

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

- President Ho Chi Minh's birth anniversary is on 19 May.
- From 1 May 2016, the environment fee for mining will apply.

**Asia Counsel is the Official Legal Partner of the Vietnam Basketball Association**



## Banking

### Bank Accounts for Foreign Loans

Effective from 15 April 2016, Circular 05/2016/TT-NHNN of the State Bank of Vietnam will amend Circular 03/2016/TT-NHNN dated 26 February 2016 regulating the foreign exchange control in respect of foreign loans. Amendments in Circular 05 sets out the following for use of bank accounts.

- A borrower being a foreign invested company with a medium to long term loan must operate its foreign loans through a direct investment capital account ("DICA") opened at a licensed Vietnamese bank. If the borrower has a short-term loan (of less than 12 months), the borrower can use the DICA or other loan account for the operation of the short-term loan. However, the foreign invested borrower must only have one account opened at one bank for short-term loans.
- A domestic borrower can only open one foreign loan account at one bank for any foreign loans.

## Health

### New Law on Pharmaceuticals

The National Assembly passed Law No. 105/2016/QH13 on Pharmaceuticals on 6 April 2016. The new law will take effect on 1 January 2017 and repeals the 2005 Law on Pharmaceuticals.

The new law sets a comprehensive regime to govern:

- the licensing of the pharmaceutical profession;
- the licensing of pharmaceutical businesses including clinical trials, manufacturing, distribution and marketing of drugs;
- the pricing of drugs;
- drug registration and its circulation;
- traditional medicines; and
- storage of medicines.

The new law has 116 articles compared to the 73 articles that are in the 2005 law.

We will report on selected issues arising from the new law in future issues of Asia Counsel Insights.

## International Treaty

### New Law on International Treaties

The National Assembly passed Law No. 108/2016/QH13 on International Treaties on 9 April 2016. The law sets out the process that must be undertaken before a treaty is ratified by Vietnam. The new law takes effect on 1 July 2016 and repeals the 2005 Law on International Treaties.

The Law on International Treaties requires the proponent of a treaty to consult across government ministries on the impact and issues of the proposed new treaty. The Ministry of Foreign Affairs and the Ministry of Justice must be consulted before any proposal for Vietnam to enter into a new treaty. The Law requires the Standing Committee of the National Assembly to be given an opportunity to provide its input on any new treaty. A treaty Vietnam signs must not be inconsistent with the Constitution of Vietnam.

## 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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## Commercial

### Draft Decree on Trading Activities

Ministry of Industry and Trade has released a draft decree to replace Decree 23/2007/ND-CP of the Government dated 12 February 2007 on trading activities of foreign invested enterprises. This Decree regulates the trading and distribution of goods. One issue to clarify is what license a trading company must obtain if a foreigner acquires an interest in that company assuming that that company is 100% Vietnamese owned. The draft decree provides that a separate business license is required when a foreigner acquires a Vietnamese company engaging in trading activities. The business license is additional to the acquisition registration certificate that must be obtained from the local department of planning and investment. The draft decree provides that the local department of industry and trade is the licensing authority issuing the business license but must consult with the Ministry of Industry and Trade in certain circumstances. This decentralizes decision making to the local level but harder decisions still requires MOIT sign off.

## Telecommunications

### Vietnamobile

On 6 April 2016, the Prime Minister issued Decision 590/QĐ-TTg providing in-principle approval for the conversion of the business cooperation contract between Hanoi Telecom Corporation and Hutchison Telecommunications (Vietnam) S.À.R.L to a joint stock company called Vietnamobile joint stock company ("Vietnamobile"). Accordingly, some important details are below.

- There are three shareholders in the new company: Hanoi Telecom Corporation (50%), Hutchison Telecommunications (Vietnam) S.À.R.L (49%) and Ms Trinh Minh Chau (1%).
- The total investment capital is USD1,248,000,000
- The project term is 50 years
- The foreign ownership cap in Vietnamobile is capped at 49%.

This is the largest foreign shareholding in a Vietnamese telecommunications company given all the major telecommunications companies are wholly stated-owned.

## Financial Market

### Valuable Papers

The State Bank of Vietnam ("SBV") issued Circular 04/2016/TT-NHNN dated 15 April 2016 regulating the depository and usage of valuable papers at the SBV. Circular 04 provides the following:

- Eligible valuable papers for depository at the SBV includes SBV's notes, Government bonds, Government guaranteed bond and other valuable papers as decided by the Governor of the SBV from time to time.
- The par value of valuable paper is VND100,000 or the multiple of such amount. The par value of special valuable and valuable papers in foreign currency must comply with applicable foreign exchange laws.
- Valuable papers deposited at SBV is managed under the International Securities Identification Number (ISIN)

Circular 06 takes effect from 1 June 2016

## Vietnam Fact Box

- The agriculture industry contributes 18.4 % to total GDP in 2013.
- Animal feed sector is dominated by foreign players.
- Vietnam is the largest producer of Robusta coffee.
- Vietnam is the largest rice exporter by volume yielding US\$3.7bn value in 2012.
- According to the Vietnam Association of Seafood Exporters and Producers, Vietnamese seafood exports grew by 16.5 % from 2013 to US\$7.84 billion in 2014.
- In the livestock sector, pig farming is the most dominant segment.

Source: Stoxxplus and Austrade

## Intellectual Property

### Violation of IP rights

The Ministry of Science and Technology and the Ministry of Planning and Investment issued Joint Circular 05/2016/TTLT-BKHCN-BKHDT on 5 April 2016 to deal with circumstances where the enterprise's name violates the IP rights of other entities.

Here are some key points:

- The responsible licensing authority will conclude in writing whether an enterprise's name violates a person's IP rights or not.
- If the violating enterprise does not cease to use the infringed name, then it is forced to change its name or remove the violating elements in its name.
- If the enterprise fails to comply with the request to change its name above, the authority may revoke its enterprise registration certificate.

Joint Circular 05 takes effect from 20 May 2016.

