

Technical Update

July 2022



1. Law on amending and supplementing a number of articles of the Intellectual Property Law

The Amended Intellectual Property Law ("**Amended IP Law**") was ratified by Vietnam's National Assembly on 16 June 2022. The Amended IP Law will take effect on 1 January 2023. However, the provisions of the sound trademark came to effect on 14 January 2022, and the provisions of test data protection for agrochemicals will come into force on 14 January 2024.

The promulgation of the Amended IP Law is an urgent requirement for the economic and social development of Vietnam and compliant with the international treaties and agreements (i.e. EVFTA and CPTPP) that Vietnam has entered into. The Amended IP Law includes more than 100 articles with some key points as follows:

1.1. In terms of copyright and related rights, the Amended IP Law amends the provisions regarding the following:

- more specific provisions regarding rights holders (authors, co-authors) in the case of assignment, and licensing of copyright and related rights;
- the transfer of some moral rights by agreement (such as the right to change the work's title);
- the supplementation of some copyrights' and related rights' exceptions and limitations to ensure the balance between the interest of copyright holders and those individuals/ organizations using and/or exploiting works;
- the rights and responsibilities of intermediary service providers on the Internet and in the telecommunications network environment; and
- provisions to handle the conflict between copyright, related rights, and trademarks.

1.2. The amended IP Law supplements some regulations related to trademarks to ensure compliance with practice in Vietnam:

- The provisions on the protection of sound trademarks are supplemented. Although there will be some challenges as to the protection of sound trademarks such as professional skills of the examiner(s), infrastructure, etc., these provisions are consistent with the international agreements Vietnam has entered into. Moreover, the protection of sound trademarks will be an additional effective way to protect Intellectual Property assets in the era of information technology development.
- For the first time, a third party can file an opposition against a trademark application on the grounds of "Bad-faith". This means that a pending trademark application can be denied based on "Bad-faith" as opposed to the current regulations, where the term "Bad-faith" was applied for the cancellation of a registered trademark. There is no "Bad-faith" definition under the current IP law. We hope that it will be defined clearly in the coming guidance on the implementation of the Amended IP Law.

1.3. Some new points relating to the administrative procedure:

- A number of regulations have been enacted to simplify the administrative procedure, particularly: (i) the rights of rights holders (authors, co-authors) are automatically established without registration, and the process of copyright, related rights registration is simplified (i.e., online registration of copyright and related rights); (ii) the requirement for industrial design description is simplified; (iii) the publication of an industrial design application can be delayed in some cases; (iv) the security control on patents is limited.
- Any third party is entitled to submit the request for opposition against a pending application before the date of issuance of a decision granting a protection title. However, the Amended IP Law sets time limitation for oppositions (such as 5 months from publication date for trademark opposition, 9 months from publication date for patent opposition, 4 months from publication date for industrial design opposition, 3 months from publication date for geographical indication opposition).
- Administrative sanctions will remain as one of the measures to deal with intellectual property infringement.
- Supplementing a number of specific regulations relative to the complaint settlement process.
- Encouraging the creation, exploitation, and dissemination of inventions, industrial designs, layout designs, and plant varieties resulting from scientific and technological (S&T) research tasks using the State budget. Accordingly, the Amended IP Law gives the right to the host organization to automatically register inventions, industrial designs, layout designs, and plant varieties resulting from the S&T tasks using the State budget, without reimbursement, and sets a mechanism for reasonable distribution of profits between the State, the host organization, and the author.
- Supplementing the right to proactively apply control measures at the customs border if, during the process of inspection/supervision, clear evidence has been found that imported and exported goods are counterfeit goods with respect to the intellectual property rights.

2. Resolution on ongoing innovation, improvement in regulatory policies, enhancement of efficiency and effectiveness in the management and use of land

On 16 June 2022, the XIII Central Committee of the Communist Party of Vietnam approved Resolution No. 18-NQ/TW on ongoing innovation, improvement in regulatory policies, and enhancement of efficiency and effectiveness in the management and use of land. The Resolution sets out a number of specific goals related to the development and improvement of the land law, notably:

- By 2023, amendments to the 2013 Land Law and a number of related laws must be completed with a view to ensuring unity and consistency. The national digital database and information system on land must be centralized, consistent, synchronous, used for multiple purposes, and must be fully connected from the Central to the provincial level.
- Formulating complete regulations on land allocation, lease, and repurposing: implementing land allocation and land lease mainly through an auction of land use rights, bidding for projects using land; strengthening management, and strictly controlling the change of land use purposes.
- Completing the land pricing approaches: abolishing the land price bracket, adopting market principles to develop the mechanism and method for determining land prices; supplementing and finalizing the requirements for public disclosure and transparency of the relevant information, such as making land prices available to the public; compulsory transactions to be conducted via real estate trading floors; non-cash payments to be made via banks.
- Completing the regulatory provisions related to the real estate market: strengthening commercialization of land use rights; building a real estate market associated with the land-related database.

