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# Legal news

May 2015

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## HIGHLIGHTED

### 1. New regulations on derivative securities and derivative securities market

*On 5 May 2015, the Government issued Decree No. 42/2015/ND-CP, on the derivative securities and derivative securities market (“Decree 42”).*

Decree 42 provides new regulations on the derivative securities and derivative securities market, which are applicable to (i) Vietnamese organizations and individuals as well as foreign organizations and individuals investing in derivative securities and operating on the derivative securities market in Vietnam, and (ii) Other organizations and individuals related to activities of investing and trading in derivative securities and involved in the derivative securities market in Vietnam.

Decree 42 expressly states that an organization conducting business of derivative securities must be issued by State Securities Commission with a Certificate of satisfaction of conditions of derivative securities trading. To be issued with the Certificate, in regard to derivative securities self-trading, the organization must be a securities company with charter capital or equity of VND 600 billion or more; in respect of derivative securities brokerage, such organization must be a securities company with charter capital or equity of VND 800 billion or more and is allowed to conduct derivative securities self-trading; in regard to derivative securities consultancy, such organization must have charter capital or equity no less than the legal capital threshold stipulated by the law on securities. In case of registering for combined activities of derivative securities consultancy, brokerage and self-trading, the charter capital or equity of the securities company must be at least VND 800 billion or more.

In addition, the organization conducting business of derivative securities must satisfy the requirements on business results, ratios of usable capital, and professional process in accordance with guidelines of the Ministry of Finance. The Director or General Director, Deputy Director (or Deputy General Director) in charge of professional activities and at least five (5) employees for each derivative securities trading activity contemplated to be registered, must have securities practising certificates and professional certificates of derivative securities and derivative securities market.

With regard to derivative securities clearing or payment services, the new Decree also requires securities companies, commercial banks, and foreign banks’ branches must be issued with Certificates of satisfaction of conditions for providing derivative securities clearing or payment services by the State Securities Commission.

To be issued with such a Certificate, the organization must be a depository member of Vietnam Securities Depository Centre; a commercial bank with charter capital or equity varying from VND 5,000 billion to VND 7,000

billion or more; or a securities company with charter capital or equity of between VND 900 billion and VND 1,200 billion or more.

This Decree takes effect on 1 July 2015.

## **2. New guidelines on the quality management and maintenance of building works**

*On 12 May 2015, the Government issued Decree No. 46/2015/ND-CP, on the quality management and maintenance of building works (“Decree 46”).*

Decree 46 provides guidelines for Law on Construction with respect to quality management of the building works in the inspection, design, or construction activities; maintenance of building works, and handling the consequences of construction incidents. This Decree applies to investment decision makers; investors; owners, managers, and users of the building works; local or foreign contractors; State management authorities on construction; and other organizations and individuals relating to the quality management and maintenance of building works.

According to the new Decree, construction contractors and contractors supplying equipment will be responsible to investors for the provision of warranty for the work(s) they conducted.

In respect of sections of building works of Special and I grades, the minimum warranty term shall be 24 months from the final check and acceptance and 12 months regarding building works and sections of building works of other grades. Particularly, for residential housing, the warranty term shall be compliant with the laws on residential housing.

Beside, Decree 46 also provides for the minimum warranty levels in respect of building works of which the construction is funded by State budget. Accordingly, the minimum warranty level shall be equal to 3% of the contract value for building works of Special and I grades, 5% of the contract value for building works of other grades. The warranty levels of building works, of which the construction is funded by other capital sources, may refer to the minimum levels above to apply.

According to the new Decree, the owner or use manager of the building works must inspect the building works regularly, periodically and suddenly to promptly discover the signs of downgrades or damages to the building works or equipment installed in the building works to perform the warranty work on such basis. The maintenance of building works shall be carried out in accordance with annual maintenance plan and approved maintenance process of building works.

