

a. in case of borrowing to increase the capital scale of the borrower, the balance of total medium- and long-term loans (including both onshore and offshore loans) must not exceed 3 times the total equity capital as recorded in the latest audited financial statements;

b. in case of borrowing to refinance other offshore loan, the total offshore loan must not exceed the outstanding principal and interest of the loan to be restructured.

Credit institutions: If the borrower is a credit institution or branch of a foreign bank in Vietnam, it must observe the regulations of safety ratios and the offshore loan must satisfy the following supplemental limits:

For short-term loans: the ratio of total outstanding of short-term offshore loans to total equity in 2023 must not exceed 25% for a credit institution and 100% for a branch of foreign bank in Vietnam. From 2024 onward, such ratios will reduce to 20% and 80% respectively;

[2] Decree 02/2022/ND-CP implementing the Law on Real Estate Business, Art. 4.2.
[3] Decree 02/2022/ND-CP implementing the Law on Real Estate Business, Art. 4.
[4] Housing Law, Art. 69.

For medium- and long-term loans: the ratio between the total or net capital withdrawal of the medium- and long-term loans within one year (i.e. withdrawn amount minus repayment amount) and the equity at the last working day of the month preceding the month signing the offshore loan agreement must not exceed 10% for a commercial bank and 50% for non-banking credit institution or branch of a foreign bank in Vietnam.

Borrowing costs

Although Circular 12 defines the borrowing costs to be the interest and other fees in connection with the loans payable by the borrower to the lenders, loan securing party, loan insurer, agents and other relevant parties, it does not limit the borrowing costs. In practice, SBV does not seem to query if the borrowing costs of an offshore loan is equal or less than the average costs of a similar domestic loan.

However, the Draft Circular limits the borrowing costs to the following caps:

a. for offshore loans in foreign currency: Reference interest rate + 8%/year for loans using reference interest rate, or SOFT Term Rate[5] + 8%/year for other loans;

b. for offshore loans in VND: Vietnam Government bonds + 8%/year.

In order to monitor the loan costs, the borrower is required to show the table of estimated loan costs to the credit institution or to include the table in its application submitted with the SBV for offshore loan registration.

Security transactions

In principle, the borrower may use its own assets or third party's assets to secure an offshore loan or guarantee the loan. Circular 12 merely stipulates that the security transactions must follow the general regulations. However, due to its particular features, the security transactions relating to offshore loans are not concluded and enforced effectively in practice. Therefore, the Draft Circular stipulates that in case the collateral is located in Vietnam and the secured party will not receive the collateral to replace the secured obligation, the parties must select a collateral settlement organization being a credit institution, branch of a foreign bank, or legal entity being established and licensed to operate in Vietnam.

Foreign exchange management

As Circular 12 is silent on foreign exchange management, the general regulations will apply. The Draft Circular imposes substantial burden on borrowers by requiring the borrower of an offshore loan in foreign currency to enter into foreign exchange derivative transactions for the term of transaction in line with the principal repayment plan, in particular:

a. *For short-term offshore loans having the loan limit more than USD 500,000:* the borrower must enter into FX derivative transactions with the value at least equal to 30% of the value of principal withdrawal on or before the date of principal withdrawal;

b. *For medium- and long-term offshore loans having the loan limit more than USD 500,000:* the borrower must enter into FX derivative transactions with the value at least equal to 30% of the value of principal withdrawal at least 3 months before the date of repayment of principal.

Conclusion

As the Draft Circular introduces substantially stringent conditions of borrowing and using offshore loans, its future enactment will certainly affect financial sources for enterprises. Therefore businesses operating in Vietnam must take these amendments into account.

[5] 6-month Term SOFR announced by CME on its official website.

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Myanmar

Consumer Protection Rules 2022

ミャンマーでは 2019 年に消費者保護法が制定されたが、施行規則が未整備であったため実際の施行には至っていなかった。今般、施行規則としての消費者保護規則が制定され、消費者保護委員会の創設、消費者が損害を被った場合の解決に向けた具体的な手続きなどが規定された。

Background

The Ministry of Commerce under the State Administration Council issued the Consumer Protection Rules ("**CPR**") by Notification 9/2022, implementing the 2019 Consumer Protection Law ("**CPL**") and providing the procedural requirements for consumers to make complaints for loss or damaged goods. CPL came into effect in 2019 with an aim to protect consumers from unfair trade. However, the CPL could not be implemented because of the absence of implementing rules. For further details on CPL, please refer to our earlier Newsletter article, which is available here.

