

**V I L A F****VIETNAM INTERNATIONAL LAW FIRM**

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New regulations affecting financial service sectors

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1. Aviation business

On 15 November 2019, the Government issued Decree 89/2019/ND-CP amending Decree 92/2016/ND-CP dated 01 July 2016 on conditional industries and trades in the civil aviation sector and Decree 30/2013/ND-CP dated 08 April 2013 on air carriage business and general aviation activities (the "Decree 89"). Decree 89 takes effect from 01 January 2020. Below are some important highlights of Decree 89.

Air carriage business

Decree 89 changes the minimum capital required to establish and maintain an air carriage business enterprise. While Decree 92/2016/ND-CP differentiates the minimum capital required for domestic air carriage from international air carriage, Decree 89 removes such differentiation and provides the minimum capital required for air carriage business (both domestic and international) as follows:

- To operate up to 10 aircrafts: VND300 billion;
- To operate from 11 to 30 aircrafts: VND600 billion; and
- To operate more than 30 aircrafts: VND700 billion.

Decree 89 increases the foreign ownership limit in an air carriage business enterprise from 30% (under Decree 92/2016/ND-CP) to 34% of the charter capital of the air carriage business enterprise. Accordingly, from the effective date of Decree 89, a foreign invested air carriage business enterprise must meet the following conditions: (i) foreign investors must not hold more than 34% of the charter capital, (ii) there is at least one domestic shareholder holding the largest portion of the charter capital, and (iii) in case the domestic shareholder is a Vietnamese legal entity having foreign invested capital, the foreign capital contribution portion of such domestic shareholder must not exceed 49% charter capital of the domestic shareholder.

Decree 89 relaxes several conditions for air carriage business. For instance, the requirement that the legal representative of an air carriage business must be a Vietnamese citizen has been removed.

Under Decree 89, an air carriage enterprise must notify the Civil Aviation Authority of Vietnam in writing within 30 days after (i) amendment of its operational charter or carriage charter; (ii) receipt of certificate of change of enterprise registration information in the case of change of enterprise registration information; (iii) change of its staffing apparatus; (iv) change of its executive members; and (v) change of shareholders holding 5% of its charter capital or more.

Airport business and aviation services

Regarding capital requirements, an enterprise conducting airport business must have a minimum capital of VND100 billion. An enterprise providing aviation services must have a minimum capital of VND30 billion. Such capital requirements under Decree 89 is similar to capital requirements under Decree 92/2016/ND-CP.

Similar to requirements under Decree 92/2016/ND-CP, regarding ownership limit, foreign investors may not hold more than 30% of the charter capital of an enterprise conducting airport business or an enterprise providing passenger terminal operation services, cargo terminal operation services, aviation petroleum services, ground commercial technical services and/or flight zone operation services.

Other amendments

Decree 89 also amends the application file for issuance of general aviation operation registration certificate for non-commercial purpose, and the provisions regarding the use of commercial names of other airlines or the general commercial name of an associated group of airlines by Vietnamese airlines.

2. Insurance auxiliary services

On 01 November 2019, the Government issued Decree 80/2019/ND-CP to amend a number of articles of Decree 73/2016/ND-CP dated 01 July 2016 implementing the Law on Insurance Business and Decree 98/2013/ND-CP dated 28 August 2013 regarding administrative sanction in insurance business sector as amended by Decree 48/2018/ND-CP dated 21 March 2018 ("Decree 80"). Decree 80 took effect from 01 November 2019.

Following the adoption of the Law No. 42/2019/QH14 amending the Law on Insurance Business and the Law on Intellectual Property which supplemented the regulations on insurance auxiliary services, the Government recently issued guidelines for insurance auxiliary service business which are highlighted below.

