


# FRASERS NEWSLETTER - MAY 2019

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

(i) New Directive on a number of measures to promote the stable and healthy development of the **real estate market**;

(ii) New Decision on the **import of used machinery**, equipment and technological lines;

(iii) Draft **Amendments to the Labour Code** (Draft No. 2);

(iv) Draft **Amendments to the Law on Public Investment**;

(v) Draft Circular on the limits and safety ratios in the operation of **foreign banks and branches**; and

(vi) New draft Decision (Draft No. 3) on the mechanisms to encourage the development of **solar power projects** in Vietnam.

## 1 New Directive on a number of measures to promote the stable and healthy development of the real estate market

On 23 April 2019, the Prime Minister issued the Directive No. 11/CT-TTg on a number of measures to promote the stable and healthy development of the real estate market (***Directive 11***).

Accordingly, the Prime Minister required the relevant authorities to issue specific pieces of legislation according to the following timeline:

**(i) The Ministry of Construction is required to:**

(a) complete the final version of the Law amending and supplementing a number of articles of the Law on Construction, Law on Housing and Law on Real Estate Business;

(b) amend and supplement the construction standards and criteria for condominiums, condotels, resorts villa, and officetels; and

(c) issue the regulations on management for officetels within the third quarter of 2019;

**(ii) The Ministry of Natural Resources and Environment is required to:**

(a) issue the documents providing guidance on the land use regime for certain new forms of real estate (condotels, resorts villa, officetels and other forms) within the third quarter of 2019; and

(b) complete the analysis on the amendments and supplements to the land use regime and the issuance of Land Use Right Certificates for certain new forms of real estate (condotels, resorts villa, officetels and other forms) in the Law amending and supplementing a number of articles of the Law on Land.

(iii) **The Ministry of Culture, Sports and Tourism is required to** issue the regulations on management and trading for condotels, resorts villa and officetels within the third quarter of 2019.

## 2 New Decision on the import of second-hand machinery, equipment and technological lines

On 19 April 2019, the Prime Minister issued Decision No. 18/2019/QD-TTg (***Decision 18***) on the import of second-hand machinery, equipment and technological lines. Decision 18 shall take effect as from 15 June 2019. Below are some highlights of the key provisions under Decision 18:

### (i) Import criteria for second-hand technological lines

A second-hand technological line is permitted to be imported if it satisfies the following criteria:

- It was manufactured in accordance with the standard national technical regulations (***SNTR***) on safety, energy saving and environmental protection. If there is no SNTR on the imported technological line, then such line must have been manufactured in accordance with the technical criteria of Vietnam's national standards or the national standards of a G7 country or of South Korea on safety, energy saving and environmental protection;
- Its residual capacity (calculated as the number of products produced by the technological line within a given unit of time) or its residual efficiency must be 85% or more of the design;
- The rate of consumption of raw materials, supplies and energy must not exceed 15% of the design;
- The technology of the technological line is not on the lists of technologies the transfer of which is prohibited or restricted; and
- The technology of the technological line is currently being used by at least three (3) manufacturing facilities in member countries of the Organization for Economic Cooperation and Development (***OECD***).

### (ii) Import criteria for second-hand machinery or equipment

Second-hand machinery or equipment is permitted to be imported when it satisfies the following criteria:

- The age of the equipment does not exceed ten (10) years (a different age is provided for in Appendix 1 of Decision 18 with respect to machinery and equipment belonging to a number of specific sectors); and
- It was manufactured in accordance with the SNTR on safety, energy saving and environmental protection. If there is no SNTR on the imported machinery, then such machinery must have been manufactured in accordance with the technical criteria of Vietnam's national standards or the national standards of a G7 country or of South Korea on safety, energy saving and environmental protection.

## 3 Draft Amendments to the Labour Code (Draft No. 2)

On 28 April 2019, the Ministry of Labour, Invalids and Social Affairs (***MOLISA***) has recently published the second Draft of the Labour Code (***Draft Labour Code***) aiming at replacing the current Labour Code (***Current Labour Code***), for public comments.