3. Decree on construction, management, and use of information systems of the housing and real estate market

With the goal of building an open and transparent real estate business market, and updating recent amendments according to Decree No. 02/2022/ND-CP guiding the Law on Real Estate Business, on 29 June 2022, the Government promulgated Decree No. 44/2022/ND-CP on construction, management and use of information systems of the housing and real estate market ("**Decree 44**"), replacing Decree No. 117/2015/ND-CP dated 12 November 2015 regulating the same issue.

Decree 44 takes effect from 15 August 2022 with some highlights as below:

- Regulations on building information systems of the housing and real estate market, developing a database on national and local real estate market; collecting and publicizing information and data about approved real estate projects, and real estate transfer and sale transactions through the trading floors.
- Detailed regulations on responsibilities for sharing and providing information and data on the housing and real estate market through the national portal on the housing and real estate market (at <http://www.batdongsan.xaydung.gov.vn>) of the State Bank of Vietnam, Ministry of Planning and Investment, Ministry of Finance, Department of Construction, Department of Natural Resources and Environment, Department of Planning and Investment, Tax Department, District People's Committee, Real Estate Project Investor, and Real Estate Trading Floors. Accordingly, on a quarterly or annual basis, agencies and organizations are required to send reports and data according to the form prescribed in Decree 44 to the Ministry of Construction or the Department of Construction for synthesis, review, and information storage.
- The information on the housing and real estate market shall also be published annually or quarterly by the Ministry of Construction or the local Department of Construction on the electronic portal under their command. However, the State agencies that manage the information system of the housing and the real estate market must not share or provide information potentially affecting national security, business secrets of enterprises, or personal information except for the cases of serving investigation, verification, and handling of law violations and serving the state management of competent agencies.

4. Decree on sanctioning of administrative violations in the field of environmental protection

On 7 July 2022, the Government approved Decree No. 45/2022/ND-CP on sanctioning administrative violations in the field of environmental protection ("**Decree 45**"), replacing Decree No. 155/2016/ND-CP dated 18 November 2016 and the supplemental Decree No. 55/2021/ND-CP dated 24 May 2021. Decree 45, effective from 25 August 2022, stipulates that the maximum monetary penalty for an administrative violation is VND 1 billion for individuals and VND 2 billion for organizations. Supplemented penalties may also be applied such as deprivation of the right to use environmental permits for a definite time, or certificates of eligibility for environmental monitoring services from 01 to 24 months; confiscation of material evidence and means used to commit administrative violations; forcibly reinstating the original environmental condition or remedying the environment according to applicable regulations; being forced to return the illegal profits obtained from the commission of violations, etc.

Decree 45 regulates some remedies imposed on the organizations' group of violations as follows:

- Violations against regulations on environmental impact assessment shall be subject to a fine ranging from VND 20 million to VND 200 million;
- Violations of regulations on environmental permits may result in a fine ranging from VND 10 million to VND 2 billion. The amount of fine imposed will depend on the specific violation such as improper or incomplete implementation of one of the contents of the environmental permit according to the regulations; not publicizing environmental permit; or constructing, installing equipment, pipelines or other waste lines to discharge untreated waste into the environment;
- Violations against regulations on trial operation of waste treatment works of an investment project may result in a fine ranging from VND 20 million to VND 240 million. The amount of fine imposed will depend on the specific violation such as failure to notify the transportation plan to test waste treatment works, work items of investment projects, facilities for competent state agencies according to regulations; failing to prepare or send reports on testing operation results for investment projects or facilities to agencies competent to issue environmental permits as prescribed.

5. Approving the Strategy for the development of the chemical industry in Vietnam

On 16 June 2022, Decision No. 726/QĐ-TTg on approving the Strategy for the development of Vietnam's chemical industry to 2030 with a vision to 2040 was issued.

The Strategy has set a target for an average growth rate of the chemical industry of 10-11%/year and the proportion of the chemical industry shall reach about 4-5% within the whole industrial sectors in 2030. During the period until 2040, the growth rate of the chemical industry is projected to reach an average of 7-8%/year and the proportion of the chemical industry shall remain about 4-5% within the whole industrial sectors. The Strategy also sets out key objectives, responsibilities, and implementation solutions, including:

- the industry shall develop towards a foundational and modern industry with a completed industry structure with 10 sub-sectors including basic chemicals, petrochemicals, technical rubber, chemical pharmaceutical, fertilizer, and other fields;
- Encouraging private investment in the chemical sector, utilizing the internal resources of social investment, and developing domestic private enterprises to become an important motivation for the development of the chemical industry;
- The chemical industry is developed in the concentrated manner in accordance with the advantages of each region and each locality, not evenly distributed along administrative boundaries, ensuring requirements for environmental protection, national defense, and security;
- Forming and effectively promoting concentrated chemical industrial zones and clusters, large-scale chemical complexes to attract chemical manufacturing projects, projects using chemicals for domestic manufacture in other fields, chemical logistics centers in locations with large enough land funds, far from residential areas, near deep-water ports, convenient for traffic connections, encouraging cyclic technologies, in which products, unused waste of these factories are not used as raw material for other factories.

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