This Decree shall take effect on 1 July 2015 and replace Decree No.114/2010/ND-CP dated 6 December 2010, on the maintenance of building works and Decree No. 15/2013/ND-CP dated 6 February 2013, on the management of building works’ quality, except for contents related to design evaluation by State management authorities on construction.

### 3. A number of contents on construction planning are detailed

*On 6 May 2015, the Government issued Decree No. 44/2015/ND-CP, detailing a number of contents on construction planning (“Decree 44”).*

Decree 44 details a number of contents contained in Law on Construction No. 50/2014/QH13, including: Setting up, assessment and appraisal, and approval of construction planning; construction planning implementation; and planning license. This Decree applies to domestic organizations or individuals, and foreign organizations or individuals in relation to construction planning activities within the territory of Vietnam.

According to the new Decree, specific functional zones with surface area of more than 500 ha are allowed to set up general construction planning, must ensure the suitability of such planning with provincial or regional construction planning, and urban planning; which will play the role of foundation to set up the zoning plan and detailed construction planning. Sectors in the specific functional zones or specific functional zones with surface area less than 500 ha, as requested by demands for management and development, are allowed to set up the construction zoning plan taken as the basis to determine the investment and construction project and to set up detailed construction planning. Sectors in the specific functional zones, when conducting the investment and construction, will set up detailed construction planning to particularize the general plan and zoning plan, which will play the role of ground for the issuance of construction license.

In case of an investment and construction project organized to be carried out by one investor with surface area of less than 5 ha (or less than 2 ha in regard to a project on investment in and construction of apartment/condominium building), such investment and construction project may be set up without preparation of detailed construction planning. The total ground blueprint, building works’s architecture plan, and technical infrastructure solutions in the basic design content must be consistent with construction zoning plan or planning license; and the connections to technical infrastructures and the compliance with architectural space of the area must be ensured.

Another notable point of Decree 44 is the provisions on principles of setting up the rural construction planning. Accordingly, general construction planning for communes must be set up to particularize the construction plannings for areas of relevant province and district, which shall be taken as the basis to determine the investment projects and to set up detailed construction planning for the rural populated places (points). Besides, the rural populated places, when conducting the investment and construction, must set up the detailed construction planning to specify the general planning and to play the role of basis for the issuance of construction licenses.

This Decree shall take effect on 30 June 2015 and replace Decree No.08/2005/ND-CP dated 24 January 2005, on the construction planning.

## **Other Sectors**

### **Finance - Banking**

- On 22 May 2015, the Prime Minister issued Decision No. 15/2015/QD-TTg, amending and supplementing a number of articles of Decision No.34/2008/QD-TTg dated 3 March 2008 of the Prime Minister, on the establishment of the National Financial Supervision Committee and Regulation on organization and operations of the National Financial Supervision Committee accompanying Decision No. 79/2009/QD-TTg dated 18 May 2009 of the Prime Minister.
- Decision No. 958/QD-BTC dated 22 May 2015 of the Ministry of Finance, promulgating the Regulation on guidelines for the estimation, management, use and finalization of expenditures funded by the State budget to ensure the activity of elaborating legal documents and improving the legal system in the administrative authorities and non-business professional units under the Ministry of Finance.
- On 5 May 2015, the Ministry of Finance stipulated Circular No. 62/2015/TT-BTC, amending and supplementing a number of articles of Circular No.162/2012/TT-BTC dated 3 October 2012 of the Ministry of Finance, providing for the advance of capital funded by the State Treasury.
- Circular No. 05/2015/TT-NHNN dated 4 May 2015 of the State Bank of Vietnam, providing guidelines for financial institutions to co-operate with Credit Guarantee Fund in providing secured loans of the Credit Guarantee Fund under Decision No.58/2013/QD-TTg dated 15 October of the Prime Minister.

