NDTC & Partners

LEGAL NEWSLETTER

December 2018

LEGAL UPDATE

December 2018

1. DECREE 148/2018/ND-CP SUPPLEMENTING A NUMBER OF PROVISIONS OF DECREE 05/2015 REGARDING THE LABOR CODE'S REGULATIONS.

-HIEU HO-

The Government has recently issued Decree 148/2018/ND-CP to supplement a number of provisions of Decree 05/2015 regarding the particular provisions of the Labor Code. Set out below are the highlighted points.

Decree 148 helps clarifying the person signing an employment contract on behalf of the employer party including the legal representative of an enterprise, organization; the head of family household and organization without legal personality and the authorized person of the legal representative or the head of an organization.

Regarding to the Contractual terms and conditions, Decree 148 modifies the pay grade promotion or the pay raise in which both contracting parties may negotiate about whether the employer's statutes or the collective bargaining agreement are applied. Furthermore, both contracting parties may negotiate about the compliance with labor rules, statutes of the employer, the collective bargaining agreement and/or legislative regulations.

Notably, Decree 148 supplements the procedures for the imposition of labor disciplinary actions. Accordingly, the employer only must ensure that the notification of invitation to the meeting about disciplinary actions is received by participants before the meeting takes place (unlike existing regulations, the Decree does not require that the notification of invitation must be sent at least 5 working days before the meeting). In the absence of any participant without good and sufficient reasons, the employer may hold that meeting at its discretion and does not have to obey the existing regulation under which at least 3 times of invitation to the meeting are required.

The Decree 148 shall be in force on December 15th , 2018.

2. DECREE NO.155/2018/ND-CP: AMENDING AND SUPPLEMENTING A NUMBER OF PROVISIONS RELATED TO BUSINESS INVESTMENT CONDITIONS UNDER THE SCOPE OF GOVERNANCE OF THE MINISTRY OF HEALTH

-HA NGUYEN-

The Vietnamese Government has recently issued Decree No. 155/2018/ND-CP on November 12th, 2018, to amend and supplement various Decrees and Circulars on business investment conditions that fall under the state management by the Ministry of Health. This Decree also takes effect on the issuing date.

Consequently, Decree 155 prescribes the operation conditions and conditions to obtain licenses for tissue bank operation. Particularly, the requirements now are more open for investors by not specifying the details of facilities and staffs. Indeed, in comparison with the old conditions, the new one reduces the number of technicians or nurses from two to one person and does not require administrative staff. For corneal bank's staffs, Decree 155 changes by only requiring the person who executes cornea extraction to be graduated from high school and being trained to extract and preserve corneas.

Besides, Decree 155 also adds in general conditions for obtaining operation licenses for medical examination and treatment establishments (the "METEs"). Accordingly, METEs must be based in a fixed location and have at least one person in charge of technical expertise.

3. CIRCULAR NO. 28/2018/TT-BCT: DETAILING THE OPERATION OF COMPETITIVE POWER GENERATION MARKET

-LY PHAM-

The Ministry of Industry and Trade has issued Circular No. 28/2018/TT-BCT, dated September 27th, 2018 and replacing Circular 30/2014/TT-BCT, on regulating the operation of competitive power generation market. This Circular takes effect from November 15th, 2018.

Circular 28 requires all licensed power plants with a capacity of greater than 30MW to join the competitive power generation market within 30 days from its commercial operation date, which is shorter than 06 months (hydropower plants) and 01 year (thermal power plants), relatively to Circular 30.

Regarding the responsibility to sign the output of yearly and monthly contract, Circular 28 allows the power generating party and the power wholesaling party to sign a written confirmation letter on the output of such contract as the calculation result, instead of signing the new amended contract and its appendix as provided by Circular 30.

Under the Law on Electricity, Vietnam competitive generation market ("VCGM") is divided into three phases: (1) competitive power generation market; (2) competitive power wholesale market; (3) competitive power retail market. The VCGM is currently at the end of phase 1, so Circular 28 will be expired from January 1st, 2019 to start phase 2 by the other Circular(s).

CIRCULAR NO. 45/2018/TT-BCT ON THE OPERATION OF THE WHOLESALE ELECTRICITY MARKET AND TO AMEND AND SUPPLEMENT A NUMBER OF ARTICLES OF CIRCULAR NO. 56/2014/TT-BCT ON THE METHOD OF DETERMINATION OF ELECTRICITY GENERATION PRICE AND THE PROCEDURES

-HAI LE-

On September 10, 2018, the Prime Minister has issued the Circular No. 45/2018/TT-BCT to officially initiate the wholesale electricity market from January 01, 2019.

