

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.

Key Dates

- CIT finalization must be completed by end of March if the fiscal year ends in December.
- Financial reports must be filed with the responsible authorities by end of March.

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Banking

Foreign Loans: Online Registration

The SBV issued Circular 03/2016/TT-NHNN on 26 February 2016 on foreign loans to Vietnamese enterprises.

Vietnamese borrowers can now register and update registration of a foreign loan online on one of two websites: www.sbv.gov.vn or www.qlnh-sbv.cic.org.vn. If the enterprise opts to register online, the borrower may not change to the traditional physical registration method at the registry.

The Circular provides guidance on the online registration process. The borrower must register to use the online registration method.

The borrower must register the foreign loan within 30 days of execution of the loan agreement. Once an application is filed online, there is a period of 12 working days for a response from the SBV. The Circular takes effect from 15 April 2016.

Investment

Approval for 100% foreign invested company operating in logistics sector

Since 18 August 2014, the HCMC People's Committee introduced a policy to suspend the grant/ amendment of an investment certificate for a 100% invested company carrying on logistics services as there is a conflict between Vietnam's WTO commitments and Decree 140/2007/ND-CP of the Government dated 5 September 2007.

However, the People's Committee has recently instructed the HCMC Department of Planning and Investment to consider the issuance of investment registration certificate for 100% foreign invested company operating *warehouse services* (CPC 742) and *Transport Agency* (CPC 748) since 25 February 2016. The *other supplemental services* (CPC 749) will need to wait for the official instructions from the Prime Minister.

Resources

Capital Gains Tax on Upstream Change of Control

The Ministry of Finance issued Circular 36/2016/TT-BTC dated 26 February 2016 on tax for petroleum exploitation and production entities. Accordingly, when a foreign entity (the "Transferor") transfers its shares, capital or other similar benefits in another foreign entity which directly or indirectly holds assets, participating interest in petroleum projects in Vietnam, such transaction shall be treated as the transfer of the participating interest in the petroleum agreement in Vietnam and the Transferor shall be liable for corporate income tax in proportion to its relevant interest in the petroleum agreement in Vietnam. Circular 36 takes effect from 12 April 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

Draft Decree on License Tax

The Ministry of Finance has prepared a draft decree on License Tax for the Government, which is expected to take effect from 1 January 2017. The draft decree sets out the license tax schedule as follows:

- Enterprise having charter capital of above VND100 billion: VND10 million/year
- Enterprise having charter capital of within VND10 billion to VND100 billion: VND5 million/year
- Enterprise having charter capital of below VND10 billion: VND3 million/year
- Branches, stores of enterprise: VND2 million/year
- Household, group of individuals, individual having registered business or having business activity: if revenue exceeds VND300 million/year, license tax is VND1 million/year; otherwise, license tax is VND300,000/year
- Representative offices of enterprises are not liable for the license tax.

Financial Markets

Establishment and operation of securities companies

The Ministry of Finance passed Circular 07/2016/TT-BTC to amend and supplement the Circular 210/2012/TT-BTC regarding the establishment and operation of securities companies. Key provisions of Circular 07 are below:

- Approval from the State Securities Commission is required for any transaction that may increase or reduce the ownership of a shareholder on reaching each of the following thresholds: 10%, 25%, 50% and 75% of the securities company's charter capital.
- Securities companies must review and adapt the new template charter to their current charters.
- An introduction of clearer procedure and conditions to establish the offshore branches, representative offices of Vietnamese securities companies.
- Lighten the restrictions on the financing (lending) and investment of the securities companies.
- A securities company can have more than one legal representative.

Circular 07 will take effect from 15 March 2016.

Health

Declaration of an epidemic

The Prime Minister issued Decision 02/2016/QD-TTg dated 28 January 2016 on the declaration of an epidemic. Decision 02 classifies a number of epidemics into Groups A, B and C. Accordingly, the condition for declaration of an epidemic in each group is below.

- Group A: there is at least one person diagnosed with the epidemic;
- Group B and C: (i) At commune level: the number of patients exceeds the average number in the same month over the last three years; (ii) At district level: there are at least two communes considered to have an epidemic; and (iii) At provincial level: there is at least two provinces that are considered to have an epidemic.

Decision 02 takes effect from 15 March 2016.

Vietnam Fact Box

General Election

As approved by National Assembly, the election of delegates to the 14th National Assembly and People's Councils at all levels for the 2016-2020 tenure will take place on Sunday, 22 May 2016.

Regular Meeting of the Government – February 2016

On 3 March 2016, the Government passed its Resolution of the meeting in February 2016. Among others, the Government has requested the State Bank of Vietnam to proactively and flexibly control the monetary policy, maintain the credit growth, control bad debts as well as improve the quality of credit.

Banking

Safe Deposit Boxes

On 26 February 2016, the State Bank of Vietnam issued Circular 02/2016/TT-NHNN ("**Circular 02**") regulating asset preservation services and lease of safe deposit boxes by credit institutions. Circular 02 will take effect from 9 April 2016.

Assets to be preserved at credit institutions must not be flammable, explosive and degradable and prohibited to be stored by law.

Asset preservation warehouses and safe deposit boxes must satisfy regulatory safety conditions and be placed at the head offices, branches or transaction offices of credit institutions.

Credit institutions and their clients must enter into contract for these services, which includes a set of compulsory terms and conditions as prescribed under Circular 02.

