

CLIENT UPDATE 2016 FEBRUARY

Recent Legal Developments in Vietnam

1. Civil Code No. 91/2015/QH13

On 24 November 2015, the National Assembly issued the Civil Code (the “2015 Civil Code”) to replace the former 2005 Civil Code. The 2015 Civil Code has a number of new points as identified below:

- (a) The 2015 Civil Code provides a broader scope of regulation encompassing the overarching intention of the 2005 Civil Code. Specifically, civil relations in the 2015 Civil Code include relations established on the basis of equality, freedom of will, independence of property and self-responsibility;¹ whereas the 2005 Civil Code only listed regulations on civil relations, marriage and family, business, trade and labor.

However, the subjects of civil relations prescribed in the 2015 Civil Code now only include natural and juridical persons and exclude “other subjects” from its scope.² Accordingly, households, co-operative groups and other non-juridical persons engaging in civil relations shall have the transactions conducted through their member or authorised representative.³

- (b) Abrogating the regulation on person(s) without civil capacity and simultaneously supplementing the case of persons with limited cognition or behavior control.⁴
- (c) Clearly distinguishing “commercial juridical person” and “non-commercial juridical person.”
 - (i) Commercial juridical person(s) include enterprises and other business entities, which means a juridical person whose primary purpose is seeking profits and its profits shall be distributed to its members;⁵ and
 - (ii) Non-commercial juridical person(s) include regulatory agencies, people's armed units, political organizations, socio-political organizations, etc., which means a juridical person whose primary purpose is not seeking profits and should subsequent profits be made, a non-commercial juridical person may not distribute these profits to its members.⁶
- (d) The 2015 Civil Code also clarifies the rate of interest in loan agreements as follows:
 - (i) The rate of interest for a loan agreed by the parties may not exceed 20% per year, unless otherwise prescribed by law. This rate may be revised from time to time by the Standing Committee of National Assembly. If the agreed interest exceeds the maximum interest as prescribed in this law, the exceeded interest shall become invalid; and
 - (ii) In case the parties agree that interest will be payable but fail to specify the interest rate, or where there is a dispute as to the interest

1 Article 1, the 2015 Civil Code
2 Article 1, the 2015 Civil Code
3 Article 101, the 2015 Civil Code
4 Article 23, the 2015 Civil Code
5 Article 75, the 2015 Civil Code
6 Article 76, the 2015 Civil Code
© Rajah & Tann LCT Lawyers

CLIENT UPDATE 2016 FEBRUARY

rate, the interest rate for the duration of the loan shall equal to 50% of the above-mentioned maximum interest.⁷

- (e) Performance of contract upon the basic change of circumstances is also a notable point in the 2015 Civil Code:⁸
 - (i) Should basic circumstances change, the affected party may request the other party re-negotiate the contract within a reasonable period of time; and
 - (ii) If the parties fail to re-negotiate the contract, any of the parties may request a court to either terminate the contract at a specific time, or to amend the contract to balance the lawful rights and interests of the parties, which may only be implemented in case the termination of contract would cause greater damage than the cost to perform the modified contract.⁹
- (f) The 2015 Civil Code takes effect from 01 January 2017.

2. Civil Procedure Code No. 92/2015/QH13

On 25 November 2015, the National Assembly of Vietnam passed the Civil Procedure Code (the “2015 CPC”) which provides many breakthrough innovations affecting settlement procedures of civil cases. Many new points in the 2015 CPC that deserve to be highlighted are as follows:

- (a) The 2015 CPC requires the courts not to refuse the settlement of any case even though there is no law to apply in such cases.¹⁰ The determination of the courts’ jurisdiction, order and procedures for settling the case will apply similarly to cases regulated by law. The 2015 CPC provides the following:¹¹
 - (i) Where the parties are not in agreement and not prescribed by the law, the courts will apply standard settlement practices; if the parties cite different practices, the applicable practice will be the one recognized in the place the civil case arises;
 - (ii) Where there is no agreement, law or general practice applicable, the Courts may apply similar laws to settle the case; and
 - (iii) The Courts may only apply the basic principles of the Civil Code, legal precedent and justice to settle civil cases in practice and when there are no similar laws applicable.
- (b) There are some categories of disputes and civil requests to be added to the jurisdiction of Courts, notably:¹²
 - (i) Disputes over compensation for damage caused by the application of administrative prevention measures not compliant with the provision of competition law, unless the claim for damages is to be settled under administrative procedures;
 - (ii) Disputes between people who are not yet company members but have initiated a transaction on the transfer of capital with the company and members of the company;

