

# ClientAlert

ISSUE NO 5.6 | JULY 2014

[www.indochinecounsel.com](http://www.indochinecounsel.com)



## In This Issue

Executive Summary	2
Transfer Of The Right To Use “.vn” Domain Names	2
New Rules For Land Allocation And Land Lease	3
New Regulations On Tendering	4
Financial Companies And Financial Leasing Companies	5
Regulations On Labour Outsourcing	6
Significant Changes To Bankruptcy Procedures	7

## 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 topics ranging from employment outsourcing services to domain name transfers and bankruptcy procedures to rules for financial companies.

We hope you find this month's Client Alert helpful and wish you prosperity in the coming month. We look forward to working with you.

Sincerely,

Dang The Duc  
Managing Partner

## Executive Summary

The Prime Minister has issued a new Decision outlining the means and methods for transferring .vn domain names. The new Decision covers priority usage by the State as well as requirements for re-registration. See **TRANSFER OF THE RIGHT TO USE “.vn” DOMAIN NAMES**.

A new governmental Decree outlines new requirements for involvement in land development projects. Investors must invest certain percentages of their own money in the project, maintain certain levels of available cash, and meet deadlines for the beginning and progression of the project. See **NEW RULES FOR LAND ALLOCATION AND LAND LEASE**.

Another new Decree from the government complements the new Law on Tendering. The new Decree sets out levels for different methods of tender and for competitive quotation. See **NEW REGULATIONS ON TENDERING**.

Yet one more Decree (they all seem to come in Decrees) enumerates the requirements for the operation of financial companies and financial leasing companies. The Decree outlines Prudential Requirements and sets out the rules for issuing credit cards. In addition it prohibits the underwriting of corporate bonds and other involvements in capital markets. See **FINANCIAL COMPANIES AND FINANCIAL LEASING COMPANIES**.

MOLISA has issued a Circular pushing new rules for labour outsourcing companies. The new rules outline exactly what registration requirements are established for such companies and the situations in which they can actually outsource labour. See **REGULATIONS ON LABOUR OUTSOURCING**.

A new law on bankruptcy has been issued by the National Assembly and makes some significant changes to the existing bankruptcy regime. There are changes in the individuals who can declare a company insolvent to the courts, changes in reporting requirements, changes in the parties responsible for liquidation of an insolvent company, and lots more. See **SIGNIFICANT CHANGES TO BANKRUPTCY PROCEDURES**.

## Briefs

### Transfer Of The Right To Use “.vn” Domain Names

After more than four years from the effective date of the Law on Telecommunications (“**LOT**”), the Prime Minister has promulgated Decision No. 38/2014/QĐ-TTg, dated 1 July 2014, regulating the auction, transfer of right to use telecommunications number storage and internet domain names (“**Decision 38**”) which is provided for in Article 49 of the LOT.

Decision 38 allows entities to transfer “.vn” domain names for which they have the legal right of use as granted by the competent authority. The transfer of a registered “.vn” domain name is prohibited in the following cases

- (i) domain names with protection priority as specified by the Ministry of Information and Communications (“**MOIC**”), including domain names which are the names of Communist Party organizations, State Authorities, socio-political organizations and other domain names in association with national interests, security and sovereignty; and
- (ii) domain names which are objects of handling of violations, dispute resolution or suspension from use.

A transferee of the right to use a “.vn” domain name must conduct re-registration of such domain name for officially recording the transferee as having the legal right to use the domain name. Parties involved in a “.vn” domain name transfer transaction are solely responsible for non-acceptance of the domain name transfer by the competent authority.

In addition, Decision 38 provides for the auction of “.vn” domain names. Accordingly, determination of “.vn” domain names which are subject to auction will be based on the result of the survey on use demand for such domain names. In particular, a domain name with high use demand will be classified as an auction domain name. The MOIC will approve the list of domain names brought to auction.

