

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

Investment restrictions for banks

One of the factors for bank's poor performance in Vietnam is their over investments in related party projects. Below is a brief outline of investment restrictions for banks under law.

- Banks cannot own more than 11% of the charter capital of any enterprise (save as below).
- The total equity investment by a bank cannot exceed 40% of its charter capital and reserve funds.
- A bank cannot make equity investments in any corporate shareholder of the bank.
- A bank may only have subsidiaries that carry on securities business, insurance business and finance leasing business.
- SBV approval is required for a bank to make an investment outside prescribed financial sectors.

Investment Law

Securities investment

Circular 123/2015/TT-NHNN dated 19 August 2015 regulates the manner for foreign investors to invest in securities in Vietnam. Circular 123 prescribes the following:

- Registration of securities trading code may be done by a securities firm electronically in one working day.
- A foreigner may be suspended from trading for six months or have its trading code cancelled for breaches of the securities law.
- A foreign investor must open an indirect capital account with one commercial bank to invest in securities.
- A foreign investor must report to the Vietnam Securities Depository on changes to a number of matters including change of name, change in contact details, a restructure, merger or acquisition and any change to its incorporation certificate.

Property

Property Leases

A majority of foreign investors access property for their investment projects in Vietnam by leasing land or building premises.

Foreigners leasing land normally enter into a land lease contract with a local department of natural resources and environment. The land lease term are for the entire period of their investment project in Vietnam which is normally between 20-50 years.

Commercial leases for office or retail space tend to be landlord friendly. Landlords often ask for a large lump sum deposit with little or no termination rights for the tenant.

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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

EU – VN Free Trade Agreement

On 4 August 2015, the EU and Vietnam reached an in-principle agreement on a comprehensive free trade agreement. The formal legal text remains to be agreed by negotiators over the next few months but the substance has been agreed. Below is a summary of the agreed terms.

- Nearly all tariffs will be eliminated in the next 10 years (over 99%). EU duties will be eliminated within 7 years and Vietnam duties will be eliminated within 10 years.
- Vietnam will recognize the EU as one trading entity and allow “made in EU” origin for non-agricultural goods except for pharmaceuticals.
- EU companies may bid in public contracts under a transparent and fair process in line with other EU trade agreements.
- Foreign invested companies are permitted to import and sell medicines to distributors and wholesalers within the country.

Financial Markets

Circular 123 on Foreign Ownership

Circular 123 sets out how the new foreign ownership rules for public companies will apply. Decree 60 effectively permits certain public and listed companies in certain industry sectors to have up to 100% foreign ownership in a public company.

Public companies are required to register a foreign ownership assessment report with the SSC. Foreigners can own up to the limit following registration. A public company must update its foreign ownership position on the occurrence of the following and register a revised report with the SSC:

- issuance of new securities;
- on a restructuring such as merger, consolidation or separation;
- change of business lines which lead to a change in foreign ownership;
- a change in law that impacts on the foreign ownership limit of the company.

The SSC is required to register the report within 10 days but this may be extended.

Consumer

Contract Registrations

Decision 35/2015/QĐ-TTg of the Prime Minister dated 20 August 2015 prescribes additional consumer contracts that must be registered with the Vietnam Competition Authority if the consumer contract is to be used nationally or with the local department of industry and trade if the consumer contract is to be used locally within a provincial jurisdiction. The additional consumer contracts are as follows:

- Mobile phone subscription contracts;
 - Consumer credit contracts, consumer deposit account contracts and credit card contracts.
 - Life insurance contracts.
- Decision 35 takes effect from 15 October 2015. The above contracts must be registered within 90 days of the effectiveness of Decision 35.

Vietnam Fact Box

2 September is Vietnam National Day. It is a public holiday in Vietnam. This year commemorates 70 years of independence from imperial rule.

According to GlobalEdge (globalEDGE.msu.edu), the following indices are of interest for Vietnam:

Corruption Perceptions Index:
118 / 173

E&Y Globalization Index Score:
36 / 60

Global Competitiveness Report:
69 / 147

International Logistics
Performance Index (LPI): 48 / 160

Infrastructure

Solar Power Plant

Vietnam's first solar power project broke ground on 29 August 2015 in the central Vietnam province of Quang Ngai. The project is a 30 hectare 19.2 MW power project with a total investment capital of VND 826 billion (c. USD36 million). The project is set to complete in June 2016.

Investors from Korea are also proposing to develop two 130 MW power projects in Can Tho with a total investment capital of USD 55.8 million and USD120 million each.

PPP Port Project

The Vietnamese government has approved the policy for a USD2.5 billion deepwater port on Hon Khai island in Ca Mau Province. The Ministry of Planning and Investment is setting the tender process for the project under a PPP arrangement.

