

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

- October 20: opening of the 2nd Session of the XIV National Assembly of Vietnam
- October 30: quarterly CIT return due

Official Law Firm Partner of the
Vietnam Basketball Association



Business

Decree on Business License Fee

Decree No. 139/2016/ND-CP dated 4 October 2016 of the Government has amended the annual business license fee. The new fee based on the charter capital or investment capital of the business entity is below.

Charter or Investment Capital (VND)	Fee (VND)
Above 10 billion	3,000,000
10 billion or less	2,000,000
Branches, representative offices, business locations and others	1,000,000

The business license fee applicable to individuals and household businesses are lower and based on their revenue.

Business entities that have made a business license fee filing before 1 January 2017 do not need to submit any future filing if there is no change to their capital or revenue, as the case may be. The business entity will only need to pay its current annual rate to the State treasury.

Administration

Registration Fee

On 10 October 2016, the Government issued Decree No. 140/2016/ND-CP to replace Decree No. 45/2011/ND-CP (as amended by Decree No. 23/2013/ND-CP) on registration fees (akin to stamp duties) applicable to certain property registrations ("**Decree 140**"). New provisions under Decree 140 are:

- Aircrafts used for non-commercial purpose shall also be subject to registration fee, which is 1% of the actual purchase price in the market.
- Assets purchased by a finance company and then leased back to the seller shall be exempt from registration fee. The same applies to fishing vessels.
- Registration fees for cars under nine seats, aircrafts and yachts shall no longer be capped at VND500million.

Decree 140 takes effect as of 1 January 2017.

Banking

Forex activities by credit institutions

Circular 28/2016/TT-NHNN dated 05 October 2016 of the State Bank of Vietnam ("**SBV**") amends a number of articles of Circular 21/2014/TT-NHNN on forex activities, conditions and procedures for consent to forex activities of credit institutions by the SBV. Under Circular 28, apart from basic and other forex activities listed by law, banks are permitted to conduct, without additional approval from the SBV:

- forex-related derivative activities if there have been SBV's guidelines on such activities and banks have previously permitted to carry out these transactions.
- other forex activities if there have been guidelines on such activities.

Circular 28 also amend scope of basic and other forex activities stipulated under Circular 21. The amendments will take effect as of 18 November 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.

Minh Duong

Partner

E minh@asia-counsel.com

Christian Schaefer

Managing Partner

E christian@asia-counsel.com

Securities

Covered Warrants

The Ministry of Finance issued Circular No. 107/2016/TT-BTC dated 29 June 2016 guiding, for the first time, offers for sale and transactions of covered warrants. The key provisions are below.

- Underlying securities of the covered warrants must meet specific requirements on market capitalization, liquidity and other criteria set by the State Securities Commission ("SSC").
- Covered warrants must be listed and traded on a Vietnam securities exchange.
- The relevant securities exchange will publish a list of securities qualified to be underlying securities for issue of warrants on a quarterly basis and shall announce which securities are no longer qualified within 24 hours of a decision to remove such securities from the list.
- Warrants are traded via the normal securities trading accounts opened at a licensed securities broker.
- Issuers are not permitted to trade warrants that uses the issuer's securities as the underlying securities for the warrants.

- The issuers must have an escrow at the custodian bank equal to 50% of the value of the warrants to be issued or a guarantee by the custodian bank for the same amount.
- The issuers must obtain a certificate of issue of warrants from the SSC before offering to sell warrants. Allotment of warrants to investors must be completed within 15 days of issue of such certificate. Payment for purchase of warrants must be paid into an escrow account and only released to the issuer when the SSC confirms the allotment results.
- There is no foreign ownership on the holding of warrants. However, foreign ownership of the warrants applies on the conversion of the warrants into the underlying securities. The issuer will need to make mandatory cash payment to the foreign holder of the warrants if there is no foreign room on conversion.
- Margin trading is not allowed for warrants.

Circular 107 shall take effect from 1 January 2017.

Tax

Transfer Pricing

The Ministry of Finance has introduced a draft Decree on management of transfer price of affiliated transactions, anti-avoidance and prevention of loss to the State budget for public comments.

The draft governs a broader scope of transactions between affiliated parties (affiliated transactions), which additionally covers borrowing transactions, transactions of tangible and intangible assets and cooperation arrangements for resource and cost sharing.

The draft also changes the definition of "affiliated parties". Two entities are considered affiliated parties if (i) either of them owns 25% or more interest of the other party, (ii) both of them have at least 25% interest owned by a third party or have at least 25% interest each in a third party. This ratio under the current regulations is 20%.

Vietnam Fact Box

Vietnam's GDP increases by 5.93%, while inflation rate increases 1.81% in the first 9 months of 2016.

South Korea is the largest source of FDI in the first 9 months of 2016, contributing US\$5.58 billion, accounting for 34% of the total FDI registered in Vietnam. Singapore and Japan rank second and third with 11.2% and 10.3% respectively. Most investment are for processing and machinery manufacturing (73.9%) and real estate (6.1%).

Source: General Department of Statistics, Foreign Investment Department

Business

Standards Assessment Services

Decree 107/2016/ND-CP issued by the Government on 1 July 2016 regulates conditions on standards assessment services. Standard assessment services include (i) testing, accreditation, inspection and certification with respect to the conformity of a product, manufacture or service provision process or environment to applicable standards or technical regulations, and (ii) recognition of standards assessment organizations. Standards assessment organizations must satisfy specific regulatory requirements on management system, operation capacity and human resources to obtain an operation registration certificate from the line ministry for provision of the above services. The validity term of the operation registration certificates shall not exceed 5 years from the date of issue.

This Decree took effect as of 1 July 2016.

