



LEGAL UPDATE

January 2023

Our monthly Legal Update is to provide the summary of key regulatory news that potentially impact your investment and business activities in Vietnam.

This January Legal Update covers the following:

- *Piloting a number of specific policies to develop Buon Ma Thuot city.*
- *Vietnam to strengthen the prevention of transfer pricing in FDI enterprises.*
- *New regulations on registration of security interests.*
- *Remarkable points of Law Amending and Supplementing a number of Articles of the Law on Intellectual Property.*

1. Piloting a number of specific policies to develop Buon Ma Thuot city

National Assembly Chairman Vuong Dinh Hue signed and promulgated Resolution No. 72/2022/QH15 on piloting a number of mechanisms, particular policy city development Buon Ma Thuot city, Dak Lak province.

The resolution stipulates that Dak Lak province can borrow through the issuance of local government bonds, borrow from other domestic financial sources and from the Government's foreign loans, and lend it back to the province with the total outstanding loan balance does not exceed 40% of the provincial budget revenues as decentralized.

The total amount of loans and overspending of the provincial budget every year shall be decided by the National Assembly in accordance with the provisions of the State Budget Law.

The excess of the loan balance compared to the provisions of the State Budget Law shall be fully devoted to investing in projects in Buon Ma Thuot city.

The People's Council of Dak Lak province decentralizes revenue sources and appropriate expenditure tasks so that Buon Ma Thuot city can enjoy and use the entire increased loan balance.

Dak Lak province is allocated an additional 45% of the expenditure calculated according to the population norm for the population of Buon Ma Thuot city according to the principles, criteria and norms for allocation of recurrent expenditure estimates of the state budget in 2022. when formulating estimates of recurrent expenditures of the state budget in 2023 and during the implementation of this Resolution.

The additional expenditure is allocated to the decentralized expenditure tasks of Buon Ma Thuot city. The People's Council of Dak Lak province decentralizes appropriate revenue sources and expenditure tasks so that Buon Ma Thuot city can enjoy and use the entire additional part.

About corporate income tax incentives, the Resolution clearly states, Investment projects in Buon Ma Thuot city are in the fields of production, preservation and processing of agricultural products (except for investment projects on production, preservation and processing of coffee); cultural tourism, community tourism, eco-tourism; healthcare, education and training (except for projects entitled to investment incentives under socialization policies); manufacturing energy-saving products, products serving the renewable energy industry; business investment in logistics centers, inland ports, and warehouses are entitled to the 10% corporate income tax rate for a period of 15 years, 4-year corporate income tax exemption and 50% corporate income tax reduction. payable in the next 9 years.

Investment projects on coffee production, preservation and processing in Buon Ma Thuot city are entitled to the corporate income tax rate of 10% for a period of 30 years, corporate income tax exemption for 4 years, and a reduction in corporate income tax. 50% of corporate income tax payable in the next 9 years.

The time to start enjoying the incentives, the conditions for applying the tax incentives, and the income eligible for incentives shall comply with the provisions of the law on corporate income tax.

On the basis of the planning project on construction of functional areas and urban planning of Buon Ma Thuot city approved by the Prime Minister, the Prime Minister decides on decentralization to the People's Committee of the province. Dak Lak to approve the local adjustment of the general planning on construction of functional areas, and the local adjustment of the urban master plan of Buon Ma Thuot city according to the order and procedures prescribed by the Prime Minister and report to the Prime Minister. Government performance results.

During the implementation of this Resolution, experts, scientists and people with special talents working at professional agencies and public non-business units under Buon Ma Thuot city are exempt from personal income tax. multiplied in 5 years for incomes from wages and salaries arising in Buon Ma Thuot city.

The People's Council of Dak Lak province promulgates regulations on preferential policies on training and retraining, working environment, working equipment, planning, appointment, salary, remuneration, welfare regime and other policies towards experts, scientists and people with special talents; criteria to identify experts, scientists and people with special talents in the fields that need to be attracted to work in Buon Ma Thuot city.

This Resolution takes effect from 01 January 2023 and will be implemented for 5 years.

