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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 regulation of functional foods to labour issues.

We also discuss the importance of geography in understanding and investing in Vietnam and Indochina.

As always 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

In a move to increase food safety, the Ministry of Health has issued new legislation governing the manufacturing, use and advertising of functional foods. See MANAGEMENT OF FUNCTIONAL FOODS.

A new government decree clarifies some issues in the existing labour rules. Namely, the decree discusses termination of employment, temporary assignment of labour, and payment of wages. See NEW REGULATIONS ON LABOUR ISSUES.

Finally, we take a look at another issue raised by Vietnam's geography and regional location: the ability to invest regionally and whether such investment might be centralized in Vietnam or offshore. See GEOGRAPHY OF VIETNAM REVISITED.

Management of Functional Foods


Circular 43 mainly regulates the production, trading, produce announcement, labeling and giving instructions on functional foods. It is noted that there are several new regulations of Circular 43 as follows:

- The imported and domestically produced functional foods which are regulated by technical regulations must have a declaration of conformity and registration of declaration of conformity at the Ministry of Health (Vietnam Food Administration) before they are put on the market. Those functional foods that are not regulated by any technical regulations are required to obtain a declaration of compliance to food safety regulations and registration of declaration of compliance to food safety regulations at the Ministry of Health (Vietnam Food Administration)

- Those pharmaceutical manufacturer who obtain the Certificate of Good Manufacturing Practices (GMP) in producing functional foods shall be exempt from obtaining a Certificate of Food safety;

- In addition, Circular 43 also regulates that health supplements are sold in a separate area from other foods. There must be a separate area in the pharmacy where functional foods are sold;

- Circular 43 also strictly stipulates the labeling of packaged foods and the label contents. Besides the mandatory label contents in compliance with regulations under joint Circular No. 34/2014/TTLT-BYT-BNNPTNT-BCT, dated 27 October 2014, by the Minister of Health, the Ministry of Agriculture and Rural development, the Ministry of Industry and Trade on labeling of packaged foods, food additives and food processing aids; the labeling of functional foods are required to contain warnings of risks, if any and the name of the product and the information on the label must be consistent with the claims and materials attached to the declaration document;

- Most importantly, the advertisement of functional foods in every advertisement for health supplements on audio-visual media, letters or words shall contain the notice: “This
With the increasing usage of functional foods in recent years, Circular 34 aims to provide specific regulations in terms of the quality and several relevant aspects of the production and trading of functional foods in order to manage and control this business line. |

On 12 January 2015 the Government enacted Decree No. 05/2015/ND-CP for the purpose of guiding the implementation of a number of items of the Labour Code ("Decree 5"). This Decree mainly focuses on stipulating the labour activities in terms of labour contracts, collective bargaining, collective labour agreements, wages, labour discipline, liability for material loss and resolution of labour disputes, with some noticeable points as follows:

Amendment of term of labour contract

According to Decree 5, the term of a labour contract is only permitted to be amended once by an appendix to such contract which must not change the type of contract entered into. However, in case senior workers are in good health as demonstrated by a medical diagnosis and treatment and their employers still wish to recruit them, the two parties may extend the term of their current labour contract without any limitation.

Temporary assignment to different work

Another significant point of Decree 5 is the regulation on temporary assignment of an employee to do work different from that specified in the labour contract, but only in the following specific circumstances:

- Natural disaster, fire or epidemic;
- Application of measures to prevent or remedy a work-related accident or occupational disease;
- Power problems [power failure] or water problems [water shortage];
- As a result of production or business requirements (this must be stipulated clearly in the internal rules of the enterprise).

If such temporary assignment reaches an accumulated period of 60 working days within a year, the employer must first obtain the written consent from such employee for continuance of the temporary assignment.

Wages

The wages payable to an employee are to be based on the wages recorded in the labour contract, and on labour output and the volume and quality of the work carried out by the employee. The details of wages are to be stated in the labour contract and comprise the amount of wages for the job or position, the wage allowances and additional items as clarified by Decree 5.

The wages recorded in a labour contract and payable to an employee shall be made in Vietnamese dong, except wages and allowances paid to non-residents or foreign residents.

