



ClientAlert

Issue No. 8.5 | October 2017

www.indochinecounsel.com

Introduction

Dear Reader,

This month saw a handful of new regulations that affect business in Vietnam. We've briefed them and outlined the most important changes from each new regulation. They cover topics ranging from international trade to the cost of judgment execution and casino rules to chemical safeguard procedures.

As always we hope you find this month's Client Alert helpful and wish you prosperity in the coming holiday season. We look forward to working with you.

Kind regards,
Indochine Counsel

In this issue

Foreign trade management	2
Judgment execution	3
The government's decree on casino business	4
Certain articles of the law on chemicals	5
Anti-dumping.....	6

Foreign trade management

The National Assembly of Vietnam issued a Law on Foreign Trade Management No. 05/2017/QH14 (“**LOFTM**”) on 12 June 2017. Its objective is to standardize the provisions for foreign trade activities and bring anti-dumping/safeguard measures under a centralized mechanism.

The key points of the LOFTM are summarized as follows:

- (i) The LOFTM regulates the state management measures involved in the international trade of goods, including:
 - Prohibition from export and import, temporary suspension from export and import;
 - Restriction from export and import;
 - Management by export and import license and conditions;
 - Certificate of origin of goods;
 - Certificate of free sale;
 - Other measures for management of foreign trade activities, including: temporary import and re-export, temporary export and re-import and border gate transfer; transit of goods; agency for goods sale and purchase for foreign business entities, authorization and acceptance of authorization in export and import; processing goods for foreign business entities and having goods processed in foreign countries;
 - Foreign trade activities with countries sharing borders; and
 - Measures for goods management in separate customs zone.

- (ii) The following are requirements of management by export and import licenses and conditions:
 - The management by condition will only be imposed if it is necessary for reasons of social safety and order, social ethics, community health, fine customs and traditions, and environment protection.
 - The management by export and import license and conditions must ensure public disclosure and transparency; and savings of time and costs for State administrative agencies and of business entities.
 - The management by export and import license and conditions shall comply with international treaties to which the Socialist Republic of Vietnam is a signatory.

- (iii) Application of measures of prohibition of export and prohibition of import is regulated as follows:

Goods prohibited from import comprise:

 - Goods relating to national defense or security that are not permitted to be imported by a competent State authority;
 - Goods causing harm to the health or safety of consumers;

- Goods causing an adverse effect on social order and safety, social ethics or fine customs and traditions;
- Goods causing harm to the environment or biodiversity, having a high risk of carrying harmful organisms which threaten food security or the production or export of Vietnam, or infringing upon intellectual property;
- Goods prohibited from import under international treaties of which the Socialist Republic of Vietnam is a member.

Goods prohibited from export comprise:

- Goods relating to national defense or security that are not permitted to be imported by a competent State authority;
- Goods Protecting national relics, antiques or precious objects in accordance with the law on cultural relics;
- Goods which are prohibited from export under international treaties of which the Socialist Republic of Vietnam is a member.

The LOFTM shall take effect from 1 January 2018 and replace: (i) Ordinance No. 42/2002/PL-UBTVQH10 on trade remedies for imports; (ii) Ordinance No. 20/2004/PL-UBTVQH11 on anti-dumping; (iii) Ordinance No. 22/2004/PLUBTVQH11 against commodity subsidies, excluding the cases handled by the state authorities before 01/01/2018; (iv) and Article 28.3, Article 29.3, Article 30.3, Articles 31, 33, 242, 243, 244, 245, 246 and 247 of the Commercial Law in 2005.

Judgment execution

On 16 October 2017 the Government issued Decree No. 115/2017/NĐ-CP (“**Decree 115**”) detailing (i) order, procedures and amount of money that must be paid by the commercial legal entity to secure the judgment execution; and (ii) custody, refund and payment to the State budget of the paid amount.