### **Accounting - Audit**

- On 21 May 2015, the State Audit of Vietnam issued Decision No. 828/QD-KTNN, promulgating the Regulation on decentralization in the management of State assets by the State Audit.
- Circular No. 75/2015/TT-BTC dated 18 May 2015 of the Ministry of Finance, amending and supplementing Article 128 of Circular No. 200/2014/TT-BTC dated 22 December 2014, providing guidelines for the corporate accounting system.
- On 8 May 2015, the Ministry of Finance stipulated Circular No. 67/2015/TT-BTC, promulgating Vietnamese standards on auditing with respect to auditing reports on the finalization of completed projects.

### **Taxation**

- Circular No. 78/2015/TT-BTC dated 20 May 2015 of the Ministry of Finance,

amending the preferential import tax rates applicable to a number of oils and gasoline commodities under the heading 27.10 of Preferential Import Tariff.

- On 6 May 2015, the Ministry of Finance issued Circular No. 63/2015/TT-BTC, amending the export tax rates applicable to cassava commodities under the heading 07.14 of Export Tariff accompanying Circular No.164/2013/TT-BTC dated 15 November 2013 of the Minister of Finance.

## **Trade**

- Decision No. 1786/QD-BNN-CB dated 18 May 2015 of the Ministry of Agriculture and Rural Development, repealing a number of articles of Circular No.04/2015/TT-BNNPTNT dated 12 February 2015 of the Ministry of Agriculture and Rural Development, providing guidelines for the implementation of a number of contents contained in Decree No. 187/2013/ND-CP dated 20 November 2013, detailing the implementation of the Commercial Law regarding international goods sale and purchase activities; activities of agency; sale, purchase, processing and transit of goods with foreign countries in the fields of agriculture, forestry and fishery.
- On 18 May 2015, the Ministry of Industry and Trade stipulated Decision No.4759/QD-BCT, announcing amended or supplemented administrative procedures, and cancelled or repealed administrative procedures under the settlement authority of the Ministry of Industry and Trade.
- Decision No. 857/QD-BTC dated 12 May 2015 of the Ministry of Finance, amending and supplementing a number of articles of Decision No. 1079/QD-BTC dated 20 May 2014 of the Minister of Finance, on the application of price stabilization measures to dairy products for children under six years of age.
- On 6 May 2015, the People's Committee of Hanoi issued Decision No.1882/QD-UBND, announcing newly-issued administrative procedures under the settlement authority of the Department of Industry and Trade of Hanoi.
- Decision No. 4313/QD-BCT dated 5 May 2015 of the Ministry of Industry and Trade, on the extension of time to implement Decision No. 6226/QD-BCT dated 29 August 2013 of the Minister of Industry and Trade, on the supplement to a number of commodities originating from the Kingdom of Cambodia imported into the Socialist Republic of Vietnam via border-gates in Kien Giang Province in the form of purchase, sale, or exchange among border residents.
- On 4 May 2015, the Prime Minister stipulated Decision No. 578/QD-TTg, on the negotiations on Border Trade Agreement between the Government of Socialist Republic of Vietnam and the Government of Lao People's Democratic Republic.
- Circular No. 08/2015/TT-BCT dated 27 May 2015 of the Ministry of Industry

and Trade, providing for imports under quota of sugar originating from the Lao People's Democratic Republic in 2015.

- On 12 May 2015, the Ministry of Finance issued Circular No. 72/2015/TT-BTC, providing for the application of priority regime in the implementation of customs procedures, and customs inspection of and supervision over exported and imported goods of enterprises.
- Circular No. 07/2015/TT-BCT dated 12 May 2015 of the Ministry of Industry and Trade, on the non-application of tariff quota to the imports of raw tobacco originating from ASEAN countries.

