DECEMBER 2024

Asia Counsel Insights

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

In this December 2024 edition, we offer an overview of recent legislation across sectors including banking and finance, capital market, energy, education, mining, real estate, data protection, and others.

BANKING AND FINANCE

Amended Circular on Bank Guarantee. On 25 October 2024, the State Bank of Vietnam issued Circular No. 49/2024/TT-NHNN with effect on 10 December 2024, which amends and supplements several provisions of Circular No. 11/2022/TT-NHNN regarding bank guarantees in relation to off-the-plan real property projects. Notably, this circular expressly permits branches of foreign banks, as well as commercial banks to offer guarantees to beneficiaries being purchasers and hire-purchasers of residential properties. The guarantors will guarantee the payment obligations of the developer for off-the-plan real property projects in the event that the developer fail to deliver the properties by the agreed date. The circular also amends the conditions that the developer must satisfy to obtain such guarantees and outlines the updated procedures for granting guarantees.

Draft Circular regulating the Opening and Use of Indirect Investment Capital Account. The State Bank of Vietnam has recently released a draft circular governing the opening and use of indirect investment capital account (**IICA**) denominated in Vietnam Dong by foreign investors in Vietnam, which is currently governed by Circular 05/2014/TT-NHNN of foreign exchange control in indirect investment activities (**Circular 05**) and aligns with the key changes under the Law on Investment 2020. For example, draft circular also proposes to amend the threshold of 51% to over 50% foreign ownership in the definition of "deemed foreign investors" for the purpose of opening direct investment capital accounts in Circular No. 06/2019/TT-NHNN on foreign exchange control in direct investment activities. Foreign investors may open multiple IICAs if they meet the specific conditions as provided in the circular for the purpose of securities trading.

CAPITAL MARKET

Amended Law on Securities. On 29 November 2024, the National Assembly adopted Law No. 56/2024/QH15 on amending, among other laws, the current Law on Securities. This law will come into effect on 1 January 2025. The key changes introduced by this amended law include:

(i) Specifying the acts that may constitute "market manipulation", which is a prohibited activity;

(ii) Expanding the scope of "professional investors" to cover foreign individuals and foreign-domiciled investors having investment activities in Vietnam;

ENERGY

Circular On Methods for Establishing Wholesale Electricity Price Brackets. On 15 November 2024, the Ministry of Industry and Trade issued Circular No. 26/2024/TT-BCT on methods for formulating the wholesale electricity brackets, which will take effect on 30 December 2024. The circular provides a mechanism to calculate the wholesale electricity prices based on electricity distribution costs and return on equity of Power Corporations. The circular also provides a model power purchase agreement for the wholesale of electricity.

Circular on Evaluation Criteria and Templates of Bidding Dossiers for Selecting Investor for Power Projects. The Ministry of Industry and Trade issued the Circular No. 27/2024/TT-BCT dated 21 November 2024 regulating the evaluation criteria and templates of bidding dossiers for selecting investor for power projects involving land use. This circular, together with Decree No. 115/2024/ND-CP dated 16 September 2024 and the new Law on Electricity adopted on 30 November 2024 is expected to form a complete framework on bidding procedures for investor selection in power projects.

EDUCATION

Amended Decree on Foreign Cooperation and Investment in Education. On 5 October 2024, the Government issued Decree No. 124/2024/ND-CP amending Decree No. 86/2018/ND-CP, governing foreign cooperation and investment in education. This Decree (i) introduces an additional type of foreign-invested education institutions – branch campus of a foreign university; (ii) supplement the online submission of application to obtain educational collaboration approvals in addition to the traditional methods such as direct submission or by post; (iii) impose more stringent conditions for the establishment of foreign invested education institution in terms of capital requirements.

Decree on Conditions for Investment and Operation in Education. On 5 October 2024, the Government issued Decree No. 125/2024/ND-CP on investing and operating conditions in education, taking effect on 20 November 2024. This decree has repealed Decree No. 46/2017/ND-CP of the Government dated 21 April 2017. This new decree imposes minimum capital requirements on domestic institutions except for branch campuses of foreign universities, which are similar to the conditions applicable to foreign-invested institutions. This decree also streamlines certain requirements regarding the construction area, site area, or floor area.

