

Yesterday. Today. Tomorrow.

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Year in review,
Year to come
Vietnam Law

December 2018



Year in review

Vietnam Law in 2018

2018 has seen the introduction of several new laws covering areas such as Competition and Cybersecurity. Vietnam has become an attractive destination for investors in the renewable sector with Government commitments to feed-in-tariff frameworks for both solar and wind power projects.



Changes to state-owned enterprises (SOE) privatisation framework:

In 2018, the Government made substantial changes to the legal framework for the equitisation and state capital divestment process, in its efforts to accelerate this process and make it easier for foreign and Vietnamese investors to participate. Under the new regulations on equitisation, the sale of shares to strategic investors must be completed after the initial public offering (IPO) of the SOE. For the first time, book-building is an IPO sale method. New regulations on state capital divestment provide for a clear priority order of methods for the sale of state's capital in an enterprise (being a public auction first, then a competitive offering if the public auction is not successful, and direct agreement is only permitted if the other two methods fail).

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Increased investment in renewable power sector:

Following the issuing of the relevant legal framework, Vietnam has become an attractive destination for investors in the renewable sector. As reported last year, the Government issued the incentive framework for solar power projects, including a guaranteed feed-in tariff (FiT) of 9.35 US cents/kWh, which contributed to a soaring number of projects registered in 2018. In August, the Government extended the commercial operation date deadline to obtain this FiT specifically for the Ninh Thuan province until the end of 2020. In 2018, the Prime Minister also approved the increase of FiT for wind power projects from 7.8 US cents/kWh (2011) to 8.5 US cents/kWh (onshore) and 9.8 US cents/kWh (offshore).

Read more [here](#) and [here](#).

New controversial Cybersecurity Law:

In June, the Government passed the Cybersecurity Law, which provides it with wide-ranging powers to control and censor information in cyberspace. The law also subjects domestic and foreign enterprises that provide services in Vietnam on a telecommunication network, the internet and value-added services in cyberspace to a number of obligations, including censorship of information considered to be "offending". Service providers that collect, exploit, analyse or process users' personal information data, data of users' relationships or data created by users in Vietnam must store such data in Vietnam, and set up a local branch or representative office.

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In November, the Ministry of Public Security released a draft decree, which will likely be issued in early 2019.

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New competition laws:

In 2018, Vietnam voted to replace its current law on competition, which has been in effect for more than 12 years, with a new Law on Competition. The new law introduces substantial changes to the country's existing competition framework, with lawmakers striving to match Vietnam's competition governance to international standards. The new law is effective from 1 July 2019. The key changes include replacing the combined market share threshold for competition assessment for anti-competitive agreements, merger filings and acts of abuse of a dominance position with a more international test: that the relevant act or agreement is "having or may have a significant competition restraining impact in the Vietnamese market".

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2018 highlights

In May a new decree on Public-Private-Partnerships (PPP) was issued simplifying investment hurdles.

2018 highlights

Compulsory social insurance for foreign employees introduced from December 2018.

New decree on trading and distribution:

In January, the Government issued a new decree on trading and trading-related activities of foreign investors and foreign-invested enterprises. Accordingly, foreign-invested enterprises (**FIEs**) are no longer required to obtain a business licence when carrying out the import and wholesale distribution of products, except for lubricants. However, the new decree still requires FIEs to obtain a separate establishment licence for each retail outlet (including the first one). The economic needs test (**ENT**) still applies to the establishment of the second retail outlet onwards, including mini-supermarkets or convenience stores (which were previously exempted from the ENT test if their floor area was less than 500 square metres, and located in areas zoned by provinces and municipalities for trading activities).

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More relaxed regulations on foreign investment in the education sector:

A new decree on foreign investment in the education sector was issued in June 2018, to clarify and relax various requirements applicable to foreign-owned educational institutions. The new decree increases the cap on Vietnamese students that a foreign-owned educational institution can enrol, to 50% of the total number of students studying foreign programs (from the previous 10% to 20% cap of the total students for different school levels). Also, notably, for the first time, the law acknowledges foreign investment by way of M&A in existing educational establishments.

Compulsory social insurance requirement for foreign employees:

In October, new regulations were issued to implement a compulsory social insurance requirement for foreign employees. Accordingly, from 1 December 2018, Vietnamese employers must contribute an amount equal to: (i) 3% of the foreign employee's monthly salary to sickness and maternity funds; and (ii) 0.5% to occupational accidents and hazards funds. From 1 January 2022, Vietnamese employers and their foreign employees must contribute an amount equal to 14% and 8%, respectively, of the employee's monthly salary to the retirement and survivor benefits fund. The salary used for calculation of these contributions is capped at 20 times the minimum monthly salary issued by the Government from time to time. This decree takes effect from 1 December 2018.

