



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 concerning the proposed amendments to the enterprise and investment laws, the development of the property market, the areas controlled by the State Bank, and tontines.

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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Draft Investment Law and Enterprise Law

According to the Draft Law, remarkable changes are proposed as follows:

Amendments to the Investment Law

(i) Conditional business lines

The Draft Law repeals 17 conditional business lines; amends 6 business lines and supplements 2 business lines.

Some business lines which are proposed to be repealed include: services of commercial arbitration organizations; debt trading services; franchising; etc.

Business lines are proposed to be supplemented are “inspecting commercial fishing vessel” and “imported newspaper release services” for the purpose complying with the regulations of Press Law No. 103/2016/QH13 and Law on Fisheries No. 18/2017/QH14.

This change may eliminate barriers in investment and business activities as well as ensure the consistence in state management policies for these sectors.

(ii) Licensing procedures to be simplified

- Projects with investment capital of over VND5,000 billion will no longer be subject to approval issued by the Prime Minister; the provincial People's Committee is decentralized to approve the investment policy in a number of projects in accordance with the planning approved by competent authorities (including construction investment projects, golf course business and housing development projects, urban area).
- Procedures for registration of capital contribution or share sale and purchase shall be removed if they do not increase the ownership ratio of foreign investors in enterprises.
- the Draft Law supplements the regulations on conditions for application of investment incentives, such as research and development activities (R&D), production of products formed from scientific and technological results , production of goods, provision of services to create or join value chains and industry linkages; investment projects of creative start-up enterprises.

Amendment to the Enterprise Law

(i) The power of the Legal Representative

Each legal representative of the company (in the case the company has more than one legal representative) shall have the authority act on behalf of the company before the Court,

arbitration or any third party when the charter of the company has no provisions or no other decisions on the division of rights and obligations of the legal representative. It is further noted that, a company must have at least one legal representative keeping one of the following positions:

- Company chairman / Chairman of the Members' council (as the case may be); or
- Director / General Director

(ii) Removing unnecessary licensing procedures

With respect to enterprise registration, the Draft Law abolishes unnecessary procedures, including:

- Procedures for registering / notifying corporate seal sample before using;
- Procedures for notifying of changing enterprise manager's information;
- Procedures for sending information to the business registration authority after establishing a branch or a new business location;

(iii) A more favorable policy for minor shareholders in joint stock companies

The Enterprise Law stipulates that a group of minor shareholders holding a specific percentage of total ordinary shares for a consecutive period of six months or more shall have certain extra rights with regards to corporate governance and such percentage can be up to 10%, subject to the charter of such joint stock company.

The Draft Law is expected to be finalized and officially approved in July 2020.

Stable and effective development of the property market

On 23 April 2019 the Prime Minister issued Directive No. 11/CT-TTg on various solutions promoting the stable and effective development of the property market ("**Directive 11**").

Property transactions have noticeably increased over the last few years and with it the diversity of transactions. Such variety has created a significant demand for the change of the laws as the prevailing legal frames on property barely match the new requirements of the property market.

New forms of property, such as condotels, officetels, resort villa, were first introduced to the Vietnam market a few years ago and in fact absorbed a huge amount of investment. However, legal risks still lie upon both property developers and investors / purchasers as there are no clear provisions set out by the laws guiding the development of the same.

Directive 11 sets out general instructions of the Prime Minister on the responsibilities of the particular government agencies in issuing the guidelines for the matters in relation to the new forms of property.

(i) Ministry of Construction

- To complete the project on the amendment to the Construction Law, Law on Residential Housing, Law on Real Estate Trading;
- To issue the amended / supplemented construction standards and regulations applicable to the condotels, resort villa, officetels, etc.; and
- To issue management and operation rules applicable to officetel within Q3/2019.

(ii) Ministry of Natural Resources and Environment

- To issue specific guidelines on the land use applicable to the new form of property (i.e. condotels, resort villa, officetels) within Q3/2019; and
- To research, make amendment to the land use, issuance of the certificate of the land use right, ownership of other assets attached to the land applicable to the new form of property (i.e. condotels, resort villa, officetels) for the project on the amendment to the Land Law.

(iii) Ministry of Culture, Sports & Tourism

- To issue management and business rules applicable to condotels and resort villa within Q3/2019.

While these changes may see the light by quarter 3 of this year, the root cause of the issues with regards to the new form of property are mainly concentrated on the land use which requires the amendment to the Land Law. The legal provisions discussed in Directive 11 may only be a temporary way to deal with the pending issues.

Entities managed by the SBV

Decree No. 16/2019/ND-CP (“**Decree 16**”) was issued on 1 February 2019 by the Government for amending and supplementing a number of articles of Decrees on business conditions under the management of the State Bank of Viet Nam (the “**SBV**”).

Decree 16 facilitates business conditions for offshore indirect investment, credit information activities and intermediary payment services under the management of the SBV.

