

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.

Asia Counsel would like to wish everyone a happy and prosperous Year of the Monkey in 2016.

**Official Legal Partner of the Vietnam  
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## Banking Wrap

### Securities issuance capital account

The State Bank of Vietnam issued Circular 40/2015/TT- NHNN dated 31 December 2015 regulating the opening and use of securities issuance capital account denominated in VND ("SICA") for securities issuance in Vietnam by non-resident foreign organizations.

A foreign issuer must open one SICA to issue securities for one investment project in Vietnam. The SICA must be opened at a licensed bank in Vietnam.

All income from the securities issuance must be remitted to the SICA. The SICA is frozen until the foreign organization requests to release the account balance and the submission of the SBV's confirmation to the foreign issuer on the result of securities issuance.

Circular 40 takes effect from 1 March 2016.

## Investment Law

### List of investment conditions applicable to foreign investors

The Ministry of Planning and Investment has published a list of investment conditions applicable to foreign investors on the national portal on foreign investment. The list sets out conditions in specific service sectors prescribed under the relevant international treaties, laws, ordinances and decrees effective as of 27 December 2015. It includes conditions in Vietnam's Commitments in WTO; ASEAN Comprehensive Investment Agreement; ASEAN Framework Agreement on Services; FTAs between ASEAN and China, Korea, Australia/New Zealand, India and Japan; FTAs between Vietnam and Korea, Japan and the US. It will be updated to reflect any changes of laws concerning permitted foreign ownership ratios and other condition applicable to foreign investors.

## Property

### Right to lease out assets attached to land

According Articles 175 and 185 of the Land Law, sublessees who make an annual payment in the industrial zone are not entitled to lease assets they legally own on the land, such as warehouses.

This regulation makes it difficult for entities who sublease land in the industrial zone to conduct the business line of real estate service business, e.g. warehouse leasing.

According to a draft of a forthcoming decree that amends and supplements the land use plan, this regulation is proposed to be changed. Sublessees of this sort will be entitled to lease out assets that are legally built, that is, comply with the conditions according to the Law on Real Estate Business without having to pay lump sum rental.

## 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.

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## Business

### New decree on foreign company branches or representative offices

Decree 07/2016/ND-CP dated 25 January 2016 of the Government, effective from 10 March 2016, replaces Decree 72/2006/ND-CP on branches and representative offices ("RO") of foreign companies in Vietnam. A number of new provisions are below.

- A foreign company cannot establish more than one RO or branches having the same name within a city/province.
- The provincial management board of industrial parks and other special economic zones has the authority to grant licenses for ROs located in these zones.
- The time limits for processing the application for a new license and amended license are reduced to 7 and 5 working days respectively, compared to 15 and 10 days under the former regulations.
- License of a foreign company branch or RO shall only be renewed for another term equal to the previous term.

## Financial Markets

### Derivative Securities Transaction

Circular No. 11/2016/TT-BTC dated 19 January 2016 implementing Decree 42/2015/ND-CP on derivative securities, including: future contract of securities index and future contract of Government bonds.

Circular 11 sets out more detailed conditions for the investors to conduct derivative securities transactions such as having (i) a derivative securities account with the trading member and (ii) an escrow account at the clearing and settlement member. The investor would use the current trading account at the securities company which is also a trading member of the derivative market as its derivative securities account.

The investor is allowed to open more than one derivative securities trading account but only one trading account with one broker.

Only brokers having a Qualification Certificate issued by the State Securities Commission are allowed to conduct a derivative securities business.

This Circular takes effect from 1 July 2016.

## Consumer

### Administrative penalties for breaches of consumers' right

The new Decree No. 124/2015/ND-CP, effective as of 5 January 2016, provides additional cases in which goods suppliers and service providers ("Suppliers") may be subject to administrative sanctions, including:

- Improper application of registered model contracts or general transaction terms and conditions;
- Preventing the consumers from terminating contracts within 10 days from the execution date due to the Supplier's failure to provide sufficient information as required by law;
- Refusing to negotiate or not conducting negotiations with the consumers within 7 working days of receipt of the consumers' request;
- Requesting the consumers to pay for supplied goods or services without prior agreement.

## Vietnam Fact Box

The Communist Party of Vietnam held its 12<sup>th</sup> National Party Congress between 20-28 January 2016. The National Party Congress appointed new leadership to steer the country for the next five years. The appointments are as follows.

- Nguyen Phu Thong was appointed Party General Secretary.
- 19 members were appointed to the Central Politburo.
- Three members were appointed to the secretariat.
- 21 members were appointed to the inspection commission.

## Construction

### Compulsory Insurance for Construction Investment Activities

On 13 November 2015, Decree 119/2015/ND CP was issued by the Government to provide regulations in relation to the purchase of compulsory insurance for construction projects, excluding those related to national defense, national security, and state secrets. It applies to the project's investors, the engineering firms constructing the project, and contractors providing consultancy services. In particular, the investor must buy compulsory insurance for any project affecting the community, environment, or requiring special conditions or techniques. Engineering firms must buy insurance for the employees working on the construction of the project. Consulting contractors must buy insurance for 2nd grade and above construction projects. This decree takes effect from 10 February 2016.

