

## FRASERS NEWSLETTER – MARCH 2018

In this edition of our newsletter we report on the following:

- i) New Decree amending decrees on business conditions under the authority of the Ministry of Industry and Trade;
- ii) Draft Decree amending Decree No. 78/2015/ND-CP on enterprise registration;
- iii) Draft Decree on the confidentiality of, and supply of customer information of credit institutions and branches of foreign banks; and
- iv) New Decree guiding the Law on Food Safety.

### 1. **New Decree amending decrees on business conditions under the authority of the Ministry of Industry and Trade**

On 15 January 2018, the Government issued Decree No. 08/2018/ND-CP amending some decrees in relation to business conditions under the management of the Ministry of Industry and Trade (**MOIT**) (**Decree 08**). Decree 08 introduces major changes in relation to a number of important sectors, including, among others, oil and petroleum, and franchising.

#### i) **In relation to oil and petroleum trading:**

Decree 08 amends certain conditions imposed on oil and petroleum exporters and importers which are prescribed under Decree 83/2014/ND-CP dated 3 September 2014 of the Government regulating oil and petroleum trading (**Decree 83**).

For example, under Decree 83, oil and petroleum exporters and importers must own or co-own a warehouse system, petroleum transportation vehicles, and petroleum retail shops for a specified period of time subsequent to the issuance of the business licence (**BL**). Under Decree 08, these requirements have been removed.

#### ii) **In relation to franchising activities:**

Franchising activities have been regulated by Decree 35/2006/ND-CP, dated 31 March 2006 of the Government (**Decree 35**). The regulations under this decree have been amended in favour of both franchisors and franchisees.

Decree 08 removes the condition that requires the franchisees to have been operating for at least one year before starting the franchising. This means that also newly established companies will be able to conduct franchise activities.

Decree 08 still requires foreign franchisors to register with the MOIT before conducting

franchising activities in Vietnam. However, the statutory conditions that a foreign franchisor needs to satisfy for such registration have been reduced to one single condition. That single condition is that its franchise system must have been operating for at least one year.

Decree 08 took effect on 15 January 2018.

## 2. Draft Decree amending Decree 78/2015/ND-CP on enterprise registration

At the end of 2017, the Ministry of Planning and Investment (*MPI*) introduced a Draft Decree amending Decree No. 78/2015/ND-CP dated 14 September 2015 of the Government on enterprise registration (*Decree 78*). This Draft Decree was published on the website of MPI on 25 December 2017 for the purpose of obtaining opinions from relevant individuals and organisations.

In general, the major steps required and the time limits with respect to enterprise registration remain unchanged. Some notable proposed changes contained under the Draft Decree include the following:

### i) The delegation of authority to conduct procedures for enterprise registration

- Under Decree 78 and other current legislation, there is no regulation requiring that a power of attorney (*POA*) held by the person who will conduct procedures for enterprise registration must be certified or notarised. However, in practice some licensing authorities in different provinces still require the POA to be certified or notarised. The Draft Decree clearly states that a POA does not need to be certified or notarised;
- The Draft Decree has also provided detailed guidelines regarding individuals who have the right to sign a POA in a case where a legal representative is absent, is detained, has a mental illness, has another illnesses causing them to be incapable of being aware of or controlling their own acts, or refuses to sign the POA. In such cases, the Owner, the Chairman of the Members' Council or the Company Chairman (for a limited liability company (*LLC*)) or the Chairman of the Board of Management (for joint stock company (*JSC*)) shall sign the POA.

### ii) The application file and procedures for the conversion of a private enterprise into a JSC

- Currently, a private enterprise which wishes to convert into a JSC must take two steps: the private enterprise shall convert to a LLC and then that LLC shall convert to a JSC. To reduce the time and cost for not only enterprises but business registration offices (*BOR*), the MPI has supplemented the regulations regarding the filing of the application and procedures for a private enterprise directly converting to a JSC.

### iii) The certificate of a business line

- Since the Law No. 68/2014/QH13, entitled the Law on Enterprises, dated 26 November 2014 (*Law on Enterprises*) became effective on 01 July 2015, the contents of an Enterprises Registration Certification no longer include the business lines which an enterprise may carry out. Under the Draft Decree, enterprises are entitled to request the BOR to issue a certificate of the business lines for the purpose of registering subsidiaries or conducting business transactions.

