



RHTLaw Vietnam
International Capabilities Delivered Locally

LEGAL UPDATES

December 2020

Decree No. 135/2020/ND-CP of the Government dated 18 November 2020 Regulating the Retirement Age ("Decree 135")

Effective date: 1 January 2021

Decree 135 provides for detailed regulations on Article 169 of Labour Code No. 45/2019/QH14 on retirement age. Below are the notable points of Decree 135.

1. Retirement Age

- 1.1 As from 1 January 2021, the retirement age of an employee in normal working conditions will be a full 60 years plus three months for men, and a full 55 years plus four months for women.
- 1.2 Thereafter, such retirement age will increase each year:
 - (a) by three months for men until reaching 62 years by 2028; and
 - (b) by four months for women until reaching 60 years by 2035.

2. Time Determination

- 2.1 *The time of retirement* shall be either:
 - (a) the end of the last day of the month when an employee reaches the stipulated retirement age; or
 - (b) the time of termination of his or her labour contract if the employee continues to work after reaching the stipulated retirement age.
- 2.2 *The time of entitlement to a pension* shall be the beginning of the first day of the month immediately following the time of retirement.
- 2.3 If application file of an employee does not set out the day or month of birth and only provides for the year of birth, then *1 January* of such year of birth shall be taken as the basis for determining the time of retirement and the time of entitlement to a pension.
- 2.4 For a male employee born in December 1960 and for a female employee born in December 1965, who are working in normal working conditions:
 - (a) the time of retirement is the end of 31 December 2020; and
 - (b) the time of entitlement to a pension is the beginning of 1 January 2021.

3. Retirement at An Age Other Than Stipulated Retirement Age in Normal Working Conditions

- 3.1 Employees may retire at a younger age but not more than five years earlier than the stipulated retirement age if:
 - (a) having been doing a heavy, toxic or dangerous job or a particularly heavy, toxic or dangerous job on the list of such jobs issued by the Ministry of Labour for a full 15 years or more;
 - (b) having been working for a full 15 years or more in an area with particularly difficult socio-economic conditions, including working time at places with a regional allowance coefficient of 0.7 or more prior to 1 January 2021;
 - (c) having a decrease of working capacity of 51% or more; or
 - (d) having been doing a job specified in sub-clause (a) plus in an area prescribed in sub-clause (b) above for a full 15 years or more.
- 3.2 Employees may retire at an older age under agreement with the employer to continue working after reaching the stipulated retirement age.

COMMERCE

Circular No. 05/2019/TT-BKHCN of Ministry of Science and Technology dated 26 June 2019 Detailing Some Articles of Decree No. 43/2017/ND-CP dated 14 April 2017 of the Government on Goods Labels (“Circular 05”)

Effective date: 1 January 2021

Circular 05 provides for details for some articles and appendixes of Decree No. 43/2017/ND-CP regulating on good labels. This Circular 05 mainly applies to manufactures, traders, and importers of goods in Vietnam. Below are the notable points of Circular 05.

1. Distinguishing commercial package and non-commercial package of goods

- 1.1 Either of the following types of container shall be non-commercial package of goods:
 - (a) Containers for storing, transporting, preserving goods, which were already labelled; or
 - (b) Bags for carrying purchased goods; or
 - (c) Containers for bulk goods or retailed goods.
- 1.2 In order to replace label of goods, the following types of container must have document presenting compulsory labelling contents in compliance with the laws: containers; cargo hold; tankers of bulk goods, liquid or gases.

2. Ingredients of goods

- 2.1 Having to mark “*genetically modified product*” or “*genetically modified*” on label of goods if having at least one genetically modified ingredient the amount of which accounts for more than 5% of the total amount of ingredients used for manufacturing such good;
- 2.2 Having to present quantity of an ingredient on product label if such ingredient is being presented on the label to attract attention for the product. The quantity of that ingredient may be written in other place of the label;
- 2.3 In case the label of a product clearly indicates that the product does not contain or is free from one or several ingredients:
 - (a) Both the product and all materials used for manufacturing that product do not contain such ingredient(s);
 - (b) That product does not contain ingredients in the same group with similar nature or using purposes with the ingredient(s) written on the label, unless the replacement of such ingredients is clearly indicated;
 - (c) That product contains ingredient(s) with amount within the absence threshold provided by international treaties and international standards to which Vietnam is a member.
- 2.4 Water, which is used as solvent for glazing or product preserving and disposed of after using product, shall not be considered as an ingredient of the product.

CONSTRUCTION

Law No. 62/2020/QH14 on amendments to 2014 Construction Law (“Law No. 62/2020/QH14”)

Effective date: 1 January 2021

Law No. 62/2020/QH14 amends and supplements to 2014 Construction Law (the “**Current Law**”) with the following key highlights:

1. New list of construction permit exemptions is issued under Law No. 62/2020/QH14.

In particular, advertisement works (as prescribed under the Law on Advertising) and passive telecommunication technical infrastructure works (according to the Government's regulations) are one of the additional cases supplemented to such list. The other case is construction works having construction design (formulated after the basic design) which is appraised by the authority and satisfied conditions for granting construction permit.

