

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.



## Banking Wrap

### New Regulation on Forex Transactions

SBV issued Circular 15/2015/TT-NHNN on 2 October 2015 on foreign exchange transactions including swaps, forward, options and spot transactions. The key aspects are:

- Licensed credit institutions can only conduct spot transactions with non-resident entities. They cannot enter into forward, option or swap currency transactions with non-resident entities.
- The term for a forex swap and forward transaction is between three days to 365 days.
- The VND/USD forward rate in a swap and forward transaction may be agreed by the parties but cannot exceed a rate based on the difference between the SBV refinancing rate and US Federal Funds Target Rate and other factors.

## Enterprise Law

### Decree 78

We continue to report on changes in Vietnam's company law under Government Decree 78/2015/ND-CP which will take effect on 1 November 2015.

- Companies must report to the relevant licensing authority any changes to its board of management, general director and inspection committee within 5 days after such change.
- Once a branch or rep office of a company is registered, details of the registration no longer appear on the enterprise registration certificate (**ERC**).
- A complaint may be filed if the licensing authority fails to meet a deadline set in law.
- A copy of the ERC may also be issued by the licensing authority.

## Property

### Bank guarantees on off-the-plan projects

Vietnamese law requires developers to obtain a bank guarantee for an off-the-plan property development before the units or villas are sold to the general public. There are a few things that property developers and purchasers may need to consider.

- How would the purchasers call on the guarantee? Must the purchasers first obtain a court judgement?
- How much can the purchaser claim - the full amount paid? Would there be an interest component?
- What is the guarantee fee from the banks. Banks may charge 2-5% of the total project costs – many property developers are calling for a cap on fees.

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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

### New Decree on Offshore Investment

The Government adopted Decree 83/2015/ND-CP on 25 September 2015 regulating offshore investment. The decree took effect on the same day.

- VN investors must obtain the Offshore Investment Registration Certificate (**OIRC**) from the MPI in order to carry out investment projects in foreign countries.
- Offshore projects with a total investment capital of VND 20 billion or more require the MPI to seek an opinion of the SBV during the licensing process.
- Investors can transfer foreign currencies to foreign countries before obtaining the OIRC in order to cover the costs of activities related to the offshore investment project, such as market surveys, site studies, data acquisition, consultancy or engagement in international bidding. However, the amount of foreign currencies to be transferred must not exceed 5 % of the total offshore investment capital, capped at USD 300,000.

## Financial Markets

### Public Information Disclosure

The Ministry of Finance issued Circular 155/2015/TT-BTC on 6 October 2015 regulating the public disclosure of information on the securities market. The disclosure requirements are for public companies, public funds and ETFs. Circular 155 introduces more rigorous disclosure requirements. The key disclosure matters are below.

- There is an extensive list of 18 disclosure items that a public company must disclose within 24 hours of the event occurring. As an example, a public company must disclose any material adverse change to its business.
- There is a general obligation for a public company to confirm or deny an event that has an impact on the price of the securities of the company.
- Circular 155 requires certain matters to be reported in a format annexed to the circular. These forms which include annual and management reports, are in English and Vietnamese.

## Consumer

### Economic Needs Test

In the retail sector, a foreign investor that wants to increase its retail network by more than one store must obtain an economic needs clearance from a council formed by the provincial level people's committee. There is an exemption to the economic needs test (**ENT**) if the retail outlet is less than 500sqm and is located in a permitted area under a master plan of the people's committee. Expanding the retail outlets of a foreign investor is cumbersome but there are strategies to achieve the aims of the foreign investor.

The good news is that under the EU-VN free trade agreement, the ENT requirement will be abolished within five years after the FTA takes effect. Although the TPP text is not yet published, there is an expectation that this same deal will also flow to TPP member countries.

## Vietnam Fact Box

Vietnamese women's day is on 20 October which is a special day to celebrate women's contribution to the nation.

In the first 9 months of 2015, 68,347 new enterprises have been established, a 31.4 % increase compared with the same period last year.

Vietnam's trade balance as a % of GDP in 2014 is 6.4%.

Vietnam's CO2 emission at 2010 levels is 1.4 metric tons of CO2 per capita.

## Trans-Pacific Partnership

On 5 October 2015, twelve member nations forming the TPP concluded negotiations on the trade pact. Vietnam is to benefit from the TPP. There will be a transition period of a few years before the TPP becomes effective as many of the TPP countries will need parliamentary approval. Vietnam will benefit from the TPP. According to Bloomberg:

- Vietnam may have a 50 % increase in apparel and footwear exports in 10 years.
- Vietnam's GDP will increase by 10% or USD36 billion. This is brought on by an increase in foreign investment as capital flows from non-TPP countries who want to benefit from Vietnam's membership.
- Vietnamese consumers will benefit from cheaper offshore products as 18,000 tariffs are removed.

