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Honoured in the 17th Annual Webby Awards



Frasers Law Company (*Frasers*) is delighted to announce that www.frasersvn.com has been recognised as a 2013 Webby Award Official Honouree in the website category for legal web design, in the 17th Annual Webby Awards. Hailed as the “Internet’s highest honour” by *The New York Times*, The Webby Awards, presented by the International Academy of Digital Arts and Sciences (*IADAS*), are the leading global awards honouring excellence on the Internet. The IADAS, which nominates and selects The Webby Award Winners, is comprised of web industry experts, including media mogul Arianna Huffington, Skype CEO Tony Bates, Mozilla CEO and Chair Mitchell Baker, Instagram co-founder Kevin Systrom, mobile-phone inventor Martin Cooper, and StumbleUpon founder Garrett Camp.

Frasers’ website upgrade got underway in late 2012, when the Firm identified strategic web developer, Norex, to work with Frasers on the project. The site was designed to provide clients with greater access to information about Frasers, as well as details of the Firm’s expertise. Clients can now more easily access previous editions of Frasers’ newsletters and legal updates, and can also sign up for updates on the website. The upgraded website went live in March of this year.

“Honourees like Frasers Law Company are setting the standard for innovation and creativity on the Internet,” said David-Michel Davies, Executive Director, The Webby Awards. “It is an incredible achievement to be selected among the best from the 11,000 entries we received this year.”

Honourees in the website category are selected for recognition based on excellence in the following criteria: content, structure and navigation, visual design, functionality, interactivity and overall experience.

“We are thrilled that Frasers’ upgraded website has received such a significant global accolade. It was a huge team effort which contributed to the success of this project, and as a Firm, we are all very proud of this achievement. We are also most grateful to the dedication and creative excellence of the design team at Norex,” said Mark Fraser, Managing Partner, Frasers Law Company.

The 17th Annual Webby Awards received 11,000 entries from over 60 countries.

In this edition of our newsletter, we report on:

- a new Ordinance on foreign exchange controls;
- a new Decision providing guidelines on the implementation of the Law on the Prevention and Combatting of Money Laundering;
- a new Circular regulating special control of credit institutions;
- new regulations on environmental protection fees applicable to wastewater; and
- updated regulations on electronic transactions for taxpayers

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 newsletter@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.

Amendment to the Ordinance on Foreign Exchange Controls in Vietnam

A new Ordinance No. 06/2013/UBTVQH13 (*the New Ordinance*) on foreign exchange controls was passed on 18 March 2013 by the Standing Committee of the National Assembly of Vietnam, amending and supplementing Ordinance No. 28/2005/PL-UBTVQH dated 13 December 2005 (*the Ordinance*). The New Ordinance focuses on issues critical to investors, including foreign investment into Vietnam; Vietnamese investment overseas; usage of foreign currency in Vietnam, and foreign loans for residents. The New Ordinance shall take effect as from 1 January 2014, and the State Bank of Vietnam (**SBV**) has prepared numerous drafts of legal instruments to implement the New Ordinance.

Foreign investment into Vietnam

Pursuant to the New Ordinance, and consistent with the Law on Investment, foreign investment into Vietnam is divided into two types, namely direct investment and indirect investment.

Foreign direct investment

Foreign direct investment in Vietnam, as defined in the New Ordinance, refers to a foreign investor investing capital and participating in the management of investment activities in Vietnam. Enterprises with foreign direct investment and foreign parties with business co-operation contracts must open a foreign direct investment capital account at an authorised credit institution for capital contributions, the transfer of the principal investment capital, profits and other lawful revenue. The New Ordinance also states that the lawful revenue of a foreign investor from such direct investment activities in Vietnam is permitted to be re-invested, remitted overseas or used to purchase foreign currency at an authorised credit institution if the revenue for overseas remittance is in Vietnamese dong. The same information is provided in Decree No. 160/ND-CP dated 28 December 2006 (*Decree 160*) on implementing the Ordinance.

In addition, in recognition of the challenges faced by investors, and their request for deposits in the form of a secured transaction to ensure the proposed project be accepted (until now, this has not been permitted, owing to the investor's new legal entity in Vietnam not yet having been established), legislators have added an important provision on other capital transactions relating to foreign direct investment activities, which states that such transactions shall be conducted in accordance with relevant laws and SBV guidelines. A circular on foreign exchange controls regarding a foreign direct investment has been drafted to effect this new provision in particular, and regulations on foreign direct

investment in general.

Foreign indirect investment

Pursuant to the New Ordinance, foreign indirect investment in Vietnam refers to a foreign investor investing in Vietnam via the purchase and sale of securities and other valuable papers, via the contribution of capital, the purchase of shares, as well as via securities investment funds and other intermediary financial institutions, in accordance with the law but without direct participation in the management of investment activities.