Click HERE for the full report on **Education Investments in Vietnam**.

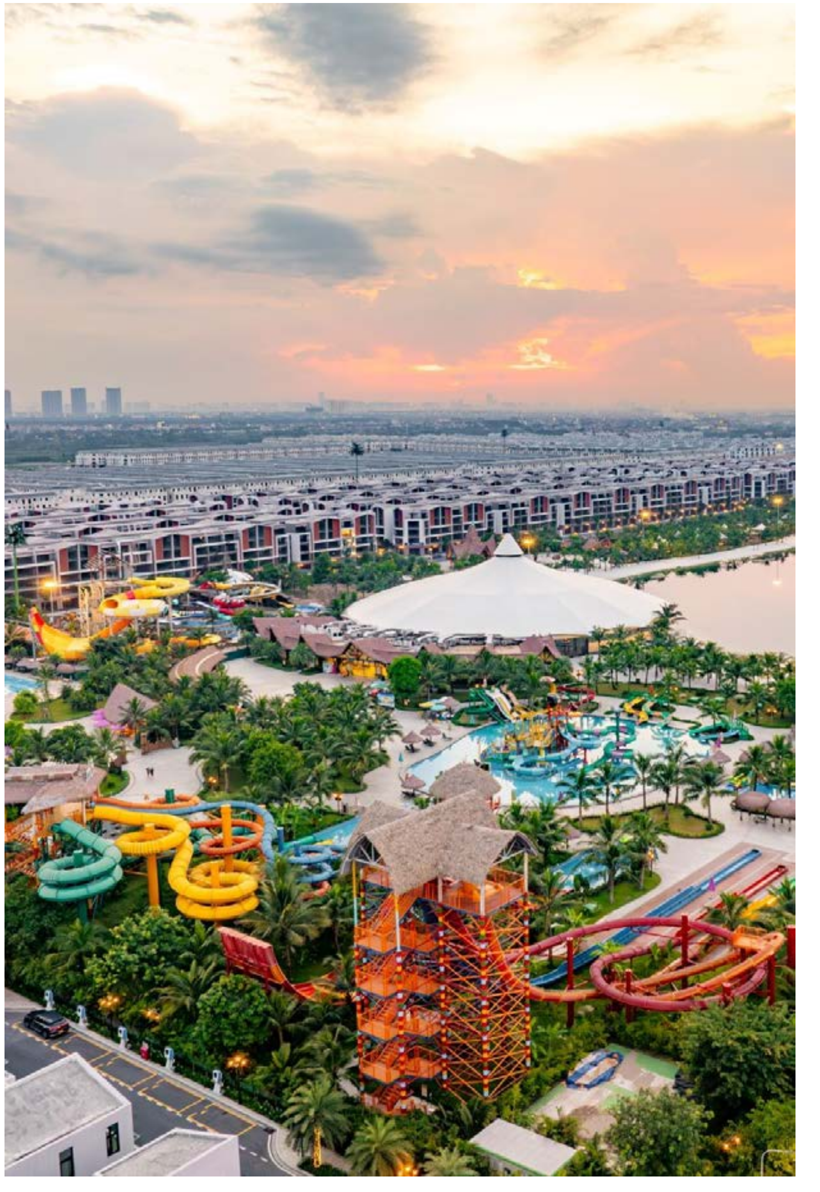
MINING

Law on Geology and Minerals. On 29 November 2024, the National Assembly passed the Law on Geology and Minerals, which will take effect from 1 July 2025. This law regulates activities related to geology and minerals, including but not limited to protection of geological resources and unexploited minerals, auctioning of mining rights, and state management of geology and minerals within the territory of Vietnam. Additionally, the law stipulates that mining licences will be granted for up to 30 years, with the possibility of multiple extensions provided that the total term of extensions will not exceed 20 years.

