

Recent Legal Developments in Vietnam

1. New Decree on goods purchase and sale activities or goods purchase and sale related activities of foreign-invested enterprises in Vietnam

On 15 January 2018, the Government issued Decree 09/2018/ND-CP to replace the decade-old Decree 23/2007/ND-CP, which notably prescribed regulations and requirements on foreign-invested companies engaged in trading and trading-related activities. The decree came into effect on the same date.

Perhaps the most notable change brought introduced by the new decree is the abolishment of the requirement by foreign-invested trading companies to obtain a Business License when they engage in export, import and wholesale distribution activities (except for certain restricted goods). The decree specifies that the following business services are subject to the Business License requirement for foreign-invested companies: (i) retail distribution, (ii) logistics services not committed for market opening by Vietnam, (iii) rental of goods, (iv) commercial promotion, (v) commercial intermediary services, (vi) e-commerce services and (vii) auctioning services.

2. New Decree on Compulsory Fire and Explosion Insurance

On 23rd February 2018, the Government of Vietnam promulgated a new decree No 23/2018/ND-CP ("**Decree 23**") with respect to the compulsory fire and explosion insurance. Remarkable points are illustrated by the Decree 23 followings:

- (i) Insured property is the property of the insured facility, including: houses, works and properties on houses and works; machines, equipment; goods and supplies (including materials, finished goods, semi-finished goods)
- (ii) The Decree frames the minimum sum insured is equal to the market value of the properties with respect to houses, machines, equipment, goods and supplies. But if there is a failure to conclusively evaluate the market value of the property, the value would be determined on the basis of mutual agreement between parties.¹
- (iii) Where the total sum insured on a single facility (except nuclear facilities) is VND 1,000 billion or over or the insured facility is a nuclear facility, the insurer and the policyholder shall reach an agreement on the insurance premiums and deductible upon the occurrence of each issued event in accordance with regulations of law and with the reinsurer's approval.²

3. New Decree to elaborate several Articles of the Law on Food Safety

On 02 February 2018, the Government promulgates a Decree No. 15/2018/ND-CP elaborating several Articles of the Law on Food Safety ("**Decree 15**") to replace Decree No. 38/2012/ND-CP dated 25 April 2012. The Decree 15 enters into force from 02 February 2018. . The following highlighted issues shall be taken into account in the course of business

¹ Decree 23, Article 5

² Decree 23, Article 7

- (i) Food manufacturers and food sellers shall prepare self-declaration of pre-packaged processed foods, food additives, food processing aids, food containers, primary packages of foods other than products, raw materials that are manufactured or imported for production or processing of exports or internal production and are not sold domestically and several products required to register the declaration.³
- (ii) Food manufacturer and seller are obliged to obtain the Certificate of food safety, except for several exempted circumstances such as micro food manufacturers, mobile food manufacturers and sellers, Sellers of prepackaged foods, restaurants within hotels.⁴
- (iii) Entities or individuals having certain foods for which advertisement contents must be registered such as dietary supplements, medical foods, food for special dietary uses shall registered advertisement content on such products with the authority that issued the Certificate of product registration be for advertising.⁵

4. Details on trade remedies in the Law on Foreign Trade Management

On 15 January 2018, the Government issued Decree No. 10/2018/ND-CP ("**Decree 10**") guiding in details some articles on trade remedies of the Law on Foreign Trade Management. The Decree 10 has taken effect on the issuance date and stipulates notable points as follows:

- (i) method for determining the damage of domestic industry⁶;
- (ii) ground for the conduction, procedures, time limit, contents and ground for the termination of trade remedy investigation⁷;
- (iii) review of the imposition of trade remedies⁸;
- (iv) taking action against evasion of trade remedies⁹;
- (v) exemption from trade remedies¹⁰;
- (vi) handling of trade remedies imposed on the Vietnamese exports¹¹.

5. New decrees on special preferential import tariffs in 2018

The Vietnamese government has recently issued ten (10) decrees to implement Vietnam's special preferential import tax commitments made in its Free Trade Agreements with various partners. Accordingly, from 1 January 2018, a number of tariff lines shall be cut to zero percent (0%). For example, under Decree 156/2017/ND-CP detail the preferential taxes of Vietnam to implement the ASEAN Trade in Goods

³ Decree 15, Article 4

⁴ Decree 15, Article 11, 12

⁵ Decree 15, Article 26, 27

⁶ Decree 10, Chapter II, Item 2

⁷ Decree 10, Chapter III

⁸ Decree 10, Chapter IV

⁹ Decree 10, Chapter V

¹⁰ Decree 10, Article 7

¹¹ Decree 10, Chapter VI

Agreement, import duty rates for cars under 9 seats shall be cut down from thirty percent (30%) to zero percent from 30% to 0%.

