IMPLEMENTING THE EMPLOYEE STOCK OWNERSHIP PLAN (ESOP)

In the context of increasing awareness of the human resources value and the sustainable development of businesses, the Employee Stock Ownership Plan (ESOP) seems to have become a powerful tool to motivate and engage employees with the success of the organization. ESOP can be implemented by various types of joint stock companies, not only joint stock companies being public (listed or unlisted public companies), but also non-public JSC, and even foreign parent companies issuing ESOP to employees of its subsidiary in Vietnam.

ESOP represents a transformative approach to employee compensation and incentivization, enabling workers to acquire a stake in the company's equity. Unlike traditional compensation structures, where employees receive cash bonuses or stock options, ESOP empowers employees to directly own shares in their organization, fostering a sense of ownership, commitment, and alignment with the company's long-term objectives. The following text explains in more details ESOP under the law of Vietnam.

1. Overview of ESOP

ESOP is a program that a business applies to give its employees the opportunity to become company shareholders through buying its shares at preferential terms or be granted free shares from the company. The operating mechanism of ESOP is typically as follows: When a company implements an ESOP, it issues additional shares and allows certain employees to purchase or receive shares based on specific criteria, such as length of service, job performance, etc. On the other hand, the company may also execute an ESOP by repurchasing outstanding shares, meaning shares that have already been issued, from shareholders at market price and then selling them at a discounted or free price to eligible employees who are beneficiaries of the ESOP.

2. Conditions for implementing ESOP

In Vietnam, the implementation of ESOPs is subject to regulatory oversight, necessitating compliance with relevant laws and regulations. For public companies, adherence to Decree No. 155/2020/ND-CP dated 31 December 2020 is imperative, outlining specific conditions and procedures for ESOP issuance. Conversely, non-public companies must navigate a different set of considerations, inter alia, including approval by the General Meeting of Shareholders (GMS), criteria for employee eligibility, and compliance with foreign ownership ratio regulations. Particularly, the key considerations for implementation ESOP as follows:

2.1. Implementing ESOP by a foreign parent company for Vietnamese employees in Vietnamese subsidiary

Under the laws of Vietnam, the Vietnamese employees are only allowed to make foreign portfolio investments (i.e. purchase and sell shares) by participating a plan that awards shares issued by a foreign entity having a commercial presence established in Vietnam (i.e. having a foreign-owned company, branch, representative office, management office in Vietnam). It means that the Vietnamese employees of the subsidiary are only granted the right to purchase shares of foreign company being direct owner of their employing entity.

Central to the ESOP implementation in Vietnam by foreign parent companies is obtaining approval from the State Bank of Vietnam ("**SBV**"), serving as a gateway to legal ownership of foreign shares by Vietnamese employees. Achieving SBV's approval for ESOP registration requires meticulous attention to detail, proactive engagement with regulatory authorities, and a commitment to compliance. Particularly, the SBV's approval process entails thorough documentation, including detailed descriptions of employee rights, features of the plan, incorporation documents, and minutes of relevant meetings. While the approval process can be complex and time-consuming, adherence to SBV's guidelines is essential for ensuring compliance and mitigating regulatory risks.

2.2. Implementing ESOP by non-public companies

In nature, the issuance of ESOP by non-public companies is considered a form of private offering equity of shares. Accordingly, this issuance shall subject to the conditions under the Law on Enterprises, specifically:

(i) The offering shall not be made through mass media;

(ii) Shares under this plan shall be offered to fewer than 100 employees.

2.3. Implementing ESOP by public companies

A public company is required to follow the provisions under the Law on Securities and other relevant instruments. In addition to the general conditions above, a public company is required to report and file the ESOP documents for the approval of the State Securities Commission of Vietnam ("**SSC**"). Upon approval, it must disclose and publicize on its website certain standard information to the Stock Exchange. This must be completed within 7 working days before the ESOP's completion date.

The results of the ESOP must be reported to both the SSC and the Stock Exchange, and announced on the company's website within certain prescribed periods. The SSC will provide the necessary confirmation to the Stock Exchange and the Vietnam Securities Depository and Clearing Corporation.

In case the public company's shares are listed on the Stock Exchange, it must

register the new ESOP shares with the Vietnam Securities Depository and Clearing Corporation so that the employees owning can trade them after at least 1 year from the completion date of ESOP.

2.4. Time limits for employees to sell shares from ESOP

The newly issued shares in ESOP granted by public companies are subject to a minimum transfer restriction of one year from the end of the issuance period. While there is no limitation on the time for transferring shares in ESOP granted by joint stock companies which are not public companies. However, in practice, companies normally extend the vesting period to mitigate the risk of market "dilution" and share price decline, as well as to maintain balance and prevent harm to shareholders.

In general, ESOP can bring many benefits to both companies and employees, creating a positive work environment and encouraging personal development. It can also be a useful tool to motivate and commit employees while sharing the company's success with them. However, the design and implementation of an ESOP needs to be carefully executed and thoroughly considered by the company to ensure that it aligns with the company's objectives and provides benefits to all parties involved.

We hope the above information on the implementation of ESOP is beneficial to you. The issuing entities of ESOP should pay attention to the above issues, especially the statute conditions and limitations, to facilitate the plan.

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