

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

- 23 September: monthly employee reporting due.
- 30 September: monthly social insurance, health insurance and unemployment insurance payments due

Official Law Firm Partner of the Vietnam Basketball Association



## Business

### Amendments to investment and business laws

In early September, the Ministry of Planning and Investment published the draft Law amending a number of laws on investment and business for comment. Highlights of the draft Law are below.

- *Amendment to investment policies:* For projects requiring an investment policy, the policy must be amended if there are changes to project objectives or location; increase of project scale by 10%; operational term; change of investors due to a transfer of the project when capital has yet been fully contributed and the project has not commenced operations; or change of project implementation conditions;
- *M&A approval:* Acquisition of shares or capital contribution in a company operating in a conditional sector needs not be registered if the acquisition does not result in an increase of the foreign ownership ratio.

- *Project's operational term:* The operation term of projects of foreign investors or foreign invested companies with investment capital of less than VND5 billion must not exceed 20 years.
- *Valuation of investment capital:* The authorities may request an independent consultant to value investment capital of foreign-invested projects at the investors' cost if they deem necessary.
- *Holding company:* Companies are allowed to hold interest in other companies and have no specific business lines for this.
- *Multiple legal representatives:* If a company has more than one legal representatives, each of them shall have equal authority to fully represent the company.
- *Use of seal:* Company seals are used as required by law and agreed between the parties. Documents issued by companies for enterprise registration are not required to be sealed.

## Employment

### Increase of minimum area wages

Under the draft Decree on minimum area wage rates applicable to employees working under labour contracts published by the Government for comment, the monthly minimum area wage rates are proposed to be increased by 7.1 – 7.5%.

Area	Current rates VND	Proposed new rates
I	3,500,000	3,750,000
II	3,100,000	3,320,000
III	2,700,000	2,900,000
IV	2,400,000	2,580,000

The draft Decree also re-classified a number of districts into different wage areas. Area I is for locations located in the cities whilst area IV is for locations in rural areas.

The Decree is expected to be passed soon and will take effect from 1 January 2017.

## 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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## Land

### Payment for delay in use of project implementation land

Under Decree 135/2016/ND-CP dated 09 September 2016 amending and supplementing a number of decrees on collection of land use fee, land rent and water surface rent ("**Decree 135**"), payment for delay in using allocated or leased land for project implementation shall be calculated as follows:

- If any extension to land use term is permitted, payment for the delay shall be based on the rent for annual lease.
- If the land user has not commenced implementation of the project on the land or no extension of time has been granted for the project, the payment shall be the rent applicable to annual lease for the period of time from land allocation to land resumption, minus the time for capital construction (in case of leased land).

Decree 135 shall take effect as of 15 November 2016.

## Taxation

### Circular 128/2016/TT-BTC

On 9 August 2016, the Ministry of Finance issued Circular 128/2016/TT-BTC providing the exemption and reduction of export tax for environmentally friendly products and recycled products. This Circular applies to manufacturers and exporters of (i) environmentally friendly products and (ii) recycled products under Clause 12 of Appendix III attached to Decree 19/2015/ND-CP.

Environmentally friendly products under the export tariff and certified with the Vietnam green label will be exempt from export tax. Recycled products under the export tariff and certified by the competent authorities pursuant to Article 44.2 of Decree 19/2015/ND-CP will be subject to a 50% reduction to export tax.

If the paid export tax exceeds the actual tax amount that needs to be paid after the tax exemption or tax reduction, the taxpayer may apply for a tax refund. This Circular takes effect from 23 September 2016.

## Bankruptcy

### Resolution 03/2016/NQ-HDTP

On 09 September 2016, the Council of Judges of the Supreme People's Court issued Resolution No. 03/2016/NQ-HDTP guiding the implementation of a number of provisions of the Bankruptcy Law ("**Resolution 03**"). Under Resolution 03, a bankruptcy is considered "complicated" and shall therefore, be resolved by the relevant provincial people's court instead of the district-level people's court if the enterprise subject to bankruptcy procedures:

- employs 300 or more employees;
- has a charter capital of VND100 billion or more;
- is a credit institution, public service provider, national defense and security enterprise, state economic group or corporation, or foreign invested company;
- owes a debt secured by the State or related to the performance of an international treaty of which Vietnam is a member; or
- has a transaction claimed to be deemed invalid according to Article 59 of the Bankruptcy Law.

Resolution 03 took effect as of 16 September 2016.

## Vietnam Fact Box

- The Prime Minister of Vietnam has hinted at opening the door for foreign ownership in Vietnam commercial banks to exceed 30%.
- The Ministry of Industry and Trade is planning to offload the government's 89.59% share in the local beer maker, Sabeco, over two tranches this year and in 2017.
- The Ministry of Finance has ruled that Uber must pay Vietnam 3% VAT and 2% corporate income tax and also pay personal income tax for its drivers.

## Anti-dumping duty

### Anti-dumping duty on galvanized steel from China and Korea

The Ministry of Industry and Trade (MOIT) has issued decision 3584/QĐ-BCT dated 1 September 2016 imposing temporary anti-dumping duties on galvanized steel from China (Hong Kong included) and Korea as follows:

- The temporary anti-dumping duty rate for companies from China and Korea is increased from 4.02% to 38.34% and from 12.40% to 19% respectively, depending on each case.
- The temporary anti-dumping measures will be applied for 120 days from 16 September 2016 to 13 January 2017. The Decision will be terminated in the event the MOIT issues the next decision.
- The General Customs of Vietnam will immediately execute the anti-dumping tariff rate to products of galvanized steel from China and Korea when this Decision takes effect.

