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THE NATIONAL ASSEMBLY APPROVED 16 LAWS

The 10th session of Legislature XIII of the Vietnamese National Assembly (NA) concluded on November 27, 2015. In this session, the NA approved 16 laws including:

1. Civil Code (amended);
2. Penal Code (amended);

3. Civil Procedure Code (amended);
4. Criminal Procedure Code (amended);
5. Administrative Litigation Law (amended);
6. Statistics Law (amended);
7. Accounting Law (amended);
8. Vietnam Maritime Code (amended);
9. Law on Surveillance Activities of the NA and People's Councils;
10. Law on Fees and Charges;
11. Law on Military Professional Staffs, Workers and Defense Officials;
12. Law on Organization of Criminal Investigation Agencies;
13. Network Information Security Law;
14. Law on Referendum;
15. Law on Hydrometeorology; and
16. Law on Temporary Custody and Detention.

In addition, the NA also discussed 10 other draft laws.

WELL-KNOWN TRADEMARK PROJECT LAUNCHED IN HANOI

On December 3, 2015, a conference on « Protection of Well-known trademarks in Vietnam – Situations and Solutions » was held in Hanoi introducing the Well-known Trademark Project carried out by the Inspectorate of Ministry of Science and Technology (MoST) in collaboration with the International Trademark Association (INTA).

Basis for implementation of the Well-known Trademark Project is the Memorandum of Understanding signed between MoST and INTA on March 24, 2015. The project is aimed at researching, assessing, collecting and consolidating information, feedbacks from various bodies, industrial property agents and private enterprises about obstacles in observing current regulations in Vietnam with respect to the recognition, protection and enforcement of well-known trademark rights, from which to build up the basis and grounds for amending, supplementing unreasonable regulations and settle problems, enhance the effectiveness of protection and enforcement of the right to well-known trademark in Vietnam. The Project is

executed in Vietnam from 2015 to 2016, covering three main kinds of activities: (i) Researching activities; (ii) Seminars/workshops and communication activities; and (iii) Training activities and factual survey on the application of laws on well-known trademarks.

It is worth noting that enterprises, owners of well-known trademarks, are given the opportunity to take part in this project by contributing financial supports. The finance contributors will have full rights and obligations in quality of participants in this project including (i) participating in and directly monitoring all the activities of the project in Vietnam ; (ii) A number of trademarks owned by the participating right holders and trademark-related disputes will be selected to be carefully researched and assessed by experts; and will be chosen for analyzing and discussing during the Project's workshops (the trademarks are the researched subjects of the Project); (iii) having the opportunities to directly and frequently work, exchange and dialogue with the competent management and enforcement state agencies in Vietnam; (iv) Participating in events, workshops and seminars within the Project framework and make suggestions, recommendations regarding the improvements of the laws on protection and enforcement of trademark rights in Vietnam; (v) Exchanging and sharing the challenges encountered during the recognition, protection and enforcement of rights to well-known trademark in Vietnam; (vi) Enterprises will be allowed to use documents and researching results of the Project for their registration of well-known trademark recognition, protection and enforcement with the trademark registration and enforcement authorities; as well as their other brand promotion activities; (vii) The participants will be named in media and promotion activities within the Project's framework.

The Conference held on December 3, 2015 was the kick-off event which will be followed by other activities within the Project framework to be carried out in the coming 2016.

GEOGRAPHICAL INDICATION DEVELOPMENT PROJECT LAUNCHED

DOn November 11, 2015 the US\$1.3 million project for development of Geographical Indications ("GI") has been launched during a Seminar held in Hanoi by the National Office of Intellectual Property ("NOIP") in cooperation with France Development Agency ("AFD").

The three-year project is aimed at improving Vietnam's system of registration and management of GIs through a brand new approach, theoretical as well as practical, with experience learnt from European countries, particularly France, which would lead to the country's regional and international integration in this field.

The project includes the following contents: (i) building a mechanism for joint ministerial cooperation in the field of GI; (ii) providing technical support and strengthening capacity of manufacturers' associations in marketing of products bearing the two pilot GIs, namely Binh Phuoc cashew and Quang Tri pepper; (iii) providing supports for GI associations in Vietnam to market their products; and (iv) evaluating and disseminating the results of the project's implementation.

