



# 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 construction permits to investment in industrial clusters and education.

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

Kind regards,  
Indochine Counsel

## In this issue

Documents for issuing Construction Permits .....	2
Management and Development of Industrial Clusters .....	3
Investment and Operation in Education .....	4
E-Games with Prizes for Foreigners.....	5
Harmony in Conflict .....	6

## Documents for issuing Construction Permits

On 8 May 2017 the Government issued Decree No. 53/2017/ND-CP, effective from 25 June 2017, providing regulations on land documents required for the issuance of construction permits (“**Decree 53**”).

The documents specified by Decree 53 can be categorized into two types:

- (a) Land-use right certificates and ownership certificates, which include:
- Land-use right certificate as provided in the applicable Land Law from 1987 to 2003;
  - Land-use rights, home ownership and attached assets certificate (“**LUR-HO Certificate**”) as provided in the 2013 Land Law and the 2009 Law on amendments of and addition to a number of articles of laws related to investment in capital construction;
  - House ownership and residential land use rights certificates as provided in Decree No. 60/CP, dated 5 July 1994, and Decree No. 61/CP, dated 5 July 1994;
  - House ownership certificate and construction ownership certificate as provided in the applicable laws on residential housing from time to time;
  - Land-use right certificate or written approval for location of a billboard, telecommunication station or antenna in the area where construction and the transformation of the land-use purpose are not permitted.
- (b) Other kinds, which include:
- Documents proving that the applicant is eligible to be granted the LUR-HO Certificate but has yet to receive it according to the 2013 Land Law and its guidance as applicable from time to time or the confirmation of the People’s Committee of the commune;
  - Land documents in cases where the State allocates and leases out land and transforms the land-use purposes after 1 July 2004 without the LUR-HO Certificate;
  - A report on the review and declaration of the use of a land area by organizations and religious facilities without the LUR-HO Certificate and without a decision by the People’s Committee of province;
  - Documents on the ranking of historic and cultural sites and landscapes for granting the license to build, repair, renovate or relocate them without the LUR-HO Certificate;
  - Land lease contracts between the construction investor and the party managing and using transportation works; written approval from a transport authority for the construction in transportation areas;
  - Documents of competent authority that permit the transformation of the land-use purpose where the land user has some particular legal land documents defined in detail in Decree 53 but applied for the construction permit for different purposes;
  - Documents from the competent authority that grant land-use right certificates at the

request of a construction licensing authority to define the area of each type of land if the land user has one of the legal land documents as specified in particular provisions of Decree 53 but does not state clearly the area of each type of land, which is the basis for the issuance of the construction permit.

Decree 53 also provides that if the application for construction permit was submitted prior to the effective date of this decree and the construction permit has yet to be granted, the applicant is required to submit additional legal land documents in accordance with this decree.

## Management and Development of Industrial Clusters

On 25 May 2017 the Government promulgated Decree No. 68/2017ND-CP on the management, development of industrial clusters ("**Decree 68**"). Decree 68 replaces Decision No. 105/2009/QĐ-TTg issued by the Prime Minister, dated 19 August 2009, promulgating the regulation on management of industrial clusters ("**Decision 105**").

### *Incentives and supports for development of industrial clusters.*

For the purpose of promoting investment in industrial clusters, Decree 68 provides incentives and supports for investment projects in industrial clusters with respect to land rent, investment credit from state capital.

*Investment projects of production and business in industrial clusters*, as pursuant to Article 27 of Decree 68, shall enjoy exemption from land rent in **7 years** and other incentives in accordance with the laws.

*Investment projects of businesses in technical infrastructure of industrial clusters*, as pursuant to Article 28 of Decree 68, may enjoy exemption from land rent for **11 years**, be considered for an investment credit from state capital with the maximum credit amount of 70% of the total investment capital and enjoy other incentives.

*For investment projects in construction of technical infrastructure of industrial clusters*, as pursuant to Article 28.2 of Decree 68, a Public Private Partnership may be considered for this type of investment. In addition, the investment projects in construction of technical infrastructure of industrial clusters may enjoy support from the central budget in accordance with the approved Program of target investment in industrial clusters for construction of technical infrastructure for the business relocation of enterprises and manufacturing facilities which cause or threaten to cause environmental pollution.