2. Vietnam to strengthen the prevention of transfer pricing in FDI enterprises

On 15 November 2022, the National Assembly of Vietnam approved Resolution No. 74/2022/QH15 on accelerating the implementation of policies and laws on thrift practice and waste prevention.

According to the Resolution, the National Assembly of Vietnam assigns the Government of Vietnam to **(i)** direct the acceleration of the road map for reforming tax policies; **(ii)** in 2023, implement the review and handling of official dispatches and decisions promulgated improperly with respect to tax exemption, reduction, and refund; **(iii)** strengthen the prevention of transfer pricing in FDI enterprises; **(iv)** to settle cases of failure to fulfill financial obligations in managing and using land, natural resources, and minerals completely.

3. New regulations on registration of security interests

On 30 November 2022, the Government issued Decree No. 99/2022/ND-CP specifying the registration of asset-based security interests ("*Decree 99/2022*") which takes effect from 15 Jan 2023.

Firstly, Decree 99/2022 specifies four cases subject to registration of security interests, including **(i)** registration of the mortgage of property, pledge of property, and retention of title in accordance with the Civil Code and relevant laws; **(ii)** registration based on the agreement between the securing party and the security-accepting party or the request of the security-accepting party, except cases of custody of property; **(iii)** registration of notices of disposal of collateral assets in case one asset item is used as security for more than one obligation with many security-accepting parties or in case the securing party and the security-accepting party reach an agreement; and **(iv)** registration of changes in registered contents or deregistration regarding the above-mentioned three cases.

Secondly, according to Article 12.9 of Decree 99/2022, if the secured transaction registration dossier is submitted via the online registration system, the signature and seal may be replaced by electronic ones. Electronic signatures and seals have the same legal value as signatures and seals used on paper documents.

Thirdly, off-land houses and other assets attached to off-plan land are used for registration of security interests. The mortgage of houses and other land-attached assets which are formed in the future defined in Article 25 of Decree 99/2022 is subject to registration of security as required by the Land Registration Office.

4. Remarkable points of Law Amending and Supplementing a number of Articles of the Law on Intellectual Property

As of 01 January 2023, except for some provisions, the Law amending and supplementing a number of articles of the Law on Intellectual Property ("*Amended IP Law*") takes effect. The Amended IP Law contains revisions and supplementations for more than 100 articles. Below are some remarkable points:

4.1 Copyright and related rights

The Amended IP Law sets out new definitions for author and co-author. In which, an author is a person who directly creates the work. Co-authors are recognized when there are more than two creators directly creating the work, as long as their contributions are combined into a complete whole work. This amendment is to facilitate the transfer or license of copyright ownership and minimize the relevant.

Pursuant to Amended IP Law, moral rights, such as the right to change the work's title and work modification, can be transferred by an agreement subject to the respective types of copyrights. This would address existing problems relating to the use of moral rights, including but not limited to changing the title of a work, and modifying or upgrading a computer program.

4.2 Industrial property rights

Firstly, in compliance with our commitments in European Vietnam Free Trade Agreement (EVFTA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), sound marks that is graphically represented are now registrable in the form of trademarks for the very first time in Vietnam.

Secondly, to protect the interests of consumers and be compliant with the EVFTA, the Amended IP Law supplements the cases of termination of the validity of the trademark registration certificates when **(i)** the protected mark has become a common name of goods or services registered for the such mark or **(i)** the use of the mark leads to consumers' misunderstanding about the nature, quality or geographical origin of such goods or services.

Thirdly, Amended IP Law stipulates that *bad faith* is a ground to cancel the validity of the trademark registration certificates or oppose issuing the trademark registration certificates, which is applied in practice internationally. The interpretation and application of *bad faith* will be guided by the Ministry of Science and Technology.

4.3 Copyright registration and industrial property rights establishment

The procedure for registration of copyright, related rights and industrial property rights in Vietnam have become simpler and more streamlined. Now, under the Amended IP Law, authors, copyright holders, and related rights holders may personally file or authorize other organizations or individuals to file dossiers for registration of copyright or related rights by hand-delivery, by post or via the Online Public Service Portal to the state management agency in charge of copyright and related rights.

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