

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

Registration of Foreign Loans

Foreign loans with a term of more than one year provided by a foreign lender to a Vietnamese company must be registered with the State Bank of Vietnam. The registration process is governed by Circular 25/2014/TT-NHNN of the SBV dated 15 September 2014. Foreign loans of more than USD10million are registered with the SBV in Hanoi whereas amounts of less than USD10million are registered at the branches of the SBV at the provincial level. The foreign loan must be registered within 30 days of the signing of a credit agreement. Drawdowns on the loan are only permitted once the loan is registered.

Citibank

The SBV has provided in-principle approval for Citibank to establish a 100% foreign owned bank in Vietnam.

Investment Law

Conditional Sectors

The Ministry of Planning and Investment issued Official Letter No. 6193-BKHDT-DTNN dated 3 September 2015 to the Office of the Government setting out a list of business lines that are subject to foreign investment conditions. The document provides a detailed and comprehensive outline of the conditions and restrictions for foreign investors including foreign ownership limits and minimum capital or infrastructure requirements. There is a list of 159 business sectors ranging from professional services, to education, health and social services and transportation. The purpose of the document is for the Government to issue a decree identifying the conditional investment sectors for foreign investors. We understand that a Government Decree to implement the Law on Investment is to be introduced soon.

Property

Real Estate Business Decree

The Government issued Decree 76/2015/ND-CP dated 10 September 2015 implementing the Real Estate Business Law. We will report on this Decree over the next issues of our Insights.

Decree 76 includes a number of model contracts for real estate transactions which are in the appendix of the decree. The model contracts include real estate sale and purchase agreements for off the plan sales and lease contracts. Decree 76 specifically provides that the model contracts are for the purpose of guiding contracting parties and are not compulsory. However, the contracting parties must include relevant provisions prescribed in the Real Estate Business Law when entering into real estate transactions.

About Asia Counsel

Asia Counsel is a dynamic international corporate and commercial law firm dedicated to serving clients in Vietnam. Our partners have over eight years of experience in working on complex and challenging matters in Vietnam. We are committed to helping clients achieve their business strategies and providing outstanding legal services.

If you have any questions on any of the items discussed above, please do not hesitate to contact us.

Christian Schaefer
Managing Partner
E christian@asia-counsel.com

Minh Duong
Partner
E minh@asia-counsel.com

Business

Proposed amendments to the Criminal Code relevant to business

The Criminal Code is being amended and there are a number of proposed changes that have an impact on business.

- The offence of manufacturing and selling fake goods will be toughened and can range from fines of two to three times the total sale price of the fake merchandise or one to three years imprisonment.
- Employers who do not pay social insurance, health insurance and unemployment insurance for more than six months and have had administrative sanctions imposed on the failure to pay may be subject to a non-custodial sentence of three years. Jail terms may be imposed for serious offenders.
- A person knowingly provides false information in an application for a public offer or a listing may be fined up to VND2billion or imprisoned for up to three years.

Financial Markets

Increased foreign ownership

There are a number of public companies that are increasing their foreign ownership room above 49%. Saigon Securities Inc., one of the leading securities firms has increased its foreign ownership to 100%. Danang Housing and Construction Development Company is also proposing to increase its foreign ownership limit to 70%.

There is a double edge sword in the increasing of the foreign shareholding to above 51% as the company would by definition be characterized as a foreign investor. Under various legislation this may impose additional investment conditions to the company that may not have existed if they were a company with 49% foreign ownership (eg. the requirement to register a securities trading code, the registering of the acquisition of shares in a Vietnamese company). Before a Vietnamese company opts to increase the foreign limit they should make an assessment about the impact of any investment conditions on their business.

Consumer

Proposed Penal Sanctions on Competition Offences

The proposed changes to the criminal code also attempt to criminalise anti-competitive conduct. The proposed offence relates to nine forms of anti-competitive conduct such as agreements to: (i) fix prices; (ii) share markets; (iii) collude in an auction; and (iv) exclude new entrants to the market. The anti-competitive conduct must cause serious harm or the conduct must be a repeat offence. The penalty is a fine of 10% - 30% of the total revenue of the offender as shown in the previous year financial statement or imprisonment of one to five years. The fines and term of imprisonment will increase depending on the severity of the crime and the recidivism of the offender. If adopted, this will be the first time anti-competitive conduct is made a criminal offence.

Vietnam Fact Box

Vietnam has 3,444 km of coastlines excludes islands. Vietnam's total land area is 310,070 sq km. The highest peak is Fansipan at 3,144 metres.

Land use (i) agricultural land: 34.8%; (ii) forest: 45%.

Vietnam is a party to the following treaties: Biodiversity, Climate Change, Climate Change-Kyoto Protocol, Desertification, Endangered Species, Environmental Modification, Hazardous Wastes, Law of the Sea, Ozone Layer Protection, Ship Pollution, Wetlands.

Source: CIA World Fact Book

Infrastructure

Public Private Partnerships

The Ministry of Planning and Investment's website: ppp.mpi.gov.vn provides comprehensive information on PPP projects in Vietnam.

There are a number of projects requiring investment in the form of PPP including: upgrade and development of Highway No. 31 (total investment capital of VND1,100 billion); Cai Vung bridge construction in An Giang province; Sapa Highway connecting Noi Bai and Lao Cai highway; Construction of Tan Binh General Hospital; Line No. 6 Hanoi Subway from Hanoi City to Noi Bai International Airport.

