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Asia Counsel Insights

SECTION I. OVERVIEW OF THE RECENT LEGISLATIONS

Asia Counsel Insights provide an overview of key trending legal and business issues in Vietnam and how they may impact your business.

In this August 2024 edition, we offer an overview of recent legislations in real estate, banking and finance, telecommunication, media and technology, commerce, and taxation. We also include a spotlight discussion on key topics such as consumer rights protection regulations, non-cash payment services, and employment stock option plans.

COMMERCE

New Law on Electronic Transaction.

The new Law on Electronic Transactions, which was passed by the National Assembly on 22 June 2023, has become effective on 1 July 2024. The law sets out the legal framework related to the forms, requirements, and legal validity of (i) electronic records, (ii) digital signatures, (iii) electronic contracts, and (iv) electronic transactions with Vietnamese authorities. Notably, the law now specifies the conditions for recognising foreign electronic signature certification service providers and the recognition of foreign electronic signatures and electronic signature certificates in Vietnam subject to the recognition procedure. The recognition procedure is outlined in Circular No. 06/2024/TT-BTTTT, taking effect on 15 August 2024.

Decree on the Protection of Consumer Rights.

On 16 May 2024, the Government issued Decree No. 55/2024/ND-CP guiding the implementation of the Law on Protection of Consumers' Rights, which was adopted by the National Assembly last year. We will discuss further details of those legislations in **Section II** below.

Decision on Model Contracts and General Terms and Conditions

On 20 June 2024, the Prime Minister issued Decision No. 07/2024/QD-TTg promulgating the list of products, goods, and services that are subject to the requirement of registering model contracts and general terms and conditions with the relevant authorities, taking effect on 1 July 2024. The list includes the following nine categories: (i) electricity supply for domestic purposes, (ii) water supply for domestic use, (iii) paid television services, (iv) terrestrial mobile telecommunications services (voice services, message services, internet access services), (v) fixed terrestrial telecommunications (voice services, internet access services), (vi) passenger transportation by air, (vii) passenger transportation by railway, and (viii) sale and purchase of residential apartments.

SECTION I. OVERVIEW OF THE RECENT LEGISLATIONS

REAL ESTATE

The new Law on Land, Law on Housing and Law on Real Estate Business were originally scheduled to take effect on 1 January 2025. However, on 29 June 2024, the National Assembly adopted a law to accelerate the effective date of the afore-mentioned three laws. These legislations are now set to come into force on 1 August 2024, which is an advancement of five months from the originally scheduled date.

Below is a capture of the three new laws and their respective implementing instruments which all take effect on 1 August 2024. We will provide further details and analysis in relation to the following legislative framework in our upcoming special edition on **Vietnam Real Estate**.

Law No. 31/2024/QH15 adopted by the National Assembly on 18 January 2024 on land ("Law on Land")

- Decree No. 71/2024/ND-CP of the Government dated 27 June 2024 on land price.
- Decree No. 88/2024/ND-CP of the Government dated 15 July 2024 on compensation, support and resettlement during land recovery.
- Decree No. 101/2024/ND-CP of the Government dated 29 July 2024 on basic land investigation; registration, granting of land use rights and assets attached to land certificates and land information system.
- Decree No. 102/2024/ND-CP of the Government dated 30 July 2024 detailing several provisions of the Law on Land.
- Decree No. 103/2024/ND-CP of the Government dated 30 July 2024 on land use fees, land rental.
- Decree No. 104/2024/ND-CP of the Government dated 31 July 2024 on development of land fund.

Law No. 29/2023/QH15 adopted by the National Assembly on 28 November 2023 on real estate business ("Law on Real Estate Business")

- Decree No. 94/2024/ND-CP of the Government dated 24 July 2024 on certain provisions of the law on real estate business on construction and management of information systems, databases on housing and real estate market.
- Decree No. 96/2024/ND-CP of the Government dated 24 July 2024 detailing several provisions of the Law on Real Estate Business.

Law No. 27/2023/QH15 adopted by the National Assembly on 27 November 2023 on housing ("Law on Housing")

- Decree No. 95/2024/ND-CP of the Government dated 24 July 2024 detailing several provisions of the Law on Housing.
- Decree No. 98/2024/ND-CP of the Government dated 25 July 2024 on renovation and reconstruction of apartment buildings.
- Decree No. 100/2024/ND-CP of the Government dated 26 July 2024 on the development and management of social housing.

BANKING AND FINANCE

New Law on Credit Institutions. The new Law on Credit Institutions, which was passed by the National Assembly on 18 January 2024, has become effective on 1 July 2024 save for Articles 200.3 (Assignment of secured assets) and Article 210.15 (Transitional provisions) taking effect on 1 August 2024.

