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## Legal Update

June 2015



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Corporate | Dispute Resolution | Financial Services | Intellectual Property | Real Estate & Infrastructure

## **LEGAL BRIEFING**

**June 2015**



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**Corporate**  
**Corporate - Compliance**

**1. New Advertising Confirmation: One Procedure, One Form**

**The Law**

On 25 May 2015, the Ministry of Health of Vietnam issued Circular No. 09/2015/TT-BYT on confirmation of advertisement information about products, goods and services under the governing authority of the Ministry of Health (“Circular 09”). Particularly, products, goods and services subject to advertising confirmation procedures under Circular 09 comprising of (if under the governing scope of the MOH) cosmetics, food, food additives, anti-insect chemistry and preparations used in household and medical areas, medical equipment, milk and nutritional products, medical examinations and treatment services.

Accordingly, Circular 09 sets out the general conditions, application requirements, procedures, validity of and authorities of department under MOH relating to confirmation of advertising of the above listed products, goods and services.

Circular 09 shall take effect from 16 July 2015 and replaces provisions on drug advertising under Circular No. 13/2009/TT-BYT and Circular No. 45/2011/TT-BYT, provisions on cosmetic advertising under Circular No. 06/2011/TT-BYT and Circular No. 08/2013/TT-BYT on advertising of foods under MOH’s authority. Receipt of advertising dossiers that have been issued prior to the effective date of Circular 09 shall remain its validity until their expiry dates.

*Circular 09 will take effect from 16 July 2015*

**Impact on Businesses**

Circular 09’s key impact is that it will allow for one procedure and one form of application for advertising confirmation for all products, goods and services. The applicants will submit the application dossier to the respective MOH’s departments governing their advertised products and receive a standardized “certificate of confirmation of advertisement”.

Under Circular 09, advertising activities of special products, goods, and services governed by MOH are stipulated in the manner of consistency and harmonization with Law on Advertising and its guiding legislations (i.e. Decree 181/2013/ND-CP). This strong link reduces overlap between specialized regulations, i.e. regulations on pharmacy, food safety, medical examination and treatment services, and advertising regulations.

The changes undertaken in Circular 09 will help to streamline the advertising procedure for the aforementioned business activities. It is expected to have positive effects for the advertising activities in the consumer health industry, with less regulatory restraint, there may be a boost in the advertising demand for these products.

## **2. Expansion of Customs Priority Policy to Brokers and Key Investment Projects**

### **The law**

On 12<sup>th</sup> May 2015, Ministry of Finance issued Circular No. 72/2015/TT-BTC that will regulate on the application of priority policies in customs procedures, customs inspection and supervision for exported and imported goods of enterprises (hereinafter referred to as “**Circular 72**”). Circular 72 will replace Circular No. 86/2013/TT-BTC dated June 27, 2013 (hereinafter referred as “**Circular 86**”) and Circular No. 133/2013/TT-BTC dated September 24, 2013 of the Ministry of Finance.

Under the new circular, the priority policy has had its subject and scope broadened and expanded, with the conditions for application of priority now less strict, and the procedures simplified in comparison with the previous Circular 86.

The customs priority regime will be expanded to include eligible customs brokers and projects, rather than only for enterprises, as noted in the previous Circular 86. The scope of privileges has expanded beyond just businesses to include various subjects including enterprises, customs brokers and key investment projects agreed by the Prime Minister. The conditions stated for the amount of import or export turnover for enterprises has been reduced from US\$200 million annually to US\$100 million annually.

### **Impact on Businesses**

In terms of procedures, Circular 72 waives the stage of undertaking the Memorandum of Understanding (“MOU”) in the verification process. Instead of separating the appraisal procedure into two stages which are generating the MOU and issuance of the Decision on recognition of prioritized enterprises as stipulated in Circular 86. Circular 72 streamlines the process as the Decision will be signed by the Director of the General Department of Customs within 10 working days since the completion of inspection process, without making the memorandum if enterprises meet the conditions for application of priority policy. Moreover, enterprises will submit the dossiers to the Customs Department of the province where the headquarters of the enterprise is located, instead of the General Department of Customs. Furthermore, the right to customs clearance with incomplete declarations will be granted to enterprises more generally, instead of only applying this in the event that the database system of the customs offices meet malfunction or temporarily stop operation.

Businesses should also note that the time schedule for the processing of dossiers is not clearly stated in this Circular, while Circular 86 explicitly specifies that the time limit for consideration to recognize the prioritized business shall not exceed 45 working days.

*Circular 72 will take effect on 26th June 2015.*

## Financial Services

### 3. New Legal Framework for Vietnam's Nascent Derivative Securities Market

#### The Law

On 5 May 2015, the Government issued Decree No. 42/2015/ND-CP on derivative securities and the derivative securities market, which is considered as the very first legal framework for the derivative securities market of Vietnam to come into operation in 2016.

This Decree recognizes futures contracts, options and forward contracts of which objects are underlying assets being securities and/or other assets used as the basis for fixing the value of the derivative securities as derivative securities. There will also be other kinds of derivative securities as recognized in accordance with guidelines of the Ministry of Finance. These newly recognized derivative securities may be traded on the derivative securities market as provided by the laws.