⁷ Article 468, the 2015 Civil Code

⁸ Article 420, the 2015 Civil Code

⁹ Article 420, the 2015 Civil Code

¹⁰ Article 4.2, the 2015 CPC

¹¹ Article 45, the 2015 CPC

¹² Articles 26, 30, and 32, the 2015 CPC

© Rajah & Tann LCT Lawyers

CLIENT UPDATE

2016 FEBRUARY

- (iii) Disputes over apprenticeship, training, sublease labour, trade union rights and trade union funds, occupational safety, occupational health, compensation for damages caused by illegal strikes; and
 - (iv) Declarations recognizing the successful results of conciliation outside courts; cancelling the resolution of the General Meeting of Shareholders and resolutions of Board members as stipulated by the law on enterprise; request of declarations neutralizing labour contracts, collective labour agreements; request to examine the legality of a strike, and so forth.
- (c) The 2015 CPC also brings forth an entirely new measure of provisional emergency that is to prohibit obligors from exiting out of Vietnam.¹³
- (d) Persons currently involved in a civil case have an obligation to notify other involved persons of the documents and evidence that has been handed over and submitted to the Court from the time the civil case is filed. The copies of the petition, the documents and evidence handed over and submitted shall be sent to the parties involved, except for those which are already accessible to them or which cannot be disclosed according to laws (i.e., state secrets, trade secrets, business secrets of a personal or family nature). Where the copies cannot be made or the petition and the documents and evidence cannot be sent for legitimate reasons, the involved persons may have the right to request assistance of the Courts.¹⁴
- (e) The 2015 CPC has added a new regulatory process for resolving civil cases - a meeting for checking submissions, access and evidence disclosure. As a rule, this meeting will be held simultaneously with the mediation (if any). At the meeting for reviewing the submission, access, evidence disclosure and reconciliation, the judge will announce the documents and evidence in the case file and ask the involved persons what issues relate to requests and petition scope and the submission and supplementation of documentation and evidence.¹⁵
- (f) In order to create a simple procedure for settling simple cases with clear evidence to protect the legitimate interests of the involved persons, the 2015 CPC allows the courts to settle cases through a more abbreviated procedure when meeting the following conditions:¹⁶
- (i) For cases which involve simple details and clear legal relations, the involved persons have admitted their obligations, documents and evidence are sufficient to ensure an adequate basis for settling the case and the courts do not have to collect documents and evidence;
 - (ii) The involved persons have clear residence or headquarter addresses; and
 - (iii) No involved person resides abroad and no disputed assets are located in foreign countries, unless the foreign involved person and the Vietnamese involved person have agreed to propose the Courts settle the dispute under the abbreviated procedure, or the involved persons have presented evidence about the legal ownership of the property and there is uniform agreement on the handling of assets.

Regarding procedures, within 01 month from the date of filing, the judge responsible for ruling on the matter has to decide whether to bring the case to trial under the abbreviated procedure and open the trial within 10 days from the date of decision issuance. The trial will not have the participation of people's jurors in the first instance and appellate courts. If the defendant and

¹³ Article 128, the 2015 CPC

¹⁴ Article 70.9, the 2015 CPC

¹⁵ Article 210, the 2015 CPC

¹⁶ Article 317.1, the 2015 CPC

© Rajah & Tann LCT Lawyers

CLIENT UPDATE 2016 FEBRUARY

persons having involved rights and obligations are duly summoned but absent without good reason, the judge will still conduct a normal hearing.¹⁷

- (g) The 2015 CPC shall take effect from 01 January 2017.

3. Maritime Code No. 95/2015/QH13

On 25 November 2015, the National Assembly of Vietnam passed the new Maritime Code which provided several significant changes to maritime businesses in Vietnam (the “2015 Maritime Code”), detailed as follows:

- (a) Bareboat manager, operator or charterer are allowed to exercise rights and fulfill obligations as a ship owner, as prescribed by the law and upon agreement with the shipowner.¹⁸
- (b) Unlike the 2015 Maritime Code, whereby only a Vietnamese ship could fly the Vietnamese flag, foreign ships operating in Vietnam seaports must also fly a Vietnamese flag.¹⁹

Foreign ships that wish to fly their national flag during national holidays must follow the laws before conducting such acts.

