



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 topics ranging from excise tax to network security to the new civil code and securities disclosure rules.

We have also briefed the new EU-Vietnam free trade agreement that is currently under a review process by both sides before proceeding to ratification.

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.

Wishing you all a happy and prosperous New Year 2016 !

Kind regards,
Indochine Counsel

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Noticeable Points of the New Civil Code

On 24 November 2015, the National Assembly of Vietnam passed the new Civil Code No. 91/2015/QH13 (the “**New Civil Code**”) to replace the current Civil Code No. 33/2005/QH11 dated 14 June 2005. This New Civil Code has, among others, a number of noticeable points as follows.

First, it enshrines the right of a person over his or her gender transformation. This is regarded as a further step for Vietnam's laws in recognizing basic human rights because not only does the New Civil Code articulate the right of re-establishing gender of a person as the previous civil code did, but it also permits a person to transform his or her gender.

Second, regarding civil transactions being invalid in consequence of not complying with formalities as required by laws, Article 129, the New Civil Code expressly stipulates that the competent court, at request of one or both contracting parties, shall recognize the validity of such transactions upon the condition that one or both of the parties have performed at least two thirds of the obligations specified in contracts. However, the new law still remains silent as to how the ratio of completed obligation is computed.

Lastly, the New Civil Code imposes restrictions upon the interest rate as agreed by involved parties in civil transactions. Accordingly, the agreed interest rate shall not be in excess of 20% per annum of the total money lent unless the laws provide otherwise. In case the contracting parties agree on paying the interest but keep silent as to the interest rate, then, under the New Civil Code, this interest rate shall be equal to 50% of the maximum interest rate (i.e. 20% per annum of the total money lent at the time of payment. To put it simply, it would be 10% per annum of the total money lent at the time of payment.

The New Civil Code shall take effect on 1 January 2017.

Law on Network Information Safety – A Brand-New Law of Vietnam

After more than 4 years of discussion, collection of public comments, and amendment, the Law on Network Information Safety No. 86/2015/QH13 was promulgated on 19 November 2015. This Law relates to certain urgent issues in the field of network information safety, such as spam, unauthorized collection and distribution of personal information, hackers, etc.

As defined in the Law on Network Information Safety, “*network information safety*” means the protection of network information and network information systems from the unauthorized access, use, disclosure, interruption, amendment or sabotage in order to ensure the confidentiality and usability of the information on the network system. Under the Law on Network Information Safety, the following six groups of acts are strictly prohibited:

- (a) Preventing the transmission of information in the network, unauthorized intervening, accessing, causing harm, removing, changing, reproducing, or falsifying information in a network;
- (b) Causing adverse impact or obstruction to the normal operation of information systems or the user's accessibility to the information system;
- (c) Attacking, unauthorized invalidating of network information protection means of an information system; attacking, appropriating the control of, and sabotaging the information system;
- (d) Disseminating spam, malware, establishing forging or defrauding of an information system;
- (e) Unauthorized collecting, using, disseminating, doing business in personal information of other persons; abusing weak spots of the information system in order to collect and exploit personal information of other persons; and
- (f) Unauthorized breaking into confidential ciphers and legally encoded information of other entities; disclosing information on civil cipher products, information on clients legally using civil cipher products; using or trading illegal civil cipher products.

The Law on Network Information Safety also provides that entities are not permitted to send commercial information to the e-addresses of recipients without a prior consent from such recipients or in cases where such recipients have refused to receive the information, except for circumstances where recipients have an obligation to receive information as required by law. In addition, telecom enterprises, and enterprises providing telecom application services and enterprises providing information technology services shall provide means for recipients to refuse the receiving of commercial information sent by such enterprises.

Regarding personal information, the Law on Network Information Safety defines "*personal information*" as information for identifying a particular person, and "*processing personal information*" as the carrying out of actions of collecting, editing, using, storing, providing, sharing, disseminating personal information in the network for commercial purposes.

