



# ClientAlert

Issue No. 7.8 | January 2017

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## 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 the Civil Code to minimum wage and from accountancy to gambling.

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

Kind regards,  
Indochine Counsel

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# What January Did

On 1 Jan 2017 many significant changes of law came into effect. Three of these new laws and decrees rank highly in their effects on the legal atmosphere in Vietnam. The three pieces of legislation we review are as follows:

- Law No. 91/2015/QH13 passed by the 13<sup>th</sup> National Assembly on 24 November 2015 (“**Civil Code 2015**”)
- Law No. 88/2015/QH13 passed by the 13<sup>th</sup> National Assembly on 20 November 2015 on Accountant (“**Law on Accountant 2015**”)
- Decree No. 153/2016/ND-CP of the Government providing regulations on minimum area wage rates for employees working pursuant to a labor contract (“**Decree 153**”)

## Civil Code 2015

On 24 November 2015, Civil Code 2015 was promulgated by the National Assembly of Vietnam in order to replace Civil Code 2005. Civil Code 2015 includes 27 chapters and 689 Articles.

Here are some new and significant regulations provided under Civil Code 2015:

### Gender transformation

Article 37 of Civil Code 2015 allows an individual to transform his/her gender in accordance with law. Accordingly, an individual whose gender has been transformed has the right and obligation to register civil status changes in accordance with the law on civil status; and has personal rights suitable to the transformed gender pursuant to provisions of this Code and other relevant laws.

### Application of case law

Under Article 6 of Civil Code 2015, the case law may be applied to govern the civil relations when there is no applicable law nor analogous law.

### Representatives:

Under Article 134 of Civil Code 2015, legal entities may become subjects of representation. Article 139 of the former Civil Code 2005 provided that only individuals could participate in representation. In our view, this provision makes improvements on the legal base for legal entities to support the implementation and protection of their civil rights and restrict legal risks in civil relations.

### Limitation periods:

Article 149 of Civil Code 2015 stipulates that *“a court shall apply provisions on limitation periods only upon petition to apply limitation periods of one or more parties, provided that such petition must be*

*made before the first instance court issues a judgment or a decision resolving the case.”*

Article 429, Article 588 of Civil Code 2015 stipulates that the limitation period for initiating legal action *respect to contracts* and *claiming compensation for loss and damage* shall be three years from the date on which the person with the right to make the request **knew or should have known** that his or her legal rights or interests were infringed. This is a stretching of the statute of limitations which, under Civil Code 2005, was limited to two years.

### Circumstances change substantially on performance of contract:

Another new point of Civil Code 2015 is the regulation on performance of contracts when circumstances change substantially: Civil code 2015 includes a completely new provision in Article 420.1: Circumstances change substantially when the circumstances satisfy certain conditions. And where circumstances change substantially, the party whose benefits are affected has the right to request the other party to re-negotiate the contract within a reasonable period of time. Where the parties are unable to reach agreement on amendment of the contract within a reasonable period of time, either party may request a court to: Terminate the contract at a definite time; Amend the contract to balance legitimate rights and benefits of the parties due to substantial change in circumstances.

### Interest rates/overdue interest in loan contracts:

*Interest rates:* Instead of employing the basic interest rate announced by the State Bank for a benchmark in civil obligations, Article 468 of Civil Code 2015 stipulates that: The rate of interest for a loan shall be as agreed by the parties. Thus, the basic interest rate announced by the State Bank is no longer applied. Where the parties have agreed on the interest rate, such agreed rate must not exceed 20% per annum of the loan, unless otherwise provided by other relevant laws. Where parties agree that interest will be payable but fail to specify an interest rate and there is a dispute as to the interest rate, the interest rate shall equal 50% of the interest rate cap provided above.

*Overdue interest:* Article 466.5 of Civil Code 2015 stipulates that: If a borrower fails to repay, in whole or in part a loan with interest, the borrower must pay (a) interest on the principal which is due and unpaid at the interest rate agreed in the contract for the term of loan, and (b) overdue interest additionally for the overdue unpaid amount equal to 150% of loan interest stated in the contract for the period of the delay, unless otherwise agreed.

This provision clarifies the mechanism, identifies overdue interest, respects the agreement of the parties in determining the overdue interest, in accordance with the principles and the nature of civil relations and overcomes inadequacies in Civil Code 2005.

