



# ClientAlert

## 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 numerous topics concerning the protection of maritime works to food safety legislation and the elimination of several business conditions.

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

Kind regards,  
Indochine Counsel

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## Protection of maritime works

Decree No. 143/2017/ND-CP, on protection of maritime works, was passed by the Government on 14 December 2017 (“**Decree 143**”). Decree 143 governs organizations and individuals related to the management and protection of maritime works within the area of seaport waters and maritime zones of Vietnam.

The following acts are prohibited under Decree 143:

- (i) Loading or storing flammables, explosives and hazardous substances which can corrode or damage maritime works without prior permission of competent authorities;
- (ii) Discharging waste causing damage or affecting the durability and service life of maritime works;
- (iii) Illegally dredging navigational channels within the safety perimeter of navigational and seaport water or dredging without complying with technical requirements approved by competent authorities; conducting the supervision of dredging and disposing of dredged mud in contravention of applicable regulations;
- (iv) Carrying out mining activities, casting trawling nets and engaging in aquaculture within navigational channels and safety perimeters of maritime works;
- (v) Trespassing on the safety perimeter of maritime works;
- (vi) Obstructing the management, operation, use and protection of maritime works;
- (vii) Operating vessels and other vehicles in contravention of regulations thereby affecting the quality of maritime works;
- (viii) Other acts affecting the safety of management and operation of maritime works;
- (ix) Other acts prohibited by laws.

Maritime works, under Decree 143, comprise ports, wharves, offshore oil ports, floating terminals, navigational channels, turning basin, aids to navigation, maritime assistance system, breakwaters, drift dikes and embankments which are constructed or established within the area of seaport waters and maritime zones of Vietnam. The safety perimeter of a port or wharf is the distance from the outermost edge of such work to the outer boundary of the waters in front of it.

Decree 143 also provides for the planning of maritime works protection, which are as follows:

- (i) Determination of the safety perimeter of the maritime work;
- (ii) Establishment of aids to navigation installed into the maritime work;
- (iii) Human resources, contact address and telephone number used for the protection of the maritime work;
- (iv) Vehicles and equipment used for protection of the maritime work;
- (v) Plan for protection of the maritime work and inspection and supervision measures by the investor or manager/operator;
- (vi) Remedial measures for damage or accidents and actions against violations affecting safety of operation of the maritime work;

- (vii) Proposed rules, mechanisms and methods of cooperation between the investor or manager/operator and the port authority as well as competent authority in the area where the maritime work is located.

Decree 143 took effect from 1 February 2018.

## New decree governing intellectual property

On 23 February 2018 the Government promulgated Decree No. 22/2018/ND-CP detailing a number of articles and implementation of the Law on Intellectual Property 2005 and the Law on Amendments to the law on intellectual property 2009 with respect to copyright and related rights (“**Decree 22**”). Decree 22 took effect on 10 April 2018 and replaces Decree No. 100/2006/ND-CP, dated 21 September 2006, and Decree No. 85/2011/ND-CP, dated 20 September 2011.

Decree 22 applies to (1) authors, copyright holders, performers, owners of related rights in accordance with the Law on Intellectual Property; (2) other organizations and individuals with activities relating to copyright and related rights; and (3) relevant authorities.

### Exploitation and use of audio and visual fixation

The highlight of Decree 22 is the detailing of the exploitation and use of audio and visual fixation along with the payment of royalties, remuneration and material benefits for the owner of copyright and related rights. Any organization or individual who directly or indirectly uses an audio or visual fixation as stipulated in article 33.1 and 33.2 of the Law on Intellectual Property must pay royalties or remuneration to the author, copyright holder, performer, and producer of the audio and visual fixation.

### Organizations acting as collective representatives of copyright and related rights

Decree 22 provides for several regulations governing organizations acting as collective representatives of copyright and related rights. Accordingly, these organizations must conduct within their scope of operational function and be authorized by the author, copyright holder and related rights holder via a written power of attorney to manage a specific right or group of rights. In addition, they are entitled to reach agreement and authorize negotiations or collect royalties, remuneration and material benefits in accordance with regulations of law.