According to Decree 45, all power plants with capacity from 30MW shall directly participate in the wholesale electricity market. The following categories of power plant shall indirectly participate in the wholesale electricity market:

-BOT power plants;
-Renewable power plants, excluding hydropower plants;
-CCGT power plants, provided that they have committed to use the gas resources with maximum capacity to ensure the state interest;
-The power plants in the industrial zones which only sell a part of their electricity generated to the national grid;
-The strategic multipurpose hydropower plants; and
-The imported electricity.

In the start phase of the wholesale electricity market, only five electricity buyers are permitted (all of them are subsidiaries of EVN), namely Southern Power Corporation, Central Power Corporation, Northern Power Corporation, Hanoi Power Corporation and Ho Chi Minh city Power Corporation.

Decree 45 shall take effect from January 01, 2019.

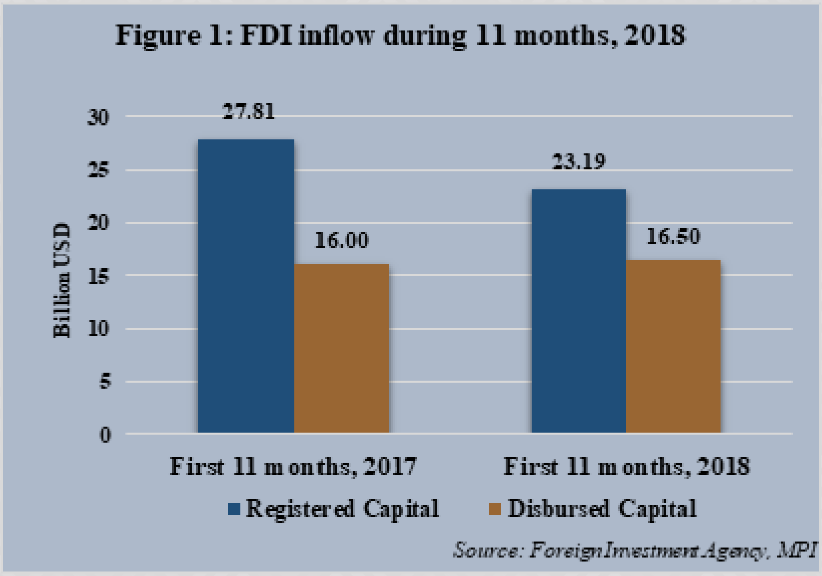
VIETNAM MACROECONOMIC PERFORMANCE

November 2018

By Dzung Dinh

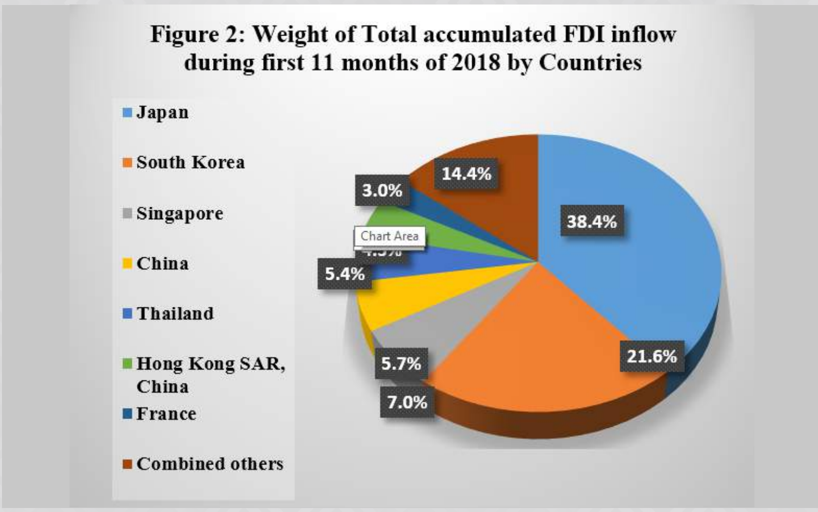
The legal framework updates would influence the investment environment and national economy. Thus, in following section, NDTC & Partners would briefly describe herewith some highlights regarding most significant variations of macroeconomic indicators during November and eleven months of 2018.

Accumulative registered FDI inflow during the first 11 months of the year recorded a considerable reduction of 16.6% y-o-y, whereas accumulated disbursed capital witnessed an opposing trend of 3.1% increase y-o-y (Figure 1).



Following the previous momentum, Japan and South Korea keep their leading positions of accumulated FDI inflow during first eleven months of combined weight of 60% total accumulated FDI inflow, combining and leveling at an accumulative value of around 9.5 billion USD (Figure 2).

Real estate and manufacturing keeps being the most interested sectors for foreign investors during first 11 months, accounting for approximately 80% of total accumulated FDI inflow, leveling at 5.21 billion USD and 7.43 billion USD, respectively.