The project uses the Funds for Strengthening Commercial Capacity (FRCC) financed by the French government through the AFD and the Economic Agency under the French Embassy, and shall be implemented by a joint venture consisting of the Rural Development Centre (RUDEC), the Research Centre for Agricultural System Development (CASRAD) and the French Agricultural Research Centre for International Development (CIRAD).

VIETNAM – KOREA TRADE AGREEMENT OFFICIALLY ENTERED INTO FORCE

According to Vietnam Ministry of Industry and Trade, the Vietnam - Korea Free Trade Agreement ("VKFTA") officially came into force on December 20, 2015. This happened after the South Korea's National Assembly had ratified it on November 30, 2015 and Vietnam had also completed the internal ratification procedure. To date, the VKFTA was signed by the Vietnamese Minister of Industry and Trade and the Korean Minister of Trade, Industry and Energy in May 5, 2015 in Hanoi.

VKFTA is a comprehensive agreement with high level of commitments and benefit balance consisting of 17 chapters, 208 articles, 15 appendixes, and one agreement on regulation implementation. VKFTA covers the following contents: Trade in Goods, Trade in Services, Investment, Intellectual Property, Sanitary and Phyto-sanitary (SPS), Trade Safeguards, Rules of Origin, Technical Barriers to Trade (TBT), E-Commerce, Customs Facilitation, Competition, Economic Cooperation, Institutional, Legislative and Horizontal Issues.

Concerning intellectual property, the two sides have committed to a high level of protection within the standards of WTO TRIPs agreement. The scope of intellectual property protection include copyright, patent, trademarks and unfair competition.



NEW LEGISLATION

CIRCULAR No. 40/2015/TT-BCT: HIGHLIGHTED REGULATIONS ON RULES OF ORIGIN UNDER VIETNAM – KOREA FREE TRADE AGREEMENT

D on November 11, 2015, the Ministry of Industry and Trade issued the Circular No. 40/2015/TT-BCT (“Circular 40”) providing details on the Rules of Origin under Vietnam – Korea Free Trade Agreement (“VKFTA”). Circular 40 is effective as of December 20, 2015.

Circular 40 includes 9 Appendices to guide the implementation of Chapter 3 of VKFTA on Rules of Origin and Origin Procedure. Below are some important highlights in regards to rules of origin under VKFTA:

1. Originating Good

A good shall be deemed to be originating and eligible for preferential tariff treatment if it conforms to the origin requirements under any one of the following:

- (i) a good which is wholly obtained or produced entirely in the territory of the exporting Party;
- (ii) a good not wholly obtained or produced in the territory of the exporting Party, but satisfies regulations on Product-Specific Rules, Special Treatment for Certain Goods or Cumulation; or
- (iii) a good which is produced entirely in the territory of the exporting Party exclusively from materials originated from Vietnam and Korea.

2. Direct Transport

To be eligible for preferential tariff treatment, a Party’s goods must be transported directly between the territories of the Parties. However, in case a good must transit out of the Parties’ territories, through one or more Non-Party countries, it shall be considered to be transported directly, provided that:

- (i) the transit is justified for geographical reason or by consideration related exclusively to transport requirement;
- (ii) the good has not entered into trade or consumption in the transit countries; and
- (iii) the good has not undergone any operation other than unloading and reloading or any operation required to keep it in good condition.

3. Certificate of Origin

In addition, for preferential tariff treatment, a good must have a Certificate of origin (C/O) in the prescribed form. Vietnam shall grant the form of C/O VK, the form of C/O KV shall be granted by Korea. Circular 40 has listed 21 organizations in Vietnam which are competent to grant C/O VK in Appendix IX.

CIRCULAR No. 28/2015/TT-BNNPTNT: LIST OF PROTECTED PLANT GENERA AND SPECIES IN VIETNAM

After a period of gathering and analyzing opinions about the contents of the Draft Circular, on August 14, 2015 Ministry of Agriculture and Rural Development (“MARD”) issued Circular No. 28/2015/TT-BNNPTNT (“Circular 28/2015”) publishing the List of Protected Plant Genera and Species.

