Global Reward Update

Vietnam – Changes to the operation of employee share plans in Vietnam

Further to our update in February 2016, the State Bank of Vietnam ("SBV") has now officially published a circular ("Circular 10") providing detailed guidance on the conditions and requirements which must be met in order for Vietnamese nationals to participate in overseas employee share plans.

Circular 10 will take effect from 13 August 2016 and the key conditions that must be met are set out below.

Conditions to allow participation of Vietnamese nationals in employee share plans

- The Circular provides that the plan must offer employees the possibility to acquire shares free of charge or share options with "preferable conditions" attached. It is expected that the SBV will provide clarification on the specific types of awards that are covered by Circular 10.
- The plan must be registered with the SBV by the "legal representative" of the overseas company. In practice, it is expected that the "legal representative" will be a local subsidiary of the foreign parent company which operates the plan. The "legal representative" is also responsible for ensuring compliance with other SBV requirements in relation to the implementation and operation of the plan (see below for further details on the "legal representative's" obligations).
- Any proceeds from the sale of shares and any dividends paid on the shares must be transferred to Vietnamese national participants through a bank account specifically

set up by the "legal representative" for the purpose of operating the share plan.
- The plan must comply with exchange control regulations. Additionally, Circular 10 provides that the plan should comply with "other relevant regulations" which, although not specified in the circular, are likely to include regulations relating to deductible expenses for corporate tax purposes and securities and banking laws. Participants and the local employer must also comply with income tax obligations in relation to awards made under the plan.

Rights of Vietnamese nationals participating in employee share plans

- Vietnamese nationals can now receive share awards and share options, and own and sell shares. They can also receive other income arising from the shares (e.g. dividends).
- Vietnamese nationals can use foreign currency which they hold in personal bank accounts to acquire shares. They can also use salary, bonuses or other income denominated in Vietnamese Dong in order to purchase foreign currency to acquire shares.
- Vietnamese nationals can receive in foreign currency any proceeds derived from selling foreign shares acquired as a result of participating in an employee share plan.

Requirements for the legal representative of the foreign company

- The foreign company must appoint a "legal representative" to represent the foreign company in Vietnam in relation to the SBV's requirements.
- The "legal representative" must submit the share plans' registration reports to the SBV prior to the grant of awards to Vietnamese nationals under the plan. It is expected that this registration would only be required ahead of the first grant of awards under each plan.
- The "legal representative" must set up a bank account through which remittances in and out of Vietnam in relation to the plan would be made.
- The "legal representative" is responsible for submitting quarterly reports to the SBV, providing details of any shares acquired and/or sold under the plan and on any remittances into or out of Vietnam in relation to the plan.

Deloitte's view

Circular 10 has provided clearer guidance on how share plans may be implemented and operated in Vietnam. The key factor is that the foreign company must appoint a "legal representative" through which the SBV will implement several requirements for management purposes.

It is expected that specific guidance on the type of awards which may be granted and on applicable foreign exchange controls, personal income tax and other relevant regulations will be issued shortly.

Companies operating in Vietnam may wish to consider making changes to their current share arrangements in order to offer participation to Vietnamese nationals. Where doing so, companies should ensure they are compliant with the SBV's requirements in respect of both the initial implementation and the ongoing operation of their arrangements in Vietnam.