



ClientAlert

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Introduction

Dear Reader,

Welcome to this month Client Alert. We have briefed some of the important new laws that affect you and your businesses in Vietnam. From corporate seals to the use of IPRs in company names to the resolution of domain name disputes we have overhead the gamut of some of the most important laws.

We have also briefly hit on some of the benefits of the new Trans Pacific Partnership and how it will affect Vietnam.

We hope you enjoy this edition of the Client Alert and look forward to working with you in the future.

Kind regards,
Indochine Counsel

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New Overtime Rules

On 23 June 2015, the Ministry of Labor, War Invalids and Social Affairs enacted Circular No. 23/2015/TT-BLDTBXH guiding a number of articles on wages of Decree No. 05/2015/ND-CP, dated 12 January 2015, of the Government guiding the implementation of a number articles of the Labor Code (“**Circular 23**”). Circular 23 has several significant points as follows:

1. The overtime payment on a normal working day is at least 150% of actual hourly wage of the normal working day. The overtime payment on a weekly day off is at least 200% of actual hourly wage on a normal working day. The overtime payment on a public holiday or paid day off (exclusive of wages of public holidays and paid days off prescribed by the Labor Code) is at least 300% of actual hourly wage on a normal working day. This rate is applied to employees receiving daily wages.
2. With regard to piece workers who receive overtime payment when the employees and the employer reach an agreement on overtime work in addition to normal working hours to increase the quantity of completed products or works in addition to the agreed workload. The overtime payment for products done on a normal working day is at least 150% of piece rate on a normal working day. The overtime payment for products done on a weekly day off is at least 200% of piece rate on a normal working day. The overtime payment for products done on public holiday or paid day off is at least 300% of piece rate on a normal working day.
3. Depending on the characteristics of work and business conditions, employers shall decide on the method of wage payment that ensures wages match the work performance, encourage employees to improve work efficiency and performance. The selection or change of wage payment method must be written in the employment contracts and collective bargaining agreement.

Circular 23 came into force from 8 August 2015 and the regimes regulated therein shall be applied from the effective date of Decree 05/2015/ND-CP, i.e. 1 March 2015.

New Guidance on Corporate Seals

On 19 October 2015, the Government issued Decree No. 96/2015/ND-CP detailing a number of articles of the Law on Enterprises (“**Decree 96**”). Apart from provisions on social enterprises, parent company – subsidiary, Decree 96 also provides for detailed guidance on the corporate seal.

Decree 96 clarifies that the provisions for a corporate seal in the Law on Enterprise shall only apply to enterprises which have already registered under the Law on Enterprises and the Law on Investment. Otherwise, organizations and units which are established under (i) Law on Notarization, (ii) Law on Lawyers, (iii) Law on Judicial Examination, (iv) Law on Insurance Business, (v) Law on Securities, and (vi) Law on Cooperatives shall not be applicable objects of such provisions, and shall comply with current regulations on management and usage of seals.

In addition, unless otherwise as stipulated in the corporate charter, making decisions on the quantity, form, content and specimen of corporate seal shall fall within the competence of:

- (a) the owner in case of a private enterprise; or
- (b) the members' council in case of a partnership; or
- (c) the members' council or chairman in case of a limited liability company; or
- (d) the board of directors in case of a joint stock company.

Other than contents of enterprise code and enterprise name which are required to be in the corporate seal, the corporate seal may include other language or images in the contents of the sample seal except for:

- (a) The national flag, national emblem or Party emblem of the Socialist Republic of Vietnam;
- (b) Images, logos or names of the State, of State agencies, of units of the people's army, of political or socio-political organizations, of professional socio-political organizations, of social organizations or of socio-professional organizations; and
- (c) Any language, symbol or image contrary to historical traditions, culture, ethics or fine customs of the Vietnamese people.

Furthermore, the management and usage of the corporate seal are also stipulated under Decree 96. Accordingly, any enterprise established prior to 1 July 2015 is permitted to continue using its issued corporate seal without notifying the business registration office of its sample corporate seal. If any such enterprise adds one or more corporate seals or changes the colors of its corporate seal, then such enterprise must conduct procedures to notify its sample corporate seal in accordance with regulations on enterprise registration. In case an enterprise was already established prior to 1 July 2015 and wishes to have a new corporate seal then such enterprise must return its old corporate seal and certificate of registration of sample corporate seal to the police office which issued it, and the police office shall issue a receipt for the corporate seal at the time of receipt. In addition, if an enterprise established prior to 1 July 2015 loses its corporate seal or certificate of registration of sample corporate seal, such enterprise must conduct procedures for issuance of a corporate seal in accordance with the provisions of Decree 96, and at the same time must notify the loss of the corporate seal or certificate of registration of sample corporate seal to the police office which previously issued such certificate.

With regard to the requirement on notification of the sample corporate seal, an enterprise is responsible to notify the sample corporate seal to the business registration office in the locality where the enterprise has its headquarters in order for publication of the sample seal on the national enterprise registration information portal in the following cases:

- (a) Making the initial seal on enterprise registration;
- (b) Any change to the number [quantity], contents and form of the seal; and
- (c) Canceling the sample seal.

