



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 numerous topics concerning the environment and natural resources, including methods for protecting water resources, solar power, and animal feed. We also discuss more regulations concerning the conversion of State Owned Enterprises.

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

Kind regards,
Indochine Counsel

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Exploitation and utilization of water resources

On 7 November 2017 the Ministry of Natural Resources and the Environment issued Circular No. 42/2017/TT-BTNMT (“**Circular 47**”) stipulating the observation of exploitation and utilization of water resources.

Circular 47 provides that the observation of exploitation and utilization of water resources is to be conducted under the following forms:

- (a) Automatic online observation: a tracking of measured statistics, automatic monitoring, to be continuously connected and immediately transmitted to an observation system of exploitation and utilization of water resource (hereinafter referred to as the “**Observation System**”);
- (b) Observation via camera: tracking via the images recorded by camera which are connected and immediately transmitted to the Observation System;
- (c) Periodic observation: tracking of measured and monitoring statistics which are updated periodically onto the Observation System.

The observation shall be conducted through the Observation System, which is required to be consistent and ensure the information and data is connected and shared from the entities conducting the exploitation and utilization of water resources to the relevant state management authorities at both local and central scale. The Observation System is composed of the following:

- (a) Data acquisition system and data management and processing software on central scale and local scale;
- (b) Observation database;
- (c) Equipment for the measurement, connection and transmission of the construction site.

In addition, each of these components of the Observation System is accompanied by general requirements set out in Circular 47.

Circular 47 also clearly stipulates the observation with regards to the following activities (i) the exploitation and utilization activities of construction of reservoir for generating electricity; (ii) the exploitation and utilization activities of construction of reservoir for agriculture, aquaculture and other purposes; (iii) the exploitation of construction of culvert, pumping station and other construction of surface water exploitation; and (iv) exploitation activities of underground water. The observation data, observation form and observation mode for each of the activities listed above are clearly provided in respective clauses under Circular 47.

The entities licensed to exploit and utilize water resources prior to the effective date of this Circular must complete the installation of equipment, connection and provision of information, data concerning the observation system of exploitation and utilization of water resources no later than 31 December 2019.

Circular 47 took effect from 22 December 2017.

Power purchase agreements for solar power projects

On 12 September 2017 the Ministry of Industry and Trade issued Circular No. 16/2017/TT-BCT (“**Circular 16**”) on regulating project development and standard forms for power purchase agreements applied to solar power projects.

Circular 16 includes 05 chapters and 22 articles with main regulations on:

- (a) Master development planning of solar power;
- (b) Power tariffs of solar power projects; and
- (c) Power Purchase Agreements (“**PPA**”) for solar power projects.

First, regarding the national solar power development planning, Circular 16 provides that the national solar power planning shall be made one time and can be revised / supplemented according to subsequent national power planning. For the provincial solar power development planning, it shall be made for any province having enormous solar power potential and made once and revised / supplemented according to subsequent provincial power planning.

Second, for the rooftop PV power projects, these projects shall be implemented with the net-metering mechanism by using bi-directional meter systems. At the end of the year or upon termination of the PPA, the excess amount of generated electricity shall be sold to the buyer at the selling price at the power delivery point (excluding value added tax), which is VND2,086/kWh. The electricity price of the following year shall be adjusted according to the central exchange rate of VND over USD quoted by the State Bank of Vietnam on the last working day of the previous year.

In addition, for purchase and sale of power, it is compulsory to use the standard form PPAs for grid-connected projects and for rooftop PV power projects for power purchase and sale as between the seller and the purchaser.

Circular 16 took effect from 26 October 2017.

Management of animal and aqua feeds

The Ministry of Agriculture and Rural Development on, 10 November 2017, released Circular No. 20/2017/TT-BNNPTNT guiding the implementation of the Government’s Decree No. 39/2017/ND-CP on the management of animal feeds and aqua feeds.

Accordingly, new feeds must undergo a testing process following suitable procedures which is comprised of the following requirements: (i) initial inspection; (ii) assessing effects of the product on livestock / environment and other requirements; and (iii) monitoring criteria.

With respect to antibiotic-containing veterinary medicines in livestock feeds and poultry feeds, users must take note on provisions as below:

- The veterinary medicines must be specified in the list of veterinary medicines that are licensed in Vietnam or allowed by a competent authority for the purpose of livestock and poultry disease prevention and treatment.

- Users of antibiotic-containing veterinary medicines in feeds have to specify names and contents of antibiotics, instructions for use and dosing intervals on the label or secondary label and package or attached documents if they are to be sold on the Vietnam market, and retain the above mentioned information in the production records.
- The prescription of antibiotic-containing veterinary medicines used in feeds must be given by veterinary physicians.
- Veterinary medicines shall only be used in complete feeds for livestock and poultry and concentrate feeds for grass-fed livestock licensed in Vietnam.
- The livestock establishment using feeds containing veterinary medicines must follow the manufacturer's instructions and keep records of use thereof.

With respect to non-antibiotic veterinary medicines in feeds, users shall comply with regulations on veterinary medicines but there is no prescription required. Names and contents of active ingredients, instructions for use and dosing intervals must be specified on the label or secondary label and package or attached documents for them to be sold on the Vietnam market, and retain the above mentioned information in the production records.

As for imported feeds, the "*Issuance of certificate of quality*" shall be issued within two working days:

- For the shipment of feeds eligible for normal inspection or tightened inspection: from the day on which the satisfactory result is given;
- For the shipment of feeds eligible for reduced inspection: from the end of the on-site inspection; and
- For the shipment of feeds eligible for temporary exemption from quality inspection: from the day on which the application form for inspection and certification of quality is approved.