Some of the key provisions contained in the Draft Labour Code include:

### (i) Increase in the overtime hours

The Draft Labour Code proposes to increase overtime hours from 300 hours per year (as prescribed in the Current Labour Code) to 400 hours per year, with a maximum cap of 12 hours per day for the combined official working hours and overtime hours.

### (ii) Increase in retirement age

(a) The Current Labour Code provides that the retirement age for male and female worker is 60 years and 55 years respectively;

(b) The Draft Labour Code proposes an increase in the retirement age for male workers from 60 to 62 years, and for female workers from 55 to 60, as from 1 January 2021 in accordance with one of the two following schedules:

- Schedule 1: Increase by three months per year with respect to men and four months per year with respect to women from 1 January 2021; and

- Schedule 2: Increase by four months per year with respect to men and six months per year with respect to women from 1 January 2021.

**(iii) New provisions regarding Representative Organisations**

The Draft Labour Code provides that employees have the right to establish and join the organisation of their choosing representing the employees at the grassroots level (***Representative Organisation***).

**(iv) Changes to public holidays**

(a) The Draft Labour Code proposes two options for public comment:

- The first option is to maintain the possibility for employees, if the Lunar New Year Holiday coincides with a weekly day off, to take weekly days off on the following working days;
- The second, alternative, option is to reduce the Lunar New Year Holiday so that if the Lunar New Year Holiday coincides with a weekly day off, the employees are no longer allowed to take a weekly day off on the following working day;

(b) In addition, the Draft Labour Code proposes to include the “War Invalids and Martyrs Day” (which occurs on July 27th of each calendar year) as a public holiday.

**(v) Better protection for employees and no discrimination on female employees**

(a) Under the Draft Labour Code, legal protection is extended to employees who do not have a written employment contract. Specifically, the Draft Labour Code provides that a labour contract entered into by electronic means in the form of data messages in accordance with the law on electronic transactions is also deemed to be a written labour contract;

(b) The Draft Labour Code provides a definition of sexual harassment in the workplace, meanwhile the Current Labour Code does not define the concept of “sexual harassment in the workplace”;

(c) Under the Draft Labour Code, female employees are no longer prohibited from doing certain jobs. Article 160 of the Current Labour Code lists out works which must not be assigned to female employees, while the Draft Labour Code only prohibits to assign *“work which has an adverse effect on the ability to bear and raise a child”* without expressly prohibiting all female workers from performing such work.

## 4 Draft Amendments to the Law on Public Investment

The Government of Vietnam is currently drafting a new law on public investment (***Draft Law***), which will replace the current Law No. 49/2014/QH13, entitled the Law on Public Investment, passed by the National Assembly of Vietnam on 18 June 2014 (***Law on Public Investment***). The Draft Law also amends a provision of the Law No. 55/2014/QH13, entitled the Law on Environment Protection, passed by the National Assembly of Vietnam on 23 June 2014 (***Law on Environment Protection***).

The National Assembly is expected to review and approve the Draft Law during its Seventh Session starting in May 2019. Below are some highlights of the key changes under the Draft Law as compared to the current Law on Public Investment.

**(i) Exclusion of public-private partnership (*PPP*) provisions**

The current Law on Public Investment includes provisions for investment in the form of PPP. However, these regulations have been removed from the Draft Law in order to avoid overlaps with another bill exclusively on PPP investments which is currently being drafted by the Ministry of Planning and Investment (***MPI***) and is expected to be submitted to the National Assembly for further consideration.

**(ii) Classification of public investment projects**

Under the Draft Law, some classification criteria have been changed in comparison with the current Law on Public Investment. Specifically, the amounts of investment capital used to classify important national projects, group-A projects, group-B projects, and group-C projects have been increased.

The Draft Law provides further that confidential projects related to defence and security matters shall be classified as group-A project regardless of the total investment capital.