A non-resident being a foreign investor must open a bank account in Vietnamese dong, in order to conduct indirect investment in Vietnam; and all indirect investment capital being foreign currency must be converted into Vietnamese dong in order to conduct investment via this account. Such investors are entitled to use the legal revenue from this type of investment to re-invest or purchase foreign currency at an authorised credit institution for remittance overseas. Under the above-mentioned draft circular, after fully satisfying all financial obligations of the State of Vietnam in accordance with the law, foreign investors can convert Vietnamese dong in an indirect investment account to foreign currency and remit such monies overseas within 15 days from the date of conversion.

Vietnamese investment overseas

Residents are still entitled to invest overseas with legal foreign capital. Regardless of whether or not the investor is a credit institution, upon obtaining approval, i.e. an offshore investment certificate, a resident must open a foreign currency account and register the remittance overseas in accordance with the regulations of the SBV.

The New Ordinance also supplements a new clause on offshore indirect investment. Accordingly, a credit institution may conduct offshore indirect investment in accordance with the Law on Investment and the SBV's regulations. Other types of companies allowed to conduct offshore indirect investment are permitted to open and use an account to conduct lawful investment activities in accordance with the SBV's regulations. Pursuant to this amendment, the responsibility of introducing a specific legal instrument belongs to the SBV. This presents an opportunity for those Vietnamese companies wishing to invest overseas.

Limitations on using foreign currency

Furthering the movement in Vietnam to "de-dollarise" the economy and combat inflation, the SBV has taken steps to restrict the use of foreign currency in Vietnam under the Ordinance and Decree 160. As a consequence, in the New Ordinance, the article relating to this issue has been amended with a stricter legislative requirement under the New Ordinance being that all transactions, payments, listings, advertisements, quotations, fixing of prices, and recording of prices in contracts, agreements, and other similar forms by residents and non-residents must not be effected in foreign currency, except those cases which have been permitted by the SBV. These amendments are expected to elicit two key changes, including (i) the increase of commercial activities in Vietnam which operate in VND, having previously operated in foreign currencies; and (ii) the authority of the SBV to decide and make legislation in respect of the types of commercial activities in Vietnam which may use foreign currency, instead of having to wait for a direct order from the Prime Minister. In addition, under this amended article "other similar forms" permits a wide interpretation of the State authorities to impose this restriction. As a result, methods commonly used to avoid the previous provisions, e.g. lease contracts with rent-review clauses based on fluctuations in the exchange rate or agreements made in a foreign currency but being settled in Vietnamese dong, may be at risk of breaching this provision, and a fine of between VND50 million and VND100 million in accordance with the current legislation; or between VND400 million and VND1.2 billion in accordance with the draft legislation, will be applicable. Moreover, a new circular restricting the use of foreign currency within Vietnam will soon be released.

Foreign loans to residents

Under the New Ordinance, residents being enterprises, co-operative institutions, credit institutions and foreign bank branches are permitted to borrow and repay foreign loans based upon the principle of self-borrowing and self-liability for repayment in accordance with the law. Residents being individuals are also entitled to enter into foreign loan agreements under the guidance of the Government. In other words, although both the New Ordinance and the previous version acknowledge the rights of individual residents to borrow and repay foreign loans, the possibility of enforcing this issue remains pending and we await specific regulations.

Miscellaneous

The article on foreign exchange activities in international markets in the Ordinance has been repealed. The New Ordinance provides a clause stating that credit institutions, foreign bank branches and other institutions are permitted to conduct business, and to provide foreign exchange services, in Vietnam and overseas, after obtaining the written consent of the SBV. The first draft of a Circular has just been announced, and will provide guidance on the scope of foreign exchange operations, as well as the conditions and procedures for approving foreign exchange operations of credit institutions and branches of foreign banks under the New Ordinance.

In addition to the above issues, the New Ordinance also updates the clause on definitions and amends other provisions relating to the one-way remittance of money; import and export of foreign currency; usage of Vietnamese dong and currencies of countries sharing borders with Vietnam; and administrative controls on foreign currency belonging to the State Budget.

Update On Regulations On Prevention And Combatting Of Money Laundering

In edition 5, 2012 of our newsletter ([click here to read this newsletter](#)) we reported on the Law on the Prevention and Combatting of Money Laundering. On 18 April 2013, the Prime Minister issued Decision 20/2013/QD-TTg (**Decision 20**) providing guidelines on the implementation of the Law on the Prevention and Combatting of Money Laundering.