Entities collecting and processing personal information must ensure the safety of such personal information, and must build and publish their own measures of processing and protecting personal information. Entities are permitted to collect personal information of other persons only after having consent from such persons in terms of scope and purposes of such collection and use of personal information. The entities must use the collected personal information for purposes as consented by persons and question, and shall not share such information with any third parties, unless they have consent from such persons or at the request of State competent authorities. The owner of personal information, i.e., the person identified by such personal information, shall have the right to withdraw his/her consent in respect of the collection, processing and use of such information, or to request

entities collecting and processing such information to update, amend, cancel or stop the sharing of that information. The entities shall be responsible for the implementation of such requests from the users or providing the users with the accession right for conducting the update, amendment or cancellation of their personal information.

The Law on Network Information Safety shall come into effect on 1 July 2016.

Guiding Decree for the Law on Excise Tax

On 28 October 2015 nearly one year after the issuance of Law No. 70/2014/QH13 amending and supplementing the Law on Excise Tax (the “**Law on ET**”), the Government of Vietnam issued Decree No. 108/2015/ND-CP (“**Decree 108**”), which provides detailed regulations and guidance on implementation of the Law on ET. Decree 108 took effect on 1 January 2016 and supersedes Decree No. 26/2009/ND-CP dated 16 March 2009 and Decree 113/2011/ND-CP dated 8 December 2011.

The following is the brief outline of certain key issues under Decree 108.

Tax Objects

One of the new points of this Decree is the supplementation of the provisions on excise duty exemption for goods in free trade zones at Section 6 of Article 3. Accordingly, goods imported from abroad into free trade zones, goods sold from inland to free trade zones and used within the free trade zones only; goods traded between free trade zones are all exempted from excise duty (except for goods brought into zones where the applicable free trade zone rules allow residences and no hard fences and vehicles that seat fewer than 24 people).

Moreover, Decree 108 also regulates interpretations of certain liable goods subject to ET, including:

- (a) only those aircraft and yachts used for civil purposes are subject to excise tax;
- (b) votive offerings are subject to excise tax with the exception of children’s toys or related items used for teaching purposes; and
- (c) betting businesses, which include sports, entertainment and other forms of betting are subject to excise tax.

Taxable Price

For imported cars with a seating capacity of less than 24 passengers, the ET taxable price is the importer’s selling price which must not be less than 105% of the import prime cost, including the import price plus (+) import duty (if any) plus (+) ET at import stage. If the selling price of such vehicle

is less than 105% of the import prime cost, then the price for assessing ET shall be fixed by the tax office in accordance with the laws on tax management.

With respect to tobacco, the price for assessing ET includes the compulsory contributions and support fee as prescribed in the Law on Prevention and Control of Tobacco Harm.

Regarding duty excise rate, it is not based on the earlier Tariff issued together with Law No. 27/2008/QH12, rather it complies with the new Tariff issued together with Law No. 70/2014/QH13.

Disclosure of Information on the Securities Market

On 6 October 2015, the Ministry of Finance enacted Circular No. 155/2015/TT-BTC guiding the disclosure of information on the securities market of Vietnam ("**Circular 155**"), replacing Circular No. 52/2012/TT-BTC dated 5 April 2012 on the same subject. In particular, Circular 155 regulates the applicable objects and persons conducting disclosure, disclosure rules, disclosure means, disclosure guidance for each applicable object and forms related to the information disclosure on securities market.

Applicable Objects

Circular 155 is applicable to the following objects:

- (a) public companies and bond issuers (except for the issuer of Government bonds, bonds guaranteed by Government and bonds of local authorities);
- (b) securities companies, fund management companies, branches of foreign fund management companies in Vietnam and public funds;
- (c) Stock Exchanges, Vietnam Securities Depository;
- (d) investors being the information disclosure objects according to the law, which include:
 - (i) internal persons of public companies including members of the Board of Directors, Supervisory Board, Board of Internal Audit, CEO, vice CEO or equivalent management positions as appointed by the General Meeting of Shareholders or Board of Directors, other individuals holding management positions with the authority to sign transactions on behalf of companies in accordance with the Company Charter, CFO, Chief Accountant, Manager of finance and accounting, accountants, legal representatives and the persons authorized to disclose information;
 - (ii) internal persons of public funds including members of Representative Board of public securities investment funds; members of Board of Directors of public securities

investment companies; members of Board of Directors or Members' Council, Chairman, members of Supervisory Board (if any) and members of Executive Board of fund management companies; CFO, Chief Accountant, Manager of finance and accounting, accountants of fund management companies; executors of public fund and public securities investment companies; legal representatives and the persons authorized to disclose information;