Under Decree 16, securities, fund management and insurance firms will be permitted to register for an offshore indirect investment license after three consecutive years of profits rather than five. Profit figures must be demonstrated through financial statements and independent audits approved by the Ministry of Finance in accordance with regulations. Decree 16 removes various other infrastructure and personnel requirements.

Offshore indirect investment is in the form of the purchase and sale of securities or investments

through overseas securities funds or other intermediary financial institutions.

Decree 16 removes the condition that requires financial companies to record their banking operations in their business licenses issued by the SBV.

Decree 16 also abolishes unnecessary barriers to issuing certificates of deposit, promissory notes and bonds to mobilize capital such as minimum operating times and shareholder and board of director approval.

To qualify for a central bank license to provide credit information activities under Decree 16, a credit information firm must have the commitments from at least fifteen (15) credit institutions and foreign bank branches in providing information.

Decree 16 came into effect on 20 March 2019.

Tontines regulated

On 19 February 2019 the Government promulgated Decree No. 19/2019/ND-CP on tontine (“**Decree 19**”) replacing Decree No. 144/2006/ND-CP dated 27 November 2006.

Decree 19 sets forth rules of organizing tontine; eligibility requirements of tontine participants, tontine holders; participation to and withdrawal from tontine; tontine agreements; annuity-receiving order and interest-receiving order; rights and obligations and legal liability of tontine participants and holders.

Conditions for being a tontine member and holder

- Member is a person capable of civil transactions according to the Civil Code. A person aged from 15 to 18 may become a tontine member if they own private property. If their private property is real estate or movable property he / she must obtain the consent of his / her legal representative.
- If members self-organize a tontine group, the tontine holder is a person who is voted by more than a half of the members, unless otherwise agreed by members. In addition, to become a tontine holder, a person has to satisfy with other requirement as agreed by tontine members.

Form of tontine agreement

- Tontine agreement with any appendices and amended versions shall be expressed in writing and be notarized or authenticated if requested by members.

Notice of organization of tontine groups

The tontine holder must notify the local People’s Committee of commune in writing of organization of

a tontine group in any of the following cases: (i) organizing a tontine group with the value of annuity shares of which at a tontine opening is at least VND100 million; or (ii) organizing at least two tontine groups.

Interest rate

Decree 19 amends some regulations on interest rate in interest-bearing tontine. In particular, interest rate in an interest-bearing tontine is agreed by the tontine members or offered by every tontine member in order to receive the annuities at each tontine opening but not exceeding 20% per year of total value of annuity shares to be contributed less contributed annuity shares of the remaining period of the tontine group. If the maximum interest rate is governed by the competent authority under Clause 1 Article 468 of the Civil Code, such interest rate shall prevail. The agreed interest rate which exceeds the maximum rate prescribed above shall be invalid.

Legal liability of tontine holders and tontine members

Tontine holders and members who violate regulations of laws and tontine agreement shall take legal liabilities (including administrative liability, civil liability and criminal liability). Disputes that arise over or from the tontine shall be settled through negotiations, conciliation or be settled at a court in accordance with laws and regulations. Tontine holders, tontine members, relevant individuals and organizations are entitled to request competent authorities to take actions against administrative violations or bring criminal prosecution against those who practice usury, obtain property by fraud, abuse of trust to appropriate property, illegal fund raising or other violations of law.

Decree 19 came into effect on 5 April 2019.

A hodgepodge of signals

While it is still some time before we know the actual amendments to the new Laws on Investment and Enterprise, it is safe to say that the Government is keen on the idea of simplifying investment, both foreign and domestic. This is further evidenced by the fact that the SBV has slackened its controls on foreign offshore investment.

Though the Government may be keen to increase investment, by opening conditional investment sectors and decreasing the complicated red tape to make changes in enterprises, there remain many challenges to an easy doing business environment.

For example, the length of time it takes needs to be addressed. There has been some improvement in this area, but the time in weeks or months is too long. When compared with New Zealand and Singapore, where the setup of businesses is measured in hours and days, there is little Vietnam has to offer. If Vietnam wants to become competitive as an investment destination with the likes of Singapore, it must make things happen more quickly.

It must also work to prioritize investment. Rather than focusing on low level investment such as basic manufacturing and processing, it should focus on developmentally sound investment. The kind of investment that will not only bring infrastructure – that thing which is most needed to attract further investment – but build a sustainable future. Green energy. Digital technology. Fintech, etc.

Vietnam is a large country, in the top twenty, and with a hundred million residents, it needs to diversify its growth trajectories. It is doing a good job moving money from foreign pockets into local ones, but this kind of growth can only last for so long unless it is directed at sustainable development. Look at Thailand. It took thirty years for them to recover from the crash of the Asian Tigers. Vietnam must learn from its neighbors if it wishes to continue to grow at a similar pace as that it now enjoys.

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
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

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