NEWSLETTER

Edition 5, 2012

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Welcome to the latest edition of Frasers' newsletter.

The last couple of months have been perhaps the most significant months on the Vietnam legal landscape for some considerable time. Vietnamese lawmakers have been very busy and we are pleased to bring you up to date in this edition of our newsletter.

In this month's edition, we bring you:

- A new Law on the Prevention and Combatting of Money Laundering recently passed by the National Assembly in June 2012;
- Certain strict regulations in relation to tobacco manufacturing and/or wholesaling, retailing businesses which are stipulated in the Law on Prevention and Control of Tobacco Harm also passed by the National Assembly in June 2012;
- A short article in relation to the usage of company seals;
- An update on consular legislation procedures; and
- Certain significant provisions arising out of the regulations on administrative sanctions for violations in respect of consumer protection, to further encourage compliance with the Law on Consumer Protection.

We trust that you find this edition of the newsletter an interesting read and welcome any feedback or comments you may have on any of our topics. Our address for comments is newsletter@frasersvn.com.

Whilst we aim to provide a useful update on new legislation, Frasers' Newsletter does not constitute formal legal advice. Should you feel that you require further information on any of the issues in this edition of the Newsletter, please contact us at the address above.

LAW ON PREVENTION AND COMBATTING OF MONEY LAUNDERING

One of the major new laws which made its way through the latest session of the National Assembly on 18 June 2012 was the Law on the Prevention and Combatting of Money Laundering No. 07/2012/QH13, which comes into effect from 1 January 2013 (***the Anti-Money Laundering Law***). The Anti-Money Laundering Law supplements and replaces some provisions of Decree 74/2005/ND-CP on the Prevention and Combatting of Money Laundering, dated 7 June 2005 of the Government (***Decree 74***), and introduces many new definitions and provisions to the applicable legal framework on anti-money laundering. Below is a summary of some significant changes and new provisions contained in the Anti-Money Laundering Law:

The definition of "Money laundering"

"*Money laundering*" is defined as the activities of an individual or organisation whose aim it is to legalise the source of money or assets obtained as a result of a crime, by way of the following acts: (i) as described in the Criminal Code, (ii) assisting individuals or organisations to avoid or evade their legal responsibilities by the way of legalising the source of money or assets obtained as a result of a crime; and (ii) possessing property, with the knowledge at the time of receiving such property that it was obtained as a result of criminal activity, for the

purpose of legalising the source of such money or assets .

Compared to Decree 74, the Anti-Money Laundering Law significantly broadens the definition of *money laundering* in the sense that it not only refers to the Criminal Code, but also supplements the provisions on assisting others in carrying out money laundering activities and possessing assets with knowledge that such assets were obtained as a result of criminal activity.

Entities subject to reporting obligations

Two types of entities are subject to reporting obligations under the Anti-Money Laundering Law. They are: (i) financial institutions (including organisations that are licensed to conduct banking, insurance and securities activities as listed under the Anti-Money Laundering Law); and (ii) individuals and organisations conducting relevant non-financial business (i.e., gaming with prizes, casinos; real estate management services, real estate broker services, real estate trading floor operations; trading precious metals and stones; notarisation services; accounting services; legal services; entrusted investment services; or services in relation to the establishment, management and operation of companies).

Know-your-customer requirement

One of the key provisions of the Anti-Money Laundering Law is the "know-your-customer" requirement, applicable to the reporting entities. Unlike Decree 74, the "know-your-customer" obligation not only relates to the obligation to identify the direct customer, but also extends to the ultimate beneficiary of any services. "Beneficiary" is a newly introduced term under the Anti-Money Laundering Law, and is defined as:

- an individual who may possess an account, and has the controlling right where a customer conducts a transaction for the beneficiary; or
- an individual who has the right to control a legal entity or an entrusted investment agreement.

Entities subject to the "know-your-customer" requirement, may engage another organisation to verify the consumer's information. However, the Anti-Money Laundering Law does not provide any provisions on whether or not there is any condition for entities (which are not entities subject to the reporting obligation referred to above) to be engaged for the business of verification on the consumer's information.

Under the Anti-Money Laundering Law, entities subject to the reporting obligations must establish internal regulations and procedures for the classification of customers, and apply appropriate "know-your-customer" measures with respect to each type of customer. In general, customers may be classified into two categories: those with a low risk profile and those with a high risk profile.