The management, collection and distribution of royalties, remuneration and other material benefits must be public and transparent. The percentage distribution of royalties and remuneration can be agreed between an organization and its members and is best handled in a power of attorney. These organizations acting as collective representatives of copyright and related rights must create a list of members as well as their works, audio, visual fixations and broadcasts and have a responsibility for negotiating and reaching an agreement on collecting royalties, remuneration and other material

benefits as stipulated in the power of attorney. Besides, collection and distribution of royalties, remuneration and other material benefits by equivalent foreign or international organizations must be implemented in accordance with the regulations on foreign exchange control.

Decree 22 also stipulates that organizations acting as collective representatives of copyright and related rights must publicize information on their official website, including, but not limited: the name of the author, copyright holder, related rights holder; the name of works and subjects of related rights; Content of works or audio or visual fixation; Scope of authorization; etc. Any following matters must be reported to the Ministry of Culture, Sport and Tourism, to the Ministry of Home Affairs; and to the Ministry of Finance. Any changes or amendments to the Charter or to operational rules; changes in leadership personnel; participation in international organizations and other external activities; price lists and methods of making payment of royalties, remuneration and material benefits; annual and long-term planning programs; operational status, signing of powers of attorney and use licenses; activities being the collection, including the amount collected and the methods of distributing royalties, remuneration and material benefits; and other relevant activities.

## Guidance for the law on food safety

On 2 February 2018 the Government issued Decree No. 15/2018/ND-CP ("**Decree 15**") detailing some articles of the Law on Food Safety No. 55/2010/QH12, dated 17 June 2010. Decree 15 repeals and replaces Decree No. 38/2012/ND-CP, dated 25 April 2012, on the same contents.

Under Decree 15, food manufacturers and food sellers may conduct product self-declaration through mass media or the producer's website or premises, instead of announcement of conformity or declaration of conformity under the current regulations on food safety.

In particular, products which may be self-declared include pre-packaged processed foods, food additives, food processing aids, food containers and primary packages of foods, except for the following:

- Products and raw materials that are manufactured or imported for production or processing of exports or internal production and are not sold domestically are exempt from self-declaration;
- Dietary supplements, medical foods, food for special dietary uses;
- Dietary products for children up to 36 months;
- Mixed food additives with new uses, food additives that are not on the list of permitted food additives compiled by the Ministry of Health.

Decree 15 took effect on 2 February 2018.

## Reduction of business conditions by the MOIT

On 15 January 2018 the Government issued Decree No. 08/2018/ND-CP ("**Decree 08**") on

amendments to certain decrees related to business conditions under state management of the Ministry of Industry and Trade (“**MOIT**”).

With 9 chapters and 19 articles Decree 08 lists a total of 675 business conditions, equivalent to 55% of the 1,216 business and investment conditions which have been reduced officially in eight sectors under the specialized management of the MOIT as follows:

## Petrol and Oil

Chapter I of Decree 08 amended and terminated several business conditions in petrol and oil trading under regulations in Decree No. 83/2014/ND-CP of the Government, dated 3 September 2014, on petrol and oil trading.

Enterprises specialized in the import and export of petrol and oil must have petrol and oil trading registered and listed in the enterprise registration certificate. Decree 08 abolished some regulations on petrol and oil production conditions and transitional provisions related to the petroleum trading system and does not force traders to expand their petrol and oil distribution system according to the annual roadmap.

## Tobacco

In the field of cigarette production and business, Chapter II of Decree 08 amended and terminated several business conditions stipulated in Decree No. 67/2013/ND-CP of the Government, dated 27 June 2013, on elaborating articles and measures for implementation of the Law on Tobacco harm prevention applicable to tobacco trading.