The key provisions of CPR are summarized below:

1. Consumer Protection Commission, Consumer Protection Committee, and the Office of Consumer Protection

CPR provides that the Consumer Protection Commission (the "**Commission**") shall be established by the Ministry of Commerce to manage and fulfill the duties related to consumer protection provided in the CPL.

Further, CPR provides for the formation of the District, State, Regional and Union Territory Consumer Protection Committees (the "**Committee**") and Offices of Consumer Protection (the "**Office**") under the Department of Consumer Affairs to enforce the CPR, manage consumer protection affairs, settle disputes between consumers and entrepreneurs, and issue decisions. The Committee and the Office are empowered to issue administrative orders such as warning, replacement or compensation equivalent to loss and damage value, fines, prohibiting the sale of the disputed goods or services for a limited period, or suspension or cancellation of the operating license. If there is failure to comply with the administrative order issued by the relevant Office or the Committee within the timeline, the Committee or the Office may then initiate legal action against the entrepreneur before courts.

2. Investigation of Complaints

Consumers can file a complaint with the relevant Office for any damage or losses caused by the use of goods or services by filing the prescribed form along with the relevant materials and evidence as provided under Rule 78 of the CPR. Under Rule 95 of the CPR, the Office may scrutinize the documentary evidence that is submitted along with the complaint. In addition, the Office that received the complaint may request consumers and businesses to submit additional materials or documents. The Office shall transfer the complaint to the Committee if the complaint falls under the jurisdiction of the Committee.

If it is deemed necessary to conduct an inspection regarding the complaint, the Office has the power to assign the duties to the inspection officer to investigate complaints relating to breaches of the CPL. Pursuant to Rule 56 of the CPR, the inspection officer shall advice the relevant Office to take appropriate actions such as recalling, temporarily or permanently suspending the goods or services after monitoring, observation or inspections. The inspection officer shall report the findings of the inspection to the relevant Office in accordance with Rule 54 of the CPR.

3. Settlement of the Complaint

In order to settle the complaint, the Office may carry out mediation between the consumer and the entrepreneur and form a consensus on the date and time to arrive at a settlement. If either party is unable to appear on the prescribed date and time for mediation with sufficient reasons, the Office may determine the date and time for the second time. The complainant or entrepreneur is permitted to appoint a legal representative to represent him or her in the mediation proceedings. If the entrepreneur or legal representative fail to be present for settlement

for more than two times, the Office shall conduct ex-parte proceedings. If the negotiation between the consumer and entrepreneur can reach a mutual settlement, they shall both sign the prescribed form of agreement provided in the CPR. After that, the Office shall then issue the administrative orders by using the prescribed form and the entrepreneur will be required to undertake the activities specified by such order within the prescribed timeline.

4. Appeal Process

CPR sets out the procedure for appeal, for anyone who is not satisfied with the administrative order made by the Office and the Committee. Appeal can be filed before the Committee via prescribed forms along with the relevant materials and evidence, if the decision was made by the Office. Similarly, appeal can be filed before the Commission if the parties are not satisfied with the administrative order issued by the Committee. Commission or the Committee shall respond to the appeal filed within 14 working days from receiving the appeal under the Rule 112. In addition, the Commission or the Committee shall notify its decision to the relevant parties within five working days from the date of its decision.

5. Invoices of goods and services

Notably, CPR provides the detail requirements for invoices of goods and services. Under Rule 75 of the CPR, the invoices for goods shall contain: (i) name of purchased goods; (ii) date of purchase; (iii) amount, quality and value of purchased goods; and (iv) name of seller or shop and contact address. Likewise, under Rule 76 of the CPR, the invoices for services shall contain: (i) name and address of the service provider; (ii) type of service provided and value; (iii) guarantee of provided service for consumer; and (iv) term of the service. However, the CPR is silent on offences or penalties associated with these non-compliance with these invoice requirements.

Conclusion

Since the implementation rules have been enacted, entrepreneurs now bear liability for their defective products, including products of poor quality, products with a deficient technical design or products with insufficient instructions. The CPR provides protections for consumers and places burdens on entrepreneurs. Thus, entrepreneurs should take proactive measures to minimize their risks of liability under the CPL by investigating and assuming the quality of their products.

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