### **Labour**

- On 15 May 2015, the Government stipulated Decree No. 48/2015/ND-CP, detailing a number of articles of the Law on Vocational Education.
- Decision No. 2367/QD-UBND dated 25 May 2015 of the People's Committee of Hanoi, authorizing the Director of the Department of Labour, War Invalids and Social Affairs to decide on the implementation of a number of policies under the deciding authority of the Chairman of People's Committee of Hanoi in accordance with Decision No. 290/2005/QD-TTg dated 8 November 2005 of the Prime Minister.
- On 20 May 2015, the Prime Minister issued Decision No. 14/2015/QD-TTg, on the regime on career incentive allowances and regime on subsidies for people working in the field of performing arts.
- Decision No. 592/QD-BHXH dated 18 May 2015 of Vietnam Social Security, promulgating electronic Social Insurance Transaction Software version 1.0.
- On 14 May 2015, the Ministry of Labour, War Invalids and Social Affairs stipulated Decision No. 629/QD-LDTBXH, announcing newly-issued administrative procedures within the scope of the Ministry of Labour, Invalids and Social Affairs's management function.
- Decision No. 577/QD-BHXH dated 7 May 2015 of Vietnam Social Security, promulgating the Set of Processes of resolving administrative procedures in accordance with TCVN ISO 9001:2008 standard in the field of implementing health insurance policies.

### **Education**

- On 15 May 2015, the Government issued Decree No. 49/2015/ND-CP, amending and supplementing a number of articles of Decree No. 134/2006/ND-CP dated 14 November 2006, providing for the regime on appointed enrolment of educational establishments at college, junior college and intermediate levels in the national



education system.

- Decision No. 1744/QD-BGDDT dated 27 May 2015 of the Ministry of Education and Training, promulgating cancelled or repealed administrative procedures within the scope of the Ministry of Education and Training's management function.
- On 19 May 2015, the Ministry of Education and Training stipulated Decision No.1669/QD-BGDDT, promulgating newly-issued administrative procedures within the scope of the Ministry of Education and Training's management function.
- Decision No. 1608/QD-BGDDT dated 14 May 2015 of the Ministry of Education and Training, approving four specialized English training programs at professional intermediate level of specialties: Restaurant and hotel profession, Receptionist profession, Sales and management at supermarkets, and Accountant.
- On 29 May 2015, the Ministry of Education and Training, and Ministry of Home Affairs jointly issued Inter-ministerial Circular No.11/2015/TTLT-BGDDT-BNV, providing guidelines for the functions, duties, authority and organizational structure of the Departments of Education and Training under the People's Committees of provinces and cities directly under the Central Government, Offices of Education and Training under the People's Committees of rural or urban districts, towns, and provincial cities.

## **Health**

- Decision No. 1738/QD-BYT dated 8 May 2015 of the Ministry of Health, on the deployment of online public services at 4<sup>th</sup> level in receiving cosmetic notification forms.
- On 8 May 2015, the Ministry of Health stipulated Decision No. 1730/QD-BYT, promulgating Guidelines for the implementation of personnel planning in agencies under and directly under the Ministry of Health.
- Inter-ministerial Circular No. 11/2015/TTLT-BYT-BNV dated 27 May 2015 of the Ministry of Health and Ministry of Home Affairs, providing for the codes and standards of professional titles in public health sector.
- On 27 May 2015, the Ministry of Health and Ministry of Home Affairs jointly issued Inter-ministerial Circular No. 10/2015/TTLT-BYT-BNV, providing for the codes and standards of professional titles, including doctor, doctor of osteopathy, and physician.
- Circular No. 09/2015/TT-BYT dated 25 May 2015 of the Ministry of Health, providing for advertising content validation for special products, goods, and services in the fields under the management of the Ministry of Health.



- On 11 May 2015, the Ministry of Health stipulated Circular No. 08/2015/TT-BYT, amending and supplementing a number of provision of Circular No.27/2012/TT-BYT dated 30 November 2012 of the Minister of Health, providing guidelines for the management of food additives.

### **Construction**

- Decision No. 11/2015/QD-UBND dated 6 May 2015 of the People's Committee of Da Nang City, promulgating the Regulations on assignment of duties and decentralization of responsibilities for the State management on the quality of building works in Da Nang City.
- On 6 May 2015, the Ministry of Planning and Investment issued Circular No.03/2015/TT-BKHDT, detailing the preparation of invitation to tender documents for tender packages for construction and installation.

