

FRASERS NEWSLETTER – DECEMBER 2017

In this edition of our newsletter we report on:

- i) Recent adoption of six bills by the 14th National Assembly of Vietnam in its fourth session;
- ii) New Amended Law on Credit Institutions;
- iii) New Circular providing guidelines on the implementation of the Law on Land;
- iv) New Circular on collection and disposal of discarded products;
- v) New Decree on conditions for automobile manufacture, assembly and import, and for warranty and maintenance services; and
- vi) New Circular guiding Decree 03/2017/ND-CP on casino businesses.

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.

1. Recent adoption of six bills by the 14th National Assembly of Vietnam in its fourth session

The 4th session of the 14th National Assembly (**NA**) concluded on 24 November 2017 in Hanoi after one month of meetings. Among others, the NA has adopted six bills, including Law on Forest, Law on Fisheries, Law on Management of Public Debt, Law on Planning, Law on Overseas Representative Missions of the Socialist Republic of Vietnam, and Law Amending and Supplementing Certain Provisions of the Law on Credit Institutions.

2. New Amended Law on Credit Institutions

Under the Law Amending and Supplementing Certain Provisions of the Law on Credit Institutions (**Amended Law on CI**), there are a few important developments as below:

- i) Firstly, the Amended Law on CI supplements and clarifies the situation in which a written approval from a State Bank must be obtained. The Amended Law on CI, in amending Article 29.1(dd) of the Law on Credit Institutions, provides that approval must be obtained in cases involving the "purchase and sale or transfer of a capital contribution portion of a capital contributing member; purchase and sale or transfer of a capital contribution portion of the owner; purchase and sale or transfer of shares of a major shareholder, or purchase and sale or transfer of shares resulting in a major shareholder becoming an ordinary shareholder and vice versa".

- ii) Secondly, the Amended Law on CI clarifies, by amending Article 126.6 of the Law on Credit Institutions, that a credit institution or foreign bank branch is not permitted to extend credit in order to contribute capital to or purchase shares in another credit institution.

The above regulations are purportedly aimed at promoting the transparency of the source of capital contribution of shareholders, and at preventing cross-ownership and “unreal” increases of capital.

- iii) Thirdly, the Amended Law on CI specifies cases of poor-performing credit institutions subject to special control (***Specially Controlled Credit Institutions***). The Specially Controlled Credit Institutions shall be restructured according to one of the following plans: (1) recovery plans; (2) merger, acquisition, transfer of the entire charter capital plans; (3) dissolution plans; (4) compulsory transfer plans or (5) bankruptcy plans.

In addition, Specially Controlled Credit Institutions (including commercial banks, cooperative banks and finance companies), shall have the right to access to one or more of the following privileges: (i) selling unsecured bad debts or secured bad debts in respect to which the collateral has been seized or the debts are without legitimate documents; (ii) being entitled to the State Bank's special loans with interest rates of 0%; (iii) being entitled to exemption or relief from interest on refinancing or special loans of the State Bank; (iv) receiving deposits from, or applying for preferential loans granted by, other supporting credit institutions and other measures subject to the approved recovery plans.

- iv) Fourthly, Specially Controlled Credit Institutions failing to recover after the above recovery plans are implemented (or failing to be merged, acquired or to transfer the entirety of their shares to new shareholders), shall be obliged to comply with a compulsory transfer plan or bankruptcy plan. The implementation of a compulsory transfer plan is only applied on the basis of voluntary proposals by the transferee. Transferees proposing to acquire the shares of a Specially Controlled Credit Institution shall have the following rights: (i) to own the entire charter capital of the transferred credit institution, (ii) not to consolidate the financial statements of the transferred credit institution, (iii) to exclude the figures of the Specially Controlled Credit Institution from its calculation of the consolidated capital adequacy ratio, and (iv) to sell or issue new stocks of the transferred credit institution to foreign investors.

If such Specially Controlled Credit Institutions are still unable to recover despite the implementation of the above listed plans, the Government shall then review and approve the bankruptcy for such credit institutions.

3. New Circular on guidelines on implementation of Law on Land

On 29 September 2017, the Ministry of Natural Resources and Environment issued circular No. 33/2017/TT-BTNMT (***Circular 33***) providing guidelines on Decree No. 01/2017/ND-CP of the Government, dated 6 January 2017, amending and supplementing some decrees detailing the implementation of the Law on Land (***Decree 01***) and amending and supplementing some circulars guiding the implementation of the Law on Land. Circular 33 took effect from 5 December 2017 and has replaced several provisions of Circular No. 23/2014/TT-BTNMT, dated 19 May 2014 (***Circular 23***), Circular 24/2014/TT-BTNMT dated 19 May 2014, and of Circular No. 37/2014/TT-BTNMT, dated 30 June 2014 of the Ministry of Natural Resources and Environment.

