

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.

### Deal Updates:

- Assisted the project owner with the divestment of a 50MW solar power project in Ninh Thuan Province.
- Assisted a ride sharing operator in raising a series seed round.
- Assisted a provider of online education services in its bridge funding round.



### Public Private Partnerships

The Vietnamese Government has proposed a draft law to supplement Decree No 63/2018/ND-CP on PPP investment. The draft law will permit PPP projects in a wider range of sectors, allow for greater assumption of risk by the State, and set the minimum investment amount to US\$4.4 million for healthcare and education projects in remote and extremely disadvantaged areas, and US\$8.8 million in other sectors and areas.

Investors in PPP projects will be required to have at least 15% equity, and the projects must have a single purpose. Contracting state agencies will be permitted to guarantee certain levels of project revenue and foreign exchange balance.

If passed, this new law will promote greater investment in Vietnamese infrastructure projects. The World Bank estimates that Vietnam will need US\$25 billion of annual infrastructure investment in the coming years.

### Competition Law

Last month we examined Decree 35/2020/ND-CP, detailing the regulations of provisions in the Competition Law ("**Decree 35**") and focused on when notifications are required in relation to a merger or economic concentration. In this edition, we focus on abuse of dominant position and anti-competitive agreements.

Decree 35 sets the factors that the National Competition Commission will consider on whether an enterprise or a group of enterprises will have substantial market power. These factors include:

- the comparative market shares of enterprises in the relevant market.
- financial strength including access to capital, number of employees, production scale and distribution network
- barriers to market entry including legal and financial barriers, initial costs, consumption habits, business practice and infrastructure access.

- Ability to switch sources of supply and demand to other relevant goods or services including the costs and time for consumers to switch to an alternative.

Decree 35 also details the factors the NCC will use to assess any agreement in restraint of trade that will have a substantial anti-competitive effect on the market. The decree elaborates on the list of factors that already appear in Article 13 of the 2018 Law on Competition.

Decree 35 also provides that an agreement is deemed not to have any significant restraint of trade include (a) an agreement between enterprises in the same relevant market but their combined market share is below 5%; and (b) any vertical restraint of trade agreements whereby the enterprises' market share in the relevant market is below 15%.

### 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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# ASIA COUNSEL INSIGHTS

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## Employment

On 24 April 2020, the Prime Minister issued Decision No. 15/2020/QĐ-TTg regulating the implementation of policies on supporting businesses affected by the COVID-19 pandemic ("**Decision 15**"), which took immediate effect. Under Decision 15, employers meeting the below conditions are eligible to take collateral-free and interest-free loans from the Vietnam Bank for Social Policy to pay wages for their employees who have been suspended.

- This policy applies to least 20% of the employees or at least 30 employees who are making social insurance contributions for at least one consecutive month, and at least 50% of the wage for work suspension must have been paid to the employees during the period from 1 April to 30 June.
- The employer is facing financial difficulties and does not have sufficient funds for payment of wages for work suspension after using up their wage reserve fund.
- The employer does not have any bad debt at any credit institution or branch of foreign bank as at 31 December 2019.

## Deferred of Tax and Land Rental Payments

On April 8, 2020, the Government of Vietnam issued Decree No. 41/2020/ND-CP on deferral of payment of taxes and land rental ("**Decree 41**").

Eligible enterprises and organizations can defer their value added tax amount payable for the assessment periods of March, April, May and June of 2020 (for monthly tax declaration cases) or the first two quarters of 2020 (for quarterly tax declaration cases) for five months. They can also defer their final corporate income tax payment of 2019 and their corporate income tax provisional payments for the first two quarters of 2020 for a period of five months.

For land rental payments, enterprises, organizations, households, and individuals who lease land directly from the State can defer the first installment of their annual land rental payment, due on 31 May 2020, for five months.

Decree 41 took effect on the date it was issued.

## EU-VN Free Trade Agreement

On 30 March 2020, the European Council adopted a decision on the conclusion of a free trade agreement (FTA) between the EU and Vietnam. Procedurally, the FTA can enter into force after the National Assembly of Vietnam ratifies it and 30 days after the completion of the notification procedures of the EU and Vietnam.

The FTA provides for the almost complete (99%) elimination of customs duties between the two parties. 65% of duties on EU exports to Vietnam will disappear as soon as the FTA enters into force, while the remainder will be phased out gradually over a period of up to 10 years. 71% of duties on Vietnamese exports to the EU will disappear upon entry into force, the remainder being phased out over a period of up to 7 years. The FTA will also reduce many of the existing non-tariff barriers to trade with Vietnam and open up Vietnamese services and public procurement markets to EU companies.

The FTA also contains important provisions on intellectual property protection, labour rights and sustainable development.

Source: Council of the EU press release

## Vietnam Fact Box

The State Bank of Vietnam has stated that it will defer capping foreign ownership of payment services companies at 49%. The proposed cap may reduce foreign investment in the growing e-wallet and e-payment services market. The number of cash-less payments in Vietnam grew by 76% between Tet 2020 and mid-March.

## Exporting Labor

Decree 38/2020/ND-CP was issued on 3 April to replace Decree 126/2007/NĐ-CP detailing and guiding the implementation of a number of articles of the law on Vietnamese laborers to work abroad under contracts and will take effect on 20 May 2020 ("**Decree 38**").

Decree 38 provides that for a license to provide services of exporting labor, inter alia, enterprises must be established under Vietnamese law, have 100% of their charter capital contributed by a Vietnamese entity, and possess minimum legal capital of VND 5 billion.

With respect to Taiwan, Japan, and the Middle Eastern market, enterprises exporting labor, upon satisfaction of additional requirements, must:

- For Taiwan, have a reference letter from the MOLISA to the competent authority of Taiwan.
- For Japan, have its name under the list of eligible enterprises to be referred to competent authority of Japan issued by MOLISA.
- For Middle Eastern countries, have an approval for exporting labor to work as housemaid from the MOLISA.