Conditions for insurance auxiliary services business

In order to provide insurance auxiliary services (including insurance consultancy, insurance risk assessment, actuarial services, insurance loss assessment, and insurance indemnity settlement support), an organisation must satisfy the conditions prescribed under the Law No. 42/2019/QH14 with respect to legal entity status and individuals directly providing insurance auxiliary services within the organisation. Decree 80 details the conditions applicable to these individuals. For example, an individual who directly provides insurance consultancy services must either have a university or higher degree in insurance business, or have a university or higher degree in another discipline and a certificate on insurance consultancy.

Further, insurance auxiliary service providers are required to have insurance policies for professional liabilities in insurance auxiliary services. The level of insurance liability shall be determined in the contract for providing insurance

auxiliary services for each type of such services provided.

Cross-border insurance auxiliary service providers

Foreign individuals and organisations shall provide cross-border insurance auxiliary services in accordance with international treaties to which Vietnam is a party in which the agreements on provision of cross-border insurance auxiliary services have been included.

Apart from the general conditions for providing insurance auxiliary services prescribed in the Law No. 42/2019/QH14, further conditions for a foreign organisation providing cross-border insurance auxiliary services in Vietnam are as follows:

- The foreign organisation must be allowed to provide insurance auxiliary services in its home country;
- The foreign organisation has been operating for at least 10 years;
- The foreign organisation has not breached the laws regarding insurance auxiliary services of its home country during the three preceding years;
- The foreign organisation must be profitable during the preceding three financial years.

With respect to foreign individuals providing cross-border insurance consultancy, the conditions of being aged 18 years or more with full capacity for civil acts and having appropriate degrees or certificates must be satisfied.

Foreign individuals and organisations are entitled to provide cross-border insurance auxiliary services to insurance enterprises, branches of foreign non-life insurance enterprises, and insurance brokers in Vietnam. Cross-border insurance auxiliary services can only be provided to other entities in Vietnam by cooperating with local insurance auxiliary service providers.

3. Prudential ratios in operation of banks

On 15 November 2019, the State Bank of Vietnam (SBV) issued Circular 22/2019/TT-NHNN regulating limits and prudential ratios in operations of banks and foreign bank branches ("Circular 22"). Circular 22 will be effective from 01 January 2020.

The current regulations, including Circular 36/2014/TTNHNN dated 20 November 2014, Circular 06/2016/TT-NHNN dated 27 May 2016, Circular 19/2017/TT-NHNN dated 28 December 2017, Circular 16/2018/TT-NHNN dated 31 July 2018, and Article 4 of Circular 13/2019/TT-NHNN dated 21 August 2019, will no longer be effective in respect of banks and foreign bank branches as from 01 January 2020. Below are some of the salient points of Circular 22.

General provisions

The SBV removes non-bank credit institutions from the scope of application of Circular 22 and will issue separate guidelines for non-bank institutions. Circular 22 therefore only sets the limits and prudential ratios in operation of banks and foreign bank branches (referred as "banks").

Notably, Circular 22 extends the definition of "credit extension" to include a commitment for issuance of a letter of credit (L/C). The "derivative products" are also amended to ensure the conformity with Circular 41/2016/TT-NHNN dated 30 December 2016 regulating capital ratio applicable to banks and foreign bank branches.

Credit extension limits and restrictions

Banks shall comply with the provisions on cases where credit extension is not permitted, credit extension restrictions and credit extension limits in accordance with Articles 126, 127, and 128 of the Law on Credit Institutions (Amended).

The conditions for banks to extend credit for investment and trading enterprise bonds and shares are similar to those under the current regulations. Circular 22 continues to limit the total outstanding credit extension balance for investment and trading enterprise bonds and shares to no more than 5% of the charter capital or funded capital of a bank.

The current regulations set out certain circumstances that a bank is prohibited from extending credit to customers for investment and trading enterprise bonds, Circular 22 expands the list of prohibitions by including investment and trading enterprise bonds issued by a subsidiary of such bank. The circumstances that a bank is prohibited from extending credit for investment and trading shares remain unchanged.

