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New regulation on ESOP in Vietnam: Looser control?



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Preface:

With effectiveness from 12 August 2024, implementation of the Employee Stock Ownership Plan in Vietnam shall no longer be required to register with the State Bank of Vietnam

Employee Stock Ownership Plan (**ESOP**) is a benefit policy for key employees working in multinational companies, in which employees will have a chance to become shareholders of holding companies by way of receiving bonus shares or purchasing shares with preferential terms. In Vietnam, ESOP issued by foreign companies to Vietnamese employees is regulated as a form of indirect foreign investment and subject to the foreign exchange control of the State Bank of Vietnam (SBV).

Implementation of ESOP issued by foreign companies to Vietnamese employees is

currently governed by the Decree No. 135/2015/ND-CP of the Government and Circular No. 10/2016/TT-NHNN of the SBV ("**Circular 10**"). On 28 June 2024, the SBV issued the Circular No. 23/2024/TT-NHNN ("**Circular 23**") to amend some provisions of the Circular 10 with respect to the ESOP implementation, which will be in force from 12 August 2024 and aims to release administrative burdens for local entities while maintaining strict foreign exchange management.

Release of registration requirement

The most significant change introduced by the Circular 23 is the removal of the requirement for registration of ESOP implementation with the SBV. Accordingly, ESOP-implementing local entities that implement the ESOP issued by foreign companies to Vietnamese employees will no longer be required to obtain SBV's approval prior to ESOP implementation. However, the management of ESOP implementation will be mainly vested in local merchant banks where the ESOP-implementing accounts are opened. Pursuant to the Circular 23, banks may request the ESOP-implementing local entity to submit documents related to ESOP for their examination, including: (i) documents evidencing relations between the foreign company and the ESOP-implementing local entity; (ii) documents describing features of

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ESOP such as the share awarding form, vesting period, and list of Vietnamese participants; and (iii) other relevant documents. Thus, local banks may challenge the legality of ESOP and, at their sole discretion, refuse transactions to be conducted through ESOP-implementing accounts.

Tighten reporting obligation

The Circular 23 imposes a new requirement for local employers to file monthly reports on ESOP implementation status to the SBV, replacing the previous quarterly reporting requirement outlined in the Circular 10. These reports must be made in regulatory form, containing foreign currency amounts of dividends or proceeds from the sale of shares remitted to Vietnam for paying the local employees, and enclosed with the local banks' acknowledgement. The deadline for filing reports is the 12th day of the month immediately following the reported month. Reports must be sent both electronically via email to the SBV's designated email address (i.e., baocaocophieu@sbv.gov.vn) and in hard copy to the SBV's office.

Restriction of transferring ESOP funds out of Vietnam

This restriction is not explicitly addressed in the existing provisions of the Circular 10. However, in practice, it is very difficult to get approval from the SBV for the awarding form

of "stock option with preferential terms" as the remittance of money out of Vietnamese territory is strictly controlled by the SBV. Many ESOPs were refused or took a long time to explain, demonstrate to obtain SBV's acceptance due to a viewpoint that ESOP may be considered as a method of mobilizing capital from Vietnamese employees.

Under the Circular 23, the transfer of ESOP funds out of Vietnam is clearly restricted. The Circular 23 clearly provides for two forms of share awarding, which are:

- (i) Directly awarding shares to the employees: The employees are awarded and own shares without any payment;
- (ii) Other forms of awarding overseas shares without any cash outflows from Vietnam.

Accordingly, an employer may implement ESOP as long as no foreign currency is remitted out of Vietnam.

Outlook

With the restriction of transferring ESOP funds out of Vietnam, the State Bank of Vietnam loosens their control over ESOP implementation by removing the registration requirement as a precedent condition for launching ESOP for Vietnamese employees. The form of directly awarding stocks to the

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employees has become more straightforward,
while the form of selling stocks to Vietnamese

employees with payment originated from
Vietnam is restricted.

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Chúng tôi giữ quyền sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này hoặc bất kỳ phần nào của bản tin mà không thông báo trước. Chúng tôi không chịu bất kỳ trách nhiệm nào về các sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này.

Nếu bạn có vấn đề nào cần tư vấn, hãy liên hệ với chúng tôi hoặc yêu cầu luật sư của bạn tư vấn về vấn đề đó cho bạn.

Tất cả các quyền, bao gồm cả quyền sở hữu, quyền tác giả, quyền liên quan và các quyền sở hữu công nghiệp đối với nội dung thông tin, thiết kế, trình bày mỹ thuật của bản tin này thuộc chúng tôi và được bảo vệ theo Luật Sở hữu Trí tuệ Việt nam, các hiệp định, hiệp ước quốc tế mà Việt nam đã ký kết.

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