

## Recent Legal Developments in Vietnam

### 1. New Regulations on Seaport Operations

On 4 April 2017, the Government issued Decree No. 37/2017/ND-CP on requirements for seaport operations (“Decree 37”) which will take effect on 1 July 2017.

The Decree sets forth requirements which the parties must be aware of when conducting business in respect of seaport operations in Vietnam including: seaports, port terminals, wharves, floating terminals, anchorage, transshipment areas, and offshore oil terminals.

Under the Decree, to operate a seaport, an enterprise must comply with rules including (i) the requirement to obtain a certificate of eligibility for seaport operations before running a seaport; (ii) running its seaport in accordance with the proper purposes and functions of the seaport; and (iii) fulfilling all requirements as prescribed in Decree 37 and other relevant provisions of law during its operation.<sup>1</sup>

Specifically, the establishment of port-operating enterprises shall be in accordance with regulations of the Law on Enterprises. If a port-operating enterprise is a foreign-invested enterprise providing material handling services, it may only establish a joint venture in which the proportion of the foreign investor’s stakes confirms to the Schedule of Commitments of Vietnam upon its accession to the World Trade Organization (WTO).<sup>2</sup>

In addition, the port-operating enterprise is responsible for complying with provisions on organizational structure and human resources; required facilities; labor safety and hygiene and fire safety requirements and environmental safety requirements.

Regarding environmental safety requirements, the enterprise must ensure it has adequate means to collect waste discharge from ships operating in seaports as prescribed in the MARPOL Convention; have sufficient documents on seaport environmental safety approved by competent authorities; and have adequate human resources, systems, works and equipment for managing and treating the waste produced within seaport areas as prescribed by the Law on Environmental Protection.<sup>3</sup>

### 2. Amendments On Management Of Constructions Projects

On 5 April 2017, the Government issued Decree No. 42/2017/ND-CP on amendments to Decree No. 59/2015/ND-CP dated 5 April 2017 on management of construction projects (“Decree 42”), which will take effect on 1 June 2017. The following highlighted issues shall be taken into account in the course of business:

- (i) With regard to the power to appraise or approve a construction economic-technical report, the Decree specifically and unequivocally stipulates the power by dividing projects into three (3) groups: a) funded by government budget, b) funded by government outside of the budget, c) funded by other sources;<sup>4</sup>

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<sup>1</sup> Decree 37, Article 3

<sup>2</sup> Decree 37, Article 5

<sup>3</sup> Decree 37, Article 9

<sup>4</sup> Decree 42, Clause 5

- (ii) The investor shall use its legal status and qualified affiliated units to directly manage construction projects with less than VND 15 billion in total investment. Also, the Decree permits that in case of ineligibility, the investor is entitled to hire an entity meeting conditions as prescribed in Decree 42;<sup>5</sup>
- (iii) Annulment of issuance of licenses for construction design practice to construction interior-exterior design; scenery design, Communications network design in works;<sup>6</sup>
- (iv) The Decree specifies the areas required to obtain a certificate of eligibility for construction activities;<sup>7</sup>
- (v) Decree 42 supplements the requirements for obtaining the certificate of eligibility for construction supervision and construction inspection, notably the minimum number of people obtaining licenses for related works;<sup>8</sup>
- (vi) Extension of foreign contractor's rights, which is directly going through procedures for import/export, temporary import, temporary export, liquidation of goods in respect of the contract agreement according to the customs authority as prescribed by law on management of import and export;<sup>9</sup>
- (vii) Any construction project and design, construction estimate of works or sections of a project that has been presented to the competent authority for appraisal before the effective date of Decree 42 shall comply with Decree No. 59/2015/ND-CP dated June 18 2015 on management of construction projects.<sup>10</sup>

### 3. New Regulation On Mechanism For Encouragement Of Development Of Solar Power In Vietnam

On 11 April 2017, the Prime Minister issued Decision No. 11/2017/QĐ-TTg on mechanism for encouragement of development of solar power in Vietnam ("**Decision 11**"). Decision 11 will take effect on 1 June 2017.

