

# Technical Update

May 2022



## 1. Decree on amendment and supplementation of provisions on conditions for investment and operation in vocational education

On 6 April 2022, the Government issued Decree No. 24/2022/ND-CP amending and supplementing Decrees providing conditions for investment and operation in vocational education (“**Decree 24**”), effective from 1 June 2022.

Below is the notable amendments and supplementations:

- Supplementing provisions on conditions and procedures for establishment of branches of foreign-invested technical schools and colleges. Apart from satisfying the conditions on minimum amount of investment capital in accordance with the prevailing regulations, the project also has to satisfy conditions on minimum land use area (i.e. at least 25% of the land use area permitted to establish foreign-invested technical schools and colleges).
- Shortening the time for reviewing and allowing the establishment of branches of foreign-invest technical schools and colleges from 10 working days to 7 working days. Besides, the new form for the establishment of branches of foreign-invested technical schools and colleges/vocational education institution are also regulated under Decree 24.
- Amending and supplementing regulations on transnational education comprehensively as follows:
  - ✓ loosening and expanding forms of educational cooperation by allowing entities to take the initiative to decide on their own the approach for implementing the educational program to be entirely in Vietnam or partly in Vietnam and partly abroad, instead of the old provisions where education programs being entirely in Vietnam or partly in Vietnam and partly abroad were specified;
  - ✓ supplementing conditions on licenses for transnational education – especially in independent decision-making for transnational education. The application dossier for registration of transnational education must include a copy of the cooperation agreement or educational association agreement between the parties;
  - ✓ shortening the statutory timeline for the procedures of application for the certificate of registration of transnational education to 10 working days.

## 2. Decree amending and supplementing a number of detailed regulations on the implementation of a number of contents of the Law on Post

On 12 April 2022, the Government issued Decree No. 25/2022/ND-CP on amendment and supplementation of a number of Articles of Decree No. 47/2011/ND-CP dated 16 June 2011 of the Government providing detailed regulations on implementation of a number of contents of the Law on Post (“**Decree 25**”), Decree 25 will be effective from 1 June 2022.

Of note, Decree 25 provides the following:

- Removing the financial conditions (i.e. the minimum capital requirement of VND 2 billion for domestic postal service providers and VND 5 billion for international postal service providers);

- Shortening the timeline for the appraisal for the issuance of postal permit from 30 days to 20 days;
- Supplementing the procedures for the revocation of postal permit for enterprises committing actions specified in Article 24.1 of the Law on Post. Enterprises whose conduct led to the revocation will be convoked and will have 10 working days to explain their actions. Permits of enterprises who fail to explain or provide explanations not in compliance with the laws, will be revoked by the competent authority and an announcement will be published on the Web Portal of such competent authority.
- Supplementing the responsibilities of the enterprise implementing postal services such as:
  - ✓ providing information on the postal services, publishing the postal service charges for the service users by posting at service points and websites;
  - ✓ notifying competent authorities on post when there are changes in the applicable postal service charges or when there are new postal charges.

### 3. Decree providing details on measures to implement Resolution No. 12/2021/UBTVQH15 on a number of mechanisms and policies in the health sector to serve the prevention and control of COVID-19 pandemic

Pursuant to Resolution No. 12/2021/UBTVQH15 dated 30 December 2021 of the National Assembly Standing Committee on permitting the implementation of a number of mechanisms and policies in the health sector to serve the prevention and control of COVID-19 pandemic (“**Resolution 12**”), on 29 April 2022, the Government issued Decree No. 29/2022/ND-CP providing details on measures to implement Resolution 12 (“**Decree 29**”). Decree 29 came into force from its issuance date.

Decree 29 has the following notable contents:

- Extending the registration certificates to end of 31 December 2022, for drugs and medicinal ingredients whose circulation registration certificates due to expire between 30 December 2021 (the effective date of Resolution 12) to 31 December 2022 because of failure to complete the registration procedures due to the impact of Covid-19 pandemic.
- Regulating a number of specific mechanisms related to drugs and medicinal ingredients with indication for prevention and treatment of Covid-19. Accordingly, pharmaceutical substances meeting certain conditions can be converted for the use of preventing and treating of Covid-19.