The Anti-Money Laundering Law leaves the manner of the categorisation of customers to the discretion of the reporting entities, taking into account risks pertinent to customers, types of services and products used by the customers, and place of residence or location of the head office of the customer. However, the Anti-Money Laundering Law provides that the following types of customers and transactions should be categorised as high risk:

- foreign customers who are politically exposed persons in the list to be announced by the State Bank of

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Vietnam (***the SBV***) and their relatives in accordance with the Anti-Money Laundering Law;

- agent-bank relationships;
- transactions relating to new technology;
- transactions subject to special supervision, i.e., high value, abnormal, and complicated transactions; and transactions with individuals or organisations domiciled in countries or domains enlisted by the inter-governmental financial task force for the purpose of anti-money laundering or by the SBV; and
- business transactions by referral.

In addition, entities subject to the reporting obligations must establish internal regulations on the prevention and combatting of money laundering, which should include the principal contents as set forth in the Anti-Money Laundering Law.

Responsibilities on the reporting, provision and retention of information

Individuals or organisations fulfilling their reporting obligations or providing information to the competent authorities as required by the Anti-Money Laundering Law will not be considered to be in violation of regulations with regard to any confidentiality obligation.

There are three types of transactions that need to be reported to the SBV:

- A high value transaction: any transaction in cash, gold or foreign currency conducted at least once within a day, having a total value equal to or exceeding a threshold amount as provided by the competent authorities. The total amount of a high value transaction is provided by the Prime Minister from time to time;
- A wire transfer: if the total value exceeds the threshold amount as provided by the SBV; and
- A suspicious transaction: Any transaction having abnormal characteristics or legal grounds for reasonable suspicion that the transacted assets are generated from criminal activity or are affiliated with money laundering activities.

Unlike Decree 74, indications of suspicious transactions are clarified and separated into two types: (i) basic suspicious indications; and (ii) suspicious indications in certain sectors, including banking, insurance, securities, gaming with prizes, casinos, and real estate. The Anti-Money Laundering Law further provides that in the process of business, where entities subject to the reporting obligations discover any suspicious transaction which is not included in the Anti-Money Laundering Law, such entities are required to report such suspicious transactions to the SBV. The Prime Minister may supplement the suspicious indications in such sectors from time to time as recommended by the SBV.

The forms, deadlines and methods for reporting and record keeping are also set out in the Anti- Money Laundering Law.

Temporary measures

In comparison with Decree 74, the Anti-Money Laundering Law removes two temporary measures, being the non-implementation of a transaction and the temporary detention of an offender; and adds a new one, being the delay of a transaction.

The entities subject to the reporting regime must delay a transaction and make a report to the competent authorities if the related parties to the transaction are named in the black list issued by the Ministry of Public Security (***MPS***); or if they have reason to believe that such transaction relates to any criminal activity. The time limit for applying this measure must not exceed three days and the application of this measure must be reported to the SBV.

Prohibited activities

The Anti-Money Laundering Law also introduces a new provision on the prohibited activities. Two activities, in particular, should be given special attention: (i) establishing or maintaining an anonymous account or an account with a fake name; (ii) establishing or maintaining business transactions with a bank established in one country or domain, but having no tangible presence in such country or domain, and not being subject to the management and supervision of the competent authorities in that country or domain.

LAW ON PREVENTION AND CONTROL OF TOBACCO HARM

Building on its National Tobacco Control Policy initiated in 2000, a new law was recently passed in Vietnam by the National Assembly. Law No. 09/2012/QH13 on Prevention and Control of Tobacco Harm (***Law No. 9***) was passed by the National Assembly on 18 June 2012 and shall come into full force on 1 May 2013. Although the main purposes of Law No. 9 are to reduce the demands of tobacco consumption, control the sources of tobacco supply, facilitate the prevention and control of the harmful effects of tobacco, both local and foreign invested enterprises, which have been or will be conducting tobacco manufacturing and/or wholesaling, retailing businesses are also affected by Law No. 9.

Definition of "tobacco" and "tobacco trading"

Law No. 9 introduces a new definition of "tobacco trading". Tobacco trading is defined as the continuous conduct of one, some, or all steps in the processing of tobacco, from manufacturing and importation, through to the consumption of tobacco on the market for the purpose of generating profit.