Decision 11 includes several mechanisms and incentives to facilitate solar power projects, related to taxes, investment capital, land, and Feed in Tariff (FIT) rate. Major points of Decision 11 are as follows:

- (i) For raising capital, investors involved in the development of solar power projects may mobilize capital from both Vietnamese and foreign organizations and individuals.<sup>11</sup>
- (ii) Solar power projects are exempted from import duties on goods imported to form fixed assets for the projects. In terms of materials, components, or semi-finished products that cannot be domestically manufactured and are imported for the project's operation, the import and export duties for these goods are in accordance with effective law.<sup>12</sup>
- (iii) Solar power projects also enjoy incentives in terms of exemption and reduction of corporate income tax similar to other projects eligible for investment incentives in accordance with prevailing tax laws and

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<sup>5</sup> Decree 42, Clause 8

<sup>6</sup> Decree 42, Clause 14

<sup>7</sup> Decree 42, Clause 19

<sup>8</sup> Decree 42, Clause 20

<sup>9</sup> Decree 42, Clause 22

<sup>10</sup> Decree 42, Article 3.1

<sup>11</sup> Decision 11, Article 10.1.

<sup>12</sup> Decision 11, Article 10.2.

regulations.<sup>13</sup> For instance, such projects are eligible for a corporate income tax rate of 10% for 15 years,<sup>14</sup> tax exemption for 4 years, and reduction of 50% of tax payable for the next 9 years for production of clean energy.<sup>15</sup>

- (iv) Grid-connected solar power projects, transmission lines and substations enjoy incentives in terms of exemption and reduction of land use fee, land rent, and water surface rent in accordance with prevailing laws and regulations.<sup>16</sup>
- (v) For FIT Rate: Vietnam Electricity (EVN), designated as the only Power Purchaser under Decision 11, will purchase all electricity generated from solar power projects at an FIT rate of VND 2,086/kWh (excluding value added tax, equivalent to US\$0.0935/kWh).<sup>17</sup> This FIT rate applies only to grid-connected projects and is subject to fluctuations in the VND/USD exchange rate to be further outlined in the standard power purchase agreement (PPA) for solar power projects.<sup>18</sup> Decision 11 does not provide a fixed FIT rate for roof-mounted solar; the price for roof-mounted solar will be announced annually by the Ministry of Industry and Trade.<sup>19</sup>

#### 4. New Regulation On Guiding The Mechanism For Cooperation In Processing Of Applications For Investment Registration And Enterprise Registration Submitted By Foreign Investors

On 18 April 2017, the Ministry of Planning and Investment issued Circular No. 02/2017/BKHDT on guiding the mechanism for cooperation in processing applications for investment registration and enterprise registration submitted by foreign investors ("**Circular 02**"). Circular 02 will take effect on 15 June 2017.

Circular 02 provides the guidelines on mechanisms for cooperation in processing of applications for investment registration and enterprise registration submitted by foreign investors and foreign-invested business entities ("**foreign investors**"). Major points of Circular 02 are as follows:

- (i) The Circular applies to foreign investors establishing a business organization; investing by capital contribution/capital acquisition/share purchase; and amendment of both investment registration and registration enterprise contents ("**IRC and ERC procedures**"),<sup>20</sup>
- (ii) In general, the process shall include:<sup>21</sup>
  - Submitting an application dossier for IRC and ERC at Investment Registration Division ("**IR Division**");
  - The IR Division shall transmit application dossier for ERC procedures to Enterprise Registration Division ("**ER Division**");

<sup>13</sup> Decision 11, Article 10.3.

<sup>14</sup> Law on Enterprise Income Tax 2008 (amended in 2013), Article 13.1.b.

<sup>14</sup> Law on Enterprise Income Tax 2008 (amended in 2013), Article 13.1.b.

<sup>15</sup> Decree 218/2013/ND-CP, Article 16.1.a.

<sup>16</sup> Decision 11, Article 11.