Decree 96 takes effect as of 8 December 2015 and replaces Decree No. 102/2010/ND-CP, dated 1 October 2010, of the Government.

IPRs as Part of Enterprise Registration

Similar to the Law on Enterprises No. 60/2005/QH11 dated 29 November 2005 ("**Old LOE**"), the Law on Enterprises No. 68/2014/QH13 dated 26 November 2014 ("**New LOE 2014**") allows the contribution of intellectual property rights ("**IPRs**") to count as capital of an enterprise.

Yet Articles 35 and 37 of the New LOE further clarify that the IPRs contributed as capital upon the enterprise establishment must be valued by all members, founding shareholders on an agreed basis, or in case it is valued by a professional price evaluation organization, the valued price shall be approved by a majority of members or founding shareholders. For IPRs contributed as capital during the course of the enterprise operation, it shall be valued on the basis of agreement between the owner or the members' council in the case of a limited liability company or partnership or the board of management in the case of a shareholding company on the one hand and the person contributing capital contribution on the other hand, or where it is valued by a professional price evaluation organization, the valued price shall be accepted by the enterprise and the person contributing capital contribution. If the IPRs (assets contributed as capital) are valued at more than their actual value, the relevant persons of enterprise approving such the valued price shall be obliged to further jointly contribute capital for the different amount between valued/ accepted price and actual price of the IPRs. In addition, such persons shall be jointly responsible for any damages caused by any intentionally wrong valuation of the IPRs.

IPRs contributed as capital comprise copyright, copyright-related rights, industrial property rights, rights to plant varieties and other intellectual property rights in accordance with the Law on Intellectual Property No. 50/2005/QH11, dated 29 November 2005, as amended by Law No. 36/2009/QH12, dated 19 June 2009 ("**IP Law**"), and only the legal owners of the IPRs are permitted to contribute such rights as capital of an enterprise. The recordal procedure of assignment of ownership for patent rights, industrial design rights, integrated circuit layout designs rights, trademark rights, geographical indications, plant variety rights, and the making of minutes on contribution of IPRs as capital is required for IP objects for which the registration of rights ownership is not required.

Regarding enterprise names, Decree No. 78/2015/ND-CP, dated 14 September 2015, on enterprise registration ("**Decree 78**") which supersedes Decree No. 43/2010/ND-CP, dated 15 April 2010, on the same matter, as amended by Decree No. 05/2013/ND-CP, dated 9 November 2013 ("**Decree 43**"), provides that the use of protected trade names, trademarks, geographic indications to constitute the enterprise individual names without the consent from the owners thereof is prohibited.

The basis for considering whether an enterprise name infringes IPRs of another person shall be in accordance with the IP Law. An enterprise name which infringes IPRs of another person shall be

changed at the request of the licensing authority that, in turn, has been informed of such infringement by the IPRs owner. As regulated, the time limit for such enterprise to change its name is two months as from the requesting date by the licensing authority, and otherwise, the enterprise will be handled by the competent authorities in accordance with the IP Law. The business registration certificate of an enterprise with the name in infringement of IPRs of another person may be revoked by the licensing authority in case where it does not implement the change of its name or removal of infringing elements from its name under the decision on administrative sanction issued by the competent authorities.

The Trans Pacific Partnership and Vietnam - A Brief Overview

The Trans Pacific Partnership (“**TPP**”) is a trade agreement between twelve countries that border the Pacific Ocean. One of those countries is Vietnam, in fact, one of the only countries in mainland Southeast Asia, to join the TPP. The question is, what advantages are available to Vietnam because of the TPP and how will it affect the country?

The first advantage is the increase in trade itself. Estimates suggest that trade will increase by over 36% by 2025 simply because of the TPP's lowering of tariffs and barriers to trade. Vietnam will benefit especially in the textiles and shoe production industries as cheap labor and the lessened trade barriers create a situation in which Vietnam becomes a much cheaper location for production than China. Vietnam will also benefit largely in the seafood production sector, shrimp, squid and tuna being the three biggest exports that will see an increase in trade.

Vietnam will be required to strengthen its rule of law, transparency, and intellectual property laws and enforcement. While some may see this as a negative, it really is a positive for Vietnam in the long run as doing so will allow Vietnam to become even more attractive of an investment location and see greater FDI as a result.

Another benefit of the TPP is the increase in FDI that has already been demonstrated. In the week after signing the TPP the stock market rose by 4.9% largely on foreign investment in textiles, production and seafood. Vietnam will see more and more FDI as it implements the reforms required by the TPP and will become a major exporter in the region.

Another benefit on a geopolitical level is the fact that Vietnam now has an agreement that sets it apart from China. With recent Chinese/Vietnamese tensions rising due to arguments over the Paracel Islands and the East Sea, the TPP bolsters Vietnam's position as a player in the region and stands to take a large part of China's production work from that country.

Ultimately, perhaps the most important benefit the TPP will bring to Vietnam, is an increase in investor sentiment towards the country. From greater transparency, rule of law, and IP protection to tighter restrictions on rules of origin Vietnam will become a much more attractive place for investors to spend their money.

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

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