



ClientAlert

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 topics ranging from new conditional categories in the investment regime to rules for operating vocational schools and from conditions for securities investment and business to licensing fees for rep offices and registration fees.

As always we hope you find this Client Alert helpful and wish you prosperity in the coming year. This is especially poignant as the Lunar New Year approaches. We wish you and your family good luck, happiness, prosperity and great success in the coming year and we look forward to working with you.

Kind regards,
Indochine Counsel

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New Business Line Rules

On 22 November 2016 the National Assembly passed Law No. 03/2016/QH14 amending and adding to Article 6 of the Law on Investment and its Annex 4 with the list of industries and trades in which business investment is conditional (“**Law 03/2016**”). This new law comes after two years of experience with the newest Law on Investment. Below are some noticeable points made by the Law 03/2016:

Business lines of banned investment

A new banned business line: “Trading firecrackers” is added to the list to make the total number of banned business lines six.

Business lines of conditional investment

Law 03/2016 replaces Annex 4, the list of 267 conditional investment business lines. The new Annex numbers 243 conditional business lines. This dramatic change is considered the result of a huge effort by the Government to systematize, supplement as well as repealing unnecessary conditional business lines in accordance with the requirement of State management. According to approved submission of Government, some conditional business lines such as: “Lighting and greenery system operation services”, “Insurance agency training services” were taken off the list. While some areas deemed necessary to protect the well being of the people and the state were added. One such area is “Overseas study consultancy services’. This has been a prospective service in recent years with more than 4,000 registered companies and organizations. In addition, there are many organizations and individuals providing this service in various forms as online consultancy, multi-level, etc.

Other relevant areas

Through compliance with Law 03/2016, conditions of two business lines regulated by two specialized legal documents are repealed. The adjusted legal documents include:

- (a) Clause 1 of article 19 of Law No. 43/2013/QH13 on Tendering (permitting services of training and capacity building on tendering);
- (b) Article 151 of Law No. 50/2014/QH13 on Construction (permitting services of formulating and verifying investment projects for construction).

Law 03/2016 took effect on 1 January 2017, except for the two conditional business lines as follows:

- (a) Trading equipment and camouflage software used for sound recording, image recording and locating;
- (b) Manufacture, assembly and import of automobiles.

These two business lines take effect on 1 July 2017.

New rules in the field of Vocational Education

On 14 October 2016 the Government issued Decree No. 143/2016 / ND-CP stipulating the conditions for investment and activity in the field of vocational education ("**Decree 143**").

Conditions for the establishment of vocational educational institutions

Decree 143 provides that vocational education institutions may be established in conformity with the planning for Vietnam's vocational education institution networks, the planning for vocational education institution networks by Ministries, ministerial-level agencies, Governmental agencies and those by People's Committees of provinces. Public vocational education institutions shall commit to operate on the principle of autonomy of public service providers as stipulated by the Government.

Relating to the training scale, for vocational training centers, the training scale must be able to serve at least 150 trainees per year. Those numbers for vocational schools and colleges are 250 and 500 students per year respectively.

In terms of the construction site, every vocational education institution is required to have premises with a minimum area of 1,000 m² (for vocational training facilities); 2,000 m² (for vocational schools) and 50,000 m² (for colleges).

In addition, the invested capital for establishment of vocational educational institutions needs to be mobilized from legitimate sources of finance, excluding the value of land. Specifically, a vocational educational center will need a minimum of VND5 billion, a minimum of VND50 billion is required for an intermediate school, and VND100 billion is the smallest amount of money needed for the establishment of a college.