### **Land - Real estate**

- Decision No. 12/2015/QD-UBND dated 25 May 2015 of the People's Committee of Hanoi, repealing Decision No. 59/2009/QD-UBND dated 7 April 2009 of the People's Committee of Hanoi, promulgating the Regulations on implementation order, procedures and mechanism for the recovery of land by the State from organizations, households, individuals, communities, religious institutions, Vietnamese peoples residing abroad, and foreign organizations and individuals that violate land laws in the area of City.
- On 15 May 2015, the People's Committee of Binh Duong Province stipulated Decision No. 22/2015/QD-UBND, promulgating the order of and procedures for determination of specific land prices in the area of Binh Duong Province.
- Decision No. 2328/QD-UBND dated 22 May 2015 of the People's Committee of Hanoi, promulgating the coefficients of land price adjustment for year 2015, which shall be taken as a basis for determination of land prices in a number of land use cases prescribed by laws in the area of Hanoi.
- On 20 May 2015, the People's Committee of Ho Chi Minh City issued Decision No. 24/2015/QD-UBND, promulgating the Process of receiving, leasing, hire-purchase, and sale of residential housing owned by the State in the area of Ho Chi Minh City.
- Decision No. 23/2015/QD-UBND dated 15 May 2015 of the People's Committee of Ho Chi Minh City, promulgating Regulations on compensation, support and resettlement when the State recovers land in the area of Ho Chi Minh City.
- On 15 May 2015, the People's Committee of Ho Chi Minh City stipulated Decision No. 22/2015/QD-UBND, amending and supplementing the regulations

on limits of loans provided by City Residential Housing Development Fund to low-income people for creation of residential housing.

- Circular No. 74/2015/TT-BTC dated 15 May 2015 of Ministry of Finance, providing guidelines for the estimation, use and settlement of funds for implementing the compensation, support and resettlement when the State recovers land.

### **Transport**

- On 8 May 2015, the Prime Minister issued Decision No. 604/QĐ-TTg, approving the Scheme on enhancing transport connectivity in ASEAN until 2020, with orientation to 2030.
- Circular No. 17/2015/TT-BGTVT dated 14 May 2015 of the Ministry of Transport, amending and supplementing a number of articles of Circular No. 15/2014/TT-BGTVT dated 13 May 2014 of the Minister of Transport, providing guidelines on routes of transporting goods in transit through the territory of Vietnam.
- On 8 May 2015, the Ministry of Transport stipulated Circular No. 16/2015/TT-BGTVT, amending and supplementing a number of articles of Circular No. 36/2013/TT-BGTVT dated 23 October 2013 of the Minister of Transport, providing for the training, and issuance and recovery of Certificates of professional qualification of maritime pilotage and Certificates of maritime pilotage zone.

### **Natural Resources - Environment**

- Decree No. 45/2015/NĐ-CP dated 6 May 2015, on the measurement and mapping activities.
- On 6 May 2015, the Government issued Decree No. 43/2015/NĐ-CP, providing for the setting up and management of corridors protecting water resources.
- Decision No. 16/2015/QĐ-TTg dated 22 May 2015 of the Prime Minister, providing for the collection and treatment of disposed products.
- On 22 May 2015, the Ministry of Natural Resources and Environment stipulated Circular No. 21/2015/TT-BTNMT, promulgating the Econo-technical norms of synthetic measuring and mapping technology.

### **Science - Technology**

- Decision No. 2392/QĐ-UBND dated 26 May 2015 of the People's Committee of Hanoi, on the authorization to implement a number of State management duties on planning, architecture and construction in Hoa Lac High-tech Zone.

- On 5 May 2015, the Ministry of Science and Technology issued Circular No.08/2015/TT-BKHCN, providing for the implementation of Program on bilateral and multilateral co-operations in scientific and technological researches until 2020 and Program on searching and transferring foreign technologies until 2020.

