

## Recent Legal Developments in Vietnam

### 1. New Decree on trade promotion activities

On 22 May 2018, the Government passed the Decree No. 81/2018/ND-CP (**Decree 81**) detailing the commercial law regarding trade promotion activities to replace Decree No. 37/2006/ND-CP on the same area as from the effective date. Decree 81 comes into effect from 15 July 2018. Under the new Decree, some provisions relating to trade promotion activities have been amended as follows:

- (i) The new Decree further stipulates promotions in multi-level business<sup>1</sup>;
- (ii) Decree No. 81/2018 also prescribes non-promotional goods and services and goods and services that cannot be used in promotion programs such as alcohol, cigarettes, medicines, etc<sup>2</sup>;
- (iii) Maximum value of goods and services used for sales promotion, and maximum discount rate for promoted goods and services are extended to 100% in concentration promotions<sup>3</sup>;
- (iv) For promotions relating to Sale of goods or provision of services at prices lower than their previous prices, the total duration of sales promotion programs conducted in the form of discount for a certain goods or service mark is not exceed 120 days<sup>4</sup> in lieu of 90 days<sup>5</sup> as regulated in the former Decree;
- (v) With respect to the responsibility of registration, the traders regulated in Article 2.1.a (traders that manufacture, sale or provide of goods and services directly implement the promotions or implement through distribution traders (wholesale, retail sale, agent, franchise and other distribution traders as prescribed in laws) must register their promotions with the state authority before implementing their promotions.<sup>6</sup> Under Decree No. 37/2006/ND-CP, the registration is only required when the traders implement promotional games of chance.<sup>7</sup>

### 2. Decree No.63/2018/ND-CP on investment in the form of public-private partnership (“PPP”) contract

On 04 May 2018, the Government promulgated Decree No.63/2018/ND-CP (**Decree 63**) on investment in the form of PPP contract. This Decree shall take effect from 19 June 2018 to replace Decree No.15/2015/ND-CP dated 14 February 2015 of the Government. The Decree covers some notable following points:

- (i) The State stimulates investors to invest in social housing project, resettlement housing project in the form of PPP contract.<sup>8</sup>

---

<sup>1</sup> Decree 81, Article 4

<sup>2</sup> Decree 81, Article 5

<sup>3</sup> Decree 81, Article 6,7

<sup>4</sup> Decree 81, Article 10.4

<sup>5</sup> Decree 37/2006/ND-CP, Article 9.4

<sup>6</sup> Decree 81, Article 16.1.a

<sup>7</sup> Decree 37/2006/ND-CP, Article 16

<sup>8</sup> Decree 63, Article 4(1)(d)

- (ii) Raise the minimum owner's equity to ensure financial capacity of investors.<sup>9</sup>
- (iii) Provide detail regulations on authorisation, progress, procedures for in-principle approval of PPP project (including both project uses and does not use public investment capital) on the basis of complying with the Law on Public Investment.<sup>10</sup> For example: Pursuant to Article 9(1)(a), Investors shall make, assess pre-feasibility study report before obtaining decision on investment policy but Project in Group C.<sup>11</sup>
- (iv) The Decree extends the source of capital to be used by the State to implement the project, in addition to state budget funds, government bonds, local government bonds, ODA and preferential loans of foreign donors.<sup>12</sup> Moreover, the State can use a variety of resources to participate in, assist the investors in PPP projects, such as the value of land use rights, public assets, infrastructure assets, rights to conduct business from works, services, etc.<sup>13</sup>

### **3. Decree No.39/2018/NĐ-CP of the Government dated 11 March 2018 on detailing several articles of the Law on small and medium enterprise assistances**

On 11 March 2018, the Government passed Decree No.39/2018/NĐ-CP on guiding detailed assistances for small and medium enterprises ("SMEs"), which will supersede Decree No. 56/2009/NĐ-CP dated 30 June 2009 . This Decree came into force on 11 March 2018. Accordingly, this Decree lays down some notable points as follows:

- (i) Supplement detailed criteria to determine the micro enterprises and SMEs in the sector of agriculture, forestry, aquaculture; industry, construction; and trading, service.<sup>14</sup>
- (ii) Micro enterprises and SMEs will receive assistance in respect of access to information, consultancy and legal issues and assistance in human resource development, etc. Specially, the Decree specifies on facilitating micro enterprises and SMEs to transfer from household business, innovative start-up.<sup>15</sup>
- (iii) The Decree sets forth duty of competent authorities on implementing the Law on Assistance for Micro enterprises and SMEs.<sup>16</sup>

### **4. Decree No. 40/2018/NĐ-CP of the Government dated 12 March on management of business activities by multi-level mode.**

---

<sup>9</sup> Decree 63, Article 10

<sup>10</sup> Decree 63, Chapter III – Chapter X

<sup>11</sup> Decree 63, Article 9(1)(a)