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New decree on public-private-partnerships (PPP):

A new decree on PPPs was issued in May 2018, but did not introduce substantial changes for foreign investors. The new decree raised the minimum equity requirement from 15% to 20% for PPP projects with total investment capital of up to VND1,500 billion (US\$66 million). The requirement for an investment registration certificate (**IRC**) and investment agreement for PPP projects has been removed. The removal of the IRC significantly simplifies administrative procedure, but brings about uncertainty in relation to certain procedures relating to PPP project implementation (such as transfer of funds for equity contribution from overseas into Vietnam, or registration of foreign loans with the State Bank of Vietnam, as these procedures normally require an IRC).

There has been much discussion about PPPs in the last eight years but, so far, there has been no project with material foreign investment commenced under the PPP legislation. In addition, the Government is proposing cuts to state guarantees for large PPP projects, on the basis that guarantees that were justified in the early stages of Vietnam's economy are no longer necessary. Therefore, foreign investors and lenders may need to reconsider their expectations, as guarantees from the state for major projects may no longer be available.

Year to come

Vietnam Law in 2019

A new Law on Securities is expected to be issued in 2019 to change the cap on the foreign ownership level of a public company from 49% to unlimited, unless a specific ownership cap is prescribed in local law or an international treaty to which Vietnam is a member.



New law on securities:

The Ministry of Finance released a draft new Law on Securities for public consultation. The key changes include: (i) the foreign ownership level of a public company will be deemed to be unlimited, unless there is a specific ownership cap prescribed in local law or an international treaty to which Vietnam is a member. Under the current regulation, such a level is deemed to be 49% unless the public company applies to the licensing authority to lift that cap; (ii) a private joint stock company has to meet a higher standard to qualify as a public company (having a charter capital of VND30 billion (US\$1.275 million) and having at least 100 shareholders (each of whom owns less than 1%) holding at least 20% of the charter capital); (iii) only strategic and professional investors are allowed to subscribe for privately placed shares. The new law introduces a lock-up period of three years for strategic investors and one year for professional investors, to replace the current one-year lock-up period; (iv) an investor (and its related person) holding 25% or more in a public company is required to conduct a public tender offer to acquire shares, if their further acquisition results in reaching each threshold of 35%, 45%, 55%, 65% and 75% of the total voting shares; and (v) a public company is no longer allowed to redeem shares to keep them as treasury shares, except for employee stock ownership plan shares redeemed from employees, and shares redeemed at the request of shareholders.

New draft regulations on e-payments:

A new decree on e-payments is currently being drafted to introduce: (i) a cap on foreign ownership applicable to e-payment companies (either 49% or 30%, though a specific cap has not been determined yet); and (ii) a cash top-up and withdrawal mechanism, which is not contemplated under the current law – accordingly, customers who do not have bank accounts can open an e-wallet, top up their e-wallets by cash and withdraw cash from their e-wallets through banking agents.

Revised Labour Code:

The revised Labour Code is expected to be passed in October 2019, and will take effect by the end of 2020. The key changes include: (i) a broader definition of an employee, to capture any individual working under an agreement with the employer; (ii) an increase in overtime hours, to 400 hours per year; (iii) the removal of the 30-hour cap of overtime per month; (iv) an increase in the rate of overtime pay; (v) a gradual increase in the male and female retirement age, to 62 and 60, respectively, from 1 January 2021; and (vi) inspections by the labour authority can be conducted without advance notice.

New draft regulations on four-wheel tech transport:

In the competition between traditional taxis and technological transport platforms such as Grab and Uber, the Government is drafting new regulations on four-wheel tech transport. The draft regulations propose to classify technological transport platforms as a transport service. As a result of this, these transport platforms will have to comply with regulations applicable to the taxi business, such as the requirements to register fares, send e-invoices and attach a badge with "TAXI" on the windshield.

Amended law on investment:

The Law amending the Law on Investment is proposed to be passed in October 2019. Based on the latest draft, the key changes include: (i) approval is no longer required if foreign investment does not result in an increase of foreign ownership level in the company; (ii) an IRC for outbound investment by Vietnamese investors is no longer required; it is proposed that outbound investment will be controlled through foreign exchange regulations on the transfer of capital overseas; (iii) the Prime Minister's decision on investment policy is no longer required for projects with investment capital of VND5,000 billion (US\$220 million) or more; and (iv) it is proposed to remove 19 conditional business lines for foreign investment, including franchising and logistics services.

2019 highlights

A new decree on e-payments is expected in 2019.

2019 highlights

New transport regulations expected to bring tech transport in line with taxi businesses.

What now?

Your contacts

We hope that you have found this guide useful.
Please contact your usual Linklaters contact, if you would like to discuss any of these matters further.



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