In addition, "tobacco" is defined for the first time in this Law No. 9. The definition is similar, however, to the definition of "tobacco products" as provided in Article 4.3 of Decree 119/2007/ND-CP dated 18 July 2007 of the Government on tobacco manufacturing and trading (***Decree 119***). That is, tobacco means any product which is wholly or partly made from raw tobacco materials and which is manufactured in the form of cigarettes, cigars, tobacco fibre, pipe tobacco, or other forms.

New regulations on tobacco products

With respect to provisions on the packaging of tobacco products, in comparison with Decree 119, there are

some changes to the requirements for printed warnings about the harmfulness of tobacco on public health as set forth in Law No. 9. Law No. 9 specifically requires that the warning message must describe the harmful effects of tobacco usage on a person's health, and other such appropriate messages, and should be changed periodically or at least once every two (2) years. In the near future, moreover, the printed warnings on the packages of tobacco products will be displayed much more prominently than those on the current packages, as Law No. 9 now requires that those printed warnings must occupy at least 50% of the total area of both the front and back (main) surfaces of the tobacco packages/cartons/or boxes (as compared with the required 30% in Decree 119).

In addition to the printing warnings on the package, the label of any tobacco product must also contain the following:

- the stamped or printed code and bar code;
- the dates of manufacturing and expiry; and
- the number of cigarettes or for other tobacco products, the weight.

The label should not have any wordings or phrases which appear to be ambiguous to readers or smokers regarding the harmfulness of tobacco or tobacco smoke. Law No. 9 also provides that any tobacco package/ carton/box which has been manufactured or imported for consumption in Vietnam, but does not adhere to the legal requirements on labelling and printed warnings as stipulated by Law No. 9, shall not be allowed to be sold within six (6) months as from the effective date of this Law.

Following the third year of the effective date of Law No. 9, the number of cigarettes per package shall not be less than 20 items, except for cigarettes and cigars manufactured for export.

Tobacco products which are manufactured and imported for sale in Vietnam shall be subject to the national technical standard regulations for cigarettes to be issued by the Ministry of Health. As far as we know, there is currently a draft National Technical Standard Regulation on safety for cigarettes under consideration.

Foreign investment in tobacco

With respect to foreign investment in tobacco manufacturing, Article 21.3 of Law No. 9 provides that any foreign invested project engaging in the manufacturing of tobacco must satisfy the following conditions:

- establish a joint venture or business co-operation with a licensed enterprise to manufacture tobacco, irrespective of purpose;
- the State holds a controlling ratio of the charter capital of the enterprise; and
- fulfill all other conditions of manufacturing tobacco as stipulated by the Government.

With regards to third item above, this refers to the manufacturing conditions for tobacco as provided by the Government. For the time being, Decree 119 and Circular 02/2011/TT-BCT dated 28 January 2011 by the Ministry of Industry and Trade (***Circular 02***) are those setting forth such conditions. Accordingly, in addition to those conditions as specified in Article 21.3 above, please note there are some further conditions that a foreign

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investor must satisfy, such as

- an approval of the Prime Minister for conducting a foreign investment project in the manufacturing of tobacco products;
- conditions for manufacture of tobacco products; and
- conditions for issuance of a permit for the manufacture of tobacco products.

Sale of tobacco

Enterprises trading in tobacco products should also be aware that their wholesaling and retailing agencies are obliged to place a notice on site explaining that tobacco must not be sold to people under 18 years of age, and that they are not allowed to display more than one (1) package/carton/or box of each product of each tobacco brand. Tobacco products are not allowed to be sold in front of any kindergarten, primary school, high school or within a perimeter of 100 metres of any medical research institute, hospital, antenatal clinic, reserve medical centre, and medical aid station.

In addition to applicable prohibitions on tobacco advertising, while a tobacco enterprise is permitted to sponsor charitable activities, it is not allowed to promote or announce such activities through any channels of media.

Compulsory contributions to the Fund for Prevention and Controlling of Tobacco Harm

Any enterprise which manufactures and/or imports tobacco shall be responsible for compulsory contributions to the Fund for Prevention and Controlling of Tobacco Harm (***the Fund***). Pursuant to Article 30.1(a) of Law No. 9, such compulsory contributions shall be made in accordance with the following timescale:

- 1% of taxable price used for calculation of special consumption tax as from 1 May 2013;
- 1.5% of taxable price used for calculation of special consumption tax as from 1 May 2016; and
- 2% of taxable price used for calculation of special consumption tax as from 1 May 2019.