### Compensation for non-contractual damages

This provision has been amended by Article 584.1 of Civil code 2015: “A person harming the life, health, honour, dignity, reputation, property, or other legal rights or interests of another person,

*thereby causing loss and damage, must compensate, unless otherwise provided by this Code and other relevant laws*". Civil Code 2015 thus regulates the causal relationship between harm and injury, but not the level of *mens rea*, or motivation.

The Civil Code 2015 took effect on 1 January 2017.

## Law on Accounting 2015

On 20 November 2015, Law on Accounting 2015 was promulgated by the National Assembly of Vietnam in order to replace Law on Accounting 2003. Law on Accounting 2015 includes 6 chapters and 74 articles, regulating the contents of accounting work, the organization of accounting systems, accountants, accounting services, State management of accounting and accounting professional organizations.

Below are some new and significant regulations of the Law on Accounting 2015:

### Accounting principles: supplement assets and liabilities

Law on Accounting 2003 only referred to the historical cost principle; assets and liabilities were therefore not reflected properly in accordance with international accounting practices. Article 28 of Law on Accounting 2015 has supplemented the principle of fair value: After initial recognition, assets and liabilities the value of which frequently fluctuates in accordance with the market price and could be re-assessed reliably, shall be recorded at fair value at the end of the accounting period.

### Numerals to be used in accounting:

*Law on Accounting 2015* supplements use of commas in some situations:

(1) financial statements to parent companies or who use the same management software as parent companies, are now allowed to use commas (,) after the thousand, million, billion and use a point (.) after the numeral representing unit as considered in the American style. It is noted that, however, for those financial statements to be submitted to taxation authorization, statistical authorization and government, a point (.) must be placed after the thousand, million, billion and a comma (,) is used after the numeral representing unit as in the Vietnamese style.

### *Electronic source vouchers: New regulations for electronic source vouchers*

As prescribed by Article 18.6, Law on Accounting 2015, entities are now allowed to store electronic accounting records in accordance with regulations on e-vouchers. In addition, entities shall ensure convenience when checking vouchers and information security, which will save both manpower and materials in voucher storage.

Law on Accounting 2015 came into force on 1 January 2017.

## Decree 153/2016/ND-CP

Decree 153 was promulgated on 14 November 2016 and provides regulations on minimum area wage rates for employees working under labor contract. The Decree will replace Decree 122/2015/ND-CP (“**Decree 122**”) that expired on 1 January 2017.

### Minimum area wage rate 2017

Under Decree 153 minimum area wage rates for the year 2017 are the most remarkable provision of Decree 153. Accordingly, employees working in every area will enjoy the minimum area wage increased with the rising rate varying from 180,000 VND to 250,000 VND. Particularly:

- *Area I*: Minimum wage increases from 3,500,000 VND per month to 3,750,000 VND per month.
- *Area II*: Minimum wage increases from 3,100,000 VND per month to 3,320,000 VND per month.
- *Area III*: Minimum wage increases from 2,700,000 VND per month to 2,900,000 VND per month.
- *Area IV*: Minimum wage increases from 2,400,000 VND per month to 2,580,000 VND per month.

Additionally, Decree 153 prescribes a List of Areas I, II, III and IV in the Appendix. There are some notable amendments as follows:

- Pho Yen Town of Thai Nguyen province promoted from Area III to Area II
- *Tan Thanh* District of Ba Ria Vung Tau province promoted from Area II to Area I
- Tra Vinh city classified to Area II

Decree 153 took effect on 1 January 2017.

## What is the Scope of Legitimate Betting Business in Vietnam

Betting services have long been considered a conditional business line. The drafting decree on betting service business was started in 2010, and after a long time of discussion and consideration, the Government has promulgated Decree No. 06/2017/ND-CP on Betting Business on Horse Racing, Dog Racing and International Football dated 24 January 2017 (“**Decree 06**”).

Decree 06 provides for three betting activities: betting on horse racing, dog racing, and international football, wherein, the business of betting on international football is permitted as a pilot project with

only one business enterprise providing such betting services, and for the duration of 5 years as from the issuance date of the certificate of eligibility for business conditions to such pilot enterprise.

According to Decree 06, a punter for a race must be 21 years old or above with full capacity for civil acts, and not be a person prohibited from betting (such as persons with certain relationships to the betting business enterprise and/ or management, executive persons thereof, or those involved in the organization/ operation/ suspensions of the races). The minimum value for bets is VND10 thousand, and the maximum value for a person to place bets at one business enterprise in respect of a betting product per day is VND1 million. The currency used for betting and paying prizes shall be in VND.