### iv) No need to use the seal for requesting enterprise registration and notification

- Under the Draft Decree, with respect to an enterprises registration application file, enterprises are not mandatorily required to affix their seals to a letter requesting enterprise registration and notification.

### v) Online enterprise registration

- Under Decree 78 an application for a business registration dossier may be made online via the National Business Registration Portal.

- The Draft Decree provides more details about who has the right to authenticate the online enterprise registration. It can be either: (a) the legal representative(s) of the company; or (b) person authorised to conduct the relevant procedures. The Draft Decree also requires that the documents assigning the authorisation are also to be included in the online business registration files;
- The time limit for amending and supplementing the online business registration file shall be 180 days from the date of issuance of the notification requiring changes or additions to such application file. Accordingly, such application file shall be revoked if there is no amendment after the required period of time.

**vi) Notification of a change of information on the founding shareholders' for a JSC**

- Under the Draft Decree, the notification of change of information on the founding shareholders' shall only be applicable where the founding shareholders fail to fulfil the required payment for shares registered in accordance with Article 112.1 of the Law on Enterprises. In other cases including where the founding shareholders have partly paid for registered shares, transferred their shares, are of organisations subject to a merger or separation or which are being consolidated with other enterprises and where the founding shareholders donate or inherit shares under Article 51 of Decree 78 there shall no longer be a requirement to give notice of the change of founding shareholders' information;
- Enterprises are responsible for giving notice of such information within 30 days from the date of completion of the share payment in accordance with Article 112.1 of Law on Enterprises.

**3. Draft Decree on the confidentiality of, and supply of customer information of credit institutions and branches of foreign banks**

- The Draft Decree was prepared by the State Bank of Vietnam (the **Draft Decree**) in order to replace Decree No. 70/2000/ND-CP dated 21 November 2000 governing the same subject matter (**Decree 70**).

The Draft Decree aims to provide further elaboration on the issue of confidentiality of customer information in relation to the banking sector, improving current regulations under Decree 70 to meet modern day requirements, better protect the interests of clients and ensuring consistency with other relevant regulations.

- The Draft Decree specifies, among others, (i) the concept of "client information" in relation to the banking sector; (ii) the persons that can be provided with client information; (iii) the methods for the provision of client information (direct, indirect or via electronic means); (iv) the time period for provision of client information; (v) procedures for the provision of client information; and (vi) the storing and protection of client information.

Some noteworthy points under the Draft Decree are specified below.

- Firstly, the concept of "client information" is clearly specified to include all information initially provided by the clients, and the information arising out of the process of the clients' use of the services of the credit institutions and branches of foreign banks, including information about the account, deposits, deposited assets, and transactions by the clients.

This definition is an improvement as compared to the definition provided under the current Decree 70 as it covers a broader category of client information to be protected, and ensures consistency with the current Law on Credit Institutions;

- Secondly, credit institutions and branches of foreign banks can only provide their client information to a few specified targets, including, among others, the clients themselves, the legal representatives

or guardians of the clients in special circumstances, relevant authorised state agencies, and some internal divisions of the same credit institutions and branches of foreign banks for their internal use (including for the purpose of reporting to foreign banks on the activities of the branch, and reporting to other relevant authorised government agencies of the foreign countries where the foreign banks are located). Article 8 of the Draft Decree also provides for the possibility that client information of credit institutions and branches of foreign banks can be stored in servers located offshore.

The above regulations are an improvement as compared to the current Decree 70. Decree 70 currently does not offer the possibility of providing client information to legal representatives or guardians of the clients, therefore causing difficulties in a situation when the clients are missing or dead. In addition, Decree 70 currently does not clearly specify the possibility for the branches to transfer their client information to foreign banks and for foreign banks to store such information in an offshore server, therefore causing difficulties in relation to the internal management of foreign banks over their branch activities in Vietnam.

- Thirdly, the Draft Decree specifically requires that credit institutions and branches of foreign banks must develop and maintain internal regulations on the confidentiality of, and storing and supply of client information, in order to ensure that client information is protected in accordance with the law.

The Draft Decree is being considered by the State Bank of Vietnam and the Government (noting that the period for calling for opinions has expired), and the decree is expected to be issued within the first half of 2018).

