

NEW POINTS IN THE DECREE GUIDING THE LAW ON ENTERPRISES

KHANH QUYNH

On April 1, 2021, the Government promulgated Decree No. 47/2021/ND-CP providing details for a number of articles of the Law on Enterprises (**Decree 47**) on social enterprises, state-owned enterprises, group of companies, and national defense and security enterprises with notable contents as follows:

Firstly, allowing social enterprises to divide, separate, consolidate, merge with other enterprises which are not social enterprises. In the case where the re-organization results in termination of the social and environmental objectives ahead of the committed schedule and dissolution of social enterprises, besides returning to the individuals, agencies or organizations providing aids and sponsorship or transferring to other social enterprises, organizations operating with similar social objectives the remaining assets or financial supports received by social enterprises as prescribed in Decree No. 96/2015/ND-CP guiding the Law on Enterprises, Decree 47 broadens the options for social enterprises in the disposal of assets, which is transferring to the State in accordance with the Civil Code.

Secondly, specifying the cross-ownership among companies in a group of companies. In particular, Decree 47 provides guidelines for Clause 3, Article 195 of the Law on Enterprises about the cases considered as "jointly contribute capital, purchase shares of another enterprise or establish a new enterprise" among subsidiaries having the same parent company being "an enterprise with at least 65% of State capital". Accordingly, 3 cases for contribution of capital, purchase of shares of another enterprise or to establish an enterprise includes: (i) Jointly contribute capital to establish a new enterprise; (ii) Jointly purchase capital contribution, shares of an established enterprise; (iii) Jointly receive the transfer of shares and contributed capital from members or shareholders of an established enterprise. Simultaneously, "an

enterprise with at least 65% of State capital" is defined as an enterprise of which 65% or more of its charter capital or total voting shares are held by the State.

In addition, the Decree prescribes that the company's President, Member Council, Board of Directors shall take responsibility for ensuring compliance with regulations on "cross-ownership" when proposing and deciding on contribution of capital, purchase of shares, capital contribution of other companies and jointly bear liabilities to compensate for damage of the company arising from any violation of such regulation.

COMMENTS AND RECOMMENDATIONS

Firstly, Decree 47 has brought many benefits to social enterprises. Specifically, enterprises are no longer confined to maintain their "pure social" nature by only being divided, separated into social enterprises or being consolidated or merged with social enterprises, but also allowed to divide, separate, consolidate, merge with other enterprises. Moreover, their investors shall also have more options upon social enterprises' engagement in the merger and acquisition market. In re-organizing social enterprises, businesses should carefully weigh up the matters relative to sources of assets and financial supports received to ensure compliance with the law and agreements with the involved individuals and organizations.

Secondly, Decree 47 has tighter regulations on cross-ownership among companies within a group. It would be the legal ground to accurately determine the nature of transactions, the responsibilities and powers of corporate managers as well as state management agencies. Therefore, enterprises need to be more cautious in investment transactions related to contributing capital, purchasing shares and capital contribution, receiving transfer of shares and capital contribution among companies within a group. Where a violation related to cross-ownership in the above transactions is detected, the business registration agency will reject any registration for the change of members or shareholders of the company. At the same time, the enterprise in question may be administratively sanctioned from VND 15,000,000 to VND 20,000,000 for the act of "cross-ownership" as prescribed in Article 39, Decree No. 50/2016/ND-CP.