

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

- From 1 July 2016, many significant laws will take effect such as the Criminal Code, the Criminal Procedure Code and the Civil Procedure Code.
- Borrowers must report the status of implementation of its non-Government guaranteed loans in Q2 by 5 July.



Enterprise

Small and Medium Enterprises

The Government has posted the fourth draft of the Law on SMEs on its website for public opinion. Key points of the draft law are below.

- The State encourages commercial banks to increase the outstanding loan balance for SMEs.
- SMEs having a feasible business plan can have access to a loan from the SME Development Fund.
- The Government encourages the establishment of start-up investment funds ("SIF") to contribute capital to, purchase shares from start-ups. SIF that mobilize at least VND10 billion from private investors may request the State to invest in such SIF.
- A start-up SME in preferential industry will enjoy the corporate income tax rate that is 5% less than the normal rate under the corporate tax law.

Industry

Improvement on Administrative Procedures

The Ministry of Industry and Trade has issued Circular 04/2016/TT-BCT to amend and simplify some administrative procedures in specific sectors such as e-commerce, chemicals, franchising and electricity. Some notable changes are:

- Enterprises are no longer required to submit the following documents in order to apply for a trading license for wine trading and distribution: (i) report on business results during the last three consecutive years; (ii) list of contracts with any wine manufacturers or other wine distributors; and (iii) information on the paid taxes.
- In many of the licensing applications involving franchising and e-commerce, the submission of a copy of a document is accepted if the original document is presented. This Circular comes into effect as of 20 July 2016.

State-Owned Enterprises

Managerial Personnel Remuneration

On 13 June 2016, the Government issued Decree 52/2016/ND-CP prescribing salary, remuneration and bonus for managerial personnel of 100% State-owned one member limited liability companies.

Salary rates vary according to size and function of the company based on scale of capital, profit, contribution to state budget, number of subsidiaries and employees.

The highest basic salary are: chairman (VND36m), general director (VND35m), deputy general director (VND32m) and chief accountant (VND29m).

Salaries of the group-level managers are 1.3 – 1.8 times higher than those at the subsidiary level. Annual bonuses are granted based on business and management efficiencies.

Decree 52 will take effect on 1 August 2016 but the new pay scheme is backdated to 1 January 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 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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Intellectual Property

Domain Names

The Ministry of Information and Communications and Ministry of Science and Technology issued Joint Circular 14/2016/TTLT-BTTTT-BKHCN dated 8 June 2016 on the amendment and recovery of domain names which breach the law on intellectual property. The applicable remedial measures when a domain name infringes intellectual property rights include:

- Delete content on website of the domain name. Within 30 days from the effective date of a decision on administrative penalty, the infringer must delete the infringed information published on the website of the domain name or the remove the infringed IP within the domain name.
- Return of domain name. Within 30 days from the effective date of a decision on administrative penalty, the infringer must return the domain name to the person with the IP rights.
- Recovery of domain name. If an infringer has not complied with any of the above decision, then a competent authority may send a request to the domain name management body to recover the infringed domain name to the person with the IP rights.

Investment

Penalties for breach of investment laws

We list below penalties that may be imposed for a breach of the investment laws as prescribed in Government Decree 50/2016/ND-CP dated 1 June 2016.

- A fine of between VND20-30 million if the investor does not conduct the procedure for registration of capital contribution, share purchase, capital purchase in an enterprise.
- A fine between VND40-60 million if the investor does not conduct the procedure for investment registration or start the investment project after 12 months from the date of the investment registration certificate without the approval from the competent authorities.
- A fine of between VND60-80 million if the investor implements its project while the investment certificate or the investment registration certificate or the investment approval has not been issued.

Transport

Penalties in road and rail transportation sector

The Government issued Decree 46/2016/ND-CP dated 26 May 2016 on administrative penalties in road transport and rail transport businesses. Some key points of Decree 46 are below.

- A fine between VND14-20 million is imposed on an organization that carry on road transport business by automobiles without a transport business license or an organization that fails to conduct road transport business in accordance with its transport business license.
- A fine between VND10-20 million is imposed on organisations: (i) conducting rail transport without safety certificate or using fake safety certificate or expired safety certificate; (ii) conducting rail transport for passenger and dangerous cargo without having compulsory insurance policies.

Decree 46 will take effect on 1 August 2016.

Vietnam Fact Box

Vietnam Investment Statistics

The website of the Ministry of Planning and Investment have published data for investment and enterprise registrations for May 2016.

- 10,019 enterprises were established.
- Total registered capital of VND 101,218,000,000,000 (USD4.5 billion).
- 104,738 new employees.
- 884 enterprises dissolved.
- 4,204 enterprises suspended operations.
- 210 new investment projects.

Consumer

Food Safety Supervision

The Ministry of Agriculture and Rural Development issued Circular 08/2016/TT-BNNPTNN on food safety supervision of agricultural, forest and aquatic products to replace Circular 05/2010/TT-BNNPTNT and Circular 61/2012/TT-BNNPTNT. Under Circular 08, the following products shall be subject to supervision by the relevant supervisory authorities of the Ministry:

- Products detected by the consumers or authorities to be in breach of food safety regulations;
- Products identified as not ensuring food safety as per the previous year's assessment outcome;
- Products causing collective food poisoning; and
- Products subject to supervision as requested by the Ministry and provincial departments of agriculture and rural development.

Circular 08 will take effect on 15 July 2016.