Decision 38 will come into effect on 1 September 2014. |

## New Rules For Land Allocation And Land Lease

On 15 May 2014 the Government promulgated Decree No. 43/2014/ND-CP (“**Decree 43**”) guiding and detailing the implementation of a number of articles of the Land Law.

According to Decree 43, those who are allocated land or leased land by the State, or permitted by the State to change land use purpose to implement investment projects, must fulfill the conditions on (i) financial capacity and (ii) investment projects using land.

### ***Regarding the conditions on financial capacity***

Decree 43 states that there are two requirements on financial capacity that must be fulfilled by investors:

- (i) To have their own capital invested in the project at not less than 20% of the total investment where the project does not exceed 20 hectares; and not less than 15% of the total investment where the project exceeds 20 hectares.
- (ii) To have the ability to mobilize capital from credit institutions, branches of foreign banks and other individuals, organizations.

Other than these requirements, investors must pay a deposit in accordance with the investment law and must not violate the land law if they are implementing other projects on state-allocated or state-leased land.

### ***Regarding the conditions on investment projects using land***

Under Decree 43, it is stipulated that there are three types of investment projects for which the investors must fulfill all requirements above for the purpose of land allocation, land lease or changing land use purpose for the implementation of an investment project:

- (i) Investment projects to construct houses for the purpose of sale, lease or the combination of sale and lease.
- (ii) Investment projects on real estate business associated with the land use right.
- (iii) Projects on manufacturing and business not using capital of the State budget.

Decree 43 also stipulates the point of time for the calculation of 24-month extensions with regard to the failure in using land or the lateness in the land using schedule, caused by certain force majeure events as stipulated in Decree 43. In particular, if the investor, due to such force majeure, fails to use land within a consecutive 12 months from the date of receiving the land, the investor shall be entitled to extend the term of land use from the 13<sup>th</sup> month calculated from the date of physical hand-over. In case the project is 24 months late under the proposed schedule, the investor shall be entitled to extend the term of land use from the 25<sup>th</sup> month as of the intended day to complete the construction.

Decree 43 took effect on 1 July 2014. |

## New Regulations On Tendering

To provide detailed provisions for the implementation of the Law on Tendering issued by the National Assembly on 26 November 2013 (“**Tendering Law**”), the Government promulgated Decree 63/2014/ND-CP dated 26 June 2014 (“**Decree 63**”), to replace, among others, Decree No. 85/2009/ND-CP dated 15 October 2009 on the same matter. Below are some new regulations on selecting contractors replacing the old regulations of Decree 85.

Decree 63 provides a lower limit for appointment of contractors to cut down the abuse of the contractor appointment. Particularly, tender packages with a value qualifying them to directly appoint a contractor include:

- (i) tender packages for consultancy services, non-consultancy services, and public services with a value not exceeding VND500million;
- (ii) tender packages for procurement of goods, for construction, for drugs, for medical materials/equipments and for combined tender packages with a value not exceeding VND1 billion; and tender packages as estimated for regular procurement with a value not exceeding VND100million.

Decree 63 expands the limits for competitive quotation. Competitive quotation under normal procedures is applied for tender packages for non-consultancy services, for procurement of goods, for simple construction with values not exceeding VND5 billion. The VND5 billion limit is much higher than that allowed by previous regulations which limited the competitive quotation to VND2 billion.

Decree 63 sets forth detailed guidance for the implementation of regulations on central procurement of goods - the newly-provided regulations under the Tendering Law. Decree 63 provides the following principles, *inter alia*, for central procurement goods to follow:

- (i) Central procurement must be conducted by, among others, competent bodies under Ministries or equivalent authorities and competent bodies under the Government or competent bodies under provincial peoples' committees. In case where a competent body is not capable of conducting central procurement, such competent body may engage professional tendering organizations to conduct the selection of a contractor;
- (ii) For goods and services that are required to be centrally procured, the state organ demanding such goods and services must recognize the contractor selection result, the contents of the master agreement with the contractor, and

enter into an agreement with the selected contractor based on terms and conditions set forth under the master agreement;

- (iii) In case selection of contractors for implementation of tendering packages having the same content for various competent bodies, the relevant competent bodies will agree and appoint one amongst them as the authorized representative to take responsibilities for the tender process.