The duration of the new preferential tariffs are extended from five (05) to six (06) years (2018- 2022/2023), instead of two (02) years as provided in the previous decrees, aiming to ensure the stability in the application of special preferential import tariffs and facilitate the compliance of the businesses.

The new decrees also specify import tax rates imposed on the imported goods inside and outside tariff quotas, as follows:¹²

- (i) For the quantities of imported goods inside tariff quotas, the applicable special preferential import tax rates shall be the special preferential import tax rates prescribed in the attached Special Preferential Import Tariffs List.
- (ii) For the imported goods outside tariff quotas, the applicable import tax rates shall comply with the Government's regulations at the time of import.

6. Simplification of administrative procedures

On 27 December 2017, the Government promulgated Resolution No. 136/NQ-CP (the "**Resolution 136**") on the simplification of administrative procedures, including the establishment and operation of enterprise, investment from Vietnam to overseas, and investment in Vietnam.

The Resolution shall take into force upon its execution, laying down major points as follows:

- (i) Dismisses the element "Copy of identification card, passport or other legal documents" for the procedures of registering the establishment of enterprise and representative office or registering an investment project in Vietnam and overseas¹³.
- (ii) Replaces some information in application form and content of Enterprise Registration Certificate:
 - "Permanent address, nationality, number of identification card, citizen identification, passport or other legal personal certificates" shall be replaced by "personal identification number".
 - Information in forms and certificates regarding citizen and citizen identification shall be replaced by "given first name, middle name, last name; personal identification number".

¹² Article 3.5 of each Decree

¹³ Resolution 136, Part A, Item I and III and IV

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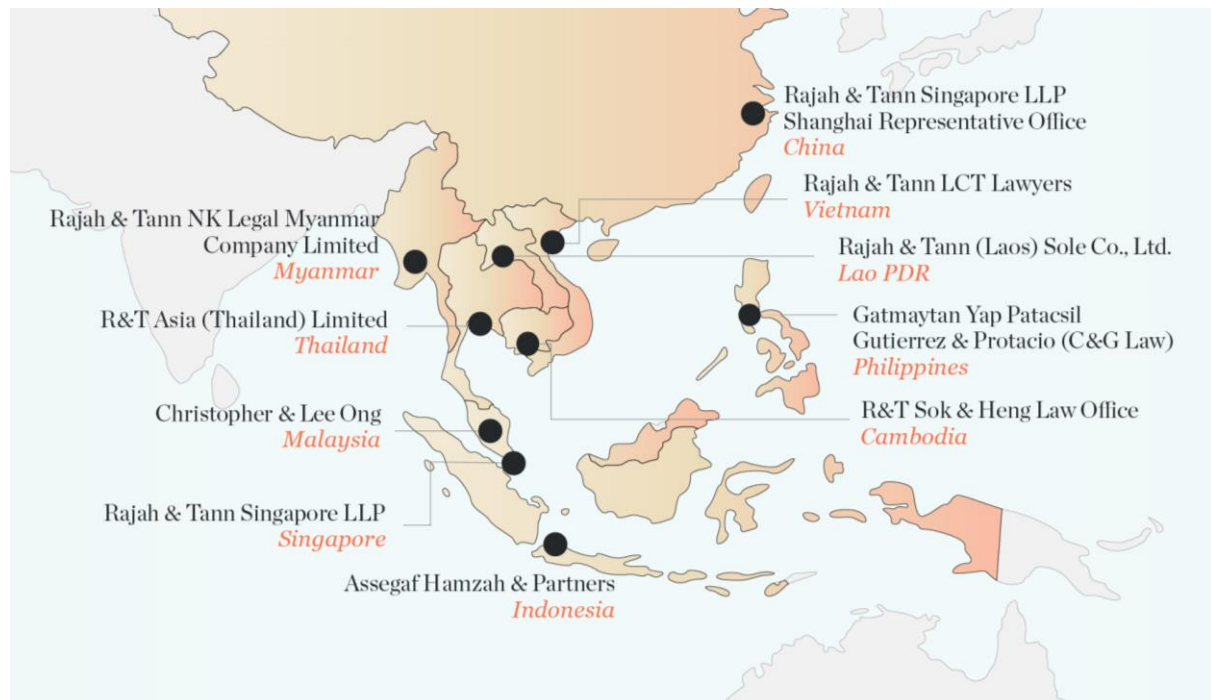
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