Circular 33 is divided into two primary parts. Part 1 provides guidelines on some articles of Decree 01 in relation to:

1. The verification of a family household or individual being directly engaged in agricultural production;
2. The use of land in a production and business project in the form of purchase of assets attached to land, receipt of transfer of land use right, lease of land use right or receipt of capital contribution by land use right; and
3. Services conducted by land registration offices.

Part 2 of Circular 33 contains amendments to some circulars guiding the implementation of the Law on Land, including in relation to the following matters:

1. Certificate of land use right and ownership of a residential house and other assets attached to the land as prescribed by Circular 23:

Circular 33 now requires that the information on all members of a family household using a parcel of land shall be reflected on the Certificate of land use right and ownership of a residential house and other assets attached to the land issued to such family household, as opposed to the name of the representative of the family household. We note however that this new provision has not yet become effective and it will only enter into force once further implementing legislation will be promulgated on this issue.

2. Documents to be submitted when registering information in the land use right certificate as stipulated in Circular 24.
3. Documents to be submitted when changing land use purposes as stipulated in Circular 30/2014/TT-BTNMT dated 2 June 2014.
4. Method of land price adjustment coefficient (which is one of the methods for identifying the price of land in Vietnam) as regulated by circular No. 36/2014/TT-BTNMT, dated 30 June 2014 (**Circular 36**):

Circular 33 now provides a more detailed formula and procedure for determination of the land price in accordance with the method of land price adjustment coefficient as stipulated in clause 4 Article 7 of Circular 36.

5. Changes to the land use purpose that do not require permission of the relevant state agencies and for which a mere registration is sufficient as set forth at circular No. 02/2015/TT-BTNMT, dated 27 January 2015 (**Circular 02**).

Under Circular 02 the conversion from residential land into non-agricultural land (not residential land) only requires registration. Circular 33 now adds four more cases in which a change of land use purpose requires registration (rather than requiring a specific permission from the relevant state agencies). Those cases are:

- i) Conversion from land for planting annual crops into other types of agricultural land, including: land for constructing glasshouses and other buildings serving plant cultivation; land for building sheds and pens for raising cattle, poultry and other types of animals permitted by law; land for aquaculture for the purposes of study and testing;
- ii) Conversion from other land for planting annual crops and land for aquaculture into land for planting perennial crops (being crops that last longer than annual crops);
- iii) Conversion from land for planting perennial crops into land for aquaculture or land for planting annual crops;
- iv) Conversion from land for commerce and services into land for non-agricultural production or business which is not land for commerce and services; conversion from land for non-agricultural production or business which is not land for commerce and services or from land for non-agricultural production establishment into land for construction of works of professional institutions.

4. New Circular on collection and disposal of discarded products

On 4 October 2017, the Ministry of Natural Resources and Environment (**MONRE**) issued Circular 34/2017/TT-BTNMT regulating the collection and disposal of discarded products (**Circular 34**).

By way of background, the Law on Environmental Protection and Decision 16/2015/QD-TTg of the Prime Minister on collection and disposal of discarded products (**Decision 16**) requires manufacturers and importers (hereinafter collectively referred to as "manufacturers") to collect and

dispose of certain discarded products that they have sold in the Vietnamese market once such products have been used and have completed their life-cycle. There are five (05) categories of discarded products which must be collected and disposed of in accordance with Decision 16, namely: accumulators and batteries, electric and electronic equipment, lubricants, tubes and tires, and means of transport. Other discarded products that do not fall within the products list in Decision 16 will be collected, treated and managed in accordance with the regulations on waste treatment. Circular 34 provides further detailed guidance for Decision 16.

Under Circular 34, collection points for discarded products may be established in different forms, including

- i) basic collection points which consist of a fixed point for collecting discarded products from users,
- ii) stationary collection points which consist of a fixed point for collecting discarded products; and
- iii) mobile collection points which consist of a non-fixed point for collecting discarded products.

Circular 34 specifies the technical requirements which each of these collection points must comply with and also sets out a standard management procedure at collection points.

In principle, Circular 34 requires that the transportation of hazardous wastes shall only be carried out by organizations or individuals holding a valid hazardous waste disposal license or a hazardous waste management license. However, consumers may directly transport discarded products (which are hazardous waste) to collection points without any license if the quantity of such discarded products in each consignment does not exceed the permitted maximum quantity levels as specified in Circular 34 (e.g., 100 kg or 50 discarded products for small-sized electronic equipment, accumulators and batteries, compact and fluorescent tubes; one discarded product in the case of automobiles and motorcycles, large-sized electric and electronic equipment; or 20 liters in the case of lubricants).

After being collected, such discarded products shall be managed and disposed of in accordance with the regulations on waste management. Manufacturers must send their annual report on the results of the recovery and disposal of their discarded products to the Vietnam Environment Administration before the 31st of January of the following year.

Circular 34 took effect from 20 November 2017.