- (iii) related persons of the internal persons as listed above;
 - (iv) major shareholders, groups of related persons holding at least 5% of shares with voting rights in public companies, investors holding at least 5% of fund certificates in closed funds and the founding shareholders in the period of transfer limitation of public companies, public securities investment companies and the founding members of public funds; and
 - (v) investors or groups of related investors acquiring to be major shareholder of public companies or to hold 5% or more of closed fund certificates.
- (e) other relevant agencies, organizations and individuals.

Rules of Disclosure

The disclosure of information must be full, accurate, timely and in accordance with the law as well as must be guaranteed that:

- (a) The disclosure objects must disclose the changes and their reasons in cases of any change in the contents of disclosed information;
- (b) In cases where there are events or information affecting the securities prices, the disclosure objects must confirm or correct such events or information within 24 hours of becoming aware of such events or information or as requested by the State Securities Commission and the Stock Exchange;
- (c) The disclosure of personal information such as ID cards or passport numbers, address contacts, permanent addresses, telephone and fax numbers, email and kinds of account number is only conducted if agreed by relevant persons.

The applicable objects of Circular 155 as aforesaid are compulsory to disclose. The applicable objects must share the information as required by law and report the contents of such disclosure to the State Securities Commission and the Stock Exchange at the same time.

Additionally, Circular 155 further provides regulations regarding the forms and minimum time limit for storage and record of disclosed and reported information as well as the language used for disclosure.

Persons Conducting Disclosure

Organizations that implement their duties of disclosure by one legal representative or one authorized person: In cases where both the legal representative and authorized person are absent when a disclosable event occurs, the member holding highest position in the Executive Board shall be responsible to conduct the disclosure information. On the other hand, investors being individuals implement their duties of disclosure by themselves or by authorizing one organization (such as securities companies, fund management companies, public companies, depository members, Vietnam Securities Depository or other organizations) or one individual to do so in accordance with the law.

Disclosure Means

According to Circular 155, the information should be disclosed through the following means: website of the organizations being information disclosure objects, disclosure system of the State Securities Commission, website of Securities Exchange, website of Vietnam Securities Depository and other mass media according to the law (newspaper, electronic newspaper, etc.).

Circular 155 took effect on 1 January 2016.

EU-Vietnam Free Trade Agreement

For some time now Vietnam has been in negotiations with the European Union to formalize a free trade agreement (“**FTA**”). On 2 December 2015, the two parties announced that they had completed discussions for the agreement. Now the FTA must be translated into member country languages and approved by legislators of all parties.

Launched in June 2012, the negotiations were intended to create a comprehensive agreement to foster a prosperous and mutual trade agreement between the two sovereigns. It has been a long three and a half years in coming, but with negotiations concluded, it is only a short while away before the FTA comes into effect and trade between Vietnam and the EU finds itself thoroughly revamped.

EU exports to Vietnam are primarily high tech products including electrical machinery and equipment, aircraft, vehicles, and pharmaceutical products. Vietnam's primary exports to the EU include telephone sets, electronic products, footwear, textiles and clothing, coffee, rice, seafood, and furniture.

The EU has a negative balance of trade in goods with Vietnam. In 2014, EU-Vietnam trade in goods was worth over €28.3 billion, with €22.1 billion in imports from Vietnam into the EU, €6.2 billion in exports from the EU to Vietnam.

The EU is one of the largest foreign investors in Vietnam. In 2015, EU investors committed a total of \$1.3 billion in Foreign Direct Investment and thus became Vietnam's third largest foreign investor partner.

The FTA will open up areas of trade between the two partners and reduce tariffs in key areas of good export/imports. With the completion of negotiations, Vietnam and the EU, two already prosperous trade partners will become even closer as they move into the future.

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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- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

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