## Electricity

Several business conditions under regulation in Decree No. 137/2013/ND-CP of the Government, dated 21 October 2013, on detailing implementation of the Electricity Law and the Law on amendment of the Electricity Law, are amended and terminated by Chapter III of Decree 08.

The conditions for specialized electricity consultancy activities shall apply only to the construction items directly related to electricity specialties and construction items subject to the Construction Law. In particular, specialized consultancy activities include consultancy on investment in construction of electricity works and construction supervision consultants.

## Franchising

Under Decree 08, Chapter IV amended and terminated several business conditions in franchising under Decree No. 35/2006/ND-CP of the Government, dated 31 March 2006, on detailing implementation of Commercial Law 2005 regarding franchising.

Amongst other areas, one of the focuses of Decree 08 is franchising. In particular, Decree 08 maintains the condition for franchisors to operate the intended franchise business system for at least one year. Accordingly, many conditions have been abolished such as having registered commercial franchising with the competent authority or goods and business services not subject to business ban.

## E-Commerce

Several business conditions are stipulated in Decree No. 52/2013/ND-CP of the Government, dated 16 May 2013, on e-commerce, amended and terminated by Chapter V of Decree 08.

Decree 08 also abolished financial requirements and technical requirements when considering the grant of operation licenses to traders. Accordingly, traders, organizations and individuals who have been granted individual tax codes have the right to set up e-commerce websites without having to have a website with a valid domain name or appropriate functions and tasks.

## Chemicals

Chapter VI of Decree 08 amended and terminated several business conditions in chemical manufacturing and trading under Decree No. 38/2014/ND-CP of the Government, dated 6 May 2014, on the management of chemicals governed by Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction.

Decree 08 abolished the conditions of location, factory, machinery, equipment, technology process, storage and conditions of testing, chemical analysis related to the production of chemicals. However, there are still conditions for producing chemical in Decree 113/2017/ND-CP, dated 9 October 2017, on specifying and providing guidelines for implementation of certain articles of the Law on Chemicals.

## Industrial Explosives

Under Decree 08, Chapter VII amended and terminated several business conditions in production and trading of industrial explosive materials under regulation in Decree No. 39/2009/ND-CP of the Government, dated 23 April 2009, on industrial explosive materials and Decree No. 76/2014/ND-CP of the Government, dated 29 July 2014, on guidelines for Ordinance on amendments to the Ordinance on management and use of weapons, explosive materials, and combat gear.

## Trade In Food

Chapter VIII of Decree 08 amended and terminated several business conditions under regulation in Decree No. 77/2016/ND-CP of the Government, dated 1 July 2016, on supplementing and amending certain regulations on investment and trading conditions in international trade in goods, chemicals, industrial explosives, fertilizer, gas business and food business under the state management of MOIT.

Decree 08 took effect from 15 January 2018.

## A Miscellany

It's time for a review. Not a review of every article I've written for the Client Alerts over the last several years, but a review of some major changes in laws that may not be obvious to corporate businessmen but that nonetheless prove certain liberalities that have escaped the notice of the Government.

First, the Supreme Court of Vietnam has issued a decision stating that supreme court decisions should now be viewed as precedence. This means that the decisions of the Supreme Court will affect the interpretation of laws by the lower courts. This will make it easier for litigants to predict the outcome of cases before the courts as well as interpreting legislation at the law firm level.

Second, the Government has signaled a very large liberalizing of human rights issues when they announced that LGBT Equal Marriage will no longer be criminal in Vietnam. This is a major step forward sideways maybe, that suggests that Vietnam will become one of the more liberal countries in the region. It is a step sideways because there was no actual law on the books forbidding gay marriage.

All of these changes are big. They not only signal changes in the courts, law, and human rights, but they signal an increasing desire to be accepted by the western powers. It will be interesting to see how the Government continues down this path or whether they will turn back. Hopefully, this is a trend that will continue. Way to go Government.

## 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 45 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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- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

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