Circular 28/2015 is effective as of September 29, 2015 replacing all previously issued Decisions and Circulars publishing lists protected plant genera and species and its subsequent supplements. The new List includes 107 plant genera and species.

Owner of plant genera and species that are not included in the List, if desired, may file a request for including them to the List with the New Plant Variety Protection Office, Department of Crop Production under MARD.

It is worth to note that under the UPOV Convention provisions, plant variety protection in Vietnam must cover all plant genera and species ten years after the country officially acceded to UPOV. Accordingly, from December 25, 2016, Vietnam shall have obligation to accept applications for registration of New Plant Variety for all plant genera and species regardless of whether they are included in the List or not.

DECREE No. 124/2015/ND-CP: SOME NEW PROVISIONS ON PENALTIES FOR ADMINISTRATIVE VIOLATIONS IN THE FIELD OF COMMERCIAL AND PRODUCTION ACTIVITIES

D on November 19, 2015 the Government promulgated Decree No.124/2015/ND-CP (“Decree 124”) to amend and supplement some articles of Decree No. 185/2013/ND-CP (“Decree 185”) regulating penalties for administrative violations in the field of commercial and production activities. Decree 124 has some remarkable new provisions as follows:

1. Reduction of fines for a number of acts of violation:

- Act of violating regulation restricting business activities to those stated in the business registration certificate - The highest level of fine for this violation shall be reduced from VND 15 million under Decree 185 (Article 6) to VND 10 million under the new Decree 124*.
- Act of violating regulation restricting business activities to those stated in the business license - The highest level of fine for this violation shall be reduced from VND 30 million under Decree 185 (Article 7) to VND 15 million under Decree 124*.
- Act of violating regulation on establishment of e-commerce websites or mobile-based e-commerce applications - Fines for this violation under Decree 185, Article 81 shall be reduced as follows:

Item, Article	Old fines under Decree 185	New fines under Decree 124
Item 1, Article 81	From VND 5 million to 10 million	From VND 1 million to 5 million
Item 2, Article 81	From VND 10 million to 20 million	From VND 5 million to 10 million
Item 3, Article 81	From VND 20 million to 30 million	From VND 10 million to 20 million*

- Act of violating regulation on information and transactions on e-commerce websites or mobile applications - Fines for this violation under Decree 185, Article 82 shall be reduced as follows:

Item, Article	Old fines under Decree 185	New fines under Decree 124
Item 1, Article 82	From VND 5 million to 10 million	From VND 1 million to 5 million
Item 2, Article 82	From VND 10 million to 20 million	From VND 5 million to 10 million
Item 3, Article 82	From VND 20 million to 30 million	From VND 10 million to 20 million*

- Act of violating regulation on supply of e-commerce services - Fine for this violation under Decree 185, Article 83 shall be reduced as follows:

Item, Article	Old fines under Decree 185	New fines under Decree 124
Item 1, Article 83	From VND 10 million to 20 million	From VND 1 million to 5 million
Item 2, Article 83	From VND 20 million to 30 million	From VND 10 million to 20 million
Item 3, Article 83	From VND 30 million to 40 million	From VND 20 million to 30 million
Item 4, Article 83	From VND 40 million to 50 million	From VND 30 million to 40 million*

Item 1, Article 83	From VND 10 million to 20 million	From VND 1 million to 3 million
Item 2, Article 83	From VND 20 million to 30 million	From VND 10 million to 20 million
Item 3, Article 83	From VND 30 million to 40 million	From VND 20 million to 30 million
Item 4, Article 83	From VND 40 million to 50 million	From VND 30 million to 40 million*

- Act of violating regulation on protection of personal information in e-commerce activities - Fines for this violation under Decree 185, Article 84 shall be reduced as follows:

Item, Article	Old fines under Decree 185	New fines under Decree 124
Item 1, Article 84	From VND 5 million to 10 million	From VND 1 million to 5 million
Item 2, Article 84	From VND 10 million to 20 million	From VND 5 million to 10 million
Item 3, Article 84	From VND 20 million to 30 million	From VND 10 million to 20 million*

