

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.

We hope that readers in Vietnam had an enjoyable Tet break and are ready for a profitable year of the fire monkey.

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Banking Wrap

Mortgage Security in Government Guarantee Loans

On 19 January 2016, the Ministry of Finance ("MOF") issued Circular 10/2016/TT-BTC guiding the registration and reporting of mortgage security to secure government guaranteed loans. Under the mortgage security, the MOF will be the mortgagee and the mortgagor is the beneficiary under a government guarantee.

Circular 10 prescribes the forms of mortgage agreements for mortgages over current assets and mortgage over future assets. It is expected that parties are required to execute these forms of mortgages when mortgaging assets to the MOF.

Circular 10 provides that assets that are formed from a government guarantee loan cannot be mortgaged. There is also a requirement for the assets to be valued each year.

Investment Law

Decree on Broadcasting and Television Services

On 18 January 2016, the Government issued Decree 06/2016/ND-CP on the Management, Provision and Use of Broadcasting and Television Services.

Decree 06 requires that the contents of paid foreign broadcasting channel must be edited and translated by a licensed agency and such content must conform to Vietnamese culture and not violate the Press Law of Vietnam.

Such foreign broadcasting channels must not broadcast advertisements from abroad and may only broadcast advertisements prepared in Vietnam and in compliance with Advertisement Law of Vietnam.

Decree 06 takes effect from 15 March 2016.

Property

Real Estate Broker License

The Ministry of Construction issued Circular 11/2015/TT-BXD on 30 December 2015 regulating the real estate brokerage profession. Circular 11 takes effect from 16 February 2016. Circular 11 requires real estate brokers to undertake a period of study and exam in order to obtain a real estate broker practicing certificate from a local department of construction. The local department of construction must hold at least one exam each year for candidates and may authorize a recognized real estate brokerage association to hold an exam on behalf of the department. In order to pass the exam, the candidate must score at least 70% in the exam.

Circular 11 also prescribes the basis on which the Ministry of Construction certifies real estate training programs of providers.

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

New Decree on Foreign Employees

The Government issued Decree 11/2016/ND-CP on 3 February 2016 implementing the Labour Code in respect of foreigners working in Vietnam. Decree 11 sets out five main conditions to obtain a work permit. The foreign employee must:

- have civil capacity to act.
- have adequate health commensurate with the job requirement.
- be a manager, executive director, expert or technician – Decree 11 defines these roles such as a technician must have undertaken a period of study of at least one year and have at least 3 years work experience.
- not have a criminal record nor is subject to criminal prosecution pursuant to the laws of Vietnam or foreign laws.
- have a letter of consent from the competent authority on the employment of foreigners.

Decree 11 will take effect from 1 April 2016.

Financial Markets

Open-ended Funds

The Ministry of Finance issued Circular 15/2016/TT-BTC on 20 January 2016 amending the existing regulation on open-ended funds. Circular 15 will take effect on 15 March 2016. Circular 15 introduces the following changes:

- An open-ended fund is expanded to include a bond fund and an index fund.
- A new investment restriction is that an open-ended fund must invest in at least six issuers.
- A circular resolution of the general meeting of investors may be passed by investors holding at least 51% of the fund certificates (this was previously 65%).
- Limits the reporting responsibility of a custodian bank on the fund manager to its operations of the open-ended fund and the actual information that is provided to the custodian bank.
- An open-ended fund may specifically invest in any rights or options that may be exercised from holding a particular security.

Consumer

Decree on Micronutrients

Decree 09/2016/ND-CP Regulating Fortification of Micronutrients in Food provides for the following mandatory fortification in food:

- Edible salts and salts used for food processing must be fortified with iodine;
- Wheat flour used for food processing must be fortified with iron and zinc; and
- Vegetable oils containing soy oil, or palm oil, or rapeseed oil or peanut oil must be fortified with vitamin A, except for vegetable oils used for food processing in industrial methods.

The Ministry of Industry and Trade will be responsible for managing food safety in production, trade and import of wheat flour and vegetable oils fortified with micronutrients and the Ministry of Agriculture and Rural Development for fortified salts.

Vietnam Fact Box

2016 is the year of the Fire Monkey. The fire element is often the driving force behind the stock market. The five elements are also affecting people's mood. In general fire is joy, water is fear, earth is meditation, metal is sadness, and wood is anger. As such, fire year often generates optimism and drive up the stock market. The industries that will perform well in the year of the monkey will be industries related to fire and water elements. Fire industries are energy, stock market, finance and entertainment. Water element is referring to transport, shipping and communications. Source: <http://www.raymond-lo.com>

Foreign Exchange Regulations

New Forex Regulations

On 13 January 2016, the State Bank of Vietnam issued a range of regulations impacting on foreign currency exchange. Some of these are below.

- Circular 13/VBNH-NHNN regulates foreign exchange for offshore direct investments. A capital account in Vietnam must be opened once an offshore direct investment certificate is issued.
- Circular 12/VBNH-NHNN regulates businesses providing electronic prized gaming to foreigners which requires the operator to obtain a SBV forex license.
- Circular 19/VBNH-NHNN regulates the licensing of foreign exchange agents.
- Circular 15/VBHN-NHNN regulates the registration of foreign loans and international bonds that are guaranteed by the State.

