

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.

Key Dates

- 15 August 2016: foreigners may lease their apartment and register the lease in accordance with Circular 19/2016/TT-BXD.
- 8 August 2016: a mortgage of land and fixed assets may be registered online.



Investment

Private public partnership

On 28 June 2016, the Ministry of Planning and Investment issued Circular No. 06/2016/TT-BKHDT ("**Circular 06**") guiding Decree No. 15/2015/ND-CP on public private partnership investment form ("**PPP**"). Under Circular 06, existing projects with public investment capital may convert to a PPP form through a replacement of public funds for private funds or through a capital restructuring. Where public capital is withdrawn, the investor must pay the withdrawn capital and arrange the remaining capital required for completion of the project. The relevant line ministry and provincial People's Committee will establish, verify and approve the proposals for conversion of state-funded projects into PPP projects and select investors for negotiation of the project's contracts.

Real Estate

Residential housing circular

The Ministry of Construction issued Circular 19/2016/TT-BXD dated 30 June 2016 to implement the Law on Residential Housing and Decree 99/2015/ND-CP.

Circular 19 sets out the following:

- the process to obtain in-principal approval of an investment project on residential house requiring Prime Minister approval;
- application dossier to register the developer as developer of commercial housing projects;
- new requirement on registration of residential leases applicable to a landlord who is a foreigner;
- the condition, sequence, and procedure to assign off-the-plan apartment.

This Circular takes effect on 15 August 2016.

Security

New guidelines on registration of real estate mortgages

Pursuant to Joint Circular 09/2016/TTLT-BTP-BTNMT issued by Ministry of Justice and Ministry of Nature Resources and Environment dated 23 June 2016, the Land Registration Office ("**LOR**") must not register a mortgage of off-the-plan residential house if the property rights under the sale and purchase agreement of such property have been mortgaged and registered with the National Registration Agency of Secured Transaction ("**NARST**").

This Joint Circular is designed to resolve the overlap in authority between the LOR and the NARST on mortgages of land use rights and fixed assets.

Joint Circular 09 will come into effect on 8 August 2016 and replace Joint Circular 01/2014/TTLT-NHNN-BXD-BTP-BTNMT.

About Asia Counsel

Asia Counsel is a dynamic international corporate and commercial law firm dedicated to serving clients in Vietnam. Our partners have over nine 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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Investment

Civil aviation business

On 1 July 2016, the Government issued Decree No. 92/2016/ND-CP prescribing the minimum legal capital to operate in various civil aviation businesses. These include:

- (a) air transportation: VND100 billion.
- (b) airport business: VND100 billion for domestic airports and VND200 billion for international airports.
- (c) aviation services at airports: VND200 billion.
- (d) services of design, manufacture, maintenance or testing of aircraft, aircraft engines, propellers and aircraft equipment and other equipment in Vietnam.
- (e) air navigation services.
- (f) professional training of aviation personnel.

A 30% foreign ownership cap applies to prescribe business in paragraphs (a), (b), (c) and (d).

100% state capital is required for air traffic services, aeronautical information notification services and search and rescue services.

Manufacturing

Conditions on manufacturing cosmetics

On 1 July 2016, the Government issued Decree No. 93/2016/ND-CP providing the conditions for manufacturing cosmetics.

Under this Decree, cosmetics manufacturers must obtain a Certificate of Satisfaction of Conditions for Manufacturing Cosmetics. The local department of health will issue the Certificate if the cosmetics manufacturer satisfies the following conditions:

- (i) It has a specialist in chemistry, biology, pharmacology (or equivalent) in manufacturing;
- (ii) The location, area, factory and equipment is suitable to produce the relevant cosmetics and store the finished products; and
- (iii) The raw materials, liquid and other inputs required for manufacturing must satisfy the quality standard and relevant national technical regulations.

This Decree takes effect from 1 July 2016.

Finance

Intermediary payment services

Decree No. 80/2016/ND-CP dated 1 July 2016 of the Government amending and supplementing a number of articles of Decree No. 101/2012/ND-CP on non-cash payments ("Decree 80") provides for a number of new conditions for the provision of intermediary payment services by organizations other than banks. The new conditions include:

- Providers of financial switching services and electronic clearing services must engage an organization to conduct finalization of clearing between the relevant parties;
- Providers of support services for payment services provided to clients with accounts at multiple banks must be connected with a provider of financial switching services and electronic clearing services licensed by the State Bank;
- Providers of intermediary payment services must have a management accounting information system as required by law.

Vietnam Fact Box

Within the first 7 months of 2016, 448 foreign investment projects in Ho Chi Minh City were granted the investment registration certificates with the total investment capital of USD 638.1 million. The foreign investment capital for real estate projects is approximately USD 278.8 million, accounting for 43.7%. Largest contributors are:

Investors from	Investment capital
Caymans Islands	USD 230.5 mil
Japan	USD 96.1 mil
Singapore	USD 87.2 mil
Korea	USD 51 mil
BVI	USD 44.6 mil

Tax

Draft resolution on tax changes

In late July, the Ministry of Finance published a draft National Assembly Resolution on a number of tax changes to support SMEs and start-ups. The recommended changes include, inter alia:

- Applying a corporate income tax rate of 17% to enterprises with an annual revenue of less than VND 20 billion and start-ups for the period from 1 January 2017 to 31 December 2020.
- Allowing enterprises to offset profits from transfer of real estates, investment projects and rights to participate in investment projects against losses from manufacturing and trading activities.
- Reducing personal income tax on salaries and remunerations of personnel working in the high-tech and IT sector by 50%.
- A write-off of tax debts, late payment penalties and fines for organizations that were dissolved or bankrupt or suspended their operations before 2014.