The law has introduced the following new changes in relation to shareholding ownership and governance as compared to its predecessor:

- *Disclosure requirement*. Any shareholder who owns 1% or more of the charter capital in a credit institution will be required to disclose to such credit institution information regarding the shareholder's identity, the identities of related parties, and the shareholding ratio of such related parties within the credit institution.
- *Shareholding ownership.* The ownership cap of a corporate shareholder and its related persons in a credit institution has been reduced from 15% to 10%. The aggregate ownership cap of a shareholder and its related person in a credit institution has been reduced from 20% to 15%.
- *Security agent.* For the first time, the law has explicitly allowed commercial banks to be appointed as an agent to manage secured assets by international financial institutions, foreign credit institutions, credit institutions and branches of foreign banks.

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Further details of the Law on Credit Institutions in relation to banking activities will be discussed in our upcoming **Vietnam Lending Guide**.

Decree on Non-cash Payments. On 15 May 2024, the Government issued Decree No. 52/2024/ND-CP promulgating regulations on non-cash payment activities, taking effect on 1 July 2024. We will discuss further details of this decree in **Section II** below.

Circular on Employee Stock Option Plan. The State Bank of Vietnam has issued Circular No. 23/2024/TT-NHNN, taking effect on 12 August 2024 to supplement and amend the provisions of Circular No. 10/2016/TT-NHNN dated 29 June 2016 relating to the employee stock ownership plan. We will discuss further details of this decree in **Section II** below.

Circular on Payment Agent Activities. On 21 June 2024, the State Bank of Vietnam issued Circular No. 07/2024/TT-NHNN regulating payment agent activities, taking effect on 1 July 2024. The circular details, among others, the permitted activities of payment agents, rights and obligations of the parties involved in payment agent activities, and mandatory contents of payment agency service agreements.

Circular on Intermediary Payment Services. On 17 July 2024, the State Bank of Vietnam issued Circular No. 40/2024/TT-NHNN regulating intermediary payment services, taking effect on 17 July 2024. This circular introduces the definition and conditions of payment intermediary services as well as the rights and obligations of the parties involved in such services. Of note, pursuant to this new circular, all non-cash payment transactions facilitated through payment intermediary services in Vietnam must be conducted in Vietnamese Dong. Exceptions to this requirement are only allowed under circumstances where the use of foreign currency is explicitly authorised in accordance with the regulations on foreign exchange management.

TELECOMMUNICATIONS – MEDIA - TECHNOLOGY

New Law on Telecommunications. The new Law on Telecommunications, which was passed by the National Assembly on 24 November 2023, has become effective as from 1 July 2024. However, certain provisions in relation to basic telecommunications services, data centres and cloud computing services outlined in Articles 28 and 29 of the law shall come into force on 1 January 2025.

TAXATION

Decree on VAT Rate Reduction. Pursuant to Decree No. 72/2024/ND-CP, the reduction of the value added tax rate from 10% to 8% for certain goods and services will remain in effect until the end of 2024.

Draft amended Law on Corporate Income Tax. The draft law introduces a number of new tax policies, notably including the imposition of a 2% tax rate on the gross sale proceeds from any capital transfer conducted by foreign corporate shareholders or equity owners irrespective of their permanent establishment status) in Vietnam-domiciled entities. This provision, if the draft law were to be enacted in its present form, would subject the foreign sellers to capital transfer tax, even in instances where the sale results in a financial loss.

The Law on Protection of Consumer Rights and Decree No. 55/2024/ND-CP detailing several articles of the law (collectively, the "**New Consumer Protection Framework**") has set out notable changes as compared to the previous legislations.

CONSUMERS' RIGHTS PROTECTION REGULATIONS

Scope of application

The New Consumer Protection Framework has narrowed down the categories of "consumers" by excluding those who purchase or use products, goods and services **for commercial purposes** irrespective of whether they are individuals or corporate entities. In light of the new definition of "consumers", it may be inferred that corporate entities who purchase products or services for its business operations on a revenue-generating basis may not be regarded as "consumers" and fall outside the scope of application of the New Consumer Protection Framework. On the other hand, it also extends the scope of application to foreign individuals and organisations that are involved in protection of consumers' rights.