As you may recall, under the Law on the Prevention and Combatting of Money Laundering, there are three types of transactions that need to be reported to the State Bank of Vietnam:

- (i) a high value transaction: any transaction in cash, gold or foreign currency conducted at least once per day, having a total value at least equal to the amount specified by the relevant government authorities. The threshold amount for a high value transaction is specified by the Prime Minister from time to time;
- (ii) a wire transfer: if the total value exceeds the amount as specified by the SBV; and
- (iii) a suspicious transaction: any transaction having abnormal indications or legal grounds for reasonable suspicion that the transacted assets are generated from criminal activity or are affiliated with money laundering activities.

Decision 20 stipulates that a high value transaction is one which is above VND300 million. This amount is higher than the current amount of VND200 million, which was stipulated in Decree 75/2005/ND-CP of the Government dated 7 June 2005.

For your information, there are two types of entities which are subject to reporting obligations under the Anti-Money Laundering Law. They are: (i) financial institutions (including organisations that are licensed to conduct banking, insurance and securities activities as listed under the Anti-Money Laundering Law); and (ii) individuals and organisations conducting relevant non-financial business activities (i.e., gaming with prizes, casinos; real estate management services, real estate broker

services, real estate trading floor operations; trading in precious metals and stones; notarisation services; accounting services; legal services; entrusted investment services; or services in relation to the establishment, management and operation of companies).

Decision 20 shall come into effect as from 10 June 2013.

New Circular Regulating Special Control Of Credit Institutions

On 14 March 2013, the State Bank of Vietnam (**SBV**) promulgated Circular 07/2013/TT-NHNN on the special control of credit institutions, providing guidelines for the 2010 Law on Credit Institutions (**Circular 07**). Circular 07 replaces Circular 08 dated 22 March 2010 and Decision 92 dated 8 February 2001 issued by the SBV on the special control regulations. In comparison with the previous regulations, Circular 07 provides more specific regulations that are considered to be in accordance with the 2010 Law on Credit Institutions, and consistent with international practices. Furthermore, from the date of promulgation, Circular 07 will put pressure on credit institutions to be structured more effectively and to operate more efficiently.

Forms of special control

Special control shall be applied to a credit institution which is in danger of defaulting on payments, at risk of becoming insolvent or critically violating the laws that may threaten the security of their operation. Circular 07 provides two forms of special control, including (i) special supervision and (ii) total control. The SBV shall, depending on the financial status, risk level and breach of law committed by the credit institution in question, make a decision to place such credit institution under special control in one of those two forms.

Requirements for the owners of credit institutions under special control

The owner of a credit institution under special control shall be required to increase the charter capital to ensure that its real value is not less than the regulated amount of legal capital.

If the capital injection is not achieved within a specified period, the owner shall formulate and submit to the SBV for approval and implementation, a plan for restructuring or a compulsory merger, consolidation or acquisition. In such restructuring plan, the issues in relation to the status of administration, finance and operation of the relevant credit institution, together with the reason leading to special control being imposed by the SBV, shall be clearly stated.

If all the plans and measures do not address the existing difficulties or the termination of the operation of such credit institution could affect the stability of the banking system, the Governor of the SBV will be entitled to directly inject, or designate another credit institution to inject, a capital contribution to, or purchase shares in the credit institution under special control.

If subsequent to the period of special control being completed, the credit institution is still unable to become solvent, the SBV will request such credit institution to file an application for bankruptcy with the court. A recommendation for bankruptcy is a key milestone in the guidelines provided in Circular 07.

Disclosure of information about Special Control

With respect to the notification of the decision to place a credit institution under Special Control, Circular 07 also stipulates that, apart from the provincial SBV branch and related bodies of SBV, such a decision must be shared with Deposit Insurance of Vietnam (**DIV**), a State-owned financial institution established to safeguard the legitimate rights and interests of depositors, contribute to the stability of insured deposit institutions and ensure the safe development of the banking industry. Moreover, information on the Special Control of the relevant credit institution, including measures for strengthening the credit institution as approved by the relevant authorities, and other essential

information, shall be announced publicly on the website of such credit institution or on the website of the SBV or via other mass media.

Composition of the Special Control Board

The composition, number of members and structure of a special control board (*the Special Control Board*) consistent with the particular form of Special Control shall be decided by the Governor of the SBV. Pursuant to Circular 07, members of the Special Control Board shall also comprise senior DIV staff members. In accordance with Circular 07, the head of the Special Control Board shall be:

- (a) Director level or higher position, at one of the expert entities at the SBV;
- (b) Director level or higher position in the Banking Inspection and Supervision Agency at the SBV;
- (c) Leader of the State Bank branch.

Circular 07 came into effect as from 27 April 2013.

New Regulations On Environmental Protection Fees Applicable To Wastewater

As part of its on-going efforts to encourage enterprises and individuals with a sense of responsibility for the protection and improvement of the environment, the Government promulgated Decree No. 25/2013/ND-CP on 29 March 2013, on environmental protection fees applicable to the discharge of wastewater (*Decree 25*). Decree 25 stipulates the applicable fees, as well as the regime for the collection, remittance, management and use of such fees.

