

Special Alert

May 2023

www.indochinecounsel.com

Proposed Amendments to Vietnam's Advertising Law

Over ten years of implementation, the Law on Advertising No. 16/2012/QH13 dated 21 June 2012, as amended in 2018 (the “**Advertising Law**”), has revealed some shortcomings which adversely impact on the effectiveness in management of advertising activities in Vietnam, such as failing to catch up with the advertising practices arisen in the rapid development of information technology, there being some inconsistencies with the other related laws of Vietnam, which have been recently amended or newly issued, such as the 2022 amended Law on Intellectual Property, the 2022 amended Public Investment Law, the 2022 amended Public-Private Partnership Law, the 2022 amended Investment Law, the 2022 amended Enterprise Law, and the 2022 amended Law on Civil Judgment Enforcement, as well as with numerous FTAs, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the European Union-Vietnam Free Trade Agreement (EVFTA) which have been signed by Vietnam. Therefore, the Advertising Law needs to be amended for addressing such shortcomings. On 7 February 2023, the National Assembly published a draft Law on Amending and Supplementing the Advertising Law (the “**Draft Law**”) at <https://chinhphu.vn/du-thao-vbqpp/ho-so-de-nghi-xay-dung-luat-sua-doi-bo-sung-mot-so-dieu-cua-luat-quang-cao-5466> for public comments.

Under the Draft Law, the proposed amendments of and additions to the Advertising Law focus on four policies as follows:

The 1st Policy: The participation of foreign businesses and cross-border advertising service provision in the advertising market of Vietnam. Objectives of this policy are enhancing the quality of domestic advertising businesses for developing high-quality and competitive advertising products that meet global standards and making regulations on advertising with foreign elements and cross-border advertising services greater consistency with related laws enacted after 2013, international commitments that Vietnam has participated in, and with current practices. Accordingly, the amendments to Article 23 of the Advertising Law, relating to providing cross-border advertising

services to Vietnam by foreign service providers under the Draft Law will be proposed by the Ministry of Information and Communications (the “MIC”), which shall be based and consisted with relating regulations of Decree No. 181/2013/ND-CP dated 14 November 2013, as amended by Decree No. 70/2021/ND-CP dated 20 July 2021, i.e. a foreign advertising service provider providing cross-border advertising services to Vietnam must comply with the following obligations, inter alia, (i) providing the MIC with its information comprising the registered and transaction names, registered address; location of main server for providing services and the location of server in Vietnam (if any); (ii) not placing advertising products with contents in violation of Article 8.1 of the Cybersecurity Law No. 24/2018/QH14 dated 12 June 2018, and Article 28 of the Law on Intellectual Property No. 50/2005/QH11 dated 29 November 2005, as amended in 2009, 2019 and 2022; (iii) providing information about any entity involved in such violations upon the request of the competent authorities; and (iv) not cooperating with websites in the list of one in violation of Vietnam laws as published by the MIC.

Article 39 of the Advertising Law as amended under the Draft Law no longer requires the foreign advertisers that do not operate in Vietnam to hire local advertising service providers for advertising their goods, services in Vietnam. Meanwhile, the amended Article 40 allows foreign advertising service providers to directly provide its advertising services in Vietnam without engaging with Vietnamese advertising service providers.

The 2nd Policy: The suitability and honesty of advertising content. The objectives of this policy are addressing the shortcomings of current regulations regarding the determination of the suitability and honesty of advertising content, and ensuring the appropriateness of advertising content to avoid causing social discontent. In this connection, proposed amendments under the Draft Law may include regulations relating to the structure and operation of the Appraisal Council for advertising products and the legal validity of the appraisal results (Article 9); certain advertising contents and conditions, subject to the consideration of particular amendments proposed by the relating specialized management authorities, for special products, goods, and services, such as medicines, foods, medical equipment, chemicals, insecticides, antibacterial products used in households and medical settings, medical examination and treatment services (Articles 19 and 20);

The 3rd Policy: Limitations on the advertising duration on television programs. The objectives of this policy are addressing the shortcomings of current regulations on advertising on television programs, ensuring the financial autonomy of television stations while striking a balance between program content and advertising duration to safeguard the interests of viewers and enhancing the quality of television programs to meet the public's entertainment needs. Accordingly, proposed amendment under the Draft Law to Article 24 of the Advertising Law include amendment of advertising time which will be based on the running time of a movie. One of the proposed options is a movie with running time less than 30 minutes would be allowed a maximum of two interruptions for running advertisement, and for each further 15 minutes of movie running, one further interruption for running advertisement would be allowed. In addition, for advertisements embedded in movie, advertising contents and conditions shall comply with prevailing regulations.

The 4th Policy: The responsibility of the person conveying advertising products. The objectives of this policy are specifically identifying the rights and obligations of entities involved in advertising activities, particularly the advertising product conveyed and preventing dishonest and misleading advertising. Therefore, proposed amendment under the Draft Law to Article 15 of the Advertising Law is about rights and obligations of persons conveying advertising products. Accordingly, such persons conveying advertising products shall have obligation of verifying documents relating to advertising conditions for advertisers and goods/services to be advertised.

As planned, the Draft Law will be submitted to the National Assembly in 2024, and may be approved in 2025, so that it will effect on 1st January 2026.

About Indochine Counsel

Established in October 2006, Indochine Counsel is a leading commercial law firm in Vietnam. Our firm is ideally positioned to assist international investors and foreign firms to navigate the legal landscape in one of Asia's most dynamic and challenging countries. We also take pride in our services offered to domestic clients in searching for opportunities abroad. With over 45 lawyers many of whom have been trained abroad and staffs in two offices, Ho Chi Minh City and Hanoi, Indochine Counsel offers expertise in a dozen practice areas and provides assistance throughout the entire life cycle of your business.

Indochine Counsel represents and advises clients on all legal aspects in the following major areas of expertise:

- Anti-trust & Competition
- Banking & Finance
- Corporate & Commercial
- Energy, Natural Resources & Infrastructure
- Intellectual Property
- Inward Investment
- Labour & Employment
- Litigation & Dispute Resolution
- Mergers & Acquisitions
- Real Estate & Construction
- Securities & Capital Markets
- Technology, Media & Telecommunications

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

Contact Us

For further information or assistance, please contact the following Indochine professionals:



Nguyen Thi Hong Anh
Partner | Co-Head of IP & TMT
Practice Group
E anh.nguyen@indochinecounsel.com



Vu Hoang Ha Thu
Associate | Head of Intellectual Property
E thu.vu@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

This Special Alert is designed to provide our clients and contacts with general information of the relevant topic for reference only, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

© 2023 Indochine Counsel | All Rights Reserved.