Under Decree 115, the amount of money paid to secure the judgment execution may be in VND or foreign currency and must be legally owned by the commercial legal entity being accused, investigated, prosecuted or on trial.

The amount of money paid to secure the judgment execution may comprise the amount paid for securing the obligation to pay a penalty and the amount paid for securing the obligation to pay compensation for damage. Accordingly, the amount paid for securing the obligation to pay a penalty shall be decided by competent procedural authorities on a case by case basis and must not be less than 50% and not higher than the highest penalty as regulated in the provisions applicable for accusation, investigation, prosecution and trial. For the case of securing the obligation to pay compensation for damage, the paid amount must not be less than 50% and not be higher than the highest level of property damage as regulated in the provisions applicable for accusation, investigation, prosecution and trial in relation to the level of property damage. If the provisions

applicable do not state the level of property damage, the competent procedural authorities, on a case by case basis, may apply the regulated measures to determine the damage levels to decide the specific paid amount for securing the obligation to pay compensation for damage. The paid amount must not be higher than the actual amount of damage already determined

Decree 115 shall come into force from 1 January 2018.

The Government's decree on casino business

On 5 October 2017 the Ministry of Finance issued Circular No. 102/2017/TT-BTC ("**Circular 102**") on guidelines for Decree No. 03/2017/ND-CP dated 16 January 2017 on casino business.

Documents required to justify a Vietnamese being financially eligible for gambling at casinos

Under Circular 102, for a Vietnamese citizen to play at casinos she must provide one of the following dossiers evincing financial capacity:

- (i) Documents proving the player has taxable income graded from third class and above under the Laws on Personal Income Tax, including: (i) a certified true copy of statement of personal income tax declaration that has been settled by tax authority; OR (ii) a payment statement of tax issued by tax authority justifying such player has taxable income graded from third class and above within 1 year before he/she enters the casino site.
- (ii) Documents proving such player has income from VND10 million per month and above:
 - A certified true copy certifying monthly income, monthly payroll or payment decision issued by the player's employer within the current 3 months up to the date on which the player gambles at the casino, clarifying the monthly income of at least VND10 million;
 - A certified true copy of a lease on house or assets held by the player, remaining valid as per the laws, specifying the total monthly rental of at least VND10 million;
 - A certified true copy of banking passbook and a statement of bank deposit account of the player that remains valid for at least 1 year and earns monthly interest of at least 10 million;
 - Other documents justifying player's regular income of at least VND10 million per month;
 - Multiple documents to be provided at the same time justifying player's total regular monthly income of at least VND10 million.

A casino operating company must keep the documents prescribed above for at least 5 years from the date of allowance for the purpose of management, supervision, and inspection of regulatory bodies.

Guidelines on financial management, auditing and accounting system, and reporting mode

Circular 102 also gives guidelines on financial management, auditing and accounting systems, and reporting mode on casino business. Casinos which are allowed to pilot serving Vietnamese customers must follow regulations on payment, management, and use of entrance tickets, in brief:

- To collect and include revenues from entrance tickets at casino in a separate account;
- To enumerate number of Vietnamese players and pay the total amount of entrance tickets to the state budget's collection account at the State Treasury. The payment must be taken at the same time with temporary payment of corporate income tax.
- If the company makes late payment or fails to pay the revenues from entrance tickets to the State Treasury, it is obliged to pay the total amount as prescribed and the late payment interest equivalent to regulated fines for late tax payment.

Circular No. 102 took effect on 1 December 2017.

Certain articles of the law on chemicals

On 09 October 2017 the Government issued Decree No. 113/2017/ND-CP specifying and providing guidelines for implementation of certain articles of the law on chemicals (“**Decree 113**”).

