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*EPLegal is an AsiaLaw , Chamber & Partners and Legal 500 recommended law firm, which provides comprehensive legal services in support of Vietnamese and international commercial transactions, corporate, tax, labor, mergers & acquisitions, and other legal interests.*

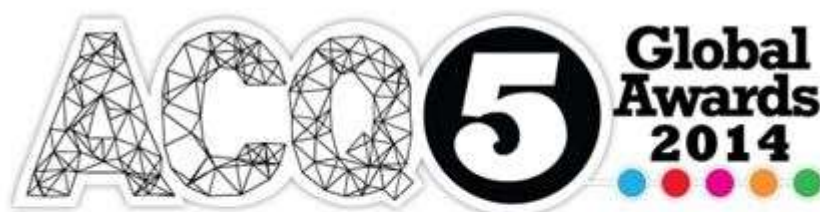
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**EPLEGAL WINS THE ACQ GLOBAL AWARDS 2014**

Since 2008, the ACQ Global Awards have been celebrating achievement, innovation and brilliance in their annual awards. ACQ operates a legitimately independent nomination process. Importantly, the award winners are chosen by ACQ's readership. With the world battling to return to growth, competition could not be fiercer. The ACQ Global Awards set out to recognise the achievements of those who are responding most successfully to the demands being placed on them in the new post-recession business environment.



**VIETNAM – ENERGY LAW FIRM OF THE YEAR, EPLEGAL**  
**VIETNAM – SHIPPING & MARITIME LAW FIRM OF THE YEAR, EPLEGAL**  
**VIETNAM – DISPUTE RESOLUTION LAW FIRM OF THE YEAR, EPLEGAL**

“Exceptional individuals, teams and firms across the marketplace represent the very best in their field from around the world and truly deserve the accolade of being an ACQ Award winner. The quality of this year's entries is astonishingly high and a testament to the fact that the profession continues to innovate and deliver high-quality services even in economically challenging times.” said Jake Robson, Editor in Chief of ACQ.

EPLegal Limited won the ACQ Awards for 03 categories of Energy Law Firm of The Year, Shipping & Maritime Law Firm of The Year and Dispute Resolution Law Firm of The Year, which recognize the exceptional capacity of its expertise in providing high-quality legal services and its outstanding practice over the past 12 months.

**Legal Updates**

**1/ Circular No. 03/2015/TT-BLDTBXH of Ministry of Labour, Invalids and Social Affairs on regulations about the adjustment of salary, wage and monthly income after social insurance**

In 2015, salary, wage and monthly income after social insurance will be increased for laborers from 2008 to 2013; with the adjustment factor for salary, wage and income being 1,68; 1,57; 1,44; 1,21; 1,11; 1,04 respectively, increase from 0,04 to 0,07 in comparison with the current factor; particularly for 2014, 2015, salary and monthly income after

social insurance remain unchanged, still equal to gross salary, monthly wage after social insurance according to regulations on salary determined by the employers or equal to gross monthly income after social insurance contributed in each year.

**2/ Circular No. 09/2015/TT-BTC of Ministry of Finance on instructing the enterprise's financial transaction under Article 6 of Decree No. 222/2013/NĐ-CP dated 31 December 2013 of the Government on payment in cash.**

Enterprises are prohibited to use cash (paper money and metal money issued by the State Bank) for payment when performing capital contribution transaction, purchase & sale transaction and capital transfer transaction to other enterprise. When performing such transaction, enterprises are allowed only to use payment by check; payment order and other methods of payment without using cash in accordance with the applicable law.

Similarly, payment by check; payment order... are also applied for enterprises which are not financial institution when performing borrow transaction, lend & pay transaction to each other by assets, obligations off-set, liability assignment under laws on enterprises.

### **3/ Circular No. 04/2015/TT-BLDTBXH of Ministry of Labour, Invalids and Social Affairs on instructing the implementation of compensation, subsidies and medical fee of employers towards laborers having occupational accidents and occupational diseases**

Laborers having occupational accidents and level of working disability being from 5% to 10% will be compensated in minimum equal to 1.5 one-month salary; in case of level of working disability up from 81% or death due to occupational accidents, occupational diseases, compensation shall be 30 salary months in minimum. In addition to compensation, laborers having occupational accidents and level of working disability being up from 5% or death shall be given subsidies for occupational accidents due to the victim's fault under conclusion of accident investigation minute or accidents happens while going from residence place to working place or vice versa, in reasonable place and time. In which, minimum subsidies shall be 12 salary months in respect to laborers with level of working disability up from 81% or death due to occupational accidents; 0.6 one-month salary if level of working disability is from 5% to 10%. Laborers having occupational accidents while performing tasks or complying with legal management of employers outside of office, enterprise, organization, cooperatives, due to other persons' fault or unable to determine whom caused the accident then employers are responsible for compensating, subsidizing for laborers. In the event that employers do not pay social insurance for laborers who are subject to compulsory social insurance participation, in addition to compensation and subsidies under above regulations, employers shall pay social insurance on behalf of insurance agency to laborers having occupational accidents, occupational diseases.

### **4/ Resolution No. 02/2015/NQ-HDTP of Council of Judges of Supreme People's Court on amendment and supplementation of some articles of Decree No. 01/2012/NQ-HDTP dated 13 June 2012 of Council of Judges of Supreme People's Court on instructing the implementation of some regulations on court fees and court levies**

The notable point is the regulations on changes of obligation to bear first-instance court fee in administration cases; according to that, from 01 March 2015, petitioners entitled to require compensation on property still have to bear civil first-instance court fee if their requirement is rejected by Court instead of not having to pay the court fee as before.