Decree 63 took effect on 15 August 2014. |

## Financial Companies And Financial Leasing Companies

On 7 May 2014 the Government issued Decree No. 39/2014/ND-CP on the operation of financial companies and financial leasing companies ("**Decree 39**"). Decree 39 took effect on 25 June 2014 (the "**Effective Date**") and replaced: (1) Decree No. 79/2002/ND-CP, dated 4 October 2002, on the operation of financial companies, as amended by Decree No. 81/2008/ND-CP, dated 29 July 2008, and Decree No. 16/2001/ND-CP, dated 2 May 2001; and (2) Decree No. 65/2005/ND-CP, dated 19 May 2005, on the operation of financial leasing companies, as amended by Decree No. 95/2008/ND-CP, dated 25 August 2008.

Decree 39 stipulates the general conditions for financial companies to perform banking operations, including:

1. The banking operation of a financial company must be specified in the Establishment and Operation Permit issued by the State Bank (the "**Permit**").
2. Having qualified staffs with professional capacity, material facilities, technology, means, equipment and internal regulations as provided for by law for the implementation of banking operation specified in the Permit.
3. For banking operations related to foreign exchange, a financial company must comply with regulations of law on management of foreign exchange.
4. Fulfilling the operational conditions for banking operations stipulated by the State Bank.

Decree 39 details the conditions for a financial company to be entitled to issue credit cards. These include compliance with the prudential ratios in banking operations, debt classification and continuous appropriation of risks in all quarters of the preceding year of the proposal for additional operation; bad debt ratio remaining below the level specified by the State Bank; the non-existence of any sanctions for administrative violations in the field of money and banking for one year from the time of request for additional operations; business operation with continuous profit for at least two years preceding the year proposed for additional operation; and having a minimum time of operation and plan for the issuance of credit cards as stipulated by the State Bank.

Financial companies and financial leasing companies for consumer credit must not conduct the following activities: Underwriting of issuance of corporate bonds and trading of corporate bonds; receipt of entrusted capital of the Government, organizations and individuals to carry out investment activities in business and production projects; entrustment of capital for other credit institutions to carry out the granting of credit.

In addition, Decree 39 stipulates in detail the rights and obligations of parties involved in financial

leasing; termination of financial leasing contracts in advance of schedule; registration of financial leasing contracts; and certificates of ownership of leased assets.

For the financial companies and financial leasing companies that have been established and are operating under a Permit issued by the State Bank before the Effective Date, Decree 39 specifies that they have 12 months to meet all conditions specified for the conditional activities as provided by Decree 39. |

## Regulations On Labour Outsourcing

In early January of 2014 the Ministry of Labor, War Invalids and Social Affairs (“**MOLISA**”) enacted Circular No. 01/2014/TT-BLĐTBXH (“**Circular 1**”) for the purpose of detailing and guiding Decree No. 55/2013/NĐ-CP (“**Decree 55**”) implementing Article 54.3 of the Labor Code on licensing of labor outsourcing activities, payment of escrow deposit, and regulating the list of jobs for which labor may be outsourced. In general, Circular 1 stipulates the conditions and procedures of issuance, re-issuance, extension and withdrawal of the labor outsourcing license (“**License**”) as well as some other matters in terms of activities of labor outsourcing enterprises.

Circular 1 makes clear the definition of “enterprise specializing in the business of labor outsourcing”, which is a principle condition applicable to foreign enterprises seeking to set up a joint venture with a domestic enterprise for carrying out labor outsourcing in Vietnam according to Article 6.3(a) of Decree 55. Thereby, Circular 1 requires that such enterprise have its main business operations being labor outsourcing activities as proved by the following documents:

- **Business registration certificate** presenting the licensed activities of labor outsourcing;
- **Labor outsourcing operation license** issued by competent authority of its home country;
- **Other written documents** issued by competent authorities of its home country to conduct the labor outsourcing operations.

