



ClientAlert

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Introduction

Dear Reader,

This month saw a handful of new regulations that affect business in Vietnam. We've briefed them and outlined the most important changes from each new regulation. They cover numerous topics including multiple points on small and medium sized enterprises, franchise and investment rules, access to information, and multi-level marketing.

As always we hope you find this month's Client Alert helpful and wish you prosperity in your dealings. We look forward to working with you.

Kind regards,
Indochine Counsel

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Investments in small and medium-sized startups

On 11 March 2018 the Government promulgated Decree No. 38/2018/ND-CP (“**Decree 38**”), guiding the investments in small and medium-sized enterprises conducting creative start-up (the “**Start-up SMEs**”). Some highlights of Decree 38 include:

New legal schemes for investment fund in the Start-up SMEs

For the purpose of encouraging investment in Start-up SMEs, Decree 38 provides regulations on investment funds investing in Start-up SMEs, the establishment, organization, dissolution, and relevant activities of the fund for venture capital (the “**Venture Capital Fund**”).

A Venture Capital Fund is not considered to be a legal entity. It can be formed by capital contributed by not more than 30 charter investors. The investors may make contributions to the Venture Capital Fund by cash, gold, land-use rights and other assets which may be valued in VND. All contributions of the investors to the Venture Capital Fund shall be accounted independently from those of the company managing the Venture Capital Fund. Investors are not permitted to use debt financing to contribute to the Venture Capital Fund.

The Venture Capital Fund is permitted for only two investment activities: (i) to deposit at commercial banks in accordance with the laws and (ii) to invest no more than 50% of the charter capital in the Start-up SME.

New policies on regulations of using local budgets for funding to Start-up SMEs

Under Decree 38, the local financial agency shall select the Venture Capital Funds to jointly make investments. A Venture Capital Fund to be selected must:

- make a commitment with the local financial agency to jointly make investments in the Start-up SME;
- have at least 1 year of experience investing in startups;
- be financially capable to make investments; and
- satisfy other requirements (if any).

The local financial agency shall annually evaluate, amend and publish the list of selected Venture Capital Funds on its website and the website of provincial People's Committees.

Total investment made by the local financial agency in a Start-up SME shall not exceed 30% of total investments jointly made by the Venture Capital Funds in that Start-up SME.

Decree 38 came into force 11 March 2018.

Further guidance related to investment conditions

On 15 January 2018 the Government issued Decree No. 8/2018/ND-CP amending a number of decrees related to investment conditions under the MOIT's supervision ("**Decree 8**"). The goal of Decree 8 is to abolish certain business and investment conditions in the areas of petroleum, cigarettes, electricity, franchising, e-commerce, chemicals, and industrial explosives

In the field of petroleum, Decree 8 has abrogated Article 5 of Decree No. 83/2014/ND-CP dated 3 September 2014 of the Government on petroleum business. Accordingly, the regulations on requiring petrol traders to own or co-own at least four additional retail petrol stations each year after being granted a license stand null and void. A petrol trader is no longer required to own or co-own (with a capital contribution of at least 51% of the depot system), and to be capable of meeting at least one-third of the trader's reserve demand three years after being granted a petrol and oil import or export license. A petrol trader is also no longer required to own or co-own (with a capital contribution of at least 51%) the local petrol vehicles that have a minimum combined capacity of 3,000 cubic meters two years after being granted a petrol and oil import or export license.

For franchise regulations Decree 8 modifies Section 1 of Decree No. 35/2016/ND-CP, dated 31 March 2006, "Conditions for Franchising," by reducing the conditions applicable to foreign franchisors (Article 5), abolishing the conditions applicable to franchisees (Article 6), and removing the restriction on goods and services permitted for franchising (Article 7). As a result, under Decree 8, the statutory conditions that a foreign franchisor needs to satisfy have been reduced to one: that its franchise system must have been operating for at least one year. However, other provisions on franchising, notably including franchise registration requirements, still remain. In other words, foreign franchisors still need to register with the MOIT before conducting franchising activities in Vietnam.

Decree 8 took effect on 15 January 2018.

Management of multilevel marketing activities

On 12 March 2018, the Government issued Decree No. 40/2018/ND-CP on the management of multilevel marketing activities ("**Decree 40**"). Decree 40 shall replace for Decree No. 42/2014/ND-CP dated 14 May 2014 of the Government covering the sale of multilevel marketing products ("**Decree 42**").

