



2018 Year Review

Vietnam

Vietnam has become an attractive destination for foreign investors. 2018 has seen the introduction of several new regulations covering areas such as labor, renewable energy, cyber security law and new law on competition. We have summarized the key legal and tax developments and new regulations introduced year 2018.



New Penal Code Enters Into Force

In 2015, Vietnam's National Assembly approved Penal Code No. 100/2015/QH13 dated 27 November 2015, ("**Penal Code**"). The Penal Code was due to take effect on 1 July 2016 and included new offences that criminalized certain anti-competitive practices that would otherwise be dealt with through the Competition Law. The Penal Code has important implications for participants in anti-competitive agreements or individuals engaged in bid-rigging activities, including penalties ranging up to potential imprisonment. It is still not clear how these new criminal competition offences will be interpreted or applied; particularly where there is overlap with practices that also infringe the Competition Law. On 30 June 2016, the National Assembly voted to delay implementation of the Penal Code while it considered further amendments.

More recently, the National Assembly adopted Resolution No. 41/2017/QH14 dated 20 June 2017 which made the Penal Code effective as of 1 January 2018. We set out the relevant provisions below and note that there have been almost no amendments to the described Penal Code provisions since their initial introduction other than clarifying the application of bid-rigging provisions to situations where administrative sanctions have already been imposed.

Article 217 of the Penal Code penalizes parties that reach certain forms of agreements where such conduct results in illicit profits of VND 500 million to 3 billion (approximately USD 22,000 to 132,000) or damages of VND 1 to 5 billion (approximately USD 44,000 to 220,000).

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Changes To Wind and Solar Power Feed-in-Tariff Deadlines

On 10 September 2018, the Prime Minister issued Decision No. 39/2018/QĐ-TTg ("**Decision 39**"), amending Decision No. 37/2011/QĐ-TTg of the Prime Minister dated 29 June 2011 on mechanisms to support the development of wind power projects in Vietnam. Under Decision 39, the wind FIT (excluding VAT) will be VND 1,928 per kWh (equivalent to US cents 8.5 per kWh) for onshore wind power projects and VND 2,223 per kWh (equivalent to US cents 9.8 per kWh) for offshore wind power projects. This replaces the previous wind FIT of US cents 7.8 per kWh.

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Workable Alternatives to Private Power Purchase Agreements for Renewable Energy Projects

Corporate, direct or private renewable power purchase agreements ("**PPAs**") have become increasingly popular worldwide as a way for companies with high electricity needs to reduce their long-term energy costs, as well as their carbon footprint. As Vietnam's renewable energy market continues to grow in light of the recent introduction of a dedicated feed in tariff ("**FIT**") and specific regulations for solar energy investments in 2017, the interest amongst project developers and consumers in implementing private PPAs has increased considerably. This has prompted questions on whether private PPAs are permissible under Vietnam's current regulatory framework and how such direct sales of electricity can be implemented in practice.

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Bankruptcy Settlement Procedures

The Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Court issued Joint Circular No. 07/2018/TTLT-BTP-VKSNDTC-TANDTC dated 12 June 2018, on cooperation in enforcement of court's decisions on bankruptcy settlements ("**Joint Circular 07**"), which came into effect on 1 August 2018. Joint Circular 07 sets forth new guidelines on cooperation in the procedures for enforcement of court's decisions on bankruptcy settlements. Key new provisions include guidelines on enforcement of court's decision on a bankruptcy settlement and asset valuation and sales consequent to a people's court's decision on a bankruptcy settlement, among other things. By clearly providing relevant deadlines, procedures, rights and obligations of relevant bodies, Joint Circular 07 improves coordination between the people's court, the civil judgment enforcement agency and relevant organizations/individuals such that bankruptcies and insolvency processes can be more efficient.

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Vietnam's New Cyber Security Law

Vietnam's National Assembly recently passed the Law on Cyber Security 2018 on 12 June 2018 which contains certain additional requirements with respect to data protection. The new law requires that foreign organizations: (i) store personal information of users, data on the relationship between service users, and data created by service users in Vietnam; and (ii) in certain cases, to set up a commercial presence in Vietnam in the form of a subsidiary or representative office in order to be entitled to store personal data in Vietnam.