### 4. Draft Circular on conditions for enterprises to borrow non-Government guaranteed foreign loans

The draft of Circular dated 10 May 2022 (providing conditions on non-Government guaranteed offshore loans to be borrowed by enterprises) (the “**Draft**”) will replace Circular No. 12/2014/TT-NHNN dated 26 February 2014 issued by the State Bank of Vietnam on conditions for borrowing of offshore loans. Details are as follows:

- The conditions provided for under the Draft do not apply to offshore loans under the form of importing goods with deferred payment.
- Providing basic contents of the plan for utilisation of offshore loans.
- Defining financing cost. The financing costs applicable to offshore loans are the total costs payable by the borrower to offshore lender(s), guarantors, insurers, agents and other related parties which include interest rate, internal rate of return, other related fees but excludes default interest, commitment fee for not having utilised the offshore loans as scheduled, prepayment fee, fees for engaging and conducting foreign currency exchange/interest rate hedging transactions and contractor tax.
- Regulating the cap fee applicable to foreign currency offshore loans as follows:
  - ✓ In relation to offshore loans with a reference interest rate: **reference interest rate + 8%/year**; and
  - ✓ In relation to offshore loans without a reference interest rate: **SOFR Term Rate + 8%/year**. Accordingly, SOFR Term Rate is the SOFR Term interest rate with 6-month term published by CME on its official website and is determined at the closest time before the signing date of the offshore loan agreement.

- Defining and regulating the foreign exchange hedging transactions. Accordingly, the borrower is required to engage in foreign exchange hedging transactions in case where the short-term as well as medium and long-term foreign loans are under certain conditions. Specifically:
  - ✓ In relation to short-term offshore loans: The borrower is required to engage in foreign exchange hedging transactions if the commitment/credit limit is over **USD500,000**.
  - ✓ In relation to medium- and long-term offshore loans: The borrower is required to engage in foreign exchange hedging transactions for repayment of **the principal amount each of which is over USD500,000**.
- Offshore lenders and related parties are also required to appoint a security agent to receive, manage and enforce the security if the offshore loan is secured by **secured assets to be placed within the territory of Vietnam**. The security agent shall be either **credit institutions, foreign bank branches or other entities** which are established and operating under the **laws of Vietnam**. However, this condition shall not be applied to the cases where the securing party and the secured party agree that the secured party will assume secured assets to replace the performance and fulfilment of the secured obligations.
- Detailing the purposes of short-term foreign loans. Accordingly, the borrower is allowed to borrow short-term offshore loans to pay short-term debts which are payable **within 12 months** from the signing date of such short term loan agreement. However, these debts do not include:
  - ✓ Debts incurring from loan contract entered into between the borrower and residents;
  - ✓ Debts incurring from purchase of trading securities; purchase/acquire of capital contribution or shares of other entities; purchase of investment real-estate and transfer of projects.
- Regulating a limitation on foreign lending for the purpose of increasing borrower's capital for business activities. Accordingly, the borrower must ensure that the **balance of both medium- and long-term onshore and offshore loans** (including proposed offshore medium-term and long-term loans) of the borrower must not **exceed 3 times of its equity** as recorded in the most recent audited financial statement **or the charter capital** in case the equity is lower than the charter capital.
- Besides, the Draft also regulates transitional terms for transactions involving offshore borrowing and debt repayment signed before the effective date of the new circular. Basically, the signed transactions will continue to comply with the regulations at the time of signing. However, in relation to (i) short-term loan agreements having commitment/credit limit of over USD500,000 or equivalent in other foreign currencies that have not been fully utilised, and (ii) medium and long-term loan agreements the principals of which not having been fully repaid and are subject to hedging transactions, such transactions must conduct hedging transactions to mitigate risks.

Recently, the State Bank of Vietnam is gathering and collecting public opinion on the latest Draft which, upon being officially issued, may be varied.

## Contact us

### Hanoi

46<sup>th</sup> Floor, Keangnam Landmark 72,  
E6 Pham Hung, Me Tri, Nam Tu Liem

T: +84 (24) 3946 1600

### Ho Chi Minh City

10<sup>th</sup> Floor, Sun Wah Tower,  
115 Nguyen Hue, Ben Nghe, District 1

T: +84 (28) 3821 9266

### Da Nang

D3, 5<sup>th</sup> Floor, Indochina Riverside Towers,  
74 Bach Dang, Hai Chau I, Hai Chau

T: +84 (236) 351 9051

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2022 KPMG Limited, KPMG Tax and Advisory Limited, KPMG Law Limited, KPMG Services Company Limited, all Vietnamese one member limited liability companies and member firms of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.



Scan to visit our website: [kpmg.com.vn](https://kpmg.com.vn)

Email: [kpmghcmc@kpmg.com.vn](mailto:kpmghcmc@kpmg.com.vn)