Importing feeds, which have not been licensed in Vietnam but are for non-commercial purposes, shall be approved by the Minister of Agriculture and Rural development.

This Circular took effect on 25 December 2017.

Conversion of state-owned enterprises

On 16 November 2017 the Government issued Decree No. 126/2017/ND-CP on conversion from state-owned enterprises and single-member limited liability companies with 100% of charter capital invested by state-owned enterprises ("**SOE**") into joint-stock companies ("**Decree 126**").

Below are some noticeable points of Decree 126:

New restriction on conditions of equitization

Under Decree 126, the State shall not issue additional capital for equitization purposes, including to those enterprises for which the Prime Minister has regulated the criteria, list and classification of State owned enterprises undergoing equitization in which the State shall retain above 50% of the total shares.

How much of an SOE can be sold and who makes such decisions

The governmental body representing state ownership in the SOE may decide on equitization of an SOE by either selling all or part of the charter capital, or issuing additional shares to increase charter capital and dilute the interests of the state. An SOE may launch an IPO by auction, underwriting, private placement or book-building.

New method of Equitization

Decree 126 provides a new method of Equitization: *Book-Building*. The book-building method shall be subject to a decision of the Prime Minister, Ministry of Finance shall be responsible for further guidance of this method of Equitization.

The introduction of book-building as an initial public offering (IPO) pricing method should facilitate more market sensitive pricing, which appeals both to the investors and the state. In addition, selling stakes to Strategic Shareholders only after the IPO ensures that Vietnam's equity capital markets will play a critical role in the equitization process.

Supplement the responsibilities for performance of guarantee with respect to the Strategic Shareholder

The investor shall adapt some pre-conditions to register to be a Strategic Shareholder, such as having legal entities, having financial capacity; having profitable production and business results of the two most recent years before the time of registration for purchase of shares, and not having any accumulated losses; and especially having a written undertaking from an authorized person on registration to become a strategic investor in the equitizing enterprise, undertaking that (i) To continue to maintain the main business line and commercial name of the equitizing enterprise for at least three years from the time of officially becoming a strategic investor and not assign the purchased shares for three years, (ii) providing a plan on assisting the equitized enterprise on [receiving] transfers of new technology, training manpower, raising financial capacity, corporate governance, supply of raw materials, and developing the product sales market, and (iii) to pay compensation on breach of the signed undertakings.

Foreign consultancy organization may conduct its services with respect to equitization of SOEs

The foreign consultants may be entitled to provide services regarding equitization of SOEs, if they satisfy certain requirements, including (i) operating in the sectors of price evaluation, auditing, accounting, financial consultancy or consultancy on conversion of enterprise ownership in accordance with the law of the home country, (ii) being reputable, with adequate capacity, a commercial name and having at least five years experience (60 consecutive months as at the time of lodging the file for application as a consultant on enterprise valuation) in one of the sectors being

price evaluation, auditing, accounting, financial consultancy, or consultancy on conversion of enterprise ownership and (iii) in case a consultancy organization which does not have three price valuers, it must have a joint venture contract with a domestic price evaluation organization which satisfies the conditions prescribed by the law on price evaluation.

The Owner's representative may decide the equitization expenses

Other than the old regulations, Decree 126 stipulates that the owner's representative issues decisions approving the estimated budget for equitization expenses and [thereafter] accounting finalization of such expenses. The basis of paying these expenses to consultants is the contract signed between the relevant parties.

Accordingly, the owner's representative shall select consultants according to the following principles: (i) in the case of a tender package for valuation consultancy valued up to three billion dong for which only one organization registers, then the owner's representative may directly appoint such consultant to conduct the enterprise valuation; (ii) in the case of a tender package other than that prescribed in sub-clause (a) above, the owner's representative shall issue a decision to hold tendering in accordance with the law on tendering to select consultants on enterprise valuation.

This Decree took effect from 1 January 2018 and replaced Decree 59/2011/ND-CP, Decree 189/2013/ND-CP and Decree 116/2015/ND-CP.

Natural resources and investment

While taking a note from the above article on water resources and utilization, it's important to understand the use of natural resources in large scale investment, especially manufacturing, agriculture, and aquaculture.

Vietnam has long had a worry about natural resources, and have made efforts to not only save electricity in urban areas, but to come to terms with the necessity of importing power, primarily from Laos PDR, Vietnam's next door neighbor in the northern half.

I remember chairing a conference about Vietnam's electricity future. At the time it was dim, but since then Vietnam has been actively securing sources of electricity (as demonstrated by the same above articles) through various means. Both through water exploitation—dams, hydropower, etc. and solar power.

These are important for manufacturing because of the need for regular power supplies. It is difficult to run a plant without regular electricity, especially if running three or more shifts. It is also important for agriculture as the need for regularized water sources is very important for crop growth, and any major deviance from the necessary brings either drought or flood.

Vietnam is still a young country, and while it is important to know how it intends to safely and deliberately manipulate and utilize natural resources, it is also important to know how it intends to protect existing resources from corruption and pollution.

This is an area in which Vietnam can improve. One of the major presentations I made during my role as a more active foreign counsel (read foreign lawyer) was on the issue of environmental pollution in

specific cases of manufacturing polluting waterways both navigable and capable of aquaculture. They have made strides in this area, though there is still much to be done, and have improved their environmental record. This may also improve as they bring online the intended nuclear energy plants they have planned.

There is much more to be done, and if Vietnam adopts the proper long-term view towards environmental and natural resource protection, something that is being undone in other, more developed countries, then the country will have a very strong chance of maintaining its economic future on the basis of smart use.

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:

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- 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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