**(iii) Exemption from in-principle investment decision**

The Draft Law clarifies that emergency projects, projects preparation, project planning, projects in the national objectives program, and component projects of projects that have been granted the in-principle investment decision are exempted from obtaining an in-principle investment decision, whereas the current Law on Public Investment remains silent on this issue.

**(iv) Adjustment of in-principle investment decision**

The Draft Law introduces a legal framework for adjustment of the in-principle investment decision, while the current Law on Public Investment does not provide the same. The procedures and authority for adjusting the in-principle investment decision shall be similar to those for obtaining the initial in-principle decision.

**(v) Increasing decentralisation**

The Draft Law provides a more favorable framework for ministries, central authorities, and local governments in public investment activities than that of the current Law on Public Investment.

To be specific, under the Draft Law, the ministries, central authorities, and local governments are able to conduct the appraisal on capital source and capital balance capacity of the investment projects and programs without the involvement of the MPI and the Ministry of Finance (***MOF***). As of now, the MPI and MOF are instead currently responsible for conducting such appraisals according to the Law on Public Investment.

Further, pursuant to the Draft Law, the local people's committees may grant in-principle investment decisions for several types of group-B and group-C projects which are currently reserved matters for the local people's councils.

**Time schedule for implementation and disbursement of capital in public investment plans**

Under the Draft Law, the capital provided in public investment plans for a specific period must be implemented and disbursed no later than 31 January of the first year of the immediately preceding period, which is 12-month earlier than that of the current Law on Public Investment.

**(vi) Amendment to the Law on Environmental Protection**

The Draft Law provides that the issuance of in-principle investment decision shall be based on a preliminary environment impact assessment, instead of a full environmental impact assessment report as currently stipulated in the Law on Environmental Protection. The Government will give further guidance on the preliminary environment impact assessment.

## 5 Draft Circular on prudential ratios and limits in activities of banks and foreign bank branches

The State Bank of Vietnam (***SBV***) has recently issued a draft circular (***Draft Circular***) in order to replace Circular 36/2014/TT-NHNN of the dated 20 November 2014, stipulating prudential ratios and limits in activities of credit institutions and foreign bank branches (***Circular 36***).

The Draft Circular provides for two material amendments of Circular 36:

(i) The Draft Circular removes non-banking credit institutions from its scope of application, while Circular 36, on the contrary, applies to all credit institutions (including banks and non-banking credit institutions) and foreign bank branches. The Draft Circular will therefore provide prudential ratios and limits only with respect to the activities of banks and foreign bank branches.

The elimination of non-banking credit institutions where finance leasing is considered as the main activity from the scope of the Draft Circular leads to the fact that finance leases are no longer included in the total outstanding balance of medium term and long term lending (Article 16.2 of Draft Circular).

(ii) As per Article 16.5 of Draft Circular, the SBV proposes to continue to reduce the maximum ratio of short term capital which may be used for medium term and long term lending according to one of following plans.

<table>
<tr><th></th><th>Current<br>(%)</th><th>From 1 July 2020<br>(%)</th><th>From 1 July 2021<br>(%)</th><th>From 1 July 2022<br>(%)</th></tr>
<tr><td>Plan 1</td><td rowspan="2">40</td><td>35</td><td>30</td><td rowspan="2">30</td></tr>
<tr><td>Plan 2</td><td>37</td><td>34</td></tr>
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## 6 New draft Decision (Draft No. 3) on the mechanisms to encourage the development of solar power projects in Vietnam

The current Decision No. 11/2017/QD-TTg of the Prime Minister, dated 11 April 2017, providing the encouragement mechanism for the development of solar power projects in Vietnam (***Decision 11***), is in effect only until 30 June 2019. On 12 April 2019, the Ministry of Industry and Trade of Vietnam (***MOIT***) published a new draft Decision (***Third Draft Decision***) to replace the Decision 11 and the current draft Decision issued on 22 February 2019 on the same matter (***Second Draft Decision***).