- Act of violating regulation on activities of assessment, supervision and authentication in e-commerce - Fines for this violation under Decree 185, Article 85 shall be reduced as follows:

Item, Article	Old fines under Decree 185	New fines under Decree 124
Item 1, Article 85	From VND 10 million to 20 million	From VND 5 million to 10 million
Item 2, Article 85	From VND 20 million to 30 million	From VND 10 million to 20 million
Item 3, Article 85	From VND 30 million to 40 million	From VND 20 million to 30 million
Item 4, Article 85	From VND 40 million to 50 million	From VND 30 million to 40 million*

2. Fine Increase for a number of acts of violation:

- Act of manufacturing counterfeit stamps, labels, and packages: The lowest level of fine for this violation shall be increased from VND

200.000 (under Article 16, Decree 185) to VND 300.000 under the new Decree 124. The highest level of fine will be increased from VND 20.000 million previously to VND 30 million* now.


- Act of violating regulation on trading, transporting, stocking, delivering and receiving illegally imported tobacco: Previously, under Article 25 of Decree 185, the lowest level of fine for this violation was VND 200.000 and the highest level was VND 100 million (applicable in case the quantity of illegal tobacco found is 1.500 packs or over). Under Decree 124, it shall be increased respectively to VND 500.000 and VND 100 million* (applicable in case the quantity found is 500 packs or over).
- Act of violating regulation on origin of imported, exported goods: The lowest level of fine for this violation shall be increased from VND 3 million (under Article 63, Decree 185) to 10 million now under Decree 124. The highest level of fine thereof shall be increased from VND 20 million to 50 million*.
- Act of violating regulation on multi-level marketing activities: The lowest level of fine for this violation shall be increased from VND 300.000 (under Article 92, Decree 185) to VND 500.000 under the new Decree 124*.

3. More details about scope of competence of People's Police, Custom, Border guard, Coast Police and Inspectorates.

Decree 185 did not provide details on scope of competence of different authorities handling administrative violations in the fields of commercial and production activities, trading of counterfeit and banned goods, and protection of consumer rights (the Law on handling of administrative violation was applicable). Now, the scope of competence of the above authorities is directly stipulated in Decree 124.

*** Note: the current VND/US\$ exchange rate: over VND22,000 = US\$1.00.**

RESOLUTION 03/2015/NQ-HDTP: PROCEDURE FOR SELECTION, PUBLICATION AND APPLICATION OF COURT PRECEDENTS

 On October 28, 2015, the Council of Justices of the Supreme People's Court issued Resolution No. 03/2015/HDTP ("Resolution 03/2015") on selection, publication and application of court precedents. Resolution 03/2015 consists of 10 articles and is effective as of December 16, 2015. According to it, the selected court precedents shall take effect 45 days after the publication date. Resolution 03/2015 marks an important step forward in the process of judicial reform and implementation of the 2013 Constitution and the 2014 Law on Organization of

People's Courts. Below are the main features of Resolution 03/2015:

1. The definition and legal status of court precedents:

According to Resolution 03/2015, "court precedents are arguments and verdicts in a legally effective judgment or decision of a court with regard to a specific case which are selected by the Council of Justices of the Supreme People's Court and published by the Chief Justice of the Supreme People's Court, for study and application in trial by the courts." (Article 1).

2. Criteria for selecting precedents:

According Resolution 03/2015, court precedent must (i) Containing arguments to clarify the legal provisions which may lead to different interpretations; analyzing and interpreting legal issues or facts, and indicating legal principles and guidelines to be followed in a specific situation; (ii) Having normative value; and (iii) Having value of guideline for consistent application of the law in trial, and ensuring that cases representing similar legal issues or facts be resolved in the same way" (Article 2).

3. Gathering opinions on judgment / decision proposed to be selected as precedents.

Judgment or decision proposed to be selected as precedent shall be immediately published in the People's Court Magazine, Supreme People's Court Web Portal, so that agencies, organizations and individuals could consult and give opinion within 2 months. Where necessary, seminars may be organized to gather opinions of National Assembly deputies, experts, scientists, activists and relevant agencies or organizations (Article 4).