Conditions for the establishment of branches of vocational schools and colleges

Establishment of branches of vocational schools and colleges are considered when submitting a proposal with the following information: (i) the necessity of a branch; (ii) name and scope of operation of the branch; (iii) a plan for construction, development and training scale of that branch by stage; (iv) the area of each classroom and practice room is at least 04 m²; (v) having curriculum and training documents according to registered training majors that are compiled, verified and introduced in accordance with regulations of the Minister of Labor, War Invalids and Social Affairs; (vi) employing qualified teachers who meet professional requirements for teacher's standards, qualifications and pedagogical requirements under regulations of law; ensure that the ratio of students to teachers does not exceed 25:1; for aptitude subjects, the ratio of students to teachers does not exceed 15:1; and (vii) tenured teachers by training major are available;

Registration of additional vocational education activities

Vocational education institutions and vocational training facilities that obtained registration certificates shall apply for additional vocational education activities if:

- (a) the admission quota is increased by 10% or more in comparison with that in the year of issue of the registration certificate;
- (b) a new training major is provided;
- (c) the vocational education institution/vocational training facility is partially divided/totally divided/merged or any change in the investment registration certificate or business registration certificate related to the certificate of registration for vocational education is made;
- (d) the headquarters or a branch or training site where the vocational education is delivered is moved;
- (e) a new branch where vocational education is provided is established;
- (f) vocational education is provided at a new training site or the association with other entities is formed to provide vocational education outside the headquarters or branches of the vocational education institution/vocational training facility;
- (g) the training level is changed or supplemented; or admission quota is adjusted by training level and training major;
- (h) the name of the vocational education institution/ vocational training facility is changed; and
- (i) the admission quota of any training major specified in the registration certificate is decreased, or the admission is ceased.

Total division, partial division and merger of vocational education institutions

Total division, partial division or merger of vocational education institutions shall meet the following requirements:

- (a) Total division, partial division or merger of vocational education institutions shall be carried out in conformity with the vocational education institution network planning approved by the competent authority and shall be suitable for the socio-economic development and human resource development planning of Vietnam, province and sectors;
- (b) Total division, partial division or merger of vocational education institution shall ensure the interests of students, teachers, lecturers, officers, staff and employees, and contribute to the improvement of vocational education quality and effectiveness;

- (c) Vocational education institutions derived from total division, partial division and merger shall satisfy requirements for a new institution as regulated in this Decree itself.

Decree 143 took effect on 14 October 2016.

Conditions for Securities Investment and Business

On 1 July 2016 the Government issued Decree No. 86/2016/ND-CP (“**Decree 86**”) regulating the conditions for securities investment and business. Decree 86 applies to many agencies and entities involved in the Vietnam securities market.

General requirement on investment and trading in securities companies:

To obtain the license for establishment and operation, securities companies need to have qualifying head offices, facilities and equipment, capital, personnel and shareholders & capital contributing members.

Conditions regarding capital:

Decree 86 stipulated paid-up capital as at the time of establishing the company must at least equal the legal capital requirement set out in Article 71.1 and Article 71.2 of Decree No. 58/2012/ND-CP guiding the implementation of a number of articles of the Law on Securities (“**Decree 58**”).

The legal capital required for professional business activities of a securities company in Vietnam are:

- (a) Brokerage: VND25 billion;
- (b) Self-trading: VND100 billion;
- (c) Underwriting securities issues: VND165 billion;
- (d) Securities investment consultancy: VND10 billion.

Where an organization or institution applies for a licence for a number of business activities, its legal capital shall be the total of legal capital corresponding to each type of business activity for which a licence is requested.

Conditions regarding shareholders and capital contributing members:

The structure of shareholders and capital contributing members must satisfy the provisions in Articles 71.5, 71.6, 71.7, 71.10 of Decree 58, and the provisions applicable to foreign investors in clauses 21 and 24 of Article 1 of Decree No. 60/2015/ND-CP amending Decree 58 (“**Decree 60**”), and must ensure that (i) as at the time of registration for establishment, any capital contributing organization must not have accumulated losses in its most recent audited annual financial statements or most recent semi-annual financial statements (if any); and (ii) if the securities company is organized in the

form of a single member limited liability company, then the owner must be a commercial bank, insurance enterprise or foreign organization satisfying the provisions in Article 4 of Decree 86.