In addition, the Current Law removes one case from the list pursuant to which construction permit exemption shall not apply to construction works belonging to projects of industrial zone, export processing zone, high-tech zone having its detailed master plan of 1/500 and construction designs approved and appraised by authority.

2. With respect to responsibility of the construction contractor to take out the required insurance in construction activities, in addition to the insurance for the employees working at the building works on-site, the construction contractors must further purchase and maintain the insurance for civil liability to the third party as required under Law No. 62/2020/QH14.
3. The Current Law provides that one of the preconditions for construction commencement is the arrangement of sufficient funds in accordance with the construction works schedule. However, this precondition is no longer required to be satisfied under the Law No. 62/2020/QH14.
4. Under Law No. 62/2020/QH14, for those projects requiring formulating the preliminary feasibility study (“**PFS**”), PFS's contents also include a preliminary environmental impact assessment. As such, PFS's contents shall have 07 items below in total:
 - 4.1 Necessity for the investment and conditions for implementation of investment in construction;
 - 4.2 Proposed objectives, scale, location and the form of investment in construction;
 - 4.3 Requirements for use of land and resources;
 - 4.4 Preliminary design plan for construction, explanations, technology, techniques and appropriate equipment;
 - 4.5 Proposed period for implementation of the project;
 - 4.6 Preliminary figure for total invested capital; a plan for raising capital; ability to recover capital and repay loans (if any); and preliminary calculations of the socio-economic effectiveness and evaluation of impact of the project; and
 - 4.7 Preliminary environmental impact assessment pursuant to the laws on environmental protection.

TAX

Decree No. 132/2020/ND-CP of the Government dated 5 November 2020 Regulating Tax Management of Enterprises with Related Transactions ("Decree 132").

Effective date: 20 December 2020

Decree 132 replaces existing Decree No. 20/2017/ND-CP (which was already amended by Decree No. 68/2020/ND-CP) with following key changes:

1. Commercial databases are newly introduced and referred to as a valid source for comparison for both taxpayers and tax authorities.
2. The standard arm's length range is re-adjusted into 35th percentile to the 75th percentile. Then, taxpayer must re-assess their transfer pricing positions effective financial year 2020 to ensure that their financial status complies with this requirement.
3. Notable changes in term of obligations for making the country by country report (the "**CCR**"):
 - 3.1 Deadline for submitting the CCR is 12 months after the end of the financial year of an applicable ultimate parent company (the "**UPC**").
 - 3.2 If the taxpayer has its UPC in a foreign country which requires a country by country profit report to be lodged pursuant to the regulations of such parent company's country of residence, then the tax authority shall automatically exchanges information as committed in international tax treaties of Vietnam.
 - 3.3 A company is however required to submit the CCR locally within 12 months from the year-end in the following circumstances:
 - (a) The country or territory where the UPC resides has an international tax treaty with Vietnam but has not signed a Multilateral Competent Authority Agreement (the "**MCAA**") as at the deadline for lodging the report as prescribed in item 3.1 above;
 - (b) The country or overseas territory where the ultimate parent company resides has signed an MCAA but has suspended automatic exchange of information or the country by country report has not been automatically provided to Vietnam;
 - (c) If a multi-national Group has more than one taxpayer in Vietnam and the UPC overseas sends a written appointment to one of such taxpayers in Vietnam to submit the inter-country profit report, then such nominated taxpayer must submit to the Vietnamese tax authorities (A) such report; and (B) such written notice from the UPC either before or on the last day of the financial year of the UPC of the taxpayer.
4. The exemptions from providing declarations and from preparing transfer pricing files are broadened to include the circumstances where:
 - 4.1 taxpayers only have domestic related party transactions; and
 - 4.2 taxpayers and their related parties have the same tax rate; and
 - 4.3 none of the parties enjoy tax incentives.
5. Decree 132 is newly introduced but applicable to the period of corporate income tax of 2020.

Contributors



Benjamin Yap (Mr.)

Senior Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
benjamin.yap@rhtlaw.com.vn



Le Thi Kim Quy (Ms.)

Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
quy.le@rhtlaw.com.vn

Office details

>

RHTLaw Vietnam

Suite 1101, 11th Floor, Sofitel Central Plaza
17 Le Duan Boulevard, District 1, Ho Chi Minh City,
Vietnam

Tel: +84 28 38206 448

HCMC > Hanoi > Singapore > Phnom Penh

>

RHTLaw Vietnam – Hanoi Branch

Unit 1501B, 15th Floor, Charmvit Tower
117 Tran Duy Hung Street, Cau Giay District
Hanoi, Vietnam

Tel: + 84 24 3974 8881

HCMC > Hanoi > Singapore > Phnom Penh

Disclaimer: All materials have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your factual and legal circumstances.