### **Information - Communications**

- Decision No. 714/QD-TTg dated 22 May 2015 of the Prime Minister, promulgating the List of national databases prioritized in deploying to create foundation for the development of electronic Government.
- On 29 May 2015, the Ministry of Information and Communications stipulated Circular No. 12/2015/TT-BTTTT, promulgating the “National technical regulations on frequency spectrum and radio radiation applied to radio transmitter and receiver equipment”.
- Circular No. 11/2015/TT-BTTTT dated 5 May 2015 of the Ministry of Information and Communications, providing for the standards of professional skills applicable to information technology human resources.

### **Culture - Sports**

- On 19 May 2015, the People’s Committee of Hanoi issued Decision No.11/2015/QD-UBND, promulgating Regulations on encouraging socialization in the fields of education and training, vocational training, health, culture, sports and exercise, environment, and judicial expertise in the area of Hanoi.
- Decision No. 1436/QD-BVHTTDL dated 6 May 2015 of the Ministry of Culture, Sports and Tourism, providing for the functions, duties, powers and organizational structure of the Department of Copyright.

### **Administration - Judiciary**

- On 26 May 2015, the Government stipulated Decree No. 51/2015/ND-CP, on the provision of legal opinions.
- Decision No. 966/QD-BTP dated 25 May 2015 of the Ministry of Justice, promulgating the Framework program on fostering legal knowledge for judicial expertise experts.
- On 12 May 2015, the Ministry of Justice issued Decision No. 909/QD-BTP, promulgating the Plan of monitoring law enforcement situation in the field of legal system codification in 2015.
- Decision No. 2112/QD-UBND dated 11 May 2015 of the People’s Committee of Hanoi, promulgating the Plan of initiating the implementation of Law on Citizens

identification in the area of Hanoi.

- On 6 May 2015, the People's Committee of Hanoi stipulated Decision No.1882/QD-UBND, announcing newly-issued administrative procedures under the settlement authority of the Department of Industry and Trade of Hanoi.

### **Agriculture - Forestry - Fishery**

- Decree No. 47/2015/ND-CP dated 14 May 2015, on the organization and operations of the inspectorate of Agriculture and Rural Development sector.
- On 21 May 2015, the Prime Minister issued Decision No. 706/QD-TTg, approving Scheme on development of Vietnam's rice brands until 2020, with orientation to 2030.
- Decision No. 4665/QD-BCT dated 14 May 2015 of the Ministry of Industry and Trade, approving the "Planning for development of manufacture of Vietnam's rubber products until 2025, with orientation to 2035".
- On 14 May 2015, the People's Committee of Ho Chi Minh City stipulated Decision No. 21/2015/QD-UBND, promulgating the Regulations on policies encouraging the application of Process of good agricultural practices in the agriculture and aquaculture sectors in the area of Ho Chi Minh City.
- Decision No. 4560/QD-BCT dated 12 May 2015 of the Ministry of Industry and Trade, on the organizational adjustment to testing inorganic fertilizers.
- On 4 May 2015, the Prime Minister issued Decision No. 575/QD-TTg, approving the Overall planning for agricultural areas and zones applying high technologies until 2020, with orientation to 2030.

### **Miscellaneous**

- Decision No. 734/QD-TTg dated 27 May 2015 of the Prime Minister, approving the adjustment in Overall planning for socio – economic development of Dong Nai Province until 2022, with orientation to 2025.
- On 22 May 2015, the People's Committee of Hanoi stipulated Decision No.2330/QD-UBND, approving the Planning for development of social facilities network in the area of Hanoi until 2020, with orientation to 2030.
- Decision No. 2257/QD-UBND dated 20 May 2015 of the People's Committee of Hanoi, on the establishment of Appraisal and Assessment Council and assignment of duties to authorities assessing and appraising investment policies of public investment programs and projects in accordance with Law on Public Investment.
- On 12 May 2015, the Prime Minister issued Decision No. 620/QD-TTg, approving the adjustment in Overall planning for socio – economic development of Nghe An Province until 2022.

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