

Our Asia Counsel Insights provide a summary overview of the key trending legal and business issues in Vietnam and how they may impact on your business. Please enjoy your read.

## About Asia Counsel

Asia Counsel is a dynamic international corporate and commercial law firm dedicated to serving clients in Vietnam. We are committed to helping clients achieve their business strategies and providing outstanding legal services.



## Banking Wrap

### New Regulation on Bank Guarantees

On 25 June 2015, the State Bank of Vietnam issued Circular 07/2015/TT-NHNN on bank guarantees. Circular 07 takes effect on 9 August 2015. Circular 07:

- provides additional requirements for guarantees to non-residents but also allows certain exemptions for guarantees to foreign credit institutions.
- regulates the giving of guarantees for residential development projects including specific wording in the sale and purchase contracts and sets expiry of guarantee on 30 days after handover of property.
- regulates the form of guarantee, guarantee fees and the rights and obligations of the guarantor and guaranteeing bank.

## New Securities Regulations

### Foreign Ownership in Public Companies

Decree 60/2015/ND-CP of the Government dated 26 June 2015 permits 100% foreign ownership in certain public and listed companies. Decree 60 provides that the foreign ownership cap will apply as follows:

- If Vietnam has entered into a treaty in which Vietnam has agreed a foreign ownership limit, then that limit will apply.
- If the company operates in a conditional business sector and there is sector legislation that caps foreign ownership then that cap will apply. If there is no legislation then a 49% foreign ownership limit will apply. The list of conditional sectors is prescribed in the Law on Investment.
- If a public company operates in multiple sectors then the sector with the higher foreign ownership cap will apply.
- 100% foreign ownership if the company does not fall in the above categories.

## Property

### Real Estate Investment Fund

Decree 60/2015/ND-CP of the Government dated 26 June 2015 also amended provisions on real estate investment funds ("REIF"). Since 2012, when REIF were first permitted no REIF have been established. Under Decree 60 an investor may contribute real estate to establish a REIF or to increase the capital of a REIF. The investor will be issued fund certificates for the value of the real estate contribution to the REIF.

A minimum of 65% of the net assets of the fund must be invested in real estate in Vietnam or a real estate company where 65% of the total revenue of the company is from rental and real estate business.

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If you have any questions on any of the items discussed above, please do not hesitate to contact us.

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## Business

### Publicly Shaming Offenders

The Ministry of Planning and Investment, Ministry of Finance and Ministry of Home Affairs issued Joint Circular 04/2015/TTLT-BKHDT-BTC-BNV on 28 May 2015 to publicly announce offenders of the corporate and tax laws.

### High Tech Enterprises

The Prime Minister under Decision 19/2015/QĐ-TTg dated 15 June 2015 has introduced additional criteria for a company to be classified as a high tech enterprise. These includes the following:

- 70% of the turnover of the enterprise is from high tech products;
- 1% of total turnover is allocated to R&D;
- 5% or more of employees have a degree.

A high tech enterprise is entitled to a range of concessions.

## Financial Markets

### Private Placements

The conduct of private placements by a public company has been further tightly regulated by Decree 60/2015/ND-CP of the Government dated 26 June 2015.

Under Decree 60, the general meeting of shareholders (**GMS**) must approve a private placement plan that specifically discloses the identity of any investor who will acquire 10% or more of the charter capital of the issuer. Any change to the plan must be approved by the GMS. Previously, the GMS could approve in general terms and allow the board the selection of major investors.

Decree 60 also sets out the process for the conversion of debt to equity. The GMS can approve a private placement of shares to creditors to set off a debt obligation pursuant to a placement plan. The debt must be identified in the audited financial statements of the company.

## Consumer

### Viettel

Viettel, under Decision 15/2015/TT-BTTTT of the Ministry of Communications dated 15 June 2015, has been deemed as a telecommunications enterprise in a dominant market position for telephone, SMS and internet services. Under the competition law there are certain restricted practices of an enterprise under a dominant market position.

### Software Infringement

The Business Software Alliance on behalf of Microsoft is seeking damages from a foreign invested enterprise called Trimmers Company Limited for software license infringement. They are seeking VND 748 million and court costs in the Binh Duong Province People's Court.

### Consumer Protection

In the 2014 Annual Report of the Vietnam Competition Authority, there were 1,000 consumer complaints to the authority mostly relating to telecommunication services. 22 cases of anti-competitive conduct were filed with the authority.

## Vietnam Fact Box

The State Securities Commission of Vietnam has registered:

- 1,545 public companies (ie companies with 100 investors);
- 104 securities companies;
- 51 fund management companies;
- 8 depository banks;
- one settlement bank (ie BIDV);
- 30 investment funds; and
- 32 representative offices of foreign securities businesses,

There are 306 companies listed on the Ho Chi Minh City Stock Exchange and 359 companies listed on the Hanoi Stock Exchange.

Listed securities include shares, bonds, fund certificates and ETFs.

## Infrastructure

### High Tech Zones

The Prime Minister has approved the development of three high-tech zones:

- Hanoi biological high-tech zone in Hanoi City;
- Dong Nai high-tech zone specialising in biology in Dong Nai Province; and
- Ascendas-Protrade high-tech zone in Binh Duong Province.

### My Thuan Can Tho Expressway

This is a 23.2 km expressway in the heart of the Mekong delta and is proposed to be completed by 2018 at a total cost of USD290 million.

### Road Redevelopment Fund

In 2014, the total road redevelopment fund was VND 8,046 billion (c. USD370 million).

