

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

Factoring

The SBV issued Circular 09/2015/TT-NHNN dated 17 July 2015 on factoring by credit institutions and foreign bank branches. Circular 09 takes effect on 1 September 2015. A credit institution or foreign bank branch may carry on factoring business if a license is issued by the SBV and the factor has a bad debt ratio of less than 3%. Factoring must be conducted in VND unless the loan receivables are sold to a non-resident. Circular 09 also prescribes the content of a factoring contract.

Bank Licenses

The SBV also issued Circular 08/2015/TT-NHNN dated 30 June 2015 on applications for bank licenses. The circular sets out the process for banks to apply for additional activities (eg interest rate swaps and depository services).

Investment Law

Investment Licensing Post 1 July 2015

Although the government decree to implement the new Law on Investment has not been introduced, the Ministry of Planning and Investment has issued an official letter to local departments of planning and investment on temporary measures for investment licensing. Draft application forms have been published which can be used as a guide to file relevant investment licensing applications. They include forms for issuance of investment registration certificate and registration of share and capital contribution of more than 51% of the charter capital of a company by foreigners. Expect delays in investment licensing during this period. Meanwhile, the draft decree to implement the new Investment Law appears to confirm that foreigners do not have to apply for an investment registration certificate if they acquire shares or capital in a Vietnamese company.

Property

Purchase of Real Property by Foreigners

The Ministry of Construction has issued official letter no. 1436/BXD-QLN dated 30 June 2015 to temporarily introduce measures to implement the new Law on Residential Housing. These involve directing local authorities on registration of ownership by foreigners of housing pursuant to the new law and clarifies the documentation to be used for the sale and purchase of real estate.

The Ministry of Construction on its website has a list of 667 overseas Vietnamese owning residential housing in Vietnam. Reportedly, 112 foreigners have purchased housing in one property development project under the new law.

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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

Workplace Health & Safety

On 26 June 2015 the National Assembly passed the Law on Labour Health and Safety. This is the first occupational health and safety legislation for Vietnam. It introduces a compulsory workplace injury insurance program where the employer must contribute 1% of the employee's salary towards the insurance scheme. The law sets out how employees can claim on the insurance cover and prescribes the number of days that the employee may take to recover from a workplace injury. The new law will take effect from 1 July 2016.

Outstanding Tax Liabilities

The Ministry of Finance has issued a list of companies in each province that have a significant tax liability. Companies in Hanoi and Ho Chi Minh City have the highest outstanding tax liabilities of 8.1 trillion dong (USD372 million) up to 30 June.

Financial Markets

Foreign Ownership

The State Securities Commission issued an official letter requiring public companies to liaise with local authorities to assess the maximum ownership limit that foreigners can hold in the public company based on the business activities of the company. This follows Decree 60 which permits foreigners to hold more than 49% in a public company. For example, a public company carrying on a manufacturing business can have foreigners holding up to 100% of the charter capital of the company.

UpCOM Trading Band

UpCom is the secondary market of the Hanoi Stock Exchange. Public companies not listed on a stock exchange are required to be admitted on UpCom – though many have delayed admission. From 1 July, the price fluctuation band widened from +/-10% to +/-15%. This means that the trading price of UpCom shares cannot be more or less than 15% of the reference share price.

Consumer

Consumer Rights Day

The Prime Minister has announced 15 March as the national consumer rights day.

Price Collusion in Shipping

Reportedly the Vietnam Competition Authority is investigating whether there are any abuse of market position in respect of price collusion by Vietnamese maritime transportation companies on fees charged to customers.

ANZ Consumer Sentiment

ANZ indicated that its measure of consumer sentiments has reduced by 4.5 points since six months ago.

Wholesale Power Market

Reportedly, the wholesale power market will begin in 2016. This means that EVN will no longer have a monopoly over the electricity market. It is expected that competition will reduce prices.

Vietnam Fact Box

According to the World Bank:

Vietnam's Co2 emission is 2.0 metric tons per capita in 2011.

The GNI per capita for Vietnam is USD1,890.

USD1.204 billion in IBRD loans and USD12.24 billion IDA loans were disbursed as at 30 June 2015

Congratulations to our partner, Minh Duong on getting married on 17.07.15



Infrastructure

Thermal Power Projects

The Ministry of Industry and Trade introduced Circular 23/2013/TT-BCT on 13 July 2015 streamlining the process for the selection and approval of thermal power projects in the form of BOT Contracts. The Prime Minister will appoint the investor of a thermal power project following a public tender process. The MOIT is required to present the investor with a MoU within 20 days of the PM's appointment. The parties are required to finalise the MoU within 30 days. Circular 23 gives the investor 12 months to prepare and finalise the feasibility study for the project. Circular 23 also sets out the timeframe for negotiating the project documents and allows the MOIT to engage external legal counsel to assist with drafting and negotiating project documents. The investor must apply to the Ministry of Planning and Investment to obtain the investment certificate for the project. Once the certificate is issued the investor and government will execute the project documents at a signing ceremony. Circular 23 will take effect on 1 September 2015.