Conditions regarding personnel:

There must be a list of the proposed company staff to include a minimum three securities practitioners appropriate for each activity for which a licence for establishment and operation is requested. The general director or director of the securities company must have full capacity for civil acts, not be currently subject to prosecution for criminal liability or serving a prison sentence or have his or her practising right deprived by a court in accordance with law; at least three years' working experience in a professional section in the financial, banking or securities sector or in the financial, accounting or investment section of another enterprise, and have at least three years' experience in administration and management; financial analysis practising certificate or fund management practising certificate; not have been penalized in accordance with the law on securities and securities markets in the 12 month period prior to lodging the application file; and not have ever committed a breach prescribed in Article 80.1(b) of the Law on Securities.

Conditions for investment and business by branches of securities business organizations and foreign organizations to own charter capital of a securities business organization

Decree 86 solves the problems on implementation of Decree 60 by supplementing a number of new contents related to the main problems such as ownership of foreign investors, establishment and operation of a branch in Vietnam of a foreign securities company...

Condition for a foreign organization to own 51% or more charter capital of a securities business organization

To own 51% or more charter capital of a securities business organization in Vietnam, a foreign organization must meet requirements applicable to shareholders and capital contributing members of a securities business organization in Decree 58 and other conditions, namely: the purchase of shareholding or of the capital contribution portion must be passed by both members' council/owner of the foreign organization and the securities business organization in Vietnam; only equity and other lawful sources shall be used to purchase shares or capital contribution; especially, financial statements for the most recent year of the foreign organization must be prepared and audited in accordance with the law of the foreign country in conformity with international accounting and auditing standards.

Conditions, application file and procedures for establishment and operation of a branch in Vietnam of a foreign securities company

A foreign securities company is only permitted to establish the one branch in Vietnam on satisfaction of the following conditions on capital to the branch, the operational duration in the licence (if any) of

the foreign securities company, risk management rules and rules on undertaking the securities activities, ownership ratio of shareholders or capital contributing members of charter capital of a fund management company in Vietnam.

Nevertheless, It is currently lawfully operating and is not undergoing consolidation, merger, separation, dissolution or bankruptcy; it is permitted to conduct the securities activities which it proposes to register for its branch in Vietnam; and the specialized branch regulator of the home country of such company has signed a unilateral or bilateral cooperative agreement with the SSC of Vietnam for the purpose of exchanging information and coordinating in management, inspection and supervision of securities and securities market activities.

Conditions for establishment and operation of a branch of a fund management company

A foreign fund management company which wishes to register establishment of a branch in Vietnam must not be in the process of consolidation, merger, demerger, dissolution or bankruptcy. It must be currently operating and licensed for public fund management activities; it is not a shareholder or capital contributing member owning above 5 per cent of the charter capital of a fund management company in Vietnam; the branch of the foreign fund management company is only permitted to provide services of managing assets raised overseas.

The branch which the foreign fund management company proposes to establish in Vietnam must have sufficient material facilities and staff satisfying the conditions stipulated by the law on establishment, organization and operation of fund management companies as applicable to domestic fund management companies, and must satisfy the conditions on the legal capital for the branch of a foreign fund management company in Vietnam which is required to be 25 billion VND and the capital contribution in order to establish the branch of a foreign fund management company in Vietnam which must be in Vietnamese dong.

Licensing Fees for Rep Offices that deal in Advertising

On 25 October 2016 the Ministry of Finance promulgated Circular No. 165/2016/TT-BTC, effective from 1 January 2017, providing for fees for processing of applications for the license for establishment of representative offices of foreign advertising enterprises in Vietnam, and the collection and transfer thereof ("**Circular 165**"). Circular 165 has several significant points as follows:

- (a) Any foreign advertising enterprises that apply for the issuance, re-issuance or modification of the license to establish representative offices in Vietnam must pay fees for processing of applications.
- (b) With regard to fees for processing of applications for the license for establishment of representative offices of foreign advertising enterprises in Vietnam, they shall be provided for

as follows: (i) New license: VND3million/an application; (ii) Re-issuance or modification of license: VND1.5million/an application. Fees for processing of applications for the license for establishment of representative offices of foreign advertising enterprises in Vietnam must be paid in VND.