At present, the Government allows only one enterprise to do business in betting on international soccer. Particular conditions for such business enterprise comprise: (i) having minimum charter capital of VND1 trillion or equivalent amount; (ii) having a plan on investing in an IT system, technical facilities and business software ensuring that the operation is modern, synchronous, easy to upgrade, and operates accurately, safely and stably; (iii) having a feasible business plan on the betting business on international football, a plan on distribution of betting tickets, and a geographical area for issuance of such tickets in compliance with the provisions of this Decree and other provisions of law; (iv) there must be an undertaking provided to comply with the law of Vietnam and international law; and (v) there must be an undertaking on ensuring security, social order and assistance to the public. The selection of the pilot business enterprise will be conducted through a bidding procedure, and the selected enterprise shall perform the investment procedure as provided by laws.

For betting on horse racing and dog racing, in addition to conditions stipulated by the law on investment, conditions for a business enterprise to obtain a certificate of eligibility for conditional business include: (i) The location for investment in construction of the racecourse must comply with the master plan on socio-economic development of the locality of such construction; (ii) having minimum investment capital of VND1 trillion in the case of betting on horse racing and a minimum of VND300 billion in the case of dog racing; (iii) there must be a plan on organizing the betting business operation on horse or dog racing which is consistent with law; (iv) there must be a plan on investing in an IT system, technical facilities and business software ensuring that the operation is modern and up to date, synchronous, easy to upgrade, and operates accurately, safely and stably; and (v) there must be an undertaking provided to comply with the law of Vietnam and international law; and (vi) there must be an undertaking on ensuring security, social order and assistance to the public. A Certificate of eligibility for business conditions will have the duration as requested by the enterprise/ project investor, but shall not exceed ten years from the effective date thereof or the operation duration of the project in question. The renewal of the certificate is permitted, however, the same restrictions on the duration shall be applied for the renewal, and the renewal shall be conducted no later than 6 months prior to the expiry date of the then current validity of the certificate.

Decree 06 requires that betting business enterprises shall audit its yearly finance and announce the audited financial statement at the end of its fiscal year according to the prevailing laws.

This Decree takes effect on 31 March 2017

## Taking things in time

I recently started reading *Vietnam* a history by Christopher Goscha. I haven't made it that far in, but I've made it far enough to realize something that I haven't addressed, and that is vital to doing business in Vietnam.

Patience.

Yes, patience. The specific prompt for this realization came with a look back at the Le Dynasty. Though Le Thanh Tong did a lot to bring Confucianism from Chinese Mandarins into Dai Viet (what Vietnam was called at the time) he didn't have the same passion as one saw in Emperor Constantine to the west. The actual transference of the culture of Confucius came more slowly. It had already begun with the inculcation of Mandarins, and Le Thanh Tong did a great deal to spread the philosophy, but it didn't happen overnight.

It happened in a gradual import.

Even though Vietnam has progressed very quickly during the last decade and a half, there was fifteen years before that during which Doi Moi built up its roots and the country turned more towards a Socialist/Capitalist stance than a pure Communist one.

One example can be found in the banking system. I've had all kinds of experiences with the banking regulations in Vietnam. Opening and closing accounts. Transferring money. Getting paid. It's been an up and down roller coaster—to use the cliché—and even today I struggle with my banking in Vietnam.

Another example comes in the area of the press. Now, I'm going to be careful here, but the west seems to view the press freedoms of Vietnam in the context of current human rights when in fact, Vietnam has moved from a completely state controlled media to a much free-er and open press. If one looks at the contrast between the institution of Doi Moi in 1986 and now, the complaints wouldn't be nearly as loud.

And then there is the contract. Contracts are slowly gaining in efficacy. I remember talking in law school about the way contracts in Asia were less about concluding an unbreakable agreement than outlining a relationship. While that was definitely the case in the 2000s, it is starting to change as the population becomes more and more astute and the laws become more and more complete.

So yes, when you come to Vietnam be patient. If for no other reason than to lose your patience shows a loss of Face.

## 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.

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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

## **Tran Quang**

Associate  
quang.tran@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 +848 3823 9640  
F +848 3823 9641  
E info@indochinecounsel.com

## **Hanoi**

Unit 705, 7th Floor, CMC Tower  
Duy Tan Street, Cau Giay District  
Hanoi, Vietnam  
T +844 3795 5261  
F +844 3795 5262  
E hanoi@indochinecounsel.com

[www.indochinecounsel.com](http://www.indochinecounsel.com)

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