In principle, any organization or individual may invest in derivative securities on the derivatives market, except for certain organizations, such as securities companies, fund management companies, credit institutions and State-owned companies, which must satisfy certain requirements before investing in the market.

Furthermore, for the purpose of conducting derivative securities trading and/or providing derivative securities clearance and payment services, an organization will need to obtain a certificate of satisfaction of conditions for the respective activities issued by the State Securities Commission. To obtain this certificate, in general and subject to activities registered to be conducted, the organization must satisfy a number of conditions, such as financial conditions, i.e. minimum charter capital; conditions on business results, ratios of available capital, professional rules and/or relevant requirements to be provided by the Ministry of Finance; and other conditions as provided.

*Decree 42 will take effect on 1 July, 2015*

#### Impact on Businesses

Through there has been a legal framework for securities trading in Vietnam since the introduction of the Law on Securities (70/2006-QH11), Decree 42/2015/ND-CP allows for more diversified securities products in the Stock Exchange, thus boosting liquidity in the securities market which will be great news for businesses that are increasingly using the Stock Market as a capital channel. Accordingly, Decree 42/2015/ND-CP is expected to support the securities market of Vietnam, increase competitiveness and help to narrow the gap between securities market of Vietnam and of other countries all over the world.

## Real Estate & Infrastructure

### 4. Construction Master Planning: More defined procedures

#### The Law

On 6 May 2015, Government issued Decree No. 44/2015/ND-CP, providing guidance for a number of regulations on construction master planning (“Decree 44”). This Decree provides detailed regulations on a number of articles in the Law on Construction No. 50/2014/QH13, including the formulation, evaluation and approval of construction master planning, as well as master planning implementation and planning permits.

#### Impact on Businesses

##### More defined procedures for construction industry and investors

Firstly, specific functional areas with the scale over 500 ha shall be put under the general planning category, to ensure the suitability for provincial planning, urban planning, and to form a basis for zoning, and detailed planning.

Secondly, areas (over and below 500 ha) inside specific functional areas shall be put under the general planning category, ensuring its suitability for provincial planning, urban planning, and again to form a basis for zoning planning and detailed planning.

Thirdly, Areas inside specific functional areas upon instruction shall be placed under the detailed planning category, in order to ensure that the general planning framework, and zoning planning is more rigid, and to form a basis for issuance of the construction permit.

Fourthly, in the event that a single investor undertakes a construction project of less than 5 ha, (or under 2 ha if it is an apartment building project), the project must be created without the formulation of a detailed construction planning. Drawings of the general site plan, architectural plan, solutions to technical infrastructure in the fundamental design must comply with zoning plans or planning permits, ensuring the connection with technical infrastructure and compliance with architectural space in the area.

Finally, the planning permit shall be issued to investors who are qualified for implementing the investment in the construction project. The maximum period of a planning permit with respect to a concentrated construction project is 24 months from the date of issuance, until the detailed planning is approved. The maximum period for a planning permit with respect to a separate construction project is 12 months from the date of issuance until the construction project is approved.



### **Streamlined instruction on planning permits**

The following functional areas directly related to the issuance of the planning permit are detailed in Decree 44: (i) procedures for the issuance of planning permit; (ii) application for obtaining planning permit; and (iii) contents of the planning permit. For any construction planning project with the planning tasks being approved before the effective date of this Decree, the formulation, evaluation and approval shall be conducted under the Government's Decree No. 08/2005/NĐ-CP dated 24 January 2005 on construction planning.

*Decree 44 shall take effect from 30 June 2015*

## **5. New Guidance for Key Aspects of the Law on Construction**

### **The Law**

On 15 May 2015 the Government issued Decree No. 46/2015/ND-CP (Decree 46) to provide further guidance on the Law on Construction 2015 with respect to quality management and maintenance of construction works, pointing out:

“The responsibility for the quality of the works remains with the survey construction contractors, design contractors, and supply contractors, even after their work has been inspected and accepted by the employer, or after the defect liability period has expired. This means that these contractors may be held liable for damages evidenced to be caused by the quality of their works.”

### **Impact on Businesses**

Under Decree 15/2013/ND-CP, acceptance of construction works for commissioning into use when they have not satisfied all requirements of the design, of national technical regulations, of standards applicable to the construction works, and the technical specifications and other requirements of the employers specified in the agreements is generally not allowed.

However, Decree 46 entitles the employer to conditionally accept the construction works for commissioning into use, if the issues with respect to quality of construction works do not affect the weight-bearing capacity, the life cycle and the functions of the works and if the construction works conform to the safety requirements.

Decree 15/2013/ND-CP allows the employer and contractor to freely agree on the minimum amount of the warranty fee retained by the employer. However, to the extent of State owned works, this has been restricted by Decree 46. Accordingly, the warranty fee for State owned works must not be less than 3% of the contract value for works of grade 1 or special grade, and 5% of contract value for the works of other grades.

Decree 46 stipulates that survey contractors should pay significant attention to the quality of their works. Therefore, we suggest that survey contractors to provide sufficient and

eligible resources to ensure their works are compliant with the technical plan, as this is required by Decree 46. We would also warn that the Decree also entitles the employer to completely suspend the construction survey works upon finding them not compliant with the technical plan, or the construction survey agreement.

*Decree 46 will take effect from 01 July 2015*



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