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AMENDMENT OF THE CAPS ON OVERTIME IN THE CONTEXT OF COVID-19 PANDEMIC

On 23 March 2022, the Standing Committee of the National Assembly approved Resolution No. 17/2022/UBTVQH15 amending the yearly and monthly overtime caps in the context of the prevention and control of COVID-19 and to support socio-economic recovery and development ("**Resolution 17**"). Resolution 17 took effect from 1 April 2022, except for the yearly overtime cap which took effect from 1 January 2022, and is expected to be in force until the end of 2022. Resolution 17 is considered to be a part of Vietnam's effort to support employers to stabilize production and business in response to the COVID-19 pandemic, along with the government-proposed socio-economic recovery program.

We describe below some major features of Resolution 17.

1. Overtime cap adjustment

1.1. Under Resolution 17, in general, if an employer has a business need and the relevant employees consent, overtime work of more than 200 hours but not exceeding 300 hours in a year will be permitted.¹ Prior to Resolution 17, the annual overtime in these circumstances was capped at 200 hours², and only employees in certain industries such as textiles, leather, shoes, and seafood processing were permitted to work overtime up to 300 hours in a year.³

¹ Article 1.1 of Resolution 17

² Article 107.2(c) of the Labor Code 2019.

³ According to Article 107.3 of the Labor Code No. 45/2019/QH14 dated 20 November 2019 issued by the National Assembly ("**Labor Code 2019**") and Article 61 of Decree 145/2020/ND-CP, an employer is permitted to request employees to work overtime hours of up to three hundred (300) hours in a year in a number of industries, trades and jobs including, among others, production and processing of export products (being textiles, garments, leather products, shoes, electrical products and electronic components, and processing of agricultural, forestry, salt and aquatic products); provision of public services; provision of medical examination and treatment services; and provision of educational and vocational training services.

1.2. When overtime work is between 200 to 300 hours in a year, the employer will need to send a written notification to the provincial labor authority in accordance with Vietnam's labor laws.⁴

1.3. In addition to the yearly cap of 300 hours (as described above), a monthly cap of 60 hours of overtime work also applies under Resolution 17. As a result, if an employer has a business need and the relevant employees consent, overtime work of up to 60 hours will be permitted in a month.⁵ Prior to Resolution 17, the monthly overtime cap was 40 hours.⁶

2. Exceptional cases of Resolution 17

The increase in the annual overtime cap to 300 hours under Resolution 17 does not apply to the following categories of employees:⁷

- (a) employees who are 15 to 18 years old;
- (b) employees with a mild disability whose ability to work has been reduced by 51%, a severe disability or a particularly severe disability;⁸
- (c) employees doing heavy, hazardous or dangerous jobs or extremely heavy, hazardous or dangerous jobs;
- (d) female employees from the seventh month of a pregnancy, or from the sixth month of a pregnancy if they work in highland, remote, border or island areas; and
- (e) female employees raising children under 12 months' old.

As noted above, the increase in the overtime hours is expected to only apply to 2022 to support businesses in response to the COVID-19 pandemic (unless the National Assembly decides otherwise and extends its application).⁹

If you have any questions or would like further details regarding this issue, please contact our lawyers listed in the left-hand column.

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⁴ Article 3.2 of Resolution 17 and Article 107.4 of the Labor Code 2019.

⁵ Article 2 of Resolution 17

⁶ Article 107.2(b) of the Labor Code 2019.

⁷ Article 1.1 of Resolution 17

⁸ The degree of disability shall be determined by the competent authority (i.e. the disability degree determination council or the medical examination council, as applicable, in accordance with the Law on Persons with Disabilities) upon a request of the person with disability or his/her legal representative.

⁹ Under Section 1(dd) of the Official Letter No. 1312/LDTBXH-ATLD dated 26 April 2022 issued by the Ministry of Labor, Invalids and Social Affairs ("MOLISA") guiding the implementation of Resolution 17, the MOLISA confirms that Resolution 17 will remain effective until the end of 31 December 2022 unless otherwise extended by the National Assembly.