4. Adoption and publication of precedents:

The Precedent Advisory Board established by the Chief Justice of the Supreme People's Court consists of 9 members and has responsibility to discuss, give opinion on the content of judgment/decision proposed to be selected as precedents (Article 5). Reports made by the Precedent Advisory Board are served as basis on which the Council of Justices of the Supreme People's Court shall adopt the proposed precedents (Article 6).

The publication of adopted court precedents shall be implemented by the Chief Justice of the Supreme People's Court and shall have the following contents: (i) Name of the case resolved by the court; (ii) Number of judgment/decision of the court case containing the precedent; (iii) Key words of legal issues resolved in the precedent; (iv) A recital of the facts in the case and ruling of the court related to the precedent; (v) The legal issue having value of guideline for trial resolved in the precedent.

The adopted precedent shall be published in the People's Court Magazine and the Supreme People's Court Web Portal, sent to the courts and published in the annual Collection of Court Precedents (Article 7).

5. Principles for application of court precedents in trial:

Court precedent becomes effective 45 days after the date on which it is published or stated in a decision to publish issued by the Chief Justice of the Supreme People's Court. Judges and jurors must study and apply court precedents in trial to resolve similar cases and ensure that cases with similar legal issues and facts be resolved in the same way (Article 8).

6. Replacement and invalidation of court precedents:

In case a court precedent is no longer suitable due to changes in any Law or Resolution of the National Assembly, Resolution of Standing Committee of the National Assembly or Decree of the Government, that precedent shall be automatically invalidated. In case a precedent is no longer suitable due to circumstance changes but there is yet no provision regulating those issues, the Council of Justices of the Supreme People's Court shall consider invalidating that precedent.

CIRCULAR No. 20/2015/TT-BKHCHN: SOME NOTABLE CONTENTS REGARDING ADMINISTRATIVE SANCTIONS ON SCIENTIFIC AND TECHNOLOGICAL ORGANIZATIONS

D on November 5, 2015 Ministry of Science and Technology issued Circular No. 20/2015/TT-BKHCHN ("Circular 20/2015") providing for detailed regulations and guidance for implementation of Decree No. 93/2014/ND-CP dated October 17, 2014 amending, supplementing some Articles of Decree No. 64/2013/ND-CP on sanctions against administrative violations in the fields of science and technology and technology transfer. Circular 20/2015 has become effective as of December 20, 2015.

Main contents of Circular 20/2015 include detailed regulations on a number of articles of Decree No. 93/2014/ND-CP, especially guidance for determining acts constituting administrative violation in the field of science and technology. Of note, as guided in Circular 20/2015, Scientific and Technological Organizations ("STO") shall be subject to administrative sanctions if they fail to report as required by competent state management authorities; fail to comply with procedure of STO dissolution as prescribed in relevant legal provisions. Specifically, STO shall be sanctioned in the presence of the following:

- Failure to report as required by competent

state management authorities, including:

- (i) Failure to submit annual report on operations before December 15 to the competent state agency in charge of Science and Technology; or
 - (ii) Failure to report, provide materials, explain issues related to their operations when requested by the competent state agency in charge of Science and Technology.
- Failure to comply with the procedure of STO dissolution means the situation where a STO, subject to dissolution, does not implement or implement inappropriately the regulations of Item 3, Article 16 of Decree No. 08/2014/ND-CP. This may be one of the following:
- (i) Absence of decision on dissolution or dissolution decision failing to include all of essential contents namely: name, head quarter address of the STO; reasons for dissolution; duration, procedures for contract liquidation and payment of outstanding debts (if any); the duration of debt payment (contract liquidation shall not exceed 06 months counting from the date on which the dissolution decision takes effect); proposed measures for handling obligations incurred from Labor contracts, recruitment decisions; full name, signature of the STO's legal representative; Founding organizations and individuals shall organize liquidation of the STO's assets, except for cases where STO Charter provides for establishing a separate liquidation organization.
 - (ii) Failure to send the dissolution decision to the science and technology registration agency or publicly display it at the STO's head quarter, branches, and representative offices within 10 working days from the date of its issuance.
 - (iii) Failure to publish the dissolution decision in at least 03 consecutive issues of a printed newspaper in the province where the head quarter is located or on the website of Ministry or Province where the head quarter is located.