- (c) The 2015 Maritime Code amends the definition of Ship Arrest. From the effective date of this law, a seagoing ship in Vietnam may be arrested based on the following grounds:
 - (i) To settle maritime complaints;
 - (ii) To apply Temporary measures (e.g. interim injunctions);
 - (iii) To enforce a civil judgment / awards; or
 - (iv) To apply judicial assistance.
- (d) Under the 2015 Maritime Code, passengers no longer have the right to terminate a passenger transportation contract before the commencement of the voyage at any port at which the vessel calls for passengers to embark or disembark or request a refund of his/her fare or an amount of money equivalent to the unused part of his/her fare, less expenses or fine, if any.
- (e) The 2015 Maritime Code takes effect from 01 July 2017.

4. Law on Cyber Information Security No. 86/2015/QH13

On 19 November 2015, the National Assembly of Vietnam passed the Law on Cyber Information Security (the “LOCIS”). The LOCIS consists of 8 Chapters, 54 Articles with some points deserved to be highlighted as follows:

- (a) The following 06 acts are prohibited:²⁰
 - (i) Blocking the transmission of information in cyberspace, illegally intervening, accessing, harming, deleting, altering, copying or falsifying information in cyberspace;
 - (ii) Illegally affecting or obstructing the normal operation of information systems or the users’ accessibility to information systems;

¹⁷ Article 318.1, the 2015 CPC

¹⁸ Article 15, the 2015 Maritime Code

¹⁹ Article 16.2, the 2015 Maritime Code

²⁰ Article 7, the LOCIS

© Rajah & Tann LCT Lawyers

CLIENT UPDATE 2016 FEBRUARY

- (iii) Illegally attacking, or nullifying cyber information security protection measures of information systems; attacking, seizing the right to control, or sabotaging information systems;
 - (iv) Spreading spams or malware or establishing fake and deceitful information systems;
 - (v) Illegally collecting, utilizing, spreading or trading in personal information of others; abusing weaknesses of information systems to collect or exploit personal information; and
 - (vi) Hacking cryptographic secrets and lawfully enciphered information of agencies, organizations or individuals; disclosing information on civil cryptographic products or information on clients that lawfully use civil cryptographic products; using or trading in civil cryptographic products of unclear origin.
- (b) In principle, individuals shall themselves protect their personal information.²¹
- (c) Those who collect, edit, utilize, store, provide, share or spread personal information in cyberspace for commercial purpose must obtain the consent of the owner of such person. They must apply suitable measure to protect the information. They also may not provide, share or publicise this information to any third party, except as required by the competent authorities.²²
- (d) Owners of personal information may request their information be updated, altered or deleted.²³
- (e) Unless the recipients are obliged to receive information under law, commercial information may not be sent to their electronic addresses if they refuse to get such information.²⁴
- (f) Enterprises that wish to do business in civil cryptographic products and services on the List of civil cryptographic products and services must obtain a license to be entitled to run their business.²⁵ The LOCIS also describes order and procedures to obtain such license as well as responsibilities of enterprises trading in this field.
- (g) Enterprises shall be granted a license for doing business in cyber information security testing and evaluation services upon satisfaction of the following conditions:²⁶
- (i) It is established and operated lawfully in the Vietnamese territory;
 - (ii) It is not a foreign-invested enterprise;
 - (iii) Its legal representative and managerial, administration and technical staff members are Vietnamese citizens residing in Vietnam;
 - (iv) It has a technical plan conformable with relevant standards or technical regulations;
 - (v) It has a customer information confidentiality plan in the course of service provision; and

²¹ Article 16, the LOCIS

²² Article 17, the LOCIS

²³ Article 18, the LOCIS

²⁴ Article 10.2, the LOCIS

²⁵ Article 31, the LOCIS

²⁶ Article 42.2, the LOCIS

© Rajah & Tann LCT Lawyers

CLIENT UPDATE

2016 FEBRUARY

- (vi) Its managerial, administration and technical staff members possess diplomas or certificates in information security testing and evaluation.
- (h) Before cyber information security products are put into market, they must be assessed for conformity with technical standards.²⁷
- (i) The LOCIS takes effect from 01 July 2016.