Remote transactions

"Remote transaction" is a new defined term which refers to all transactions conducted in the cyberspace, by electronic means, or otherwise where consumers are not capable of verifying or having a direct contact with the goods and services before consummating the transactions. As a general proposition, traders conducting remote transactions are required to provide accurate and sufficient information to the consumers, including for instance, information relating to traders' identities, product specifications, consumer rights, procedures for exchanging or returning products or terminating contracts, and procedures for handling consumer complaints. If the traders fail to comply with the provision of the afore-mentioned information, the consumers will be entitled to (i) agree with the traders on selection of the contractual remedies, (ii) unilaterally terminate the contracts, or (iii) request the competent authorities to declare the contracts invalid or rescind the contracts.

Multi-level Marketing *(Bán hàng đa cấp* in Vietnamese*)*

The New Consumer Protection Legislation defines multi-level marketing ("**MLM**") as the sale of products through a network of individual sellers at different levels and branches under which the sellers will be entitled to commissions, sale bonus and other economic interests arising from the sale of goods of themselves and other individuals in the network. Organisations and individuals conducting MLM are prohibited from (i) requiring the members to make any deposit, make any advance or commit to purchase a certain quantity of goods as a condition to participate in the MLM, (ii) providing false or misleading information to the consumers or other members participating in the MLM, (iii) conducting the MLM business without MLM license, (iv) applying MLM model to the sale of services, and (v) developing the MLM network not on the basis of goods trading transactions.

Compensation for damages incurred by consumers

As a general principle, traders shall be liable for compensation in instances where their defective products cause harm to the life, health and property of consumers. This liability persists irrespective of whether the traders have knowledge of the defects or have committed any act or default that resulted in such defects.

Pursuant to the New Consumer Protection Framework, organisations and individuals acting as commercial intermediaries in the distribution of products to consumers – including, but not limited to, sale representatives, brokers, authorised dealers, and sale agents – shall, along with other categories in the previous framework such as manufacturers, importers, retailers, be subject to liability for compensation to consumers.

Of note, the former Law on Protection of Consumer Rights granted an exemption from liability for traders solely in instances where it could be demonstrated that defects in the goods were not detectable due to the prevailing scientific and technical conditions at the time of sale. In contrast, the New Consumer Protection Framework introduces additional exemptions. Traders are now also exempt from liability if they have undertaken necessary procedures to recall and handle the defective products provided that the consumers have been adequately informed but still choose to use the defective products. Furthermore, it also permits the possibility of additional exemptions as prescribed by laws.

Invalidity of standard contracts and general trading conditions

In addition to broadening the circumstances under which a clause in standard contracts or general trading conditions may be deemed invalid, the New Consumer Protection Framework incorporates a catch-all provision prohibiting any clause that contravenes the principle of goodwill, as established by civil regulations, and that results in disadvantages to consumers. The terms "goodwill" and "disadvantages" lack explicit definition within the framework, thereby granting the relevant dispute resolution body the discretion to interpret these concepts.

Decree No. 52/2024/ND-CP of the Government on non-cash payment (“**Decree 52**”) has repealed the former Decree No. 101/2012/ND-CP as from 1 July 2024 with the following significant changes.

NON-CASH PAYMENT SERVICES

E-money

Decree 52 introduces the definition of electronic money or e-money being the value of Vietnamese Dong stored on electronic devices such as e-wallets or prepaid cards. The value of e-money corresponds to the amount of money prepaid by customers to banks, branches of foreign banks, and payment intermediary service providers offering e-wallet services.

This provision seeks to address the legal gap concerning e-money despite its prevalent use in practice. Furthermore, it also seeks to clarify and distinguish e-money from other non-cash payment instruments such as "virtual currency" or in-game money, which will be subject to the scope of regulation under the Draft Law on Digital Technology Industry.

E-wallets and prepaid cards

Decree 52 recognises e-wallets and prepaid cards as platforms for storing e-money.

Banks and branches of foreign banks are permitted to issue and offer e-wallets and prepaid cards. Intermediary payment service (“**IPS**”) providers, however, are restricted to providing only e-wallet services. These IPS providers must ensure that the total balance across all accounts held at the banks or branches of foreign banks designated for funding e-wallets is not less than the total balance of all e-wallets issued to customers.

Non-cash payment instruments

Decree 52 sets out specific regulations for non-cash payment instruments, defining them generally as instruments provided by (i) payment service providers, (ii) licensed financial companies issuing credit cards, and (iii) IPS providers offering e-wallet services to customers for conducting payment transactions. Decree 52 also provides a comprehensive list of official non-cash payment instruments and any instrument outside the list will be deemed illegal.

