



# ClientAlert

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## 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 numerous topics concerning the expanded use of foreign exchange, state housing regulations, labour outsourcing, and the incentivization of science and technology enterprises.

As always we hope you find this month's Client Alert helpful and wish you prosperity in your dealings. We look forward to working with you.

Kind regards,  
Indochine Counsel

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## Expanded use of Foreign Exchange

Circular No. 32/2013/TT-NHNN (“**Circular 32**”) issued by the State Bank of Vietnam (the “**SBV**”) on 26 December 2013 outlined that non-residents have the right to use foreign exchange in the following circumstances:

- (i) to send foreign currency remittances to other non-residents; and
- (ii) to receive quotations and fixed prices in foreign currency or receive payments in foreign currency by transfer when receiving goods and services from residents.

On 29 March 2019, the SBV issued Circular No. 03/2019/TT-NHNN (“**Circular 03**”) which adds that foreign investors (as non-residents under foreign exchange laws) are permitted to pay a deposit or escrow in foreign currency by way of bank transfer when participating in an auction for the purchase of shares in:

- (i) State-owned enterprises upon equitization;
- (ii) State-owned enterprises or in enterprises with State capital upon divestment; or
- (iii) State-owned enterprises invested in another company upon divestment.

Successful bidders then transfer the investment capital in accordance with regulations on management of foreign exchange in order to make payment of the value of the purchased shares. If the foreign investors are unsuccessful at auction, they are permitted to remit escrow deposit in foreign currency after deducting relevant expenses (if any).

Circular 03 took effect on 13 May 2019.

## Use of State Housing

On 28 March 2019, the Government promulgated Decree No. 30/2019/ND-CP (“**Decree 30**”).

Decree 30 provides for determination of the time of arrangement for using state-owned housing:

- (i) If a house is used by a person who has a lease contract in which she is a party, the time of arrangement for using house is determined as follows:
  - the time stated in the lease contract;
  - if not stated in the lease contract, the time shall be determined by the signing date of the contract;
  - if the lease contract is renewed or extended, the time shall be determined according to the time stated in the first contract.
- (ii) If a house is used by a person who is not named on the lease or other permutations of permission granted in layout documents or rental agreements, then there are additional criteria for determining the time of use. For more information, please contact your lawyer.

Decree 30 took effect on 15 May 2019.

## Labour Outsourcing

On 20 March 2019 the Government issued Decree No. 29/2019/ND-CP (“**Decree 29**”). Decree 29 took effect on 5 May 2019 and replaces Decree No. 55/2013/ND-CP (“**Decree 55**”). Decree 29 concerns labour outsourcing.

- (a) The legal representative of an enterprise applying for a license for outsourcing activities (the “**License**”) must be an enterprise manager and not have any criminal convictions. In addition, she must have at least three years experience in the field of outsourcing or labor supply.
- (b) The maximum term of the License is 60 months and may be extended.
- (c) The enterprise seeking labour outsourcing services may make payment of escrow deposit at a commercial bank or foreign bank branch lawfully established and operating in Vietnam.

## Science and Technology Enterprises

Decree No. 13/2019/ND-CP was passed by the Government on 1 February 2019 (“**Decree 13**”).

Decree 13 focus on scientific and technological operation registration certificates (the “**STEC**”); and incentive and support policies.

The STEC is the basis for implementing incentive and support policies intended for science and technology enterprises (the “**STEs**”) nationwide and for providing investment incentives for the STEs.

Conditions for obtaining an STEC are:

- (a) establishment and operation under the Law of Enterprise;
- (b) that it has the potential for creating or applying scientific and technological advancements as assessed and recognized by the competent authority; and
- (c) that the profit earned from production or trade in science and technology products accounts for at least 30% of its total profit.

In addition to the manufacturing and business scheme from scientific and technological results, one of the following documents is required:

- (i) Certificate of intellectual property rights protection;
- (ii) decision on recognition of new plant varieties, livestock breeds, fish seeds or forest tree

- varieties or technique advances;
- (iii) Proof of award for science and technology achievements given by the competent regulatory agencies in cooperation with the awarding organization or given under award approval of such competent regulatory agencies;
- (iv) decision on recognition of achievements of science and technology objectives funded by state budget or certificate of registration of the aforesaid achievements; confirmation or appraisal report on achievements of science and technology objectives not using state budget;
- (v) Certificate of technology transfer registration; and
- (vi) other conformation or recognition reports with equal validity.

Upon receipt of an STEC, the following supports and incentives may be applied to the STEs:

- (i) exemption or reduction of corporate income tax;
- (ii) decrease in costs for land lease or water surface use; and
- (iii) credit incentives to implement science research, technology development, and business manufacture activities. Certain enterprises may be funded by the state budget and if deemed important for the state, such results may be purchased by the government.

Decree 13 took effect on 20 March 2019.

## Startups or Bust

As detailed in the above article on Science and Technology Enterprise incentives, there is an increasing awareness of the need for high-tech investment on the part of the government. That increase is now evidenced by concrete action. A great leap forward for the Doi Moi initiatives of the 1980s.

In addition to science and technology firms, there also needs to be an increase in incentivization of startup firms. The process for becoming a registered STE to become eligible for incentives is difficult, and may lead many companies to turn away from the possibility of incentives. This needs to change.

While there may be a separate condition for STEs, there needs to be some way to incentivize firms that are not capable or desirous of braving the gauntlet of the STEC. The government has outlined plans, but no absolute action has been taken. If the government hesitates too long, it may find the increased investment overflowing from the United States trade war on China passing it by in favor of other, more startup friendly, environments.

In addition, startups provide a major means for increasing the private sector economy. State support and incentivization would allow for the state touted goals of one million private sector enterprises by 2020. Startups are attractive to investors because of the technology and innovation of their products. The STEC stifles innovation at the startup level by requiring formalization of the “science” or

“technology” and requiring proof of IP. This is tiresome a lengthy process that may obviate the product by the time such incentives may be obtained.

It is essential, therefore, that the government setup a separate category for startups and provide incentives for that category. Not only will this provide a means for subsidizing the best and brightest of Vietnam’s upcoming entrepreneurial generation, but it will also provide an attractive environment for international VCs and investors to fund small enterprises that may become unicorns.

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

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

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