<sup>12</sup> Decree 63, Article 11

<sup>13</sup> Decree 63, Article 34

<sup>14</sup> Decree 39, Chapter II

<sup>15</sup> Decree 39, Chapter III and IV

<sup>16</sup> Decree 39, Chapter V

On 12 March 2018, the Government of Vietnam issued Decree No. 40/2018/NĐ-CP (**Decree 40**) setting out provisions of management of business activities by multi-level mode. This Decree shall take legal effect from 02 May 2018 and replace Decree No. 42/2014/ NĐ-CP. Under the new Decree, notable changes include:

- (i) Changes in conditions for registration of multi-level business activities. An organization must have: (i) charter capital at least 10 billion dong<sup>17</sup>, (ii) escrow money at 5% of charter capital but not less than 10 billion dong<sup>18</sup> and (iii) sample of multi-level business contract<sup>19</sup>.
- (ii) An organization must register with a provincial-level Industry and Trade Department of each province and centrally run city before starting their business, not just notify as prescribed in Decree No. 42/2014/ NĐ-CP.<sup>20</sup> The new Decree also stipulates more clearly procedures and dossiers for this kind of registration.<sup>21</sup>
- (iii) The Decree also requires organizations to have training programs in relation to legal knowledge, moral standards for multi-level business activities as well as contents of multi-level business contracts. The training program for legal knowledge must be approved by State authorities.<sup>22</sup>

#### **5. Decree No. 41/2018/NĐ-CP of the Government dated 12 March 2018 stipulating administrative sanctions in the field of accounting and independent audit.**

On 12 March 2018, the Government of Vietnam passed Decree No. 41/2018/NĐ-CP (**Decree 41**) stipulating administrative sanctions in the field of accounting and independent audit. The new Decree has some changes compared to Decree 105/2013/NĐ-CP. Remarkable points are illustrated by the Decree following:

- (i) Under the new Decree, when household business and cooperative groups violate in domains of accounting and independent audit shall be sanctioned as individuals.<sup>23</sup>
- (ii) the maximum fine levels in accounting is extended to 50,000,000 VND for individuals and 100,000,000 VND for organizations.<sup>24</sup>
- (iii) the new Decree stipulates more remedial measures and provides that violations in both accounting and independent audit shall bear the same remedial measures.<sup>25</sup>
- (iv) the Decree also stipulates more behaviors that shall be considered as violations such as signature does not match signature in registration form<sup>26</sup>; (ii) accounting vouchers are not translated in to Vietnamese<sup>27</sup>; (iii)

<sup>17</sup> Decree 40, Article 7.1.c

<sup>18</sup> Decree 40, Article 50.2

<sup>19</sup> Decree 40, Article 7.1.d

<sup>20</sup> Decree 40, Article 19, 20

<sup>21</sup> Decree 40, Article 21

<sup>22</sup> Decree 40, Article 32, 35

<sup>23</sup> Decree 41, Article 2.2

<sup>24</sup> Decree 41, Article 6.1

<sup>25</sup> Decree 41, Article 5

<sup>26</sup> Decree 41, Article 8.2.d

<sup>27</sup> Decree 41, Article 8.2.e

# Client Update: Vietnam

## 2018 MAY

---

Make loss, damage to accounting vouchers<sup>28</sup>; (iv) the signature in accounting vouchers is red or blur<sup>29</sup>; (v) copy, seal off accounting documents<sup>30</sup> or (vi) violations about testing of accountant certificate and updating knowledge<sup>31</sup>, etc.

- (v) the new Decree also further states sanctions relating to accounting such as violations about provision of accounting service or providing through-border accounting service.<sup>32</sup>
- (vi) for independent audit, the new Decree supplements behaviors as violations such as (i) violations relating to application for certificates of audit practice<sup>33</sup>, or (ii) falsify certificates of audit practice<sup>34</sup>, etc.

---

<sup>28</sup> Decree 41, Article 8.2.g

<sup>29</sup> Decree 41, Article 8.1.c

<sup>30</sup> Decree 41, Article 13

<sup>31</sup> Decree 41, Article 19, 20

<sup>32</sup> Decree 41, Item 4, 5

<sup>33</sup> Decree 41, Article 39

<sup>34</sup> Decree 41, Article 38

## Contacts



**Chau Huy Quang**  
Managing Partner

D +84 28 3821 2382  
F +84 28 3520 8206  
[quang.chau@rajahtannlct.com](mailto:quang.chau@rajahtannlct.com)



**Vu Thi Que**  
Partner

D +84 28 3821 2382  
F +84 28 3520 8206  
[que.vu@rajahtannlct.com](mailto:que.vu@rajahtannlct.com)



**Pham Manh Dzung**  
Partner

D +84 28 3821 2673  
F +84 28 3821 2685  
[dzung.pham@rajahtannlct.com](mailto:dzung.pham@rajahtannlct.com)