- (c) Relating to Declaration, collection and transfer of fees, Collectors must make declaration and transfer of collected fees in accordance with regulations in Clause 3 Article 19 and Clause 2 Article 26 of Circular No. 156/2013/TT-BTC, dated 6 November 2013 by Minister of Finance providing guidance on a number of articles of the Law on Tax Management; the Law on amendments to the Law on Tax Management and the Governmental Decree No. 83/2013/ND-CP, dated 22 July 2013; transfer the entire collected fees to the state budget according to corresponding chapter, item and sub-item in the list of state budget entries.

Transfer of “.VN” Domain Names

Circular No. 16/2016/TT-BTTTT on transfer of “.vn” domain names which are assigned without auction was issued on 28 June 2016 by the Ministry of Information and Communication (“**Circular 16**”), effective on 15 August 2016, which provides details for implementation of the Decision No. 38/2014/QĐ-TTg, dated 1 July 2014, regulating auction, transfer of right to use of telecommunications number storages, internet domain names (“**Decision 38**”).

Decision 38 allows entities to transfer “.vn” domain names of which they have the legal right of use as granted by the competent authority. However, because of the lack of guidance on procedures of such transfer in Decision 38, there has been some difficulty in the transfer of “.vn” domain names in practice. In particular, direct transfer of a “.vn” domain name from the assignor to the assignee is not acceptable, but the assignee is required to make a reservation to register the domain name in question, and simultaneously, the assignor returns such domain name to the Vietnam Internet Network Information Center (**VNNIC**) through the relating domain name registration service provider, so that upon the procedure of returning the domain name by the assignor is completed, the using right for such domain name will be granted to the assignee as reserved.

According to Circular 16, the procedure of transfer of a “.vn” domain name will be as follows:

- (a) the assignor or assignee submits an application dossier with the domain name transfer agreement to the relating domain name registration service provider;
- (b) the relating domain name registration service provider will examine the application dossier within five working days from the date of receipt of the application dossier; and
- (c) If the application dossier is properly filed, and accordingly, the transfer of the domain name is acceptable, the assignor/assignee is required to pay the applicable tax imposed on the transfer fee payable from the assignee to the assignor in accordance with the domain name

transfer agreement, and then the assignee will submit a request for re-registration of the “.vn” domain name.

Obviously, Circular 16 facilitates the transfer of “.vn” domain names. In addition, under Circular 16, the Government can collect tax imposed on “.vn” domain name transfer fees. Unfortunately, the rules governing tax of domain name transfers has yet to be clarified by the Ministry or the Government and thus the actual transfers of domain names remains unimplemented.

Registration Fees

Decree No. 140/2016/ND-CP as issued on 10 October 2016 by the Government (“**Decree 140**”) regulates rates (%) at which registration fees (akin to stamp duty) are collected.

Under Decree 140, the rates for housing and land are 0.5%; hunting guns, sport guns and guns for practicing are 2%; ships, barges, canoes, tug boats, push boats, yachts, and aircrafts are 1%.

In addition, the rate for motorcycles is 2%. Particularly, for motorcycles of organizations and individuals in the centrally-run cities; cities of the provinces; towns where the provincial People's Committee bases its office, the registration fee rate for the first time is at 5%. For the motorcycles paid registration fee from the second time forward, the rate is of 1%. Where property owners had declared and paid the registration fee for motorcycles at 2%, then transferring to organizations and individuals in the areas prescribed above, the registration fee rate is at 5%.

The rates for cars, trailers or semi-trailers pulled by automobiles, or similar vehicles are 2%.

Particularly, automobiles with fewer than nine seats shall pay the registration fee for the first time at the rate of 10%. The People's Councils of provinces and centrally-run cities shall increase the rates of the registration fees to the rates that do not exceed 50% of the general rates in order to suit the actual conditions of the localities. In addition, automobiles with fewer than nine seats will pay the second registration fee at a rate of 2% and it shall be applied nationally.

Based on types of vehicles written on the technical safety and environmental protection Certificate issued by Vietnam Register authorities, the tax authority shall determine the rates at which the registration fee for cars, trailers or semi-trailers pulled by automobiles, or similar vehicles are collected.