(i) While the Second Draft Decision subdivides grid connected solar power projects into three different groups, based on the solar power technology utilised by each project, including (i) floating solar power project; (ii) ground solar power project; and (iii) solar power project integrating a storage system, the Third Draft Decision now removes the definition and the separate feed-in tariffs (***FiTs***) for solar power project integrating a storage system.

(ii) Also, according to the Third Draft Decision, the electricity producer is entitled to sell electricity to different electricity buyers other than Electricity of Vietnam Corporation (***EVN***) and EVN's authorised member units, under a direct power purchase agreement (***the DPPA***). Accordingly, the electricity price and the terms of the DPPA will be negotiated and agreed by the parties, regardless of the FiTs and prices applied by EVN.

(iii) The Third Draft Decision also increases the power purchase tariffs applicable to the power output from floating solar power project as follows[1]:

| Solar power technology | Region I | | Region II | | Region III | | Region IV | |
|---|---|---|---|---|---|---|---|---|
| | VND/ kWh | *Equivalent USD cent/ kWh* | VND/ kWh | *Equivalent USD cent/ kWh* | VND/ kWh | *Equivalent USD cent/ kWh* | VND/ kWh | *Equiva-lent USD cent/kWh* |
| <u>Floating solar power projects</u> | <u>2.281</u> | *<u>9,98</u>* | <u>1.963</u> | *<u>8,59</u>* | <u>1.758</u> | *<u>7,69</u>* | <u>1.655</u> | *<u>7,24</u>* |
| Ground solar power projects | 2.102 | *9,20* | 1.809 | *7,91* | 1.620 | *7,09* | 1.525 | *6,67* |
| Rooftop solar power projects | 2.486 | *10,87* | 2.139 | *9,36* | 1.916 | *8,38* | 1.803 | *7,89* |

The power purchase tariffs of the power output from grid connected projects shall only apply to a part or to entire grid connected projects which reach commercial operation date (***COD***) from 1 July 2019 to 30 December 2021, and shall last for 20 years from the COD.

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(a) Region I includes 28 provinces in the north of Vietnam: Ha Giang, Bac Kan, Cao Bang, Tuyen Quang, Thai Nguyen, Lao Cai, Yen Bai, Lang Son, Quang Ninh, Phu Tho, Vinh Phuc, Bac Giang, Hai Duong, Hoa Binh, Ha Noi, Ha Nam, Bac Ninh, Hung Yen, Hai Phong, Ninh Binh, Thai Binh, Ha Tinh, Nam Dinh, Quang Binh, Thanh Hoa, Lai Chau, Nghe An and Son La;

(b) Region II includes 6 provinces in the center of Vietnam: Quang Tri, Dien Bien, Thua Thien Hue, Quang Nam, Da Nang and Quang Ngai;

(c) Region III includes 23 provinces in the south of Vietnam: Kon Tum, Ca Mau, Hau Giang, Binh Dinh, Bac Lieu, Kien Giang, Soc Trang, Can Tho, Vinh Tho, Tra Vinh, Lam Dong, Ben Tre, Tien Giang, An Giang, Dak Nong, Ho Chi Minh City, Dong Nai, Dong Thap, Ba Ria – Vung Tau, Long An, Binh Duong, Binh Phuoc and Tay Ninh; and

(d) Region IV includes 6 provinces in the south center of Vietnam: Phu Yen, Gia Lai, Dak Lak, Khanh Hoa, Ninh Thuan and Binh Thuan.

(iv) In addition, the grid connected projects in Ninh Thuan province may enjoy the FiT of 2.086 VND/kWh, equivalent to 9.35 USD cent/kWh, in the event that such projects (i) reach the COD prior to 1 January 2021; and (ii) have a total capacity of no more than 2,000MW. In the meantime, the grid connected projects in Ninh Thuan province that reach the COD from 1 January 2021 to 30 December 2021 shall apply the FiTs as specified above.

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.

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

**Hanoi**

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

Email: legalenquiries@frasersvn.com

Website: www.frasersvn.com