



VIETNAM



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## Increased penal liabilities for crimes relating to food safety and hygiene

Food safety and hygiene are on red alert in Vietnam. According to local papers and media, food poisoning happens almost everyday, in many different locations, and the result of some investigations shows that, substantially, food poisoning is caused by using substances banned in growing animals and plants and/or in preparing food products, or by failing to follow regulations for the preservation of food products by farmers, food manufacturers or food service providers. Such illegal uses have not yet been prevented in part because of insufficient legal regulations without enough teeth for enforcement. In addition, certain legal regulations are not practical. For addressing these shortcomings, Penal Code No. 100/2015/QH13 dated November 27, 2015 (2015 Penal Code) has been promulgated, to supersede Penal Code No. 15/1999/QH10 dated 21 December 1999, as amended in 2009 (1999 Penal Code).

A remarkable change in the 2015 Penal Code in respect of the crime of breach of regulations on food safety and hygiene is that the element of “causing the loss of life or serious damage to the health of consumers” as regulated in Article 244 of the 1999 Penal Code has been removed from the material elements of certain crimes, and to some extent, it is treated as an aggravating fact in the examination of the penal liability of an offender. Such crimes include, inter alia, the use of banned substances in manufacturing, preliminarily processing, preserving food products, or sale of food products that the offender has become explicitly aware that they contain banned substances; use of

chemicals, anti-bodies, veterinary medicines, plant protection preparations which are banned from use in growing animals and plants, producing salt, preliminarily processing agricultural, forestal, aquatic products; and preparation, sale or supply of foods for which the offender has become explicitly aware that such foods do not comply with foods safety and hygiene regulations or technical regulations, which cause certain damage for persons in question. The maximum penalty for these crimes is up to 20 years’

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imprisonment, instead of 15 years as regulated in the 1999 Penal Code. In addition, the offender may be subject to a fine of from VND20 million to VND100 million.

Article 190 of the 2015 Penal Code provides for the crimes of manufacturing and trade of chemicals, anti-bodies, veterinary medicines, plant protection preparations which are banned from use in growing animals and plants, producing salt, preliminarily

processing agricultural, forestal, aquatic products. Accordingly, such crime may be subject to a penalty of up to 15 years’ imprisonment and the offender may be subject to a fine of up to VND100 million. Meanwhile, the crimes of storage and transportation of such banned goods may be subject to a penalty with a maximum level up to 10 years’ imprisonment, and an additional fine of up to VND50 million.

Regarding the crimes of manufacturing and trading of fake goods, in accordance with Articles 193 and 195 of the 2015 Penal Code, for fake goods being food products or food additives, an offender may receive a maximum penalty of a life sentence, and if the fake goods are food products for growing animals, the maximum penalty is 20 years’ imprisonment. In addition, an additional fine of from VND20 million to VND100 million may be imposed for these crimes of manufacture and trade of fake goods.

In connection with articles 190, 191, 193 and 195 of the 2015 Penal Code as mentioned above, traders may be subject to the penal liability examination (according to the 1999 Penal Code, only individuals can be made subject of such). The following penalties may be imposed on a trader who has committed the already discussed crimes:

- (i) Fine of up to VND9 billion, VND15 billion or VND20 billion, subject to particular crime;
- (ii) Temporary suspension of operation for the period from six months to three years;
- (iii) Permanent suspension of operation;
- (iv) Prohibited from doing business in certain fields, or from mobilising capital in a certain period of time.

The 2015 Penal Code shall take effect on 01 July 2016.