

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 announce that our office has been relocated to Level 5, 16-18 Hai Ba Trung, Ben Nghe Ward, District 1, Ho Chi Minh City (above the Annam Gourmet Market).

**Asia Counsel is the Official Legal Partner
of the Vietnam Basketball Association**



Banking Wrap

Draft Decree on Prudential Ratios

On 17 February 2016, the State Bank of Vietnam issued a draft decree regulating prudential ratios and limits for credit institutions and foreign bank branches.

The draft decree:

- extends the definition of "related parties" to include an entity that: (i) owns a minimum of 5% of the shares of the bank; or (ii) has the right to appoint managers or supervisory board members of the bank.
- prescribes additional financial instruments that may be treated as short term or medium to long term capital sources.
- reduces the maximum limit that credit institutions and foreign bank branches are entitled to use short term capital sources as medium and long term loans.

Investment Law

Information Sharing Between Tax and Corporate Regulators

The Ministry of Planning and Investment and Ministry of Finance issued Joint Circular No. 01/2016/TTLT-BKHDT-BTC dated 23 February 2016 to share information between the tax and corporate regulators at each levels of government. The tax and corporate regulators will have access to each of their electronic databases. There will be a range of corporate information that will be shared such as:

- Corporate action including any re-organisation of a company, mergers and consolidations.
- Change in owners and shareholders of a company.
- Change in business and management.
- Financial and tax reporting.

The Joint Circular will take effect on 25 April 2016.

Mining and Resources

Environmental Protection Fee

Decree 12/2016/ND-CP of the Government dated 19 February 2016 introduces environmental protection fees in the mining and resources sector. The fee applies to the exploitation of crude oil, natural gas, coal-seam gas, metal minerals and non-metal minerals. The fees are set out as follows:

- Crude oil: VND100,000/ton
- Natural gas: VND50/m³
- Natural gas extracted from crude oil exploitation: VND35/m³
- Exploitation of other mineral resources: Based on the Schedule of Fee set out in Decree 12, each provincial People's Council will determine the fee for the mineral resources in its province.

Decree 12 will come into force from 1 May 2016.

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

E-commerce mobile applications

Circular 59/2015/TT-BCT dated 31 December 2015 of the Ministry of Industry and Trade ("MOIT"), effective as of 31 March 2016, regulates the management of e-commerce via mobile devices.

Under Circular 59, owners of mobile apps that have been developed to market the business of the app owners must make a notification of the app with the MOIT. If there is any change to information that has already been notified to the MOIT then an updated notification is required to be made.

An app that has been developed as a marketplace for use by other traders, including apps for e-commerce, online auction and online promotion, must be registered with the MOIT. If the ownership of such app is transferred then the transfer must be registered with the MOIT within 30 days of the assignment.

The app owner need not notify or register a new version of an existing app.

Financial Markets

Draft Decree on Securities Business

A draft decree on securities business applicable to securities firms and fund managers is set to propose a range of new conditions including the following:

- A foreign invested securities business will be treated as a local investor when it makes securities investments.
- A securities firm must have a minimum office space of 100sqm, have at least three securities professionals and must also satisfy additional conditions on profitability and financial ratios to provide day trading and derivative trading services.
- A foreign entity investing 51% or more of a securities business must satisfy a number of conditions such as: (i) a confirmation from an authority from its home jurisdiction that the entity is not under supervision or warning; and (ii) the investment must be approved by the board or shareholders of the foreign entity and also the Vietnamese securities business.

Consumer

Draft Decree on Cosmetic Manufacturing

The Government has issued a draft decree regulating the conditions for cosmetic manufacturing. Here are some key proposals:

- The cosmetic production facility must have employee, factory, equipment, system of records that satisfies the standard of "Good Manufacturing Practice" stipulated in the ASEAN Cosmetic Directive.
- In the event of inspection by an authority, the facility must provide a number of documents including an application for inspection; operation certificate or enterprise registration certificate; organizational chart; training program; location and design of factory; and list of current equipment.

The Draft Decree is expected to be passed mid-year.

Vietnam Fact Box

The World Bank and the MPI penned Vietnam 2035: Toward Prosperity, Creativity, Equity and Democracy, which draws a roadmap for Vietnam to transform to a middle and upper economy in 20 years. Key ideas are:

- Vietnam needs to nurture private enterprises and innovation.
- Build climate resilience into economic planning.
- Delink the household registration system from access to public services.
- Expand the pension system to cover most of the population.

Personal Income Tax Exemption

On 22 February 2016, the Prime Minister issued Decision 06/2016/QD-TTg and Decision 07/2016/QD-TTg on personal income tax (PIT) exemption for foreign experts working for foreign non-governmental aid programs and projects in Vietnam, and Vietnamese employees working for a UN organisation, respectively. The PIT exemption must satisfy following conditions:

- For foreign experts: (i) must be a foreign national and (ii) must enter into a labour contract with the relevant organisation (except for temporary staff working on an hourly basis).
- For Vietnamese employees: (i) must be a Vietnamese national and (ii) the tax department must have confirmed the employment with the UN organisation.

These decisions take effect from 1 May 2016.