Circular 1 requires the submission of a **legal capital confirmation** from a Vietnamese licensed commercial bank regarding the escrow deposit of founding members (in case of new establishment) or from an independent auditing institution regarding the current equity of the enterprise (in case of supplementation of labor outsourcing business line), in order to confirm that such deposit or equity is more than or equal to the required legal capital pursuant to Decree 55.

Further evidence required to prove the satisfaction of at least five years experience in providing labor outsourcing services of such foreign enterprise (according to Article 6.3(b) Decree 55) are copies of its **labor outsourcing contracts**.

Circular 1 also supplements Decree 55 by listing the Director or General Director, Chief Accountant and other Managers regulated in the company charter or appointed by authorized persons as “manager or person in a key position” mentioned in Article 9 Decree 55.

Labor outsourcing enterprises should take note that the License is permitted to extend twice only. Enterprises will thus have to obtain a new License to continue labor outsourcing activities after the end of its second extension period.

Last but not least, labor outsourcing enterprises are allowed to move their registered head office, branch and representative office only in the circumstances of fire hazard; collapses or damage from landslides causing damage; clearance of the competent authority and other force majeure circumstances.

Circular 1 took effect on 1 March 2014. |

## Significant Changes To Bankruptcy Procedures

The Law on Bankruptcy 2014 (“**New Law**”) was officially approved at the 7th session of the XIII National Assembly.

The New Law expands its scope by clearly providing provisions on orders, application procedures and handling and opening of bankruptcy procedures; determination of property obligations and measures to preserve property in bankruptcy procedures; conditions and procedures for restoration of business operation, procedures for property liquidation and bankruptcy declaration and execution of judges’ decisions on bankruptcy.

The New Law promulgates legal terms and their definitions regarding bankruptcy, unsecured creditors, secured creditors, partially secured creditors, liquidators, participants of bankruptcy procedures, persons carrying out bankruptcy procedures, charges of bankruptcy application, expenses for bankruptcy, and so on... In particular, the new Law changes the term of “Property managing and liquidating teams” into “Liquidators” and provides conditions to become a Liquidator together with the rights and obligations of a Liquidator.

For the application of opening bankruptcy, the New Law specifies the time when creditors and employees of an insolvency enterprise or cooperative are entitled to submit an application to open bankruptcy procedures. It must be no more than three months from the date debts due are unable to be paid by such enterprise or the cooperative. Previously, employees had to appoint their representatives to submit or submit through their trade union representatives the application for opening bankruptcy, however, as stated in the New Law, employees are entitled to directly submit applications.

The New Law supplements provisions on responsibility to inform enterprises and cooperatives of their insolvency. Accordingly, individuals, agencies and institutions who detect the insolvency of the enterprise or the cooperatives shall be responsible to notify in writing persons having statutory rights and/or obligations to submit applications for opening bankruptcy procedures and must ensure the accuracy of the notices. Inaccuracy may give rise to incurred compensation for misinformation that causes the enterprise or the cooperative damages.

The New Law also issues specific provisions on responsibility of providing bankruptcy-related documents, evidence of relevant individuals, agencies, institutions (“relevant persons”). According to the new provisions, such relevant persons, as required by creditors, bankruptive (*editor’s note: it’s not a word, but it’s so much fun*) enterprises or cooperatives having bankruptcy-related documents and evidence must provide them to parties so requesting within 15 days from the date of receiving the request.

The courts with jurisdiction for handling bankruptcy are defined as district-level people’s courts and provincial-level people’s courts. Bankruptcy situations having assets abroad, or participants of bankruptcy proceedings being abroad, or a bankruptive enterprise or cooperative having

branches, representative offices or property in many districts, towns or provincial cities shall be settled by provincial-level people's courts. The remaining bankruptcy situations of enterprises and cooperatives shall belong to settling jurisdiction of district-level people's courts.