Who pays?

Decree 25 states that environmental protection fees will be applicable to organisations and individuals discharging industrial wastewater and living wastewater into the environment. Accordingly, industrial wastewater has been defined as water released into the environment from a manufacturing facility and processing facility of agricultural, forestry and aquatic products. Living wastewater has been defined as water released into the environment from households and other organisations.

Processing facilities for agricultural, forestry and aquatic products using clean water for manufacturing and processing shall be only required to pay the environmental protection fees applicable to industrial wastewater, and will not be subject to fees for living wastewater.

Who doesn't pay?

Moreover, Decree 25 identifies two further types of water that shall not incur environmental protection fees applicable to wastewater, being:

- (i) water used to cool equipment and machines, which is not directly mixed with pollutants, and is discharged through a separate drainage system; and
- (ii) surplus spilt over rainwater.

Fees

There is a change in the way the fees are to be determined for the discharge of wastewater compared with the previous regulations, as follows:

- (a) for living wastewater: the fee is to be based on the selling price of one cubic metre (1m³) of clean water, and must not exceed 10% of the water price exclusive of VAT. Meanwhile, the fee for excessive living wastewater discharged from organisations and households will be stipulated by the relevant local People's Council.
- (b) for industrial wastewater: a fee will be imposed if the wastewater registers a higher rate for two

specific pollutants than that which is accepted, according to current regulations applicable to the two polluting substances including (i) Chemical Oxygen Demand (**COD**) and (ii) Total Suspended Solids (**TSS**). Moreover, the environmental protection fees will be charged exponentially with a very high coefficient 'K' based on the volume of industrial wastewater containing heavy metals.

The Ministry of Finance and the Ministry of Natural Resources and Environment shall be responsible for providing further guidelines on these fees.

Decree 25 shall come into effect as from 1 July 2013, and will replace three previous decrees on environmental protection fees applicable to wastewater.

Supplementing Regulations On Electronic Transactions For Taxpayers

On 1 April 2013, in response to a growing dependency on the transfer of information electronically, the Ministry of Finance issued Circular 35/2013/TT-BTC (**Circular 35**) on amending and supplementing Circular 180/2010/TT-BTC dated 10 November 2010 (**Circular 180**), and implementing new policies to promote online tax declaration, and clarifying numerous issues related to T-VAN, a programme specially designed to enable online registration, declaration and payment of taxes, as well as other important points regarding electronic data transactions relating to tax.

Declaring tax via T-VAN

Circular 35 introduced a new option in addition to the two current methods of declaring tax, being (i) online declaration via the web portal of a tax agency and (ii) software and supporting tools designed for tax declaration.

Circular 35 also includes essential obligations of T-VAN service suppliers, including the following:

- issuing a notice on the receipt of tax declaration dossiers to the user, which will be used to define the time of submission of those tax files;
- assuming responsibility if the tax declaration dossiers have not been delivered to the tax agency within the specified period while the taxpayer submitted those files on schedule; and
- assuming responsibility for the transfer of electronic tax dossiers to the electronic portal of the tax agency no later than 2 hours from receiving the files from the taxpayer. In the case of a problem with the web portals of the T-VAN service provider, the T-VAN service supplier must promptly notify the taxpayer and the relevant tax agency as guided under the regulations on incidents, which are provided in Circular 180 and Circular 35.

Other notable issues

- **Time for submitting electronic tax files:** Taxpayers can perform electronic tax transactions via the web portal of tax agencies or T-VAN service suppliers 24 hours per day, seven days a week, including weekends and holidays (Saturdays, Sundays and official national holidays, including Tet). The day for tax dossier submission is counted from 0 hours to 24 hours on same day.

The submission time for an electronic tax dossier is the time indicated on the Notice, confirming the submission of such files of the tax agency or T-VAN service supplier, which must be emailed to the taxpayer no later than 15 minutes after receipt.

- **Date of electronic tax payment** is defined as the day a taxpayer transfers money from their account and the bank accepts the payment. The tax receipts must be concurrently certified by commercial banks or the State Treasury by digital signature.
- **New condition for performing electronic tax collection:** in order to be authorised to conduct this

activity, a commercial bank must satisfy the new condition that it has taken part in the coordination of collecting the State funds; have the application software to collect the State funds electronically and technical solutions on safety, data security of the taxpayer as stipulated on the coordination of collecting the state budget.

This new Circular also supplements other regulations relating to the conditions to perform electronic transactions in tax filings, usage of digital signatures, handling with occurrences, and tax applications. Circular 35 shall take effect as from 1 June 2013.

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