²⁷ Article 39.1, the LOCIS
© Rajah & Tann LCT Lawyers

CLIENT UPDATE 2016 FEBRUARY

Contact us

Email: quang.chau@rajahtannlct.com – Head of Dispute Settlement
que.vu@rajahtannlct.com – Head of Corporate M&A
nha.nguyen@rajahtannlct.com – Head of Banking & Finance
brian.ng@rajahtannlct.com – Head of Capital Market

RAJAH & TANNLCT LAWYERS

Ho Chi Minh City Office
 Saigon Centre, Level 13, Unit 2&3
 65 Le Loi Boulevard, District 1, HCMC, Vietnam
 T +84 8 3821 2382 / +84 8 3821 2673
 F +84 8 3520 8206

Hanoi Office
 Lotte Center Hanoi - East Tower,
 Level 30, Unit 3003,
 54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam
 T +84 4 3267 6127 F +84 4 3267 6128
www.rajahtannlct.com

ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

Our regional presence



Our regional contacts

RAJAH & TANN | Singapore

Rajah & Tann Singapore LLP
9 Battery Road #25-01
Straits Trading Building
Singapore 049910
T +65 6535 3600 F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | Cambodia

R&T Sok & Heng Law Office
Vattanac Capital Office Tower, Level 17, No. 66
Preah Monivong Boulevard, Sangkat Wat Phnom
Khan Daun Penh, 12202 Phnom Penh, Cambodia
T +855 23 963 112 / 113 F +855 963 116
kh.rajahtannasia.com
*in association with Rajah & Tann Singapore LLP

RAJAH & TANN REPRESENTATIVE OFFICE | China

Rajah & Tann Singapore LLP
Shanghai Representative Office
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle
Road
Shanghai 200021, People's Republic of China
T +86 21 6120 8818 F +86 21 6120 8820
cn.rajahtannasia.com

RAJAH & TANN NK LEGAL | Myanmar

Rajah & Tann NK Legal Myanmar Company Limited
Myanmar Centre Tower 1, Floor 07, Unit 08,
192 Kaba Aye Pagoda Road, Bahan Township,
Yangon, Myanmar
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | **Indonesia**

Assegaf Hamzah & Partners

Jakarta Office
Menara Rajawali 16th Floor
Jalan DR. Ide Anak Agung Gde Agung Lot #5.1
Kawasan Mega Kuningan, Jakarta 12950, Indonesia
T +62 21 2555 7800 F +62 21 2555 7899
www.ahp.co.id

Surabaya Office
Pakuwon Center, Superblok Tunjungan City
Lantai 11, Unit 08
Jalan Embong Malang No. 1, 3, 5, Surabaya 60261, Indonesia
T +62 31 5116 4550 F +62 31 5116 4560
* Assegaf Hamzah & Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.

CHRISTOPHER & LEE ONG | **Malaysia**

Christopher & Lee Ong
Level 22, Axiata Tower, No. 9 Jalan Stesen Sentral 5,
Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia
T +60 3 2273 1919 F +60 3 2273 8310
www.christopherleeong.com
*in association with Rajah & Tann Singapore LLP

RAJAH & TANN | **Thailand**

Rajah & Tann (Thailand) Limited
973 President Tower, 12th Floor, Units 12A-12F
Ploenchit Road, Lumpini, Pathumwan
Bangkok 10330, Thailand
T +66 2 656 1991 F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN | **Lao PDR**

Rajah & Tann (Laos) Sole Co., Ltd.
Phonexay Village, 23 Singha Road, House Number 046/2
Unit 4, Saysettha District, Vientiane Capital, Lao PDR
T +856 21 454 239 F +856 21 285 261
la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | **Vietnam**

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
Saigon Centre, Level 13, Unit 2&3
65 Le Loi Boulevard, District 1, HCMC, Vietnam
T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

Hanoi Office
Lotte Center Hanoi - East Tower, Level 30, Unit 3003,
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam
T +84 4 3267 6127 F +84 4 3267 6128
www.rajahtannlct.com

Rajah & Tann LCT Lawyers has a multi-faceted talent pool of lawyers with expertise in a range of practice areas who are able to provide end-to-end legal services for all transactions in Vietnam. Rajah & Tann LCT Lawyers is also able to handle cross-border transactions involving other jurisdictions, particularly those within the Indochina region.

Rajah & Tann LCT Lawyers is part of the Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam. Our Asian network also includes Singapore-based regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann LCT Lawyers and subject to copyright protection under the laws of Vietnam and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann LCT Lawyers.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann LCT Lawyers.