**Lim Wee Hann**  
Partner  
Rajah & Tann Singapore  
LLP

D +65 6232 0606  
F +65 6428 2201  
[wee.han.lim@rajahtann.com](mailto:wee.han.lim@rajahtann.com)

## Our Regional Contacts

### RAJAH & TANN | *Singapore*

#### Rajah & Tann Singapore LLP

T +65 6535 3600  
F +65 6225 9630  
sg.rajahtannasia.com

### CHRISTOPHER & LEE ONG | *Malaysia*

#### Christopher & Lee Ong

T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

### R&T SOK & HENG | *Cambodia*

#### R&T Sok & Heng Law Office

T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

### RAJAH & TANN NK LEGAL | *Myanmar*

#### Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

### RAJAH & TANN 立杰上海

#### SHANGHAI REPRESENTATIVE OFFICE | *China*

#### Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

### GATMAYTAN YAP PATACSIL

#### GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

#### Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977  
F +632 552 1978  
www.cagatlaw.com

### ASSEGAF HAMZAH & PARTNERS | *Indonesia*

#### Assegaf Hamzah & Partners

##### Jakarta Office

T +62 21 2555 7800  
F +62 21 2555 7899

##### Surabaya Office

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

### RAJAH & TANN | *Thailand*

#### R&T Asia (Thailand) Limited

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

### RAJAH & TANN LCT LAWYERS | *Vietnam*

#### Rajah & Tann LCT Lawyers

##### Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

##### Hanoi Office

T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

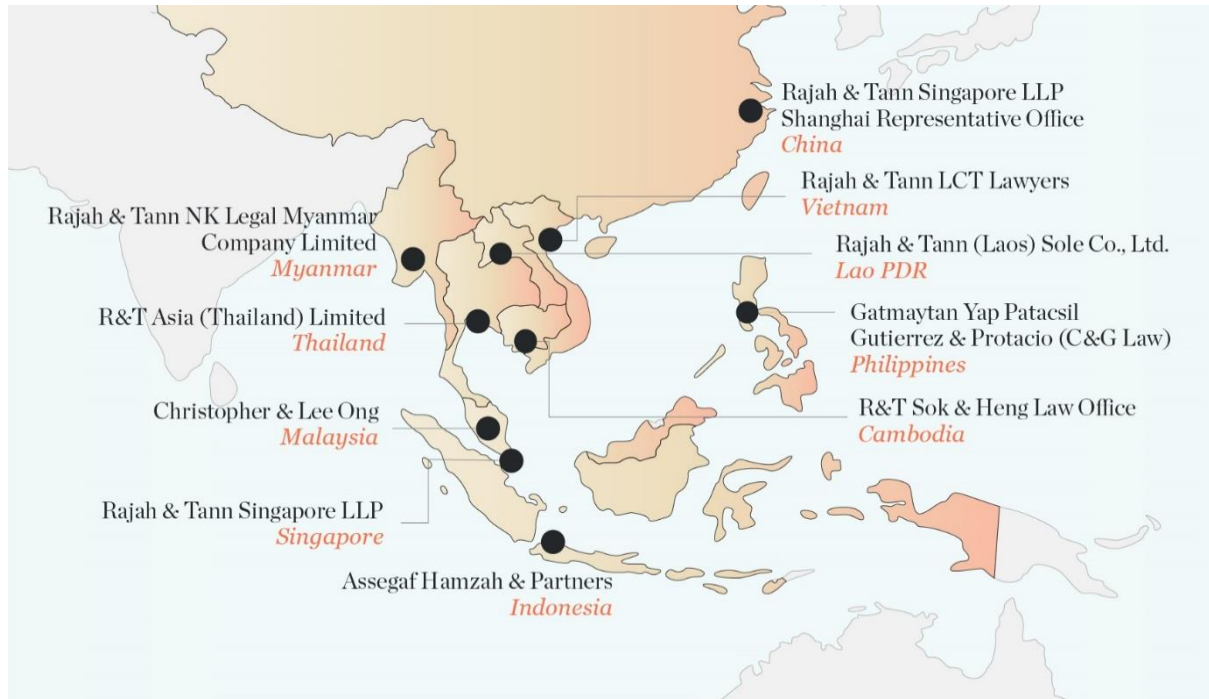
### RAJAH & TANN | *Lao PDR*

#### Rajah & Tann (Laos) Sole Co., Ltd.

T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

## Our Regional Presence



Rajah & Tann LCT Lawyers has a multi-faceted talent pool of lawyers with expertise in a range of practice areas who are able to provide end-to-end legal services for all transactions in Vietnam. Rajah & Tann LCT Lawyers is also able to handle cross-border transactions involving other jurisdictions, particularly those within the Indochina region.

Rajah & Tann LCT Lawyers is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann LCT Lawyers and subject to copyright protection under the laws of Vietnam and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann LCT Lawyers.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann LCT Lawyers.