For body and chassis and engines of the properties that are replaced but must be re-registered with competent authorities, the rate collected is the rate for each type of property. Registration fee rates for the properties are controlled at a maximum rate at VND500 million per one, except for: cars with fewer than nine seats, aircrafts and yachts.

The decree takes effect as of 1 January 2017.

Healthcare's Sweet Balm

Vietnam offers a plethora of healthcare issues. On my first trip to Ho Chi Minh City, Vietnam, back in 2003 I got an ear infection. I went to one of the multiple expat clinics that operate in District 1. The doctor there irrigated my ear and gave me some antibiotics. It cost about thirty-five bucks. That clinic still exists in District 1 and I've since visited it for various medical issues.

There are clinics and hospitals and other medical offerings throughout the country and they are all regulated by certain laws. These laws specify the amount of capital required to open and the requirements for qualified personnel to operate the facility.

Similar requirements exist for pharmacies. Though less stringent, they do require that an actual pharmacist work on the site.

Other laws specify educational requirements and hiring quotas, the stuff of healthcare. When in Laos, on one occasion, I broke my arm. I had to have surgery—which I did in Laos, figuring they were used to injuries from motorbike accidents—and then I shortly thereafter moved to Vietnam. In Vietnam, unlike Laos, I was able to find physical therapy and the proper follow up treatment to return my arm to full mobility.

I've dealt with other health issues in Vietnam, but that is neither here nor there. The point is that there are medical facilities available, for the right price.

And that gives rise to the question of insurance. Expat insurance will only cover certain clinics or hospitals. And then, frequently, they have to operate through local insurance carriers. For instance, FV Hospital works directly with half a dozen different international insurance carriers. It does not deal directly with others, which require you, the insured, to pay for your health treatment and then apply to your health care provider for a reimbursement.

That's why it's, if you're an expat in Vietnam, to make sure your insurance covers the location of your primary medical needs. Otherwise you might be paying a pretty penny before you're done, if anything major happens.

For small things, though, it's great. Only twenty or thirty dollars per visit, and that includes more than just the co-pay. The only place in the Southeast Asian peninsula that offers better healthcare is Thailand, with its long established medical tourism.

Holiday Time

Well, the time of year when Saigon lights its lights has come again. Go see the holiday displays downtown, especially at the Saigon Centre where years past have shown a great deal of holiday

spirit. The best, though, and unfortunately no more, was always the Saigon Tax Center shopping mall.

The Saigon Tax Center stood proud for many years, its external walls decked with sheep and stars and santas and reindeer. But now, this year, the Saigon Tax Center is no more. It is swept aside by the demands of a growing city: high occupation multi-purpose buildings, the coming metro, and traffic.

I remember walking past the Saigon Tax Center at previous holidays and struggling to get past on the sidewalk. People from all over the city would come to District 1 just to take pictures of their kids in front of the decorations. It was a festive time. It was before the center of Saigon became ravaged by modernization and foreign property investment.

That is not to say that Saigon is stagnant. No. It is a bustling city in constant change. The New York of the Mekong, it is a rush of motorbikes and pedestrians, taxis and Ubers. Yes, Vietnam has Ubers. You can find most anything you like if you look hard enough and that ranges from fine European cuisine to comic art.

Come New Years Eve the city comes together again, cramming thousands upon thousands of spectators into a single street to watch as the time ticks down and the new year arrives. It, too, is a festive event. It is a holiday acquired from the west, but the urban population of Vietnam has come to embrace it.

Maybe it's another reason to drink beer.

And then comes Vietnamese New Year, or Tet. This is a weeklong celebration when all the urban people return to their homes in the country, visit family, celebrate the passing of the year and the passing of family. It is a solemn time of reflection and beer drinking. Yes, beer drinking is at its peak on Tet—a bad time to visit the city as everything is closed.

I will keep this missive short as I don't want to intimate anyone with a recitation of holidays in Vietnam, but I also want to note that the holidays are here and that Indochine Counsel and all its staff wish you a Merry Christmas, a Happy New Year, and a lucky Tet. May you find happiness and peace, growth and wealth, luck and family in the coming year.

Happy Holidays.

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 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
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- Banking & Finance
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- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

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