Termination of labour contract

Decree 5 also clarifies two cases pursuant to the Labour Code, in which employees are entitled
to unilaterally terminate their labour contracts, including:

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<th>Interpretation by Decree 05</th>
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<td>The employee is maltreated, sexually harassed or is subject to labour coercion</td>
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<td>The employee is not able to continue performing the contract due to personal or family difficulties</td>
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Employers have a right to unilaterally terminate a labour contract where the employee repeatedly fails to perform their works in accordance with the terms of the labour contract, the employer must specify the criteria for assessing the level of completion of work in the working rules of the enterprise, providing the basis for assessing whether or not an employee has repeatedly failed to complete his or her work in accordance with the terms of the labour contract. Provisions on assessing the level of fulfillment of duties by employees shall be issued by the employer after obtaining the opinion of the organization representing the labour collective at the grassroots level.

When a senior worker is not in good health as required or when the employer does not wish to employ them anymore, then the two parties may terminate their labour contract.


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The Geography of Vietnam Revisited

Geography. In a time of celebration and renewal—Vietnamese New Year—it is vital to understand the geography of Vietnam and its surrounds in order properly plan your business endeavors in the region. Last month I talked about the way that Vietnam is different, about the rivers and the mountains, about the languages and about the long coastline with its problems concomitant. This month I want to expand on that, I want to expand on the geography of Vietnam to include the geography of Indochina for a wee little bit.

When I worked in Laos we attempted to get the regional rights for a major American F&B
franchise. Our strategy was flawed, however, as we targeted the wrong country for initial entry. As a result, we failed to get the franchise and spent a lot of time and money for naught.

Vietnam has over ninety million people. Over half of whom are considered young. Cambodia, with over sixteen million people also has a young, if uneducated, workforce. Laos, on the other hand, only has six million people and is mostly rural. The largest city, Vientiane, has less than a million people. The second largest town, Savannahket, has even less. It's a country full of farmers and laborers, not manufacturing and services.

Despite this disparity of interests, I have run across numerous people who are interested in Laos' coffee farms (and in marketing the coffee they produce). Laos is struggling to develop a high tech capable workforce and to bring investment in from outside. The largest investors being Vietnam, China, Japan, Korea and Thailand. This should come as no surprise considering Laos' borders. But it is in its relationship with Vietnam that I bring this up. And in conjunction, also consider Cambodia.

Vietnam is bordered by three countries: China, Laos, and Cambodia. Across the East Sea is the Philippines, but this is of lesser concern. Of immediate note are the countries with which Vietnam shares a land border. Why is this important? For two reasons: first, Laos and Cambodia offer a large and important secondary market to Vietnam, and second, Vietnam has specific rules for outward investment.

I take the first point. Vietnam is a large market with an increasing need for services. It also has an increasingly large middle class of people who are office workers and who are unwilling to perform the tasks that many of the lower classes—or immigrants—might be willing to perform. In this sense Vietnam looks to Cambodia and Laos for immigrant labor; as housekeepers and maids, nannies and au pairs, gardeners and guards. These two countries also, taken regionally, offer an even larger market than Vietnam alone. Something to think about for the future of an investment in the region.

The second important point should be taken into consideration when planning a regional business strategy. First, Vietnam is the target market in Indochina, with Cambodia and Laos acting as separate and distinct—but most importantly, small—markets. You can approach this market as one market, an Indochina market, as discussed or you can split it into three markets. If you decide to consider Indochina as a single market, then you have to consider the rules for outward investment—especially franchise networks. A single franchise can license itself to a regional proprietor, say, in Vietnam. For that proprietor to move to Cambodia or Laos, she will have to get permission from the government of Vietnam (as Vietnam imposes controls on outward investment). You can also separate your investments, though this is less efficient.

Perhaps the best strategy is to find a licensee in Vietnam who then incorporates an offshore vehicle to control the franchise rights for all three countries. That way the licensee is approved to work in all three countries but does not have to jump through the hoops necessary to make outward investments. Whatever the decision, legal counsel is important to determine the best structure for rights in any of the given countries and, especially, when you are formulating a cross-border regional strategy.
 Contributors

Editor:
Steven Jacob | Editor

Contributors in this month’s issue:

“Management of Functional Foods”
By Le Thi Hai Duong, Legal Assistant

“New Regulations on Labour Issues”
By Nguyen Kim Trang, Legal Assistant

“The Geography of Vietnam Revisited”
By Steven Jacob, Editor

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:

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- Intellectual Property
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- 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

**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

**Contacts**

**Dang The Duc** | Managing Partner | duc.dang@indochinecounsel.com

**Le Nguyen Huy Thuy** | Partner | thuy.le@indochinecounsel.com

**Phan Anh Vu** | Partner | vu.phan@indochinecounsel.com

**Nguyen Thi Hong Anh** | Partner | anh.nguyen@indochinecounsel.com

www.indochinecounsel.com

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