### *New policies on incentives and supports for development of cottage-industrial clusters.*

Chapter V, Section II provides special incentives and support for investment projects in cottage-

industrial clusters and offers financial support policies applied to entities in term of cost for relocations into industrial clusters.

*Investment projects of production and business in cottage-industrial clusters*, under Article 32.1(a), may enjoy exemption from land rent for **11 years** and be considered for investment credit from state capital with the maximum amount of 70% of the total investment capital.

*Investment projects of businesses in technical infrastructure of industrial cluster*, under Article 32.1(b), may enjoy exemption from land rent for **15 years** and be considered for investment credit from state capital with the maximum amount of 70% of the total investment capital.

Moreover, *enterprises, cooperatives, business facilities of households and individuals*, under Article 32.2, may be supported for the cost of relocation into industrial clusters by local budgets, the specific amount of support from local budgets are based on the provincial People's committee's Decision.

Investment projects in technical infrastructure business, and production and business in cottage-industrial clusters as above shall also enjoy incentives provided for other industrial clusters as prescribed by Decree 68 and other relevant laws.

Decree 68 took effect on 15 July 2017. Decree 68 replaces Decision 105, however, if the industrial clusters were established, expanded or in process of establishment or expansion under Decision 105 they will still have the rights to operate and be managed under Decree 68.

## Investment and Operation in Education

On 21 April 2017 the Government issued Decree No. 46/2017/ND-CP stipulating the conditions for investment and operation in the area of education ("**Decree 46**").

The Decree puts forth the regulations on conditions and procedures for the establishment, permission for establishment, merger, division, split, dissolution; permission for educational/training activities; termination of institutions of pre-school education, general education, continuing education, special schools; universities and academies (hereinafter referred to as university). These conditions consist of a Decision on the establishment, material facilities (such as land, facility, equipment, construction structure, etc.), the management and teaching staff, financial sources and regulations and rules of establishment and operation.

In addition, the new Decree clearly stipulates specific and respective periods that force educational institutions, from the valid date of a decision on the establishment or the permission for establishment, to be permitted for educational/training activities unless such Decision is revoked. Besides, as for a university and the campus of a university which cannot meet the conditions for permission for training activities, there is a high risk of being placed under land revocation protocols in accordance with the current land regulations.

## *Outstanding new provisions for foreign investors*

With a view to adopting policies to encourage educational cooperation with Vietnam, the new Decree has opened another new business channel for foreign educational institutions which are legally operated in Vietnam, allowing them to run their business as an overseas education consultant. Conditions needed to be satisfied by organizations operating in such aspect are as the follows:

- (i) Organization which is legally established;
- (ii) Having headquarters, material facilities and equipment serving for business activities as an overseas education consultant;
- (iii) Staff who directly does overseas study consultancy, have the ability to use at least one foreign language at level 4 or higher following the Vietnamese reference framework for foreign language (6 levels) and equivalent; having certificate of consultancy training in accordance with regulations of the Ministry of Education and Training.

Regarding the application dossier for registration of overseas study consultants, many previously required documents have been reduced. Professional education quality accreditation and overseas study consultancy in professional education under the competence of the Ministry of Labour, War Invalids and Social Affairs shall not be under the governing scope of this Decree.

Decree No. 46/2017/ND-CP took effect on 21 April 2017 and revoked Decision No. 64/2013/QD-TTg, dated 11 November 2013, of the Prime Minister. Also, regulations contained in Decision No. 05/2013/QD-TTg relating to overseas study consultancy are revoked.

