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1. Guidelines on amendments of and additions to the Regulations on Issuance of Government Bonds in Big Lots

The Ministry of Finance has recently promulgated Circular No. 132/2010/TT-BTC dated September 7, 2010 providing guidelines on amendments of and additions to Decision No. 46/2006/QĐ-BTC dated September 6, 2006 of the Ministry of Finance promulgating the Regulations on Issuance of Government Bonds in Big Lots.



According to the old Decision, “The time limit for issuance of a big bond lot shall not exceed 365 days”, now this is amended as “The time limit for issuance of a big bond lot of 3 years’ payback period shall not exceed 180 days from the date of initial issuance.”

The payback period of 5 years or more of bonds in big lots will be changed into 3 years or more.

In addition, the nominal interest rate of bonds is added specifically as follows: The nominal fixed interest rate of bonds in big lots is determined by the interest rate offered by the winning bidder at the initial issuance under the mechanism of bidding for Government bonds; The interest rate of bonds in big lots offered by the winning bidder at additional issuances of bonds shall be decided by the General Director of the State Treasury within the ceiling rate stipulated by the Ministry of Finance.

This Circular is effective as of its issuance date.

2. Procedures for issuance of certificates of operation in high technology

As of October 26, 2010, Decision No. 55/2010/QĐ-TTg of the Prime Minister providing regulations on the authority, order and procedures for certification of organizations and individuals operating in application of high technology, research and development of high technology and recognition of high technology enterprises is officially effective.

According to this Decision, an organization or an individual wishing to request for issuance of a certificate of operation in application or research and development of high technology (certificate of operation) shall submit a request dossier to the Ministry of Science and Technology directly or by post.

The dossier shall be made in 2 sets, including 1 original set and 1 photocopy set. The dossier shall include: Request Form for issuance of a certificate of operation in the sample form (for an individual, 2 photographs of 4x5 cm dimensions are required); a photocopy of the valid identity card or passport of the individual, a notarized copy of one of the document types of an organization (business registration certificate, investment certificate, certificate of a science and technology enterprise, certificate of registration of operation in science and technology); a description of the project for application of high technology, or a subject or plan of research and development of high technology (falling within the category of high technology prioritized for investment and development); written confirmation by the governing body or by the Department of Science and Technology of the contents presented in the description of the project for application of high technology or the subject or plan of research and development of high technology.

Within 15 working days from the date of receipt of the request dossier for issuance of a certificate of operation submitted by an organization or individual, the Ministry of Science and Technology will evaluate and issue a certificate of operation to the organization or individual requesting for such issuance; in case of refusal of issuance, reasons therefore must be notified in writing. A certificate of operation is effective as of its date of issuance and will be valid until termination of such project or subject or plan and shall only be valid for each project for application of high technology or each subject or plan of research and development falling within the category of high technology which is prioritized for investment and development and is the basis for such organization or individual to receive preferential treatment and support in accordance with the Law on High Technology.

This Decision is effective as of October 26, 2010.

3. Application of investment rates for construction of works and price index for construction of works to Department of Construction of Hanoi

The Ministry of Construction recently issued Official Letter 1876/BXD-KTXD dated September 29 to the Department of Construction of Hanoi regarding application of investment rates for construction of works and price index for construction of works.

Regarding the investment rates for construction of head offices of bodies and working offices: The investment rates for construction of head offices of bodies and working offices announced in Decision No. 411/QD-BXD dated March 31, 2010 of the Ministry of Construction are exclusive of the costs for construction of basements. Currently, the Ministry of Construction is reviewing and amending the category of investment rates for construction of works so as to be consistent with the reality, including the addition of head offices of bodies and working offices. At first, in order to determine the investment rates for construction of head offices of bodies and working offices (with basements), two temporary methods can be applied. Specifically, it is possible to utilize the adjustment factor for investment rates in the same way as for high-rise residential apartment buildings with basements or it is possible to calculate the average investment rate per square meter of construction floor (including construction floor of upper storey and construction floor of basements) on the basis of adjustment of investment rates in accordance with the characteristics of each construction work.

Regarding the times of extraordinary price changes: As stipulated with respect to building materials (cement, steel for construction), if for a minimum period of 15 consecutive days, retail prices hike by 15% or more on the market from the market prices prior to the change, it is considered that there has been an extraordinary price change. Therefore, when determining the average price index for construction of works in order to calculate the contingency expenses for a project, if, in the years in which the price index is taken for calculation of the I_{XDCTbq} , there is any month or quarter with extraordinary changes in the prices of major building materials (cement, steel, sand, stone, gravel, etc.), it is possible to exclude such month or quarter in such years and then calculate the average number of the remaining months (or quarters) in such years.

The Official Letter also stipulates that only the Ministry of Construction is permitted to announce the price index for construction of works. Investors and consulting organizations shall only be permitted to determine the price index for specific construction works which have not been included in the price index for construction of works announced by the Ministry of Construction.

4. Amendment of Circular No. 13: Loans granted not exceeding 80% of raised capital

The State Bank recently issued Circular No. 19/2010/TT-NHNN amending Circular 13 regarding the ratio of grant of credit from raised capital, whereby grant of credit from raised capital shall not exceed 80% at banks and 85% at non-banking credit institutions.



Also according to Circular 19, a credit institution shall only be permitted to use raised capital for granting credit on the condition that the solvency ratio and other safety ratios stipulated in this Circular are ensured before and after credit grant.

