

# HIGHLIGHTS OF THE DRAFT DECREE AMENDING THE DECREE ON ORGANIZATION AND OPERATION OF SME DEVELOPMENT FUND

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To complete the regulations on lending and sponsoring in accordance with newly issued legal normative documents such as Enterprise Law 2020, Decree 80/2021/ND-CP providing details and guidelines for implementation of several articles of the Law on Supporting Small and Medium Enterprises as well as the practical situation, the Ministry of Planning and Investment is developing a Draft Decree amending and supplementing a number of articles of Decree 39/2019/ND-CP on organization and operation of Small and Medium Enterprise Development Fund (**Decree 39**). In this Legal Newsletter, NHQuang&Associates would like to introduce some notable contents of the Draft related to lending and sponsoring from the Small and Medium Enterprise Development Fund (hereinafter referred to as "**the Fund**") that possibly affect business activities of enterprises.

## Amending and supplementing regulations related to direct lending

*Regarding the implementation roadmap*, according to assessment by the Ministry of Planning and Investment, the Fund's direct lending activities are always potentially risky as borrowers of the Fund are small and medium enterprises (**SMEs**) running innovative startups, participating in inter-sectoral complexes and value chains. Thus, it is necessary to have a roadmap for implementation with review, assessment, and adjustment of the operating mechanism for ensuring effective and safe lending of the Fund. However, the formulation of the roadmap in this activity has not been regulated in Decree 39. Therefore, to limit any related risk, the Draft Decree has added the principle that "*the Fund must perform direct lending activities according to the roadmap approved by the Ministry of Planning and Investment*".

*Regarding lending requirements*, the Draft Decree also amends the lending requirements in Article 16 of Decree 39 towards stipulating more specifically the criteria for determining the loan subjects and the requirements that enterprises need to meet in applying for loans. The amendment aims to enhance the lending requirements so that they could better conformed to the criteria for identifying innovative start-up SMEs, SMEs participating in inter-sectoral complexes and value chains as stipulated in Decree 80/2021/ND-CP. For example, with regard to innovative start-up SMEs, the Draft Decree supplements the requirement of "*Meeting the criteria for identifying innovative start-up small and medium enterprises under clause 1, Article 17 of the Law on Supporting Small and Medium Enterprises and the guiding documents*".

*Regarding the level of direct lending*, Decree 39 stipulates that the maximum loan amount for each production and business project or plan must not exceed 80% of the total investment capital of each project or plan. However, this provision has been removed in the amendment Draft. Specifically, the loan amount will be agreed with the SMEs based on the production and business project or plan, financial capacity of SMEs and the loan limit specified in the Draft Decree as well as the funding capacity of the Fund. This adjustment is to be consistent with the practice of credit institutions under the State Bank's regulations on lending amounts and lending limit methods (Circular 39/2016/TT-NHNN stipulating lending activities of credit institutions, foreign bank branches to clients). In addition, the Draft Decree supplements the form of lending application submission through an online reception system, which aims to shorten the time and save costs for sending documents to the Fund, in line with the digital transformation requirements

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#### **Amending and supplementing regulations related to indirect lending and sponsoring**

*Regarding indirect lending activities*, for facilitating enterprises' better access to the Fund's capital and promoting commercial banks to cooperate with the Fund to disburse for SMEs, the Draft has lessened the conditions for borrowing from the Fund's capital. Accordingly, enterprises may borrow the Fund's capital when they meet the criteria for identifying innovative start-up SMEs, SMEs participating in inter-sectoral complexes and value chains and have their production and business plan or project approved for loan by banks. Compared to Decree 39, the Draft has removed the provision which refers to point c, clause 1, Article 16 on "*Ensuring that the equity participation in a production and business project or plan makes up at least 20% of the total investment capital for implementation of such production and business project or plan, and ensuring sufficient capital for implementation of the production and business project or plan*" and point b, clause 1, Article 23 on "*Meeting regulations on loan guarantee under relevant laws*".

*Regarding sponsoring activities*, the Draft amends the regulations on the subjects of capital sponsor, focusing on innovative start-up SMEs because these subjects are considered to face the most difficulty in accessing credit sources in the SME community due to their lack of collateral, credit history or business management experience. The Draft also supplements the provision on sponsor sources by owners' equity gained from the Fund's operations (development investment fund) or non-budget capital sources (aid, sponsorship, trust, etc.).

## **COMMENTS AND RECOMMENDATIONS**

The amendment and supplementation to Decree 39 are necessary in the current context that over 75% of SMEs are hunger for capital; meanwhile, there are always various obstacles and limitations in the channels for accessing credit institutions' capital as well as existing gaps in the credit legal framework for SMEs. On the other hand, SMEs have not actively grasped relevant information by themselves but are still highly dependent on the financial advice by the banks that they have credit relations with. Therefore, it is necessary for SMEs to study the provisions of the Draft Decree and regularly update information thereof to quickly access the new regulations.