Short term funds used for medium and long term loans

Circular 22 reduces the maximum ratio of short term funds which may be used for medium and long term loans. In particular, banks are allowed to use their short term funds for medium and long term loans at the maximum ratios according to the following schedule:

(a) from 01 January 2020 up to the end of 30 September 2020: 40%;

(b) from 01 October 2020 up to the end of 30 September 2021: 37%;

(c) from 01 October 2021 up to the end of 30 September 2022: 34%; and

(d) from 01 October 2022 onward: 30%.

Loan over deposit ratio

The loan over deposit ratio (LDR) applicable for banks is 85%. For newly established banks within the first three years, the SBV Governor will determine the specific level for each bank.

Banks are not required to implement the prescribed LDR if the charter capital or funded capital remaining after deduction of accumulated losses, the original purchase price of or investment fixed assets, capital contribution or share subscription is larger than the outstanding loan balance.

Transitional provisions

Contracts signed before the effective date of Circular 22 (i.e. 01 January 2020) shall continue to be implemented in accordance with the signed agreements until the expiry of the contracts. Any revision of such contracts must comply the provisions of this Circular and relevant provisions of law.

Banks which have the LDR not satisfying the provisions of Circular 22 must formulate plans for resolution, which include at least the followings: (a) the specific ratios which do not satisfy the provisions; (b) measures to be applied to ensure that the LDR will not increase; and (c) measures and plans for resolution to ensure compliance before 01 January 2022.

Banks which have the minimum capital adequacy ratio not satisfying the provisions of Circular 22

must formulate plans for resolution to include as a minimum: (a) the specific ratios which do not satisfy the provisions and (b) measures and plans for resolution to ensure compliance within 06 months from the effective date of Circular 22.

4. Legal capital for credit institutions

On 14 November 2019, the Government issued Decree 86/2019/ND-CP regulating legal capital levels for credit institutions and foreign bank branches ("Decree 86"). Decree 86 takes effect from 15 January 2020 and repeals Decree 141/2006/ND-CP dated 22 November 2006, Decree 10/2011/ND-CP dated 26 January 2011 and Article 3 of Decree 28/2005/ND-CP dated 9 March 2005.

Decree 86 adds the legal capital of VND05 billion required for micro-financial institutions, and increases the legal capital required for people's credit funds from VND0.1 billion to VND0.5 billion or VND01 billion (depending on their location). The levels of legal capital required for banks, foreign bank branches, and non-banking credit institutions remain unchanged (i.e. VND3,000 billion for a commercial bank, US\$15 million for a foreign bank branch, VND500 billion for a finance company).

Credit institutions (except for people's credit funds) and foreign bank branches which have been issued with an establishment and operation licences before the effective date of Decree 86 must ensure that their legal capital amounts are at least equal to the levels of legal capital stipulated in Decree 86 as from 15 January 2020. For licensed people's credit funds, the deadline is 30 June 2021.

5. Anti-money laundering

On 14 November 2019, the Government issued Decree 87/2019/ND-CP to amend Decree 116/2013/ND-CP of the Government dated 04 October 2013 implementing the Law on Anti-money Laundering ("Decree 87"). Decree 87 took effect from 14 November 2019.

Decree 87 expands its scope of application to intermediately payment service providers. This expansion aims to ensure that those entities comply with the regulations on anti-money laundering. Intermediately payment service providers are responsible to apply the same measures

for prevention and combat of money laundering as reporting financial entities stipulated in Article 4.3 of the Law on Anti-money Laundering.

Decree 87 requires a reporting entity to identify the ultimate beneficial owner of a customer. The beneficial owner is identified on the following criteria:

(i) the individual who actually owns one account or one transaction: the accountholder, joint accountholder or any individual who controls the activity of such account or benefits from such transaction;

(ii) the individual who controls the legal entity: the individual holding directly or indirectly 25% or more of the charter capital of such legal entity; private business owners; and other individuals actually controlling the entity;

(iii) the individual who controls the investment entrustment or authorisation agreement: the entrusting or authorising individual; or the individual with the right to control another individual, the legal entity, or the entrusting or authorising organisation.