In addition, Clause 3 of Article 18 of Circular No. 13 is amended in Circular 19, re-stipulating the sources of raised capital, including: Individuals' deposits in the form of demand deposits, term deposits; Organizations' term deposits, including term deposits of other credit institutions and branches of foreign banks; 25% of demand deposits of economic organizations (exclusive of credit institutions), for a term of 3 months or more (exclusive of loans from other domestic credit institutions for covering temporary shortages with respect to the ratios of solvency as stipulated in Clause 1 of Article 14 of Circular 13) and loans from foreign credit institutions; Capital raised from organizations and individuals in the form of issuance of valuable papers.

The Circular is effective as of October 1, 2010.

5. Regulations on detailed cost estimation in information technology application activities

The Ministry of Information and Communications has promulgated Circular No. 21/2010/TT-BTTTT dated September 8, 2010 stipulating the outlining and detailed cost estimation with respect to State-funded information technology application activities without the requirement on project formulation.

This Circular applies to investments in upgrading or expansion of the capability of information technology application with State administrative funding in the amounts smaller than VND3 billion, including development and upgrading of in-house software; procurement, upgrading, installation, setup of information technology equipment (network, hardware, commercial software) in order to maintain regular operations in a total amount of more than VND100 million.

The Circular stipulates that the outlining and detailed cost estimation must be in accordance with the requirements of the beneficiary and must comply with information technology codes and technical standards applicable to each content of payment for information technology application set out in the outline and the detailed cost estimate. Cost estimates must be developed based on standards, norms or unit prices issued by competent State authorities; with respect to the contents for which standards, norms or unit prices have not been issued, it is required to rely on the requirements on techniques, technology and working conditions to develop norms or unit prices, or apply norms or unit prices from other projects or tasks which have been approved. A competent authority approving outlines and detailed cost estimates is the authority that directly assigns the cost estimation to the unit using the budget for the information technology application activities.

This Circular is effective as of October 25, 2010.

Legal Advice

QUESTIONS:

This is to respond to your question on the compensation to be paid by your company (the “Company”) to one of its senior Vietnamese employee (the “Employee”) as a result of the Company’s termination of his/her probation agreement.

Background

The Company entered into a labour agreement with a 3-month probation agreement (“**Labour Agreement**”) with the Employee. After 2 months and a half of his/her probation, the Company terminated the Labour Agreement because the Employee did not meet the requirements for his/her position. Recently, the Employee has filed a claim against the Company to the local Court and currently asked for a compensation equivalent to his/her 1-year salary for his/her loss of work.

Probation Period

Different probation periods will be applied depending on the requirements set for different types of work or position or the seniority of each employee. However, the probation period must not exceed 60 days if an employee is recruited for a position that requires a professional or technical college qualification, and not exceed 30 days if an employee is recruited for a position that requires an intermediate-level qualification, or if being recruited to work as a technical worker or staff¹.

The Employee was recruited for a senior position. Logically, his/her probation period should not have exceeded 60 days. From a strict Vietnamese legal stand-point, application of a 3-month probation period to his/her case is inconsistent with the applicable law of Vietnam and hence the Labour Agreement with a 3-month probation agreement would likely be viewed as null and void.

If the Company has not provided any notice on termination of the employment of the employee on or before expiry of the 60-day probation period, the Employee shall then automatically be deemed to be officially employed with definite or indefinite terms¹.

In this case, we understand that no such notice has been given to the Employee within the first 60 days of his/her probation period. Therefore, there are still rooms to argue that the Employee had passed the probation and the Company had accepted to officially employ the Employee. Consequently, the local labour authorities may consider the Company’s termination of the employment of the Employee as a violation of Vietnamese law.

Compensation

If the Company is considered that it has unlawfully and unilaterally terminated the employment of an employee by the Court, the applicable laws of Vietnam provides the following sanctions¹:

- (i) The Company must re-employ the Employee and must pay his/her a compensation equal to the amount of salaries and allowances (if any) (“**Compensation**”) for the period which the Employee was not allowed to work (“**Interrupted Period**”), plus at least two months' salaries and allowances (if any). The Interrupted Period will be counted from the date the Employee was not allowed to work to the date the Company re-employs the Employee.
- (ii) In case the Company intends to re-employ the Employee and the Employee does not wish to return to work, in addition to the Compensation above, the Employee will not be entitled to a severance allowance due to the working period is less than 12 months.
- (iii) If the Company does not wish to re-employ the Employee and the Employee agrees not to continue working for the Company, then in addition to the Compensation, two months' salaries and allowances (if any) in item (i) above, the two parties may agree on an additional amount of compensation for the Employee¹. If the two parties cannot agree on this matter, either party can refer the dispute to the competent labour court for a hearing.

The Company should be aware that, if it loses the case before the court, it may be required to pay the Employee:

- an amount equivalent to the salaries he/she would be entitled to receive during the period calculating from the date on which the Employee was not allowed to work for the Company to the date on which the court renders its judgment;
- at least two months' salaries and allowances (if any); and
- any additional amounts of compensation that the court deems reasonable.

Conclusion

Based on our arguments and discussion above, option (i) or option (ii) seems to be more practical than option (iii) in the sense that the payable amount of compensation to the Employee under these 2 first options seems to be less than the amount of 1-year salary required by the Employee and the process for handling with this labour dispute would likely be shorter. If the Company chooses either option (i) or (ii), then it should be preceded as soon as possible.

In case the Company opts for option (iii), then the cost will be much higher because the litigation procedures is normally prolonged and thus the court decision might be in favour of the Employee which might result in increasing the amount of compensation .Last but not least, this may do harm to the reputation of the Company when the dispute is brought to the public.

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