

Our Asia Counsel Insights provide an overview of the key trending legal and business issues in Vietnam and how they may impact 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.



### Decree 118 guiding Law on Investment

On 12 November 2015, the Government issued the much anticipated Decree No. 118/2015/ND-CP guiding the implementation of the Law on Investment ("**Decree 118**").

#### Parallel applications for investment and enterprise registration

Foreign investors can choose to lodge application dossiers for both the investment registration certificate ("**IRC**") and enterprise registration certificate ("**ERC**") with the Investment Registration Authority ("**IRA**") at the same time. The IRA and the Enterprise Registration Authority ("**ERA**") will then coordinate in examining the applications. The IRA will inform the investors of any requirements for amendments to both dossiers within 5 working days from the date of submission.

#### Online submission

Foreign investors must declare the information of their investment project on the National Information System on Foreign Investment before carrying out the investment registration procedure. Within 15 days from the date of such declaration, the investors shall lodge the application dossier to the licensing authority.

#### No IRC for acquisition of capital or shares

A foreign investor investing capital, or purchasing capital or shares, amounting to 51% or more of the charter capital of an existing company ("**Target Company**") must register the acquisition with the IRA. The Target Company must register changes of its shareholders/members with the ERA on the completion of the transaction but it does not need to apply for the reissue or amendment of the IRC, or approval for the investment policy of any existing projects carried out prior to the foreign investor's acquisition.

#### Amendment to IRC

Decree 118 distinguishes the procedures for amending the contents of the IRC depending on the significance of the content to be amended. Such as:

- Changes of project name, address or name of investor(s) simply require submission of the standard application form and documents related to such changes, which will then be processed by the licensing authority within 3 working days.
- Amendments to more significant contents related to location, capital and schedule of project, investment incentives and conditions require further supporting documents and longer timeframes (10 or 15 working days).

Decree 118 takes effect from 27 December 2015.

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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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## Banking Wrap

### Bank Cheques

The State Bank Vietnam has issued Circular No. 22/2015/TT-NHNN ("**Circular 22**") dated 20 November 2015 regulating the provision and use of cheques in Vietnam. According to Circular 22:

- The term for requesting payment of a cheque is 30 days from the date it is drawn, excluding any time lost to a force majeure event;
- For a cheque presented after 30 days but not exceeding 06 months after it is drawn, the payment can be made if the drawee has not been notified that the cheque payment has been suspended and the drawer's account balance is sufficient for payment.
- The beneficiary may present cheques for payment by way of registered mail via the public postal network. The date of cheques presentation for payment must be the date indicated by the post office where the cheques are sent.

Circular 22 takes effect from 12 January 2016.

## Financial Markets

### Registration of trading in the unlisted public company market ("**UpCom**").

The Circular No. 180/2015/TT-BTC issued on 13 November 2015 by the Ministry of Finance ("**Circular 180**") has shortened the time for registration of trading in UpCom to:

- 30 days after obtaining the confirmation of the State Securities Commission ("**SSC**") on the registration of a public company;
- 10 days from the date of cancellation of listing by a delisted public company;
- 30 days from the closing date of IPO by an unlisted public company (including state-owned enterprises);

The above time period have been substantially reduced compare to the old regulations.

If an enterprise is formed after the merger with any listed company, it will not qualify as a listed company, and must register for trading in the UpCom within 6 months from the date of obtaining a new ERC.

Circular 180 takes effect from 1 January 2016.

## Business

### Penalties for administrative violations of the protection of consumer's rights amended

On 19 November 2015, the Government issued Decree No. 124/2015/ND-CP amending, among other things, penalties for administrative violations of the protection of consumer's rights. The following fines will be imposed:

- VND 30 million and 50 million for failure to implement the standard form of contract and general terms as registered; such fines will be doubled for violations committed in two provinces.
- VND 10 million and 20 million for restricting the right of the consumer to terminate the contract within 10 days of signing where the supplier fails to provide correct information.

Decree 124 takes effect from 5 January 2016

## Vietnam Fact Box

8 properties within Vietnam's territory are inscribed on the UNESCO World Heritage List: 5 cultural properties, 2 natural and 1 mixed.

Trang An Landscape Complex in North Vietnam is the latest property to be inscribed in 2014.

No other ASEAN member state has more inscribed UNESCO World Heritage properties than Vietnam.

Vietnam became a member of the UNESCO in 1951.

Vietnam is currently serving on the UNESCO World Heritage Committee (2014-2017).

## Infrastructure

### Guidance on investment under the form of Public Private Partnership (PPP)

On 30 October 2015, the Ministry of Industry and Trade issued Circular No. 38/2015/TT-BCT on investment fields, procedures and the supervision of investment projects under the form of PPP. The investment fields include projects in construction, renovation, operation, infrastructure works management and public services, in particular: electricity plants, electricity wire cabling, markets, supermarkets, exhibition centers, logistic centers and warehouses.

The procedures comprise of 5 steps: (i) create, evaluate, approve and publically announce the projects; (ii) create, evaluate and approve the feasibility study; (iii) select the investors; (iv) sign the investment agreement and project contract; and (v) supervise the project's implementation. Circular 38 takes effect from 15 Dec 2015.