The New Law supplements the provisions of negotiation between creditors who submit the application for opening bankruptcy proceedings and bankruptive enterprises or cooperatives. Accordingly, the parties shall have rights to request in writing the competent people's court to negotiate the withdrawal of the application due to the reasonable time determined by the competent people's court but not in excess of 20 working days from the date of receiving the application.

The New Law also refers to judicial authorization in bankruptcy. During the bankruptcy handling process, the competent people's court may issue judicial authorization decisions to other people's courts for asset recovery, testimony of participants of bankruptcy procedures, on-site appraisal, asset and/or property valuation or other methods to collect related documents, evidence and the requested courts have to conduct this assignment within 30 working days.

In addition, the New Law also issues more specific details for disposing interest of debts, secured liabilities, obligation set-off, creditors' conferences, and applying temporary measures among others.

The New Law will take effect on 1 January 2015. |

## Contributors

Editor:

Steven Jacob | Editor

### Contributors in this month's issue:

"Transfer Of The Right To Use ".vn" Domain Names"

By Nguyen Thi Hong Anh, Partner

"New Rules For Land Allocation And Land Lease"

By Nguyen Duong Nguyet Ngan, Legal Assistant

"New Regulations On Tendering"

By Vo Huu Tu, Junior Associate

"Financial Companies And Financial Leasing"

By Dang Dinh Truong, Legal Assistant

"Regulations On Labour Outsourcing"

By Nguyen Kim Trang, Legal Assistant

"Significant Changes To Bankruptcy Procedures"

By Le Thi Hong Tham, Legal Assistant

## About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading commercial 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 35 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
- ❖ Intellectual Property
- ❖ Technology & Media
- ❖ International Trade
- ❖ Banking & Finance
- ❖ Taxation
- ❖ Intellectual Property
- ❖ Technology & Media
- ❖ International Trade
- ❖ Mining & Energy
- ❖ Property & Construction

A full list of partners, associates and other professionals is available on our website. |

## Contact Us

For further information or assistance, please contact us:

### **Ho Chi Minh City Office**

Unit 4A2, 4th Floor, Han Nam Office Bldg.  
65 Nguyen Du, District 1, Ho Chi Minh City, Vietnam  
T +848 3823 9640 | F +848 3823 9641 | [info@indochinecounsel.com](mailto:info@indochinecounsel.com)

### **Hanoi Office**

Unit 705, 7th Floor, CMC Tower  
Duy Tan Street, Cau Giay District, Hanoi, Vietnam  
T +844 3795 5261 | F +844 3795 5262 | [hanoi@indochinecounsel.com](mailto:hanoi@indochinecounsel.com)

### **Contacts**

**Dang The Duc** | Managing Partner | [duc.dang@indochinecounsel.com](mailto:duc.dang@indochinecounsel.com)

**Le Nguyen Huy Thuy** | Partner | [thuy.le@indochinecounsel.com](mailto:thuy.le@indochinecounsel.com)

**Phan Anh Vu** | Partner | [vu.phan@indochinecounsel.com](mailto:vu.phan@indochinecounsel.com)

**Nguyen Thi Hong Anh** | Partner | [anh.nguyen@indochinecounsel.com](mailto:anh.nguyen@indochinecounsel.com)

### **Indochine-Apex Korean Desk**

#### **APEX LLC. Vietnam Office (Ho Chi Minh City)**

**K. C. Lee** | Business Lawyer | [kcee@indochinecounsel.com](mailto:kcee@indochinecounsel.com) &  
[kcee@apexlaw.co.kr](mailto:kcee@apexlaw.co.kr)

[www.indochinecounsel.com](http://www.indochinecounsel.com)

*Indochine Counsel Client Alert provides a general overview of the latest developments in Vietnam's regulatory framework, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice. Professional advice should be sought for any specific case or matter.*

© 2014 Indochine Counsel. All Rights Reserved.