A reporting entity may apply the simple measures for customer identification in case the customer is rated as low-risk, comprising of: (a) not collecting information about the purpose or the nature of a business relationship if there is a basis for identifying the purpose and nature from the types of transactions or business relationships that have been performed and established; (b) authentication of customer identification and beneficial owner identification after the business relationship is established; (c) reducing frequency of customer identification updates; and/or (d) reducing level of transaction supervision and control. However, the reporting entity is not entitled to apply these measures if there is a suspicion related to money laundering or terrorism financing.

6. Consumer lending by finance companies

On 04 November 2019, the SBV issued Circular 18/2019/TT-NHNN to amend and supplement Circular 43/2016/TT-NHNN dated 30 December 2016 regulating consumer lending by finance companies ("Circular 18"). Circular 18 takes effect from 01 January 2020.

Under Circular 18, finance companies are allowed to directly disburse the loan to customers provid-

ed that the customers do not have bad debts according to the report on credit relation from the Vietnam National Credit Information Centre at the most recent time calculated from the time of entering into the consumer lending contract.

Circular 18 has several requirements that finance companies must comply when conducting the direct disbursement to customers including but not limited to (i) required ratio of the total balance of consumer loans disbursed directly to customers over total balance of consumer credit of a finance company at the end of and (ii) the methods of disbursing loan capital.

A finance company must provide a draft consuming lending contract to its customer and also provide an explanation of specific items in the contract. The finance company must obtain confirmation from the customer that the company has provided complete information to consider before making a decision to sign the contract.

Circular 18 specifies the responsibilities of finance companies to create clear policies for protection of the rights of customers, and to supervise and control the compliance with law and the internal rules on consumer lending by the relevant individuals of the finance company. A finance company must, among others, post on its website the interest rate framework for consumer loans, fees, method for calculating interest on loan, and necessary information regarding consumer loans.

Furthermore, Circular 18 also provides the regulations on measures of supervising and controlling the collection of debts to limit complaints on improper debt collection practices conducted by finance companies. According to Circular 18, the finance companies must not threaten the customer to collect the debt and the maximum number of debt reminding times is 05 (five) times per day. The form of debt reminding and the time of debt reminding shall be agreed upon by the parties in the lending contracts but must be between 7:00 and 21:00 o'clock. The finance companies shall not remind debtors, collecting debts, sending information on debt recovery of customers to organizations and individuals that are not obliged to pay debts to financial companies, except where so requested by competent state agencies as prescribed by law; and keep the confidential information of the customers in accordance with the laws.

VILAF NEWS

RECENT AWARDS

We have recently been honored to be awarded:

- Asialaw Vietnam Firm of the Year Award 2019
- Vietnam M&A Forum Most Notable M&A Advisory Firm of 2018-2019

RECENT PROMINENT DEALS

AVIATION

Avolon Aerospace leasing Airbus aircrafts to Vietnam Airlines and Bamboo Airways

VILAF advised Avolon Aerospace Limited on the refinancing of an Airbus A350 leased by Vietnam Airlines and in the leasing of several Airbus A350 aircrafts to Vietnam Airlines and Bamboo Airways.

Partner Vo Ha Duyen and Counsel Nguyen Thi Kim Anh advised these deals.

BANKING & FINANCE

Reserve Based Lending Facility to SOCO International

VILAF advised BNP Paribas, Crédit Agricole, and Standard Chartered Bank as arrangers on the US\$125 million Reserve Based Lending Facility to SOCO International, secured against the Group's producing assets in Vietnam, which include Te Giac Trang Field of Block 16-1, Ca Ngu Vang field of Block 9-2 and Blocks 125 & 126 offshore Vietnam.

Partner Vo Ha Duyen and Senior Associate Nguyen Thanh Tung advised this deal.