#### 4. New Decree guiding the Law on Food Safety

On 2 February 2018, Decree 15/2018/ND-CP was issued by the Government (**Decree 15**) providing detailed regulations for the implementation of the Law on Food Safety. Decree 15 replaces the former Decree 38/2012/ND-CP, dated 25 April 2012, of the Government which regulates in detail some articles on the Law on Food Safety (**Decree 38**). Decree 15 also repeals Chapter II of the Joint Circular 13/2014/TTLT-BYT-BNNPTNT-BCT, dated 9 April 2014 of the Ministry of Health, Ministry of Ministry of Agriculture and Rural Development and Ministry of Industry and Trade (**Circular 13**). Circular 13 provides guidelines on the allocation of tasks and cooperation among regulatory agencies in food safety management. Decree 15 takes effect as from its execution date.

- One noticeable point of Decree 15 with respect to food products, is a newly introduced mechanism for self-declaration of conformity with technical regulations and with food safety regulations. This contrasts with Decree 38, which required products to obtain a declaration of conformity with technical regulations and with food safety regulations. Under Decree 15:
  - i) some products only require a self-declaration by the food producers and traders (as stipulated under Clause 1 Article 4);
  - ii) some products still require a conformity declaration by the relevant authorities (as stipulated under Article 6); and
  - iii) some products are exempted altogether from the declaration requirements (as stipulated under Clause 2 Article 4).
- The second change introduced under Decree 15, with respect to food producers and traders, compared to Decree 38 is the introduction of a more favourable business environment for small and individual food producers and traders. In particular, Decree 15 expands from four to ten the categories of producers and traders that are not required to obtain a food safety conditions satisfaction certificate:
  - i) Small-scale primary producers;
  - ii) Food producers and traders without a fixed location;
  - iii) Small-scale primary treatment units;
  - iv) Small-scale food traders;
  - v) Packaged food traders;

- vi) Producers and traders of equipment and materials used for wrapping and containing food;
  - vii) Restaurants in hotels;
  - viii) Collective kitchens where food trading is not one of the registered business lines;
  - ix) Street food traders; and
  - x) Units that are issued with one certain type of certifications as listed at item (k) of Clause 1 Article 12 of Decree 15.
- The third change is that Decree 15 introduces mandatory registration of the contents of advertisements for some types of food products. In particular Article 26 of Decree 15 now requires that the contents of advertisements for the following food products must be registered with the relevant authorities before the advertisement is placed:
    - i) health supplements, food for special medical purposes, food for special dietary uses; and
    - ii) nutritional food for children aged below 36 months not prohibited from being advertised subject to Article 7 of Law on Advertising.
  - The fourth notable change is in relation to labelling requirements. While Article 18 of Decree 38 provided uniform labelling requirements (by listing the information required to appear on the labels of all products), Article 25 of Decree 15 now provides exemptions from a number of compulsory requirements for the contents of labels for certain products. In addition, Article 24 of Decree 15 provides that:
    - i) Labels for food products for special medical purposes and food for special dietary uses must follow precisely the template description provided for under Decree 15; and
    - ii) Labels for imported products must contain specified compulsory information.

We trust that you find this edition of our newsletter an interesting read and welcome any feedback or comments you may have on any of our topics. Our address for comments is [legalenquiries@frasersvn.com](mailto:legalenquiries@frasersvn.com).

Whilst we aim to provide a useful update on new legislation, Frasers' Newsletter does not constitute formal legal advice. Should you feel that you require further information on any of the issues in this edition of the Newsletter, please contact us at the address above or via your usual Frasers' legal adviser.

### **Ho Chi Minh City**

Unit 1501, 15th Floor, The Metropolitan  
235 Dong Khoi Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84 28 3824 2733

Email: [legalenquiries@frasersvn.com](mailto:legalenquiries@frasersvn.com)

### **Hanoi**

Unit 1205, 12th Floor, Pacific Place  
83B Ly Thuong Kiet Street, Hoan Kiem District  
Hanoi, Vietnam  
Tel: +84 24 3946 1203

Website: [www.frasersvn.com](http://www.frasersvn.com)

---

This article provides a summary only of the subject matter covered, without the assumption of a duty of care by Frasers Law Company.

The summary is not intended to be nor should it be relied on as a substitute for legal or other professional advice.