CASES

THE **emart** TRADEMARK CASE: CONSIDERING TRADEMARK AS A WHOLE FOR ASSESSMENT OF DISTINCTIVENESS

Recently, D&N International has succeeded in appealing against the refusal to protect the **emart** trademark for services in class 35 in Vietnam. This case once again confirms that a trademark shall be assessed as a whole for assessment of distinctiveness. A trademark which is a combination of low or non distinctive elements may be considered as distinctive as a whole.

Facts



The Korean Client, E-MART Co., Ltd (“E-MART Company”) filed an application for **emart** trademark (“the Trademark”) for “wholesale and retail” services in respect of a wide range of goods in class 35 in Vietnam. Nevertheless, the National Office of Intellectual Property of Vietnam (“the NOIP”) refused to protect this trademark on the grounds that: (i) the Trademark directly guides the consumers to refer to the service of electronic commerce or trading via internet- “electronic mart” in class 35, therefore, the Trademark is considered merely descriptive to the applied services (Article 74.2(c) of IP Law); and (ii) the Trademark is considered confusingly similar to the prior registered marks

 and  (“the Cited Marks”) (Article 74.2(e) of IP Law).

Having disagreed with the NOIP’s refusal, on March 20, 2013, E-MART Company, represented by D&N International, filed an appeal against the NOIP refusal basing on the following arguments:

(i) With regard to the absolute ground of refusal:

The applicant argues that the Trademark is presented in stylized form, including colours and the emphasized element “e”, thus as a whole creates specific impression to the consumers. It does not directly guide the consumers to refer to the service of electronic commerce or trading via internet- “electronic mart” for the following reasons:

- The word “emart” has not been found in English-Vietnamese dictionaries or English-English dictionaries;
- The letter “e” in yellow colour of the Trademark means “everyday”, which has been reinterpreted as “Emart helps to improve your everyday life by providing fresh products and service solutions”; the shape “” in the letter “e” looks like an ear, being reinterpreted as “we listen to what our customers say”; the shape “” in the letter “a” looks like a leaf representing freshness;
- As a matter of facts, many registered marks are combination of an alphabetic letter and the word “mart” for services “wholesale and retail” that is often similar to the presentation of the Trademark. Such popular usage of this presentation helps consumers recognize the Trademark without any reference to electronic commerce;
- In Vietnam, the Trademark has been registered for almost all classes including 1, 2,3, 5, 8, 9, 10, 11, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, & 45;
- The Trademark has been registered in some countries, has been widely used and recognized (accompanied by supporting document);
- Turnovers from providing services bearing the Trademark in period of 2009-2013 increased;
- In Vietnam, E-MART Company has received a certificate of investment from the People Committee of Ho Chi Minh City for the first supermarket “EMART Go Vap” and has invested USD 60 million in building this supermarket;
- The Trademark is claimed to be protected in its whole form (stylized). The elements “e”, “mart”, or “emart” are disclaimed for exclusive protection.

(ii) With regard to relative ground of refusal:

The applicant argues that the Trademark is not confusingly similar with the Cited Marks for the following reasons:

- Elements “E”, “mart”, “eMart” incorporated in the Cited Marks are not exclusively protected;
- The Trademark as a whole is distinguishable from the Cited Marks in terms of structure, presentation and pronunciation;
- As a matter of fact, a number of marks containing elements “e” and “mart” for similar/ related services has been granted to different entities and have co-existed without causing any confusion as to the origin of goods/services;
- The Trademark is claimed to be protected in its whole form (stylized). The elements “e”, “mart”, or “emart” are disclaimed for exclusive protection.

After examining and considering the above arguments and supporting documents provided by E-MART Company, on December 9, 2015, the NOIP issued decision No. 3158/QD-SHTT accepting appeal filed by E-MART Company as well as accepting to protect the Trademark in its whole form (stylized form) for applied services in class 35.

D&N INTERNATIONAL CO., LTD (D&N International)

D&N International is a Vietnam's leading firm providing professional legal services in the field of Intellectual property, investment consultancy and business law.

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