5. **New Decree on conditions for automobile manufacture, assembly and import, and for warranty and maintenance services**

On 17 October 2017, the Government issued Decree No. 116/2017/ND-CP on the conditions for automobile manufacture, assembly and import, and also for warranty and maintenance services (**Decree 116**), which took effect from 17 October 2017.

Decree 116 introduces business conditions that must be satisfied by enterprises manufacturing/ assembling and importing vehicles; and enterprises providing automobile warranties and maintenance services in Vietnam.

Some notable provisions contained under Decree 116 include (but are not limited to) the following:

- **Conditions for the Manufacture/Assembly of Vehicles**

Companies engaged in the business of manufacture/assembly of vehicles must satisfy business conditions such as conditions on facilities, personnel, fire prevention, and environmental protection. If the manufacturer/assembler meets all business conditions, the Ministry of Industry and Trade (**MOIT**) will grant a "Certificate of satisfaction of conditions for the manufacture/assembly of automobiles".

After the enterprise has obtained the certificate, the MOIT shall perform periodic inspections at least once every 24 months, in addition to ad hoc inspections whenever there is

information proving that the relevant automobile manufacturer/assembler is violating the applicable regulations.

Manufacturers/Assemblers in operation before the effective date of Decree 116 may continue their operations for 18 months following the effective date of Decree 16. After the aforesaid period, such manufacturers/assemblers must comply with the conditions set out in Decree 116.

- **Conditions for Importing Vehicles**

Under Decree 116, enterprises wishing to engage in the business of importing vehicles in Vietnam must first obtain an “automobiles import business licence” from the MOIT. The conditions for being granted such license include:

- i) the enterprise owns or leases a vehicle warranty and maintenance facility or such a facility belongs to the authorised dealer of the enterprise and satisfies the provisions of Decree 116; and
- ii) the enterprise can produce evidence of its right to represent a foreign vehicle manufacturer/assembler and its right to order the recall of vehicles imported into Vietnam.

Starting from 1 January 2018, only companies holding the “automobiles import business licence” are permitted to import vehicles.

- **Conditions for Vehicle Warranty and Maintenance Services**

Pursuant to Article 21 of Decree 116, an enterprise wishing to provide vehicle warranty and maintenance services must first obtain a “Certificate of vehicle warranty and maintenance establishment” from the Vietnam Register under the Ministry of Transport. The company must meet certain conditions for being granted such certificate, for example, conditions on facilities, capacity to provide technical assistance and to supply vehicle accessories and parts for the warranty and maintenance work, personnel, occupational safety and hygiene, fire protection and fire fighting and environmental protection requirements.

6. **New Circular guiding Decree 03/2017/ND-CP on casino businesses**

On 5 October 2017, the Ministry of Finance issued Circular No. 102/2017/TT-BTC (**Circular 102**) guiding the implementation of some articles of Decree 03/2017/ND-CP (**Decree 03**) on casino businesses. Circular 102 became effective on 1 December 2017.

Some notable provisions contained under Circular 102 include (but are not limited to) the following:

- Casino business enterprises (**Casino Enterprises**) must use register books or issue electronic cards to monitor people entering or exiting the casino, and must ensure that the relevant data is stored and archived for a minimum period of two (2) years. In the case of Casino Enterprises conducting a trial period for Vietnamese citizens using the casino, the monitoring book with respect to Vietnamese citizens must be archived for a minimum period of five (5) years for the purpose of reviewing and evaluating the pilot project.
- Casino Enterprises are also responsible for ensuring that only Vietnamese citizens with a regular monthly income of at least VND10 million are allowed to use the casino. For this purpose, Circular 102 provides a list of documents that can be accepted as evidence of the financial capacity of players being Vietnamese citizens.
- The use of regular currency is prohibited in casinos. Tokens (which could be in the forms of chips, coins, cards, slips of paper, exchange points and other equivalents) shall be used as instruments of payment. Under Circular 102, Casino Enterprises must register the form, model, quantity and type of their tokens with the Department of Finance and with the local

tax office at least five (5) business days prior to the use of such tokens. A register book for controlling the tokens is also required.

- Casino Enterprises shall also be responsible for compliance with the reporting scheme stipulated under Circular 102. In particular:
 - i) With respect to financial statements: The financial statements must be submitted to the local tax department within 30 days from the end day of the quarterly accounting period while the annual financial statements must be submitted to the Ministry of Finance and the local tax department within 30 days from the end day of the financial year;
 - ii) With respect to reports on business operations: Every six months and at the end of each year, Casino Enterprises must prepare and submit their reports, made according to a standard form, within 30 days as from the end day of the corresponding accounting period to the following authorities: (i) Ministry of Finance; (ii) provincial-level Department of Finance; (iii) provincial-level Department of Culture, Sport and Tourism (or provincial-level Department of Culture and Sport); and local tax department.

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