Decree 113 sets out the regulations with regards to the following contents:

- (i) General requirements for safety in chemical production and trade;
- (ii) the production and trade of Industrial chemicals which are conditional; requirements; dossier and procedures for obtaining the Certificate of eligibility for production or trade in conditional industrial chemicals;
- (iii) Requirements for industrial precursor chemical production and trade; application and procedures for obtaining license for industrial precursor chemical export/import;
- (iv) Restricted industrial chemicals; requirements, application and procedures for obtaining the license for restricted industrial chemical production/trade;
- (v) Prohibited chemicals / poisonous chemicals;
- (vi) Plans and measures for prevention of and response to chemical emergencies;
- (vii) Safety distance to the hazardous chemical factories/stores;

- (viii) Classification of chemicals and safety data sheets;
- (ix) Declaration on chemicals and information about chemicals;
- (x) Training courses in chemical safety.

Decree 113 also provides that chemicals in Vietnam must be classified in accordance with the rules and technical guidance of Globally Harmonized System of Classification and Labelling of Chemicals (the “GHS”) from the second version (2007) onwards. In particular, chemicals are classified into the three following groups (i) hazardous materials; (ii) hazardous chemicals for health; (iii) hazardous chemicals for the environment. Besides, the detailed list of chemicals, consisting of (i) list of chemicals subject to conditional production or trading in the industrial field; (ii) list of chemicals restricted from production or trading in the industrial field; (iii) list of prohibited chemicals; (iv) list of chemicals requiring the plans and measures for prevention of and response to chemical emergencies; and the (v) list of chemicals required to be declared, are also attached to this Decree.

In addition, the reporting obligation is specified in Decree 113 and both individual/ organization having chemical-related activities and state authorities are required to conduct such obligation.

Decree 113 took effect from 25 November 2017 and replaces Decree 108/2008/ND-CP dated 07 October 2008.

Anti-dumping

After reading the article in this month’s Client Alert, I notice that it refers to Anti-Dumping regulations. Prior to the conduct of some extensive research, I didn’t know what anti-dumping was, or what dumping was for that matter. I prepared an article which was published in Vietnamese at the time. It was involved with the United States application of non-market status to Vietnam as a country so similar to China that there was enough justification to retain the non-market status without an actual investigation.

Now, that was several years ago, and I haven’t kept up with developments in the international trade arena, but it could be helpful to define, or at least discuss, some of the more esoteric terms associated with international trade and its disputes.

Dumping

Dumping is the act of infiltrating a foreign market at costs lower than those charged by domestic providers with the intent of taking over the market for that particular good. For example, at the time of my article, Vietnam was charged with dumping on the United States market for both shrimp and

plastic bags. The idea was that the Vietnamese government subsidized the industries so much, that the government could be held responsible for the act of dumping.

Anti-dumping consists of the actions taken by a harmed State towards the dumping State. Usually this is an instigation of a trade dispute between the companies as arbitrated by the World Trade Organization (WTO). Remedies can include tariffs against the infringing goods, or completely cut off trade in that category.

This segues into the final definition, countervailing measures. Countervailing measures are those measure given to a country that claims dumping. It is the tariffs itself, the limitation of import amounts, and other remedies.

I won't go further at this time because this Client Alert doesn't require it, but don't think I'm in lecture mode. I'm simply trying to explain something that can be quite complicated in a simple and easy to understand way. If I come off as condescending, well, I was marked down on an employer review once for that very activity.

Here's to you and yours. I wish you the best in the New Year: success, prosperity, happiness, and family fun.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 35 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Le Nguyen Huy Thuy

Partner
thuy.le@indochinecounsel.com

Le Van Duong

Senior Associate, Head of Hanoi Office
duong.le@indochinecounsel.com

To Xuan Tinh

Partner
tinh.to@indochinecounsel.com

Phan Anh Vu

Partner
vu.phan@indochinecounsel.com

Nguyen Thi Hong Anh

Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72 -74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

Indochine Counsel Client Alert provides a general overview of the latest developments in Vietnam's regulatory framework, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice. Professional advice should be sought for any specific case or matter.

© 2017 Indochine Counsel. All Rights Reserved.