

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

### Restructuring of credit institutions

The State Bank of Vietnam ("SBV") issued Circular 36/2015/TT- NHNN dated 31 December 2015 on the restructuring of credit institutions.

Circular 36 provides detailed requirements for merger procedures of credit institutions. One requirement is that the applicant must have three consecutive years of audited financial statements. Moreover, if the application does not submit the application requesting consent for the merger within 60 days from the date the SBV issues an in-principle approval of the merger, the in-principle approval will expire and new approval must be obtained.

Circular 36 also provides procedures and requirements for conversion of the credit institutions into different legal forms. Circular 36 takes effect on 1 March 2016.

## Investment Law

### Overseas Indirect Investment

On 31 December 2015, the Ministry of Planning and Investment issued Decree 135/2015/ND-CP regulating overseas indirect investment by Vietnamese entities. Overseas indirect investment includes securities trading and investment through investment funds and other financial intermediaries in foreign countries. For the first time professional investors, including securities companies, funds and fund managers, investment and finance companies, insurance firms, banks and State Capital Investment Corporation are permitted to acquire offshore securities. Other economic organizations are entitled to entrust their investment to eligible fund managers and banks to acquire offshore securities. Vietnamese citizens can engage in overseas indirect investment through an employee stock option plan. The Decree will take effect from 15 February 2016.

## Employment

### Compulsory social insurance changed from 1 January 2016

On 29 December 2015, the Ministry of Labor, War Invalids and Social Affairs issued Circular 59/2015/TT-BLDTBXH on social insurance.

Accordingly, from 1 January 2016 to 31 December 2017, social insurance premiums are calculated based on the monthly salary plus any salary based allowances (eg bonus salary) as agreed in the labor contract. From 1 January 2018, social insurance premiums are based on a widened net of income and other labour entitlements provided to the employee pursuant to the labor contract. This Circular takes effect from 15 February 2016.

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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

### Corporate Criminal Liability

The National Assembly passed a new Criminal Code on 27 November 2015. For the first time, criminal liability may be imposed on companies. The key provisions are below.

- Commercial legal entity shall only be charged for committing certain crimes such as smuggling, tax evasion, market manipulation and fraud in insurance business.
- The main penalties for legal commercial entity include fines and suspension of operation. There is no imprisonment of managers of the commercial entity unless that manager also commits an offence.
- The elements of the offence for an entity are as follows: (i) the offence is conducted in the name of the legal entity; (ii) the offence is conducted for the interest of the legal entity; (iii) the violation is directed, controlled or approved by the legal entity; and (iv) the limitation period for criminal liability has not expired.

The Code will take effect on 1/7/2016.

## Financial Markets

### Securities Trading

Effective from 1 July 2016, Circular 203/2015/TT-BTC introduced new provisions on securities trading. These are:

- Day trading is allowed. Investors can buy and sell the same kind of stock in the same trading day on one account;
- The securities company carrying out margin trading must have the charter capital of VND100 billion, its accumulated losses are less than 50% of the charter capital, liquidity ratio is maintained at adequate levels, equity is not less than VND100 billion and debt/equity ratio does not exceed 300%;
- Listing companies are prohibited from registering to buy or sell treasury shares at prices outside the prescribed trading band at the time the treasury shares are traded;
- Foreign investors are not allowed to engage in margin trading thus, consequently, cannot conduct the day trading activities.
- Circular 203 limits the number of securities trading account an investor, securities company, fund manager and insurance company may hold.

## Financial Markets

### Securities Listing

The Ministry of Finance issued Circular No. 202/2015/TT-BTC dated 18 December 2015 to guide the listing of securities on a Stock Exchange. The key changes are:

- An issuer that has been approved for listing must make its securities available for trading within 90 days from the date of such approval from the Stock Exchange. The listing approval expires after that time.
- A listed company which has its securities listing cancelled (on a compulsory or voluntary basis) may only list its securities after 12 months from the date of cancellation;
- If there has been a share swap or a debt to equity conversion undertaken by a listed company, the company is entitled to list the additional shares that arises from such transaction.

Circular 202 takes effect from 1 March 2016.

## Vietnam Fact Box

Below is a scorecard of socio-economic data for 2015.

- GDP: increase by 6.68%
- Rice production: 45.2m tons (up by 240.9 thousand tons) from 2014.
- New enterprises registered: 94,754
- Retail sales: up 9.5%
- International arrivals in Vietnam: 7,943,700
- Labour force within working age: 48.19m (up 506,100 from 2014)
- Population: 91.7m (up about 970,000 from 2014).

Source: [www.gso.gov.vn](http://www.gso.gov.vn)

## New Civil Code

The National Assembly passed a new Civil Code on 24 November 2015. The Civil Code will take effect from 1 January 2017. Some key points are below.

- Parties to a loan contract may agree on the interest rate of the loan, but not exceeding 20%. If there is no specific interest rate stipulated in the contract or dispute on the determination of the interest rate, then the interest rate shall be half of the interest rate that is allowed by the Civil Code.
- The Civil Code recognizes new security interests to secure an obligation such as (i) reserving ownership of assets until settlement of an obligation, and (ii) putting a lien over assets when one party fails to fulfil its obligation.
- When there is no law or customs to apply to a civil relation, court precedents can now be applied to determine the rights of a party.