Decree on Offshore Investment in Oil and Gas Activities. On 15 October 2024, the Government issued Decree No. 132/2024/ND-CP, regulating offshore investment in oil and gas activities. Investors are allowed to use a single operating company to manage and operate one or multiple offshore oil and gas projects. However, the expenses for each project must be allocated and booked separately. Additionally, this decree outlines provisions for activities related to offshore oil and gas projects, such as capital mobilization, loan guarantees for project implementation, capital recovery, and project transfers. This Decree takes effect as from 5 December 2024.

REAL ESTATE

Decree on Sanctioning Administrative Violations in Land Sector. Decree No. 123/2024/ND-CP was issued by the Government on 4 October 2024 with effect on the same date and replaced Decree 91/2019/ND-CP dated 19 November 2019. This new decree outlines various administrative violations in the land sector, covering both completed and ongoing violations, forms and levels of sanctions, remedial measures, authority to draw up minutes on violation, authority and subjects of punishment. In comparison to the previous decree, the new decree introduces additional penalties for specific actions, such as (i) economic organisations acquiring agricultural land use rights without a land use plan, and (ii) acquiring land use rights in socio-economic development projects without written approval from the provincial People's Committee.



DATA PROTECTION

Law on Data. On 30 November 2024, the National Assembly adopted the Law on Data aiming to enhance the digital transformation and development of e-Government, digital economy, and digital society. This law regulates, among other things, data construction, development, processing, and management; application of science and technology in data processing; national comprehensive database; national data center; and data products and services. Additionally, this law introduces the principle provisions on cross-border data transfer and processing, and data platform. We will discuss further details of this law in a separate publication.

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

Amended Decree on Management, Provision and Use of Internet Services and Online Information. On 9 November 2024, the Government issued Decree No. 147/2024/ND-CP replacing the current Decree No. 72/2013/ND-CP on management, provision and use of internet services and online information which takes effect as from 25 December 2024. This decree regulates the management of internet services, internet resources, provision of information content services on mobile telecommunications networks, information monitoring and prevention and removal of illegal online information.

COMMERCE

Amended Decree on Trade Promotion. On 10 October 2024, the Government issued Decree No. 128/2024/ND-CP taking effect on 1 December 2024 to amend Decree No. 81/2018/ND-CP on trade promotion activities. The amended decree (i) clarified a number of trade promotion activities as approved by the Department of Industry and Trade from time to time will not be subject to the maximum value threshold for promotion purposes; (ii) remove the restrictions on the duration of centralized promotional programs; and (iii) remove the notification requirement for several types of promotional activities - such notification requirement is only required for skill-based contests and loyalty programs.

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TAXATION

Amended Laws on Tax-Related Matters. On 29 November 2024, the National Assembly adopted a law amending, among other laws, the Law on Tax Administration, Law on Personal Income Tax and Law on Sanctioning Administrative Violations. We will discuss the amendments to these laws in our next Monthly Update.

INVESTMENT AND PLANNING

Amended Law on Public Private Partnership Investment, Law on Investment, Law on Planning and Law on Bidding. On 29 November 2024, the National Assembly passed Law No. 57/2024/QH15 amending and supplementing several provisions of the Law on Public-Private Partnership (PPP) Investment, Law on Investment, Law on Planning and Law on Bidding. We will discuss the amendments to these laws in our next Monthly Update.

INSURANCE

Amending Law on Medical Insurance. The National Assembly adopted Law No. 51/2024/QH15 on 27 November 2024, taking effect from 1 July 2025 amending the current Law on Medical Insurance. Under the amended law, the list of compulsory medical insurance participants is extended to include (i) village health workers, midwives, (ii) individuals participating in local security and public order, and (iii) elders aged 75 or older, or aged from 70 to under 74 years old from near-poor households receiving monthly survivor benefits. The amended law also recognises the concepts of digital medical insurance card. The hard copy version and the digital version of the medical insurance card will have equal validity.

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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