The specific term for the holding of information, the information that must be stored, and the types of foreign organizations that must maintain a commercial presence in Vietnam are to be determined by the Government via regulations that have yet to be enacted. Of note for employers, the new law requires employees who engage in cyber security activities to obtain special training on how to appropriately manage cyber security activities. Again, implementing regulations are still pending which may shed more light on these training requirements. [Read more](#)

New Competition Law Will be Effective Soon

On July 1, 2019, the new Law on Competition ("**2018 Law**") will take effect and it has some significant differences from the existing Law on Competition ("**2014 Law**"). While certain details are yet to be determined, below we will outline some of the significant differences that businesses should note between the two laws. In addition, in October 2018, a draft decree was published for discussion purposes providing more details on certain provisions of the 2018 Law ("**Draft Decree**"). While it is not clear, how closely the final issued decree will follow the contents of the Draft Decree, where appropriate we have incorporated references to the Draft Decree herein. [Read more](#)

2019 EXPECTED DEVELOPMENTS



The National Assembly (“NA”) passed Resolution No. 57/2018/QH14 dated 8 June 2018 on the legislative program in 2019 (“**Resolution 57**”). Based on Resolution 57, several proposed amendments to key laws concerning business communities in Vietnam are expected to be discussed and approved by the NA in 2019. We summarize below the proposed amendments to the Securities Law, Investment Law, Enterprises Law and Labor Code.

1. Key amendments to the Securities Law include the following:

- (i) Amend the several definitions, such as institutional securities investor, people with inside information;
- (ii) Stricter conditions for initial public offering;
- (iii) New regulations on fund for protection of investors;
- (iv) Restrictions applicable to public funds;
- (v) Amendments to the maximum fine for administrative violations to be VND 3,000,000,000 for organization and VND 1,500,000,000 for individual (increasing 50% in comparison with the previous maximum fine).

2. Key amendments to Investment Law and to Enterprises Law consist of the following:

- (i) Supplement of the principle of non-retroactive effect of investment conditions in case amendments to laws or policies cause negative influence on investment conditions previously provided in the Investment Registration Certificate;
- (ii) Amendment on cases where foreign investors are obligated to perform registration procedures for capital contribution, shares purchase and contributed capital purchase;
- (iii) Abrogation of a number of cases of investment policy approval that fall under the jurisdiction of the Prime Minister;
- (iv) Abrogation of issuance procedure for the Overseas Investment Certificate, which is replaced by the mechanism of registration for overseas investment capital transfer with the Foreign Exchange Management Authority;
- (v) Abrogation of 21 conditional business lines;
- (vi) Extension of the time limit for charter capital contribution from 90 days to 36 months; and
- (vii) Amendment on professional requirements for the Head of the Inspection Committee of joint stock companies and inspectors of listed companies or a companies with more than 50% of charter capital held by the State.

3. Key amendments to Labor Code consist of:

- (i) Employees may terminate labor contract without providing advance notice in certain cases;
- (ii) An increase in overtime hours from 300 hours to 400 hours per year and the rate of overtime pay;
- (iii) Specific regulations on payment of wages, deducting sums from wages and wages on ceasing work to ensure that employees have more favorable conditions;
- (iv) Increase in the male and female retirement age; and
- (v) Labor authorities could conduct inspections without advance notice.

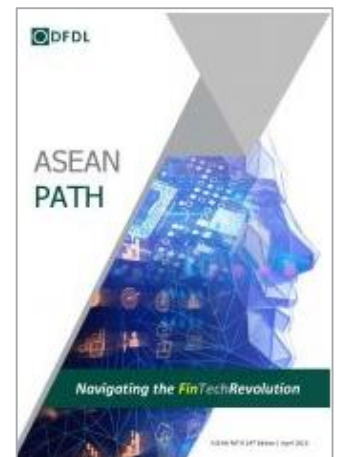
2018 PUBLICATIONS



Vietnam Investment Guide



ASEAN Path #15 GDPR



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