In comparison to Decree 42, objects to be traded by way of multilevel marketing have been clarified in more detail. Multilevel marketing activity is still a conditional business activity and therefore, multilevel marketing organizations must satisfy the following specific conditions:

- (a) be an enterprise established and operating under the laws of Vietnam and its Multilevel Marketing Registration Certificate (the "**MMRC**") has never been revoked;

- (b) Its charter capital must be at least VND10 billion;
- (c) Its members/shareholders/partnership members/owner/legal representative (as the case may be) are not individual/organization used to hold any of the foresaid positions in other multilevel marketing enterprises whose MMRC was revoked in accordance with Decree 42 or Decree 40;
- (d) It has opened an escrow account in a licensed bank in Vietnam under Decree 40;
- (e) It has its own sample contract of multilevel marketing activities, rules of operation, bonus payment program and basic training program in accordance with Decree 40;
- (f) It has a management data system of multilevel marketing participants, website to provide its information and its multilevel marketing activities;
- (g) It has a communication system to obtain and resolve questions, claims of the multilevel marketing participants.

Upon the satisfaction of the aforementioned conditions and proper application for the MMRC to Department of Industry and Trade, a multilevel marketing enterprise shall be issued with the MMRC and such MMRC shall be valid for 5 years as of its issuance date.

In regard to the multilevel marketing participants, anyone who is not subject to the below restrictions shall be allowed to be the multilevel marketing participants:

- (a) Those serving an imprisonment sentence or having previous convictions for counterfeit goods, manufacture and trade of prohibited goods, deceitful advertising and other crimes stated in Decree 40;
- (b) Foreigners without a work permit issued by competent authorities in Vietnam, except for those being exempted under the laws of Vietnam;
- (c) Multilevel marketing participants have already been fined for the acts mentioned in Article 5.2, 5.3 and 5.4 of this Decree and its guilty limit has not yet been expired;
- (d) Individuals under Article 7.1(c) of this Decree; and
- (e) Cadres and civil servants in accordance with laws of cadres and civil servants.

In addition to the above content, Decree 40 also clearly provides detailed regulation in respect of (i) Prohibited actions of enterprises conducting multilevel marketing activities and multilevel marketing participants; (ii) Procedures for amendment/ supplement/ extension/ reissuance/ revocation of the MMRC; (iii) Management provisions on related issues; and (iv) Other detail provisions.

It is also provided that within 9 months of the effective date of Decree 40, multilevel marketing enterprises established and operating under Decree 42 must fulfill the applicable conditions under Decree 40.

This Decree took effect on 2 May 2018.

Business support policies for SMEs

On 11 March 2018, the Government issued Decree No. 39/2018/ND-CP (“**Decree 39**”) on detailing some provisions of Law on supporting small and medium-sized enterprises (“**SMEs**”). Decree 39 repealed Decree No. 56/2009/ND-CP, dated 30 June 2009, on assistance to the development of SMEs.

Under Decree 39, SMEs are classified by size as the following types:

Business sectors	Types of SMEs		
	Micro enterprises	Small enterprises	Medium enterprises
Agriculture, forestry, fishery, industry and construction	Number of employees: ≤10 Total revenue: ≤ VND3 billion or Total capital value: ≤ VND3 billion	Number of employees: ≤100 Total revenue: ≤ VND50 billion or Total capital value: ≤ VND20 billion	Number of employees: ≤200 Total revenue: ≤ VND200 billion or Total capital value: ≤ VND100 billion
Trade and service	Number of employees: ≤10 Total revenue: ≤ VND10 billion or Total capital value: ≤ VND3 billion	Number of employees: ≤50 Total revenue: ≤ VND100 billion or Total capital value: ≤ VND50 billion	Number of employees: ≤100 Total revenue: ≤ VND300 billion or Total capital value: ≤ VND100 billion
In addition, the business sector of SMEs is determined by law on the system of economic sectors and specialized law. If an SME engages in many business sectors, it will be based on the highest revenue. If the highest revenue is not identified, it will be based on the sector which has the highest number of laborers.			

In addition, Decree 39 specifies support policies for SMEs as follows:

- Information support: SMEs are free to access the information in the National Portal on Support of SMEs managed by the Ministry of Planning and Investment, and other information portals managed by competent agencies.
- Human resources: At least 50% of the total cost of a training course for SMEs concerning entrepreneurship and business administration will be supported by the State budget.

- Consultation: The household businesses registering to be transformed into enterprises will be free of charge for advice and instructions from the provincial-level People's Committees, and be exempt from the business registration and license fees for the first registration if they meet the dossier requirements as stipulated.
- Innovation: There are many policies to support innovative SMEs in many contents such as intellectual property, technical standards, measurement and quality, development of new products and business models, technology transfer, trade promotion and technical facilities.

Decree 39 took effect on 11 March 2018.

Compulsory fire and explosion insurance

On 23 February 2018 the Government issued Decree No. 23/2018/ND-CP ("**Decree 23**") regulating compulsory fire and explosion insurance. On 15 April 2018, Decree 23 took effect and replaces Decree No. 130/2006/ND-CP, dated 8 November 2006 ("**Decree 130**"), regulating the same content and Article 2 of Decree No. 46/2012/ND-CP, dated 22 May 2012, on the revision and supplementation of some articles of Decree No. 35/2003/ND-CP, dated 4 April 2003, detailing some articles of the Law on fire prevention and fighting and Decree 130.