Bank of China (HK) Lending Facility to Gain Lucky

VILAF advised Bank of China (HK) on making a US\$35 million medium term loan facility to Gain Lucky Vietnam to fund its project.

Partner Vo Ha Duyen and Senior Associate Nguyen Thanh Tung advised this deal.

Rabobank's loan to Japfa Vietnam

VILAF advised Rabobank on the loan to Japfa Vietnam worth US\$30 million and in taking security interest over Swine from Japfa Vietnam.

Partners Dang Duong Anh and Vu Le Trung advised this deal.

M&A FINANCIAL SECTOR

Vietcombank's private placement of shares to GIC

VILAF advised Credit Suisse on Vietcombank's issuance of 94,442,442 ordinary shares worth US\$270 million to GIC Private Limited in its private placement to raise its charter capital.

This transaction involved a US\$ escrow deposit and approval from the State Bank of Vietnam for the non-application of the restriction to transfer shares to certain countries.

Partner Tran Tuan Phong and Senior Associate Pham Thuy Anh advised this deal.

Acquisition of Prudential Vietnam Finance Company by Shinhan Card

VILAF advised Shinhan Card Co. Ltd. on the acquisition of the full equity capital in Prudential Vietnam Finance Company worth US\$151 million.

Prudential Finance is a 100-percent foreign capital consumer finance company in Vietnam. This has become the first ever foreign finance company which sold all its capital interests to another foreign investor in Vietnam.

Partners Vo Ha Duyen and Nguyen Quang Hung advised this deal.

CORPORATE/M&A

Sale of Thinh Phat Cables and Dovina to Stark Corporation

VILAF advised the founders as sellers on the bidding process and sale of all equity stake in Thinh Phat Cables and Dovina to Stark Corporation, in a transaction valued approximately at US\$240 million.

Think Phat Cables and Dovina manufacture electric wires and cables and non-ferrous metal, and primarily operate their business on the basis of Business-to-Business (B2B) and Business-to-Government (B2G) models.

The closing of the transaction was subject to satisfying certain conditions precedent including governmental approvals.

Partners Vo Ha Duyen and Pham Si Hai Quynh advised this deal, with assistance of Counsel Nguyen Thi Kim Anh and Senior Associate Nguyen Thanh Tung.

H.C. Starck sale of the tungsten business to Masan Tungsten Limited Liability Company

VILAF advised the H.C. Starck group as Vietnam counsel on the sale of the tungsten business of H.C. Starck Group GmbH to Masan Tungsten Limited Liability Company, a wholly owned subsidiary of Masan Resources Corporation. The H.C. Starck group is part of the portfolio of the private equity investors Advent International and the Carlyle Group.

Closing of the transaction is, inter alia, subject to certain regulatory approvals (including governmental approvals in Vietnam).

Partner Vo Ha Duyen advised this deal.

Minh Phu's sale of 35.1% shares of its company

VILAF advised Minh Phu on the sale of 35.1% stake of its company to one of Japan's largest trading group, Mitsui & Co. Mitsui invested US\$150 million. Mitsui also invested in Minh Phu-affiliated processing plant in 2013.

Minh Phu, the world's largest shrimp integrator from farming to processing and sales, owns two processing plants and shrimp farms equivalent to an area of 900 hectares in Southern Vietnam. Minh Phu's extensive range of products are exported to around 50 countries, including the United States and Japan, accounting for approximately 20% of Vietnam's total shrimp exports.

Partner Trinh Luong Ngoc advised this deal.

Sale of Auchan's supermarkets to Saigon Co.op

VILAF advised Auchan on the sale of its retail business to Saigon Co.op that included 18 supermarkets nationwide, including its e-com-

merce platform.

Partners Vo Ha Duyen and Trinh Luong Ngoc advised this deal, with assistance of Counsel Nguyen Thi Kim Anh.