<sup>17</sup> Decision 11, Article 12.

<sup>18</sup> Decision 11, Article 12.1.a.

<sup>19</sup> Decision 11, Article 12.2.b.

<sup>20</sup> Circular 02, Article 4.

<sup>21</sup> Circular 02, Article 6.

- Within 02 working days from the receipt of information of application dossier, the ER Division notifies the result to the IR Division to (i) require for amendment and/or supplements or (ii) accept the application dossier;
  - Within 1 working day from the receipt of ERC, the IR Division shall deliver the ERC and IRC to the foreign investors.
- (iii) Only one copy of each investor document is required for the application dossier (including passport of the foreign investor being as individual; certificate of incorporation or equivalent documents of the foreign investor being as organization; power of attorney);<sup>22</sup>
- (iv) The foreign investor, at its decision, can obtain the IRC and ERC documents at the same time according to cooperation mechanism or obtain each one separately.<sup>23</sup>

## 5. Further Regulations In education Sector

On 21 April 2017, the Government issued Decree No. 46/2017/ND-CP setting out conditions of investment and operation in the education sector ("**Decree 46**") which took effect on 21 April 2017. Decree 46 provides regulations on conditions of investment and operation in educational sector, including:

- (i) Establishment, establishment permit, acquisition, division, partial division, dissolution; educational operation permit and suspension towards institutions of preschool education; institutions of general education; institutions of continuing education, special schools; universities and academies;
- (ii) Establishment, establishment permit, acquisition, division, partial division and dissolution of pedagogical professional secondary schools and pedagogical college; registration, supplement registration of vocational training operation towards teaching training sector ; issuance, revocation and suspension of registration certificate of vocational training operation towards teaching training sector at college and professional secondary education level;
- (iii) Establishment, establishment permit; registration, supplement registration and suspension of operation of education quality accreditation; dissolution of education quality accreditation institutions;
- (iv) Application and revocation for Registration Certificate of study abroad consultancy service; suspension of study abroad consultancy service.

However, conditions of investment and operation to foreign education institutions, foreign education representative office in Vietnam, campuses of foreign-capitalized educational institutions and educational association with foreign partners shall comply with other Decree on foreign cooperation and investment in education sector. Currently, the foreign cooperation and investment in education and educational training, including educational association, foreign-capitalized educational institutions, representative offices of foreign education in Vietnam are still being governed by Decree No. 73/2012/ND-CP of the Government.

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<sup>22</sup> Circular 02, Article 5.3.

<sup>23</sup> Circular 02, Article 5.1.

## 6. Detailing On Pharmaceutical Law

On 8 May 2016, the Government issued Decree No. 54/2017/ND-CP detailing and guiding the implementation of some articles of Pharmaceutical Law (“**Decree 54**”) which will take effect on 1 July 2017. Notable regulations of Decree 54 are as follows:

- (i) Dossier and procedure for issuance, reissuance, adjustment and revocation of pharmacy practice certificate and certificate of eligibility for pharmacy business;<sup>24</sup>
- (ii) Management of pharmaceutical business operations (particularly, conditions for institutions trading special controlled drugs);<sup>25</sup>
- (iii) Conditions and proposal dossier for importation and exportation licence of some specific drugs and drugs that do not have circulating certificates in Vietnam;<sup>26</sup>
- (iv) Circulating registration of medicinal materials, excipients, capsule shells;<sup>27</sup>
- (v) Assessment of drug manufacturing institutions residing abroad to satisfy good practice of drug production;<sup>28</sup>
- (vi) Competence, conditions, scope and handling measures pertaining to withdrawal of drug raw materials;<sup>29</sup>
- (vii) Dossier for issuance, reissuance and adjustment of approval document of drug information content and drug advertisement contents;<sup>30</sup>
- (viii) Drug price regulatory measures.<sup>31</sup>