Under Decree 23, the insured property is the property of the insured facility, including: houses, works and properties on houses and works; machines, equipment and goods and supplies (including materials, finished goods, semi-finished goods). The insured property and its location must be specified in the insurance contract and insurance certificate.

Furthermore, insurance for the amount of property (including goods and supplies) is the value of the property as calculated in accordance with the bill, valid vouchers or other relevant documents. In comparison with Decree 130, the value is calculated based on the information provided by the insurance purchaser. Provisions on insurance fees, deductible insurance amounts and insurance compensation amounts is regulated in separate articles of Decree 23.

Decree 23 provides three important rules to making insurance compensation:

- The insurance compensation amount for damaged property shall not exceed the insurance amount of the property (as approved and recorded in both insurance agreement and insurance certificate), minus the deductible amount.
- The insurance indemnity amount shall be reduced up to a maximum of 10% in cases where the properties are in danger of fire or explosion where damages are increased in consequence of failure of full and timely implementation of the recommendations recorded in the minutes of inspection of fire prevention and fighting safety issued by the fire prevention and fighting police agency.
- There is no liability to pay insurance against the amount of money arising or increasing from insurance fraud in accordance with the Penal Code.

Insurance enterprises are prohibited from making insurance indemnity in the following situations: earthquake or other nature disasters, risks incurred by policy and social orders; deliberate fire and explosion of insurance purchasers; damages of data, software and computer program, etc.

Guidance on implementation of law on access to information

On 23 January 2018 the Government promulgated Decree No. 13/2018/ND-CP (“**Decree 13**”) regulating details and measures for implementation a number of articles of the Law on Access to Information No. 104/2016/QH13, dated 6 April 2016 (the “**AI Law**”). In particular, Decree 13 details measures which shall be provided by the relevant authorities for facilitating citizens to perform their rights to access to information.

Under Decree 13, basically, there are two units involved in the provision of information to persons requesting information: (i) information generation units and (ii) information provision units. The information generation unit shall determine and classify the list of information which must be published in accordance with Article 17 of the AI Law, the list of conditionally accessible information in accordance with Article 7 of the AI Law, and list of inaccessible information in accordance with Article 6 of the AI Law, and then transfer the same to the information provision unit. In addition, the information generation unit shall be responsible for reviewing the contents of information in files, documents to determine inaccessible information, conditionally accessible information in accordance with Article 6 and Article 7 of the AI Law before transferring the same to the information provision unit.

The list of information which must be published shall comprise the contents of name, number and sign of the documents, files; issuance date thereof along with the form of publication of such information, and time of publication, if any. In addition, such list shall be updated regularly in accordance with the relevant rules.

The information provision unit shall make and update the list of accessible information and the list of conditionally accessible information, and also review and eliminate inaccessible information from transferred information before providing such information via prescribed measures.

The list of information which must be published shall be posted in an information accession micro-site of the relevant website, and if any information provision authorities do not have their own information portal/ websites, the list of information which must be published shall be posted up at their head office or another publication forms shall be provided by such authorities, so that citizens are facilitated in their accession to information.

In case where information has been published in different databases or posted in particular information portals and/or websites, the list of information which must be published shall be accompanied with the relevant link. Meanwhile, if information has not yet been published on any

information portal and/or website, but has been digitalized, the list of the information which must be published shall be accompanied.

If a request for providing information is submitted online, the information provision authorities may use their e-signatures, if applicable, in respect of their notices to the requesters.

Decree 13 comes into effect on 1 July 2018 which is also the effective date of the AI Law.

SMEs WOW

Lots of small and medium sized enterprise laws this month. Talks about investment conditions and support policies. It's enough to send one into fits or spasms of exuberance. I'm sitting in a cafe in North Carolina, though, and it's crowded. I don't think this is the best place to have a happy dance.

Anyway, what's the big deal?

Recently, China has implemented very friendly legislation for foreign startups to come to China. It's a policy of the Xi government. Subsidies and supportive laws are luring foreign startups to tech cities throughout China. It's a big deal, they're trying to market to the Silicon Valley crowd, or at least the international startup community. It's a big deal and it's real.

Whether Vietnam is mimicking its bigger neighbor, or is simply seeing the advantages of a well-supported SME system, things are starting to thrum (that's onomatopoeia). Silicon Valley is arguably the largest conglomeration of tech—both startups and established firms. Many cities and regions across the globe are trying to imitate the models of success that seem indigenous to the west Bay.

Vietnam has an ocean, it has beaches, it has big buildings and a growing and extensive infrastructure. Why can't Vietnam hop on board the SME startup carousel?

No reason, only that it still has a few policies that make foreign investment difficult. I won't name names, but immigration policies have been slowly developing into a liberal direction. But that's it, no more names.

So yeah, SMEs. A good thing for Vietnam. A good thing for any country/ state/ region. SMEs bring jobs and technology, tax bases and diversity. All great things for development. Go Vietnam. SMEs be U.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
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- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

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