Those contributions shall be declared and calculated, along with special consumption tax, and paid by the enterprises to the account of the Fund.

NEW CIRCULAR PROVIDING FOR SEALS OF STATE AGENCIES, ORGANISATIONS, AND THEIR RELEVANT TITLES

On 13 April 2012, the MPS issued Circular 21/2012/TT-BCA (***Circular 21***), providing for regulations on seals of State agencies, organisations, and their relevant titles. This legislation will be applicable to State bodies and Vietnam-domiciled enterprises, etc.

Circular 21 provides no new regulations regarding the application procedures to obtain a seal. This Circular does, however, introduce new standards for a seal in relation to the font, icon, diameter, shape, etc., for each type of organisation. Illustrations of sample seals are also provided in this Circular. It is noted that, if the geographical name is engraved on a seal, it must be that of the place where the head office of an organisation or

agency is located.

As provided in the new Circular, a second seal, embossed seal, and wafer seal must bear the same information and be the same size as the first seal. A smaller seal may have a different size as requested by the user, but it must contain the same information as on the first seal. With respect to a foreign organisation or entity having no diplomatic function but desiring to use its seal in Vietnam, the seal must be identical to the sample shown in the request application.

A seal must be made by a certified supplier, in possession of a Certificate of Satisfaction of Public Order, issued by an authorised Public Security agency. Regarding seals containing the national emblem, these must be made by suppliers approved by the MPS.

In addition, Circular 21 also introduces an article on time limitations for the usage of a seal. The term for usage of a seal is five years from the date of validity, as provided in the Certificate of Seal Registration, and which could be renewable. Where the seal is worn out, deformed, destroyed, or lost, or there is any organisational change of name, head office, or form of establishment, the seal may be exchanged or re-issued.

Circular 21 has come into full force as from 6 June 2012, replacing Circular 08/2003/TT-BCA dated 12 May 2003, providing guidelines on the seal model and engraving, as well as preservation and usage inspections by an organisation or entity pursuant to Decree 58/2001/ND-CP dated 24 August 2001 on seal management and usage. A seal issued under the previous Circular, and which does not contravene the provisions of Circular 21, however, shall remain valid.

ADDITIONAL REGULATIONS PROVIDING GUIDELINES FOR CONSULAR CERTIFICATION AND LEGALISATION PROCEDURES

On 20 March 2012, the Ministry of Foreign Affairs (***MOFA***) issued Circular 01/2012/TT-BNG (***Circular 01***) providing guidelines on a number of provisions of Decree 111/2011/ND-CP (***Decree 111***) with respect to consular certification and legalisation. As a replacement for Circular 01/1999/TT-BNG dated 3 June 1999 providing for consular legalisation procedures on documents and/or materials, Circular 01 only focuses on clarifying the terms and provisions provided by Decree 111, streamlining the procedures for consular certification (applicable to documents produced in Vietnam to be recognised and used overseas) and on consular legalisation (applicable to foreign documents to be recognised and used in Vietnam) (hereinafter together
referred to as, ***the Consular Procedures***).

(a) Identifying the competent agencies able to conduct the Consular Procedures in Vietnam:

Decree 111 in general provides that MOFA is the competent entity to carry out the Consular Procedures in Vietnam, and that MOFA may authorise its agencies at the provincial level to process any application dossier for the Consular Procedures, i.e., Circular 01 expressly states that its Consular and Foreign Affairs Offices in Ho Chi Minh City are the two agencies authorised to carry out such Procedures. With respect to the other provinces and municipalities under the central government, MOFA's Minister will decide which

relevant agency is to be authorised to conduct such Procedures after taking into consideration the actual demands, officials' capacity, and facilities at each locality.

(b) Languages used in the Consular Procedures:

According to Circular 01, the languages to be used in such Procedures are Vietnamese and English. In the event that such Procedures are conducted overseas, the official language of the country where the documents and/or materials are produced will be used as the main language other than English.

(c) Specific types of documents eligible for the Consular Procedures:

Circular 01 lists the documents and/or materials that can be requested for the Consular Procedures at any authorised agency. Such efforts, however, merely categorise the three main groups of such documents and/or materials, including:

- Education and training-related qualifications and certificates;
- Health care-related certificates; and
- Judicial records.