Regarding drug price regulatory measures, Decree 54 specifies that pharmacy business establishments may not sell drugs without declaring or re-declaring prices published on the Health Ministry’s electronic information portal, which is declared or re-declared by drug manufacturers or drug-processing establishments or drug-importing

establishments. Pharmacy business establishments shall not be allowed to sell drugs at the wholesale or retail level at prices higher than the declared or re-declared prices.<sup>32</sup>

Decree 54 also requires drug establishments to list the wholesale price of each drug at the transaction location or sale place of the drug establishment. Drug retailers must list the retail price of each drug at the drug retailer. Drug wholesale and retail establishments may not sell higher than the prices set by the listed establishments.<sup>33</sup>

<sup>24</sup> Decree 54, Chapter II, Section 1 and Chapter III, Section 1

<sup>25</sup> Decree 54, Chapter III, Section 4

<sup>26</sup> Decree 54, Chapter IV, Section 1

<sup>27</sup> Decree 54, Chapter V, Section 1

<sup>28</sup> Decree 54, Chapter V, Section 2

<sup>29</sup> Decree 54, Chapter VI

<sup>30</sup> Decree 54, Chapter VII

<sup>31</sup> Decree 54, Chapter VIII

<sup>32</sup> Decree 54, Article 133

<sup>33</sup> Decree 54, Article 135

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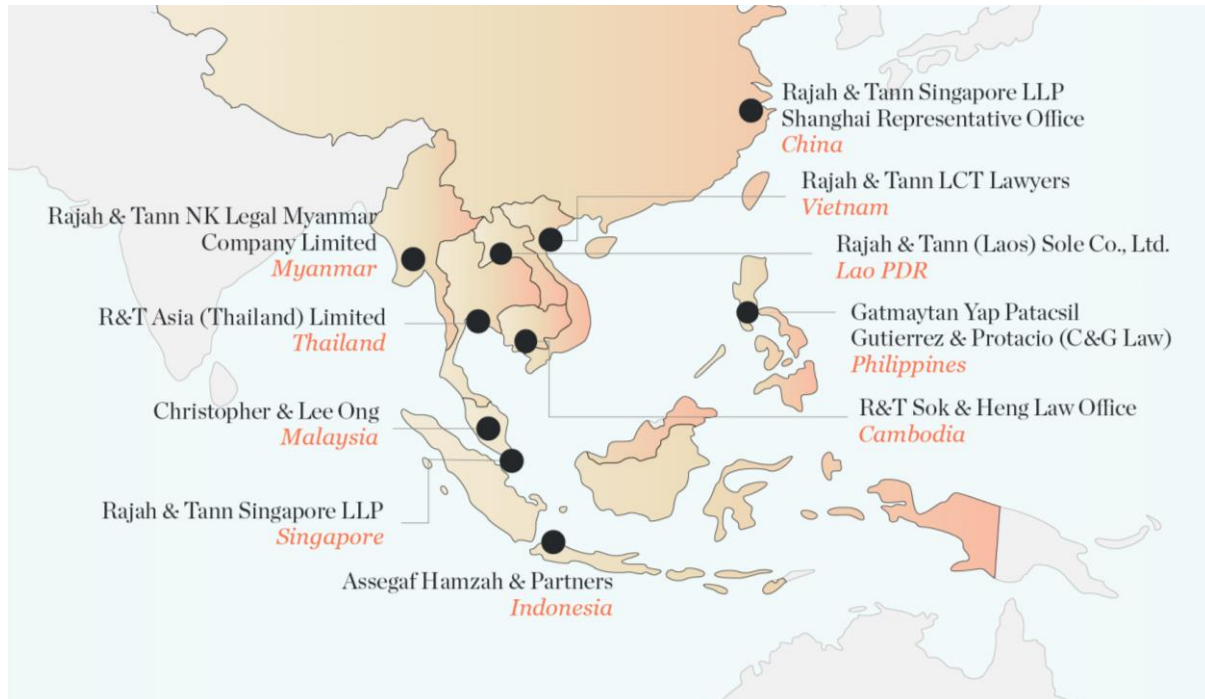
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