Participation in the international payment system

Decree 52 introduces a detailed framework to address the complexities of international payment activities and ensure compliance. It specifically outlines the conditions for participation in the international payment system of certain service providers. In particular:

Commercial banks and branches of foreign banks participating in international payment systems must satisfy the following conditions:

(i) Being licensed to engage in basic foreign exchange operations in domestic and international markets;

(ii) Having policies on and procedures for risk management concerning money laundering, terrorism financing, and financing of proliferation of weapons of mass destruction laws;

(iii) Maintaining information systems that meet the requirements of Vietnamese law, having internal regulations on standards for selecting connections to international payment systems;

(iv) Connecting to international payment systems that are legally established and operated abroad.

IPS providers providing international financial switching services can also participate in the international payment system to provide related services after meeting the following conditions:

(i) Having a license to provide financial switching IPS;

(ii) Using a clearing organisation to settle the clearing results between involved parties;

(iii) Having internal regulations on standards for selecting connections to international payment systems to perform financial switching of international payment transactions;

(iv) Having internal regulations on technical professional processes for the services;

(v) Connecting to international systems for international financial switching services that are legally established and operated abroad.

IPS regulations

The scope of IPS under Decree 52 includes financial switch services, international financial switch services, electronic clearing services, e-wallet services, collection and payment services, and electronic payment portal services. Supporting services for electronic payment service are now removed from the list of IPS.

Decree 52 also imposes clearer and more stringent requirements for obtaining licenses for IPS providers, including higher standards for charter capital, ownership structure, and IT systems. For instance, the service providers must have a legal capital not less than (i) VND 50 billion (around USD 2 million) for offering e-wallet services, payment collection, and support services, and electronic payment portal services, or (ii) VND 300 billion (around USD 12 million) for offering financial switching services, international financial switching services, and electronic clearing services. Under the previous decree, the legal capital of VND 50 billion was applicable to all services.

Decree 52 also elaborates and clarifies the procedures for granting, revoking, and re-granting the operational license for IPS providers. The State Bank of Vietnam is authorised to supervise, inspect, and control IPS, ensuring compliance and mitigating risks.

EMPLOYMENT STOCK OPTION PLAN

Requirements and procedures under the previous framework

Pursuant to the previous framework, foreign-domiciled entities must establish a presence in Vietnam, such as a subsidiary, representative office, or branch (“**Implementing Entities**”), to qualify for issuing stock options to Vietnamese employees. These Implementing Entities will handle the relevant process on behalf of the foreign organisations, which includes obtaining approval from the State Bank of Vietnam for registering ESOP and opening accounts at licensed commercial banks for conducting transactions related to the ESOP including for instance, the subscription and divestment of bonus shares and the distribution of dividends (“**ESOP Accounts**”).

Streamlined procedures and requirements under the current framework

With effect on 12 August 2024, foreign-domiciled entities are no longer mandated to establish a presence in Vietnam for the purposes of ESOP implementation. The ESOP will be implemented through Vietnam-domiciled economic organisations that have a relationship with such foreign entities via share ownership, capital contribution, or other forms as prescribed by Vietnamese law.

The new circular has abolished the requirement of registering the ESOP with the State Bank of Vietnam before the implementation. Consequently, the Implementing Entities can now open ESOP Accounts without necessitating any regulatory approval to the remitting banks. This is a well-suited provision as the cash flows involved in a stock bonus program typically constitute a one-way remittance of funds into Vietnam, which should be managed with flexibility.

However, it should be noted that the State Bank of Vietnam still exert a degree of management during the course of ESOP implementation. Accordingly, the reporting regime for organisations implementing ESOP has intensified, shifting from a quarterly basis to a monthly basis. Reporting will be conducted by way of emails and postal services.

Amendment to the forms of stock awards

The new circular provides two possible types of stock awards under an ESOP, including (i) bonus shares and (ii) other stock awards not involving in remittance of funds overseas. The issuance of rights to subscribe preferential shares is no longer classified as a stock award under an ESOP. This exclusion effectively prevents scenarios where employees transfer their funds overseas to subscribe for preferential shares, thereby characterising such transactions as other outbound investment activities rather than components of an ESOP.

About Asia Counsel

Asia Counsel is a well-established and highly regarded law firm with more than 20 Vietnamese and foreign lawyers, including three partners, based in Ho Chi Minh City, Vietnam's centre of enterprise. The firm has built an excellent reputation over a decade of on-the-ground experience and excellence. It assists multinational corporations, UK, US, European, Japanese, Chinese and other Asia-Pacific law firms, as well as global, regional and local investment funds, venture capital funds, private equity investors and financial institutions. It also serves an array of high-profile Vietnamese corporations with their full business lifecycle in Vietnam — from market entry and M&A to daily operations and regional expansion.

If you have any questions on any of the items discussed above, please do not hesitate to contact us.

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