

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

- 2 September is Vietnam National Day.
- Monthly employment reports are filed on 25th of each month



**Official Legal Advisor to the
Vietnam Basketball Association**

Securities

Offshore Securities Investment

On 29 June 2016, the Ministry of Finance issued Circular 105/2016/TT-BTC on offshore indirect investment. Circular 105 takes effect from 15 August 2016. Circular 105 sets out the licensing process for securities firms, fund managers, investment funds and insurance enterprises to allow each of those entities to make indirect offshore investments: principally in offshore listed shares and other less risky securities investments.

The State Securities Commission issue these licenses. There are range of documents that must be filed in order for the above entities to be licensed to conduct offshore indirect investment.

They include (i) a shareholders' approval; (ii) an internal risk management policy; (iii) a business plan for offshore investment; (iv) at least one international CFA qualified employee employed at the entity; (v) the tax authority have confirmed that

the entity is tax compliant; and (vi) evidence that the entity has adequate facilities to provide the offshore indirect investment service. A license is also required for a fund manager providing investment entrustment services for offshore investments.

An insurance enterprise and a securities business conducting self-trading in offshore securities must also be licensed.

Circular 105 sets an investment amount cap for self-trading in offshore securities. For securities firms, this is 30% of equity. For fund managers, this is 20% of equity. For investment funds, this is 20% of the net asset value. For insurance enterprises, the cap cannot exceed the cap registered with the State Bank of Vietnam.

Circular 105 requires the permitted entities to report to the SSC on a monthly basis on its offshore indirect investment activities in a prescribed form set out in Circular 2015.

Telecommunications

Licensing domain names

On 28 June 2016, the Ministry of Information and Communications issued Circular 16/2016/TT-BTTTT on licensing of domain names. This circular applies to domain names with the ".vn" extension which are not granted via auction. The application for licensing a domain name must be submitted to the domain name registrar listed on www.nhadangky.vn. After the application is approved and all applicable tax obligations are fulfilled, the licensee will re-register the licensed domain name with the registrar. During the process, the following activities are prohibited:

- (i) Change of the registrar, change of the applicant's name or return of the domain name;
- (ii) Application for registering the licensed domain name by a third party.

This circular took effect from 15 August 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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Pharmacy

Trading in Pharmaceuticals

Under Decree No. 102/2016/ND-CP dated 01 July 2016 of the Government on conditions for pharmaceuticals trading, a wholesaler must have the following conditions to obtain a certificate for satisfaction of conditions for wholesale pharmaceuticals trading:

- Qualified personnel as required for specific assignments;
- Warehouse and ancillary system, preservation and delivery areas designed, built and maintained in compliance with preservation purpose and usage scale;
- Adequate preservation and transport equipment;
- Preservation warehouse equipped with a back-up power generator system for cold storage;
- Medicine transport vehicles satisfying preservation, safety and security requirements applicable to medicine trading establishments; and
- Standard quality management system, documentation, guideline and process for all activities.

Banking

Credit Information

On 12 July 2016, the State Bank of Vietnam issued document No. 39/VBHN-NHNN amalgamating a number of legal documents of the SBV on credit information services. A company providing credit information services must be licensed by the SBV and the SBV has set a high bar to obtaining these licenses to limit the number of service providers. One of the bar is that the service provider must have an undertaking from 20 commercial bank that the bank will only supply information to the service provider. In addition, the SBV will inspect the facilities of the service provider to ensure that the provider has adequate software and hardware IT infrastructure. On the operational side, the provider can provide credit information in relation to credit transactions that have occurred in the last five years of a search. The provider may obtain credit information from commercial banks, other credit information service providers, the bank customers, credit information centre and other public sources.

Business

New Circular on Food Recall

After 15 August 2016, procedure to recall food products, food contamination, food additive, equipment/packaging materials to process food shall be implemented pursuant to Circular 17/2016/TT-BYT of the Ministry of Health. Highlights of this Circular are below.

- The Food Inspectorate, Vietnam Food Association or Department of Health each has authority to require food manufacturer, traders, and importer to recall food in Vietnam when the quality do not comply with their announcement on conformity with food safety standards.
- Recalled food product must be re-exported or destroyed.
- The owner of recalled food products can only re-market the recalled products after providing new test result proving the products are qualified to be re-marketed, the owner has developed a re-marketing plan and only after obtaining the approval from a competent authority.

Vietnam Fact Box

In 2015, the turnover for two-way trade between Vietnam and European Union (EU) was EUR 38.46 bil, accounting for 19.1% of the total turnover for two-way trade between Asian and EU (EUR 201.4 bil). This figure ranked Vietnam second in Asia in term of two-way trade with EU.

Asian country	Trade Turnover (EUR bil)	(%)
Singapore	48,53	24,1
Vietnam	38,46	19,1
Malaysia	36	17,9
Thailand	32,83	16,3
Indonesia	25,38	12,6
Others	20	9,9

Source: Bloomberg

Mining

Draft Decree on Mineral Exploitation and Trading

The Government issued a draft Decree that specifies the conditions on exploitation and trading of mineral. Two key points are below.

- Exploitation projects must comply with the mineral master plan, satisfy market supply and demand and provide materials for process-intensive products as listed under the Decree; and must have basic designs approved by the competent authorities.
- Processing projects must have minerals from a reliable source, the minerals must produce process-intensive products preferably from domestic mineral sources, meet minimum capacity requirements stipulated by law (if applicable), use compatible technologies and equipment, and ensure labor safety and environment protection.

The new Decree is expected to be issued in 2017.