Source: Government Statistics Office (GSO, MPI)

Industrial Production Index (IPI) recorded a growth of 10.1 % y-o-y during the first 11 months of 2018, with manufacturing sector in general still being the main growth driver, albeit confronting deceleration trend, following by power generation and distribution sector (Figure 3).

In brief, macroeconomic growth has been still majorly driven by the FDI groups while domestic counterparts remained unenergetic.

Figure 3: Industrial Production Index first 11 months, 2018 (% y-o-y to 2017's)

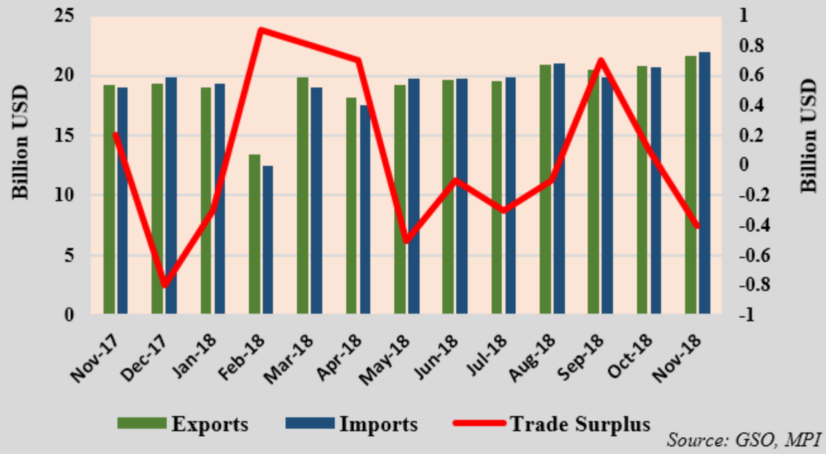
Coal & lignite	9.6 %	Rubber & plastic products	3.1 %
Crude oil & natural gas	(5.4) %	Non-metal mineral products	11.2 %
Food products	8.1 %	Metals	23.7 %
Beverages	7.9 %	Prefabricated metal products	12.8 %
Tobacco	6.4 %	Electronic, computing & optical products	11.2 %
Textile	13.0 %	Electric equipment	6.7 %
Clothes	11.5 %	Motor vehicles	16.3 %
Leather & related products	11.1 %	Furniture	13.4 %
Paper & paper products	13.4 %	Power generation & supply	9.6 %
Chemical & chemical products	7.4 %	Water extraction, treatment & supply	7.5 %
Medicine, pharmaceutical chemistry	22.3 %	Waste collection, treatment& destruct; waste cycling	3.2 %

Source: Government Statistics Office (GSO, MPI)

Trade balance of each month has been fluctuating since August last year, reaching a trough in last December and peak this March (Figure 4).

Aggregate Export turnover for first 11 months of 2018 is estimated at USD 223.63 billion (+14.4% y-o-y to 2017's) whilst aggregate import turnover leveled at USD 216.82 billion (+12.4% y-o-y to 2017's). The slight trade surplus during the period mainly came from export acceleration of FDI corporates at a higher rate than import acceleration of domestic businesses.

Figure 4: Exports - Imports and Trade Balance, November 2018

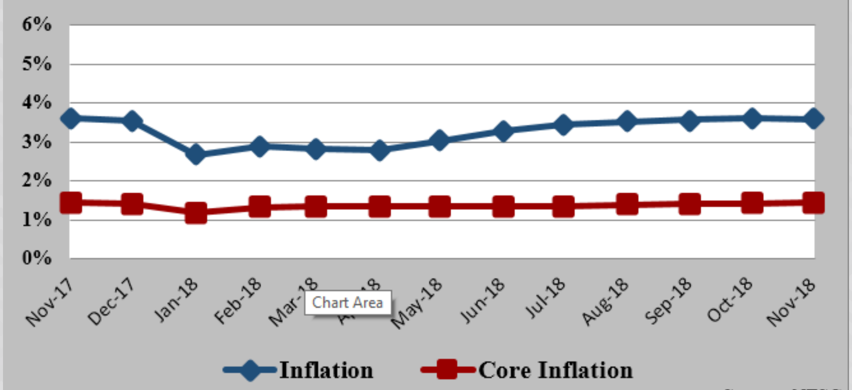


Source: GSO, MPI

Weighted aggregate Inflation rate has continuously decelerated since last June (at 4.15% CPI) until this April (at 2.80% CPI), then slightly accelerated in the past three months to 3.59% in November (Figure 5).

Core inflation has remained under 2% since last June, aggregately reached 1.46% in this November (% y-o-y change to 2017's).

Figure 5: Weighted Aggregate Inflation and Core Inflation by November 2018, % y-o-y change to 2017's



Source: NFSC

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