In addition to the event which the petitioners died but their rights and obligations are not inherited; petitioners withdraw the petition and the court approves; petitioners are lawfully summoned the second time but still absent, then the advanced payment amount of court fee which has been paid shall be requisitioned for Government in the event that the administration cases are suspended when the defendants cancels the administrative decision, the resignation disciplinary decision.... And petitioner agrees to withdraw petition, persons with related rights and obligations shall have the right to independently approve of withdrawing petition.

### **5/ Decree 05/2015/NĐ-CP of Government on specific regulations and instructing the implementation of some of the issues in the Labor Code**

Employers shall indirectly pay salary in full and in time to laborers.

In special event of natural disaster, fire or force majeure, employers may pay salary later than the time agreed upon in contract but no later than 01 month in maximum. In addition, for the purpose of protecting the employer's rights and interests, the decree has affirmed that if salary is paid later than up from 15 days, laborers shall be paid an additional amount at least equal to the late paid amount times the ceiling interest of one-month term deposit announced by State Bank at the time of payment; in the event that the ceiling interest is not regulated then it shall be calculated by the interest of one-month term deposit announced by commercial bank where enterprises and offices open the transaction account at the time of payment.

Laborers having salary paid by the hour shall be paid over-time salary as usual determined by employers or when working overtime for additional amount and volume of products and job besides the agreed amount and volume. In which, salary paid by the hour in normal day shall be at least 150% of actual salary for the current job; in respect of weekends, holidays, new-year eve and paid leave days, the salary shall be at least 200% and 300%, not to mention the salary in holidays, new year-eve and paid leave days for the laborers having salary paid by the hour...

Laborers also have the right to unilaterally terminate the contract to take care of children, wife or husband; parents in both mother and father sides for sickness, accidents. Especially, participants in strike with unlawful procedure and order shall not be entitled to salary and other interests in the striking time. Except for laborers participating in the strike but having to stop working due to the strike will still be entitled to salary in stop-working time and other interests under law on labor.

## Legal Analysis

### TRAPS IN L/C FORM OF PAYMENT FOR VIETNAMESE EXPORTERS

Hang Nguyen - Associate

In today's international trade, letter of credit ("L/C") is one of the most important forms of payment. However, that form is also potentially highly risky and reckless companies may endure huge losses.

For instance, a Vietnam rice exporter signed a contract with a company in Thailand. According to the contract, the seller agreed to sell 500 tons of rice to the buyer with total contract value of 200.000 USD, L/C at sight as form of payment. After delivery, the Vietnamese exporter sent the documents to the buyer to receive the goods and submitted the documents for the L/C payment. Before the delivery, both parties had agreed via oral confirmation that payment could be made upon presentation of the House Bill of Lading ("HBL") instead of the Master Bill of Lading, and that the buyer would confirm that to the issuing bank. Nonetheless, the buyer did not notice the issuing bank of that agreement but instead confirmed acceptance of discrepancies on case-by-case basis. In fact, this is the buyer's intention to escape the payment duty and break the contract when the market appeared less attractive. As the House Bill of Lading is issued before the nomination of a carrier, it does not mention the name of the carrier. Hence, when presenting its documents to the bank, in one of the shipments the Vietnamese company had its L/C document rejected. . The reason is that the buyer disapproved the waiver of the discrepancies.

According to Article 4 of the UCP 600 issued by the ICC in 2006, a credit by its nature is a separate transaction from the sale or other contract on which it may be based. According to Article 7 of the UCP 600, an issuing bank is irrevocably bound to honour as of the time it issues the credit. Moreover, when an issuing bank determines that a presentation is complying, it must honour (Article 15). As a result, since the time of issuance of L/C, the bank bears payment duty to the seller and has to make payment whenever the seller presents complying documents.

The issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation (Article 14). That regulation put the duty of examining documents on banks; however, banks' examination will only be based on their face, neither on their validity nor their legality. Any dispute in relation with "the content" of the documents will be at the cost and risk of the seller and the buyer. In the case that the documents have discrepancies and are not complying, the issuing bank can either refuse to honour or negotiate by asking for a waiver of discrepancies from the applicant, and notice the beneficiary of the refusal or

negotiation. Notice must be sent to the seller no later than the close of the fifth banking day following the day of presentation (Article 16).

Based on those regulations, the issuing bank may, upon the buyer's instruction, refuse to pay the Vietnamese exporter and he has no legal basis to sue either the buyer or the bank for their losses. The tricky point is, when the issuing bank asked for the approval of the HBL presented by the seller, the buyer is at its full discretion to accept or disapprove the discrepancy. The seller naively made a mistake by following the buyer's instruction to present a HBL without having any guarantee that the buyer will confirm to the issuing bank its acceptance of that document, as well as not being aware that the duty of payment belongs to the issuing bank not to the buyer.

The above example may provide a worthy lesson to the Vietnamese exporter when using L/C form of payment in transactions. In order to protect themselves from avoidable losses, exporters should acquire and master knowledge in L/C, UCP, Incoterms, etc. As L/C form of payment requires a strict compliance between the presented documents and L/C, Vietnamese exporters should pay sufficient attention to documents' descriptions, from commercial invoice, certificates to Bill of Lading, to be complying with L/C's requirement in details. Under some circumstances, both parties may reach an agreement to use documents with discrepancy. Regarding to the aforesaid case, exporters should immediately amend the L/C to secure their payment.

