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LEGAL UPDATE

NEW REGULATIONS ON THE
OFFSHORE-ISSUED BONUS SHARE PLAN



On 8 June 2024, the State Bank of Vietnam (“**SBV**”) released Circular No. 23/2024/TT-NHNN (“**Circular 23**”) amending a number of provisions of Circular No. 10/2016/TT-NHNN regarding governance on the employee stock ownership plans (“**ESOP**”) issued oversea. Circular 23 is effective from 12 August 2024.

This legal update will present to you an overview of the key provisions and amendments prescribed by Circular 23.

1. SBV registration requirement is removed

Prior to Circular 23, the foreign entity to issue foreign ESOP rights to Vietnamese employees shall comply with the required hurdles, including registration of the ESOP scheme with the SBV. The process was complicated, expensive and not practical in approach. As a result, we often saw a combination of alternative (less favourable) bonus arrangements offered to Vietnamese employees, or non-registration of foreign ESOPs, leaving employees to deal with implications and risks themselves for their foreign entitlement/proceeds.

Now, the SBV registration requirement is no longer a challenge to the foreign ESOP plan, making the issuance to and inclusion of Vietnamese employees now feasible and encouraged. The requirements now include:

- opening an ESOP bank account by the Vietnamese organisation implementing the foreign ESOP, for all ESOP benefits for Vietnamese employees to be paid through (as a foreign exchange control process); and
- monthly reporting to the State Bank in respect of ESOP implementation status.

2. Limitation of outbound fund transfer for ESOP

Circular 23 currently sets out two bonus forms of the foreign ESOP scheme comprising (a) direct share issuance and (ii) other forms of offshore-issued share bonus with non-cash offshore remittance.

Through this change, the government tends to be further careful of flow of foreign currency and to prevent the potential misuse of ESOPs to transfer money abroad in a manner that does not align with the true value of the shares.

3. Vietnam entity executing ESOP

Circular 23 still keeps the 2-layer managing model of a foreign ESOP including a foreign entity offering ESOP and a Vietnam entity executing the ESOP scheme. It has expanded the definition of the entity executing ESOP to include not only the subsidiary commercial presence in Vietnam of the foreign entity offering ESOP but also the other organisation having a shareholding relationship with the ESOP scheme offeror.

4. ESOP bank account

The entities executing ESOPs need to open an ESOP account at an authorized credit institution. By removing the SBV registration, the burden of checking the ESOP suitability relies on the bank. The bank needs to review the relevant documents similar to the previous registration process with the SBV before opening the ESOP account. This change may simplify the administrative procedures, for Vietnamese employees to participate in ESOPs offered by foreign organizations. On the other side, it remains to be seen how this will be implemented in practice, as most commercial banks are not familiar with this process, despite the requirement having been in place.

5. Reporting regimes

The reporting duty is tightened from quarterly to monthly reports. The entity executing ESOP shall report both online and offline at SBV office. In case there is revenue transaction in the ESOP bank account, it is required to submit the bank statement of the relevant month.

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