ENERGY

Financial closing of Van Phong 1 Coal-Fired Power Plant Project

VILAF advised Sumitomo Corporation on the financing of the Van Phong 1 Coal-Fired Power Plant in Khanh Hoa province. This 11-year project achieved financial closure on April 2019 with a total value of US\$2.58 billion.

Partner Tran Tuan Phong and Counsel Nguyen Vu Quynh Lam advised this deal.

Financial closing of AES-VCM Mong Duong 2 Coal-Fired Power Project

VILAF advised AES Corporation, Posco Energy, and China Investment Corporation on the financing closing of AES-VCM Mong Duong 2 Coal-Fired Power Project in Quang Ninh Province. Following its financial closure in 2011, its refinancing was completed in July 2019. This is the first time a BOT project in Vietnam was refinanced through bond issuance with the value of US\$678 million and a loan of US\$402.7 million.

Partner Tran Tuan Phong and Counsel Nguyen Vu Quynh Lam advised this deal.

Financial closing of Nghi Son 2 Coal-Fired Power Plant Project

VILAF advised JBIC, K-Exim, and commercial lenders on the financial closing of the Nghi Son 2 Coal-Fired Power Plant Project. This 10-year project is the first power plant of international tender in Vietnam achieving limited recourse project financing.

This project brought VILAF two prestigious awards from Asian Legal Business (ALB) with the Project Finance Deal of the Year 2018 and IJGlobal with the APAC Coal-fired Power Project of the Year 2018.

Partner Tran Tuan Phong and Counsel Nguyen Vu Quynh Lam advised this deal.

PRIVATE EQUITY

Vinfast's selling of shares

VILAF advised Vinfast, a subsidiary of Vingroup and a major shareholder of VCM Services and Trading Development Joint Stock Company on the selling of 104,660,885 shares of VCM to GIC-led consortium in the form of a private strategic sale with a value of US\$500 million. This made this transaction one of the biggest private strategic investments by a foreign investor in the Vietnamese consumer and retail sector which is not fully opened to foreign investors.

Partner Tran Tuan Phong and Senior Associate Pham Thuy Anh advised this deal.

VinaCapital's investment in Ngoc Nghia

VILAF advised Ngoc Nghia Industry-Services-Trading Joint Stock Company ("Ngoc Nghia"), a pioneer and leading manufacturer of PET (polyethylene terephthalate) packaging in Vietnam. on a private equity investment by a consortium led by VinaCapital. The consortium made an investment of US\$21.4 million in Ngoc Nghia.

Partners Vo Ha Duyen and Trinh Luong Ngoc advised this deal.

2020 PROMOTIONS

VILAF is pleased to announce the promotion of 5 senior lawyers effective 1 January 2020.

Meet our new counsel and senior associates.



Nguyen Thanh Tung
Counsel

Tung joined VILAF in 2011 and since then has gained much experience in the areas of banking, asset finance, project finance and energy, real estate finance, capital markets and M&A transactions. He is an LL.M graduate of UK's University of the West of England.



Bui Vo Phuong Thao
Senior Associate

Thao joined VILAF in 2013 and her areas of expertise include energy, capital markets, and M&A. She is an LL.M graduate in Energy and Natural Resources Law from Queen Mary University of London, UK (with distinction).



Nguyen Tang Hanh Hien
Senior Associate

Hien joined VILAF in 2013 and is knowledgeable in the areas of banking, finance, capital market, and M&A. She took her LL.M degree on International Banking and Finance Law in the University of Leeds (UK).



Tran Thuy Dan Thanh
Senior Associate

Thanh joined VILAF in 2015 and her areas of expertise include corporate and cross-border M&A, finance, and taxation. She is an LL.M graduate of Australia's University of New South Wales.



Nguyen Thi Minh Ha
Senior Associate

Ha joined VILAF in 2018 and has focused on the practice areas of banking and finance, M&A and private equity, foreign investment, corporate, real estate and employment.. She is an LL.M graduate of Belgium's Katholieke Universiteit Leuven.

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