This Circular also covers other documents and/or materials eligible for the Consular Procedures in compliance with the laws. Hopefully, we will see more guidelines detailing which documents and/or materials are "eligible for the Consular Procedures in compliance with the laws" in the near future.

(d) Clarifying a number of the following terms and phrases in Decree 111:

With regard to the provision of documents and/or materials that the Consular Procedures are not allowed to certify and legalise, Circular 01 expresses that:

- *Documents and/or materials in the application dossier for the Consular Procedures having contradicting content* are defined as such documents and/or materials that have self-contradicting content or contradict other documents and/or materials enclosed in such dossier;
- *The original signature and original seal,* defined as the signature which is directly executed on and the seal which is directly affixed to, the documents and/or materials;
- *Documents and/or materials having content causing harm to the State of Vietnam* are defined as such documents and/or materials with content that violates the rights and benefits of the State of Vietnam and are inconsistent with its policies and intentions, or are otherwise intent on causing harm to Vietnam.

With regard to the application dossier for the Consular Procedures:

- *Vade-mecum documents* are defined as identification card, passport or other documents;
- *A copy of vade-mecum documents* is supposed to be included in a dossier but need not be certified as a true copy;

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- *Documents and/or materials applying for the Consular Procedures*, if containing more than one sheet, must be sealed on each fanning-out sheet or bound or sealed or otherwise sealed for the purpose of preventing the fraudulent exchange of any sheet in such documents and/or materials;
- *Translated versions of such documents and/or materials* need not be certified as true copies.

(e) Explanations regarding how to calculate the processing time for the Consular Procedures application dossier:

Circular 01 emphasises that the number of pages of such documents and/or materials shall not affect the processing time of such dossier. In other words, according to Decree 111, the processing time of any dossier will last from one to five working days, subject to the volume of such documents and/or materials.

Circular 01 has been in effect as from 15 May 2012.

NEW ADMINISTRATIVE SANCTIONS SUPPORT CONSUMER PROTECTION

To further encourage compliance with the Law on Consumer Protection, on 16 March 2012, the Government promulgated Decree No. 19/2012/ND-CP, providing for the sanctioning of administrative violations in respect of consumer protection (***Decree 19***).

Individuals and organisations committing acts of administrative violation in respect of consumer protection shall be subject to principal sanctions, being a caution or a fine with the maximum penalty of VND 70,000,000 (equivalent to approximately US$ 3,500). Depending on the nature and severity of the violation, organisations or individuals committing administrative violations may be subject to additional sanctions including withdrawal of relevant practice permits or certificates and confiscation of material evidence or means used to commit such violations.

We set out below certain notable acts of violation and their corresponding sanctions:

Violations with respect to consumer information

A fine of between VND 10-30 million (equivalent to approximately US$ 500-1,500) shall be imposed for acts of:

- failing to explicitly and publicly inform consumers on the purposes of collecting and using consumers' information; and
- transferring consumers' information to a third party without the prior consent of such consumers, except for certain cases as prescribed by the laws.

Unfortunately, no definition of "consumers' information" is provided. We hope that a relevant guideline may be issued in the near future.

Violations of advertising activities

A fine of between VND 20-30 million (equivalent to approximately US$ 1,000-1,500) shall be imposed for acts of false or misleading advertising with respect to products, services or business reputation or capacity of traders.

Violations of consumer contracts and general transaction terms

A fine of between VND 10-70 million (equivalent to approximately US$ 500-3,500) shall be imposed for acts of:

- failing to allow consumers to consider all information in a contract prior to entering into such contract, should the contract be made by electronic means;
- using standard consumer contracts and general transaction terms which have a font size of less than 12 points or which have paper and ink colours that do not contrast sufficiently for a consumer to read;
- failing to register or re-register standard consumer contracts and general transaction terms with relevant authorities; and
- failing to publicly inform consumers on general transaction terms prior to entering into such terms.

Violations of warranty obligations

A fine of between VND 10-70 million (equivalent to approximately US$ 500-3,500) shall be imposed for acts of violation in relation to warranty obligations, including:

- failing to provide consumers with a warranty card specifying the warranty period and conditions;
- failing to provide consumers with similar [subsequent] products for temporary use or another accepted settlement during the warranty period; and
- failing to pay the costs arising from the repair and transport of goods between a consumer's residence and the warranty centre.

Decree 19 came into full force and effect as from 1 May 2012.