

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

Central Bank widens VND band

The SBV has last week widen the VND fluctuation range from +/-1% to +/-2% of the basic rate in reaction to China's sudden devaluation of the Yuan. This allows the VND to devalue.

New Bank and Merger

The SBV has issued in-principle approval for CIMB of Malaysia to establish a 100% foreign owned bank in Vietnam. The SBV has also permitted Southern Bank to merge with Sacombank.

Authorised Guarantee Banks

The SBV announced a list of 33 banks that are permitted to provide guarantees to property developers for apartment and villas purchased or leased off-the-plan. The major foreign banks are on the list as are the big four State owned banks.

Investment Law

September Decrees

Government Resolution No. 59/NQ-CP dated 7 August 2015 requires the Ministry of Planning and Investment to complete the draft of the decrees to implement the Law on Investment and Law on Enterprises so that the Government can issue the decrees before 15 September 2015. The MPI is also finalising a list of investment conditions applicable to foreign investors which is also planned to be published at the same time.

MPI Guidance on Investment Licensing

The MPI issued Official Letter No. 5122-BKHDT-PC dated 24 July 2015 advising licensing bodies of licensing procedures during the interim period. An FIE changing a business line will be issued with a new enterprise registration certificate and details of the business lines in the existing investment certificate is repealed. An FIE changing any details of an investment project will be issued with a new investment registration certificate.

Property

Registering Property

According to the World Bank's *Ease of Doing Business* survey, Vietnam is ranked 33 out of 188 countries for ease of registering property. It generally takes about 57 days to register property in Vietnam and costs about 0.6% of the property price.

Land mortgages in Vietnam

Land owners with long term and stable use rights may mortgage their land as well as land where the land rental or land use fees have been paid on a lump sum basis. A mortgage contract must be entered into and notarised by a notary public. A mortgage must be registered with the local land authority in order to attain priority.

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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

Directors' Liability

The Law on Enterprises sets the general standard for liabilities of board members and senior managers of Vietnamese companies. Senior managers must act in the best interest of the company and must not use information of the company for personal benefit or benefit of a third party. This limits the ability of a shareholder who has the power to appoint a board member from obtaining company information from that member. A shareholder holding 1% of a company may pursue a board member for breach of his or her duties. The securities laws also set additional standards for senior members of public companies. These include the requirement to disclose relevant interests and those of family members. There are also serious consequences including criminality liability for insider trading and collusion.

Financial Markets

Government Bonds in Domestic Market

The Ministry of Finance issued Decision No. 111/2015/QĐ-BTC dated 28 July 2015 regulating the issuance of government bonds in the Vietnamese market. The issuer of government bonds is the Ministry of Finance. The State Treasury is empowered to organize the bond issuance. The Treasury may issue treasury bills which have shorter maturity of 13 to 52 weeks, or treasury bonds which may have a maturity from 2 years up to 30 years. The par value of a government bond is VND100,000. The coupon may be a fixed or floating rate. The Ministry of Finance sets the framework for determining the coupon rate which the State Treasury will apply.

Government bonds may be issued under an underwritten placement, auction process, placement agent or direct issuance by the State Treasury. Decision 111 regulates how each of these issuance methods are conducted.

Consumer

Food Safety in Vietnam

The Law on Food Safety passed in 2010 and Government Decree 38/2012/ND-CP dated 25 April 2012 provides the legislative framework for regulating the manufacture and import of food products in the Vietnamese market. It sets out how food safety standards are set by the agriculture, health and trade ministries. There are specifications on food labelling, food import inspections and genetically modified products. Imported foods require clearance from the responsible ministries.

Anti-Dumping of MSG

The Vietnam Competition Authority is launching an investigation into the anti-dumping of MSG products into Vietnam and has asked Vietnamese producers to provide market information to the VCA.

Vietnam Fact Box

According to the SBV's website, there are:

- Three 100% State-owned commercial banks.
- 34 joint stock commercial banks.
- Five 100% foreign owned commercial banks.
- Four joint venture banks.
- 49 foreign bank branches.
- 51 representative offices of foreign credit institutions.
- 17 finance companies.
- 11 finance leasing companies.
- Three micro finance organisations.
- One credit co-operative.

The average total transactions on the inter-bank money market per day is VND 24,454 billion (USD 1.1 billion).

Infrastructure

Vietnam Wholesale Electricity Market

The Ministry of Industry and Trade issued Decision 8266/QĐ-BCT dated 10 August 2015 approving the detailed framework for the Vietnam Wholesale Electricity Market. The Decision specifies who can participate in the VWEM and the mechanics on how electricity is traded and priced on the VWEM. The VWEM allows private participants to participate at the generator level. The State through EVN and its subsidiaries primarily participates at the distribution and services level. Generally, generators producing more than 30MW can participate in the VWEM.

There are two types of markets, the spot market and the contract based market. Under the spot market, each generator on D-1 submits to the VWEM operator offers to supply electricity at specified prices over 48 set periods of 30 minutes each on D day. This can be amended. The VWEM operator will use this to select the generators and calculate electricity prices. Detailed rules of VWEM are expected at year end.