## **E-Games with Prizes for Foreigners**

Decree No. 86/2013/ND-CP, dated 29 July 2013, on the business of electronic games with prizes for foreigners ("**Decree 86**") has been amended and supplemented by Decree No. 175/2016/ND-CP, dated 30 December 2016 ("**Decree 175**"). Accordingly, Circular No. 11/2014/TT-BTC dated 17 January 2014, guiding a number of articles of Decree 86, needs to be amended for ensuring its consistence with the amended Decree 86 ("**Circular 11**"). In order to meet such need, on 2 June 2017, the Ministry of Finance issued Circular No. 57/2017/TT-BTC on amendments and supplements to a number of articles of Circular 11 ("**Circular 57**"). Certain remarkable changes under Circular 57 as follow:

Article 9 of Circular 11 provides that only gaming machine manufacturers/ suppliers and independent testing service providers which are licensed to do business in the Macau market and have been published on the website: [www.dicj.gov.mo](http://www.dicj.gov.mo) are permitted to sell gaming machines and providing testing services, respectively in Vietnam. This restriction under Circular 11 has been abrogated by Circular 57.

In addition, technical requirements for gaming machines as provided in Article 10 of Circular 11 have been eliminated from Circular 57, yet gaming business enterprises shall, within the number of gaming machines permitted to use as recorded in its Certificate of eligibility of business conditions, have the right to decide the number of gaming machines actually used. Based on such number, the gaming business enterprises can choose the type of gaming machine, forms of e-games with prizes, and ratio of gaming machines in accordance with regulations, provided that all gaming machines used at any business location shall be 100% new with technical specifications published by the manufacturers, and which have been tested by an independent testing organization operating in a G7 jurisdiction. In this connection, Circular 57 has a transition provision that gaming business enterprises are permitted to continuously use gaming machines which have been legally purchased from time to time before 15 February 2017 for their gaming business until such gaming machines are replaced by new ones which shall comply with requirements under the amended Decree 86 and Circular 57.

During the operation, gaming business enterprises shall have the right to change the number of gaming machines, type of gaming machines, forms of e-games with prizes, and the ratio of gaming machines, provided that such changes shall comply with relating regulations, and the gaming business enterprises shall report the same to the competent authority within five working days as from the date of the changes.

Circular 57 also requires that all activities in any business location of a gaming business enterprise must be monitored and controlled by using electronic devices and camera systems, wherein the positions of entry and exit points, areas of gaming machines and areas related to cash or token (counters, safes, etc.) shall be strictly monitored and fully recorded. Such monitoring devices and camera systems must work for 24 hours per day, and recorded data must be fully archived for at least 30 days from the recording date.

Circular 57 came into effect on 17 July 2017.

## Harmony in Conflict

I was reminded recently of an aspect of Confucianism that I had forgotten since I first studied Asian religions in college: harmony.

In addition to the ideas of a strict hierarchy involving emperors, mandarins, parents and children, there is also the overriding theme of harmony that intertwines throughout the other aspects of the philosophy.

I have often used the example of witnessing a very intelligent partner sit down with a foreign client who wished to enter into a lawsuit with a major investor. This foreigner felt he had been cheated out of a major bonus payment because of the actions of the investor. From what we could tell he was right, but the partner, who I've already said was intelligent (and I'm not licking boots), insisted that the conflict be carefully managed into a slow escalation.

At the time I felt this was a matter of Face, and I have since used this example multiple times to explain Face, but to my new memory of harmony, I think the example fits better under that heading.

Harmony is defined as agreement or concord. That means there is a lack of conflict, a carefully considered lifestyle that minimizes the reasons for conflict. That's one of the reasons you'll hear various Asians say, "Yes," "It's up to you?" "No problem." They are simply taking the path of least resistance and demonstrating their desire for harmony.

This is very important to understand, and I apologize for misleading with my mistaken understanding, but conflict is hurtful. It is to be avoided, even though it may mean a loss of funds.

At one point I relied on a secretary to purchase plane tickets for me. At first I told her to get the schedule, but she reserved the tickets anyway, which cost an extra hundred dollars. Now I knew that her salary was somewhere between three and four hundred dollars a month, and my salary was considerably more. While she offered to pay the difference, I allowed her to slide, taking the loss of the misunderstanding on my own wallet.

Investing in Vietnam, or in South or Southeast Asia, understanding harmony can be vital. While there is the necessary equivalent of Face, and losing Face, harmony is the accord that prevents situations from escalating to that level.

## 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.

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

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