

LEGAL UPDATES

INTELLECTUAL PROPERTY

Decree No. 76/2018/ND-CP detailing and guiding some articles of Law on Technology Transfer

Effective date: 1 July 2018

- (1) **Payment method.** Payment will be made by the following modes:
 - a) one-off payment or payments in instalments in money or by goods;
 - b) transfer of the value of the technology as capital contribution to an investment project or as capital of an enterprise in accordance with law;
 - c) payment by percentage (%) of the net selling price;
 - d) payment by percentage (%) of net turnover;
 - e) payment by percentage (%) of the pre-tax profit of the transferee; or
 - f) payment method which is a combination of the above methods or other methods in accordance with the laws on technology transfer.
- (2) **Support and encouragement from the State.** The following organizations may be entitled to supports from the State such as capital, loan guarantees, loan interest rate and other incentives:
 - a) enterprises with projects in investment incentive geographic areas and sectors receiving technology transferred from science and technology organizations;
 - b) enterprises cooperating with organizations or individuals to implement investment projects for renovation of technology, innovative start-ups, and development of infrastructure serving the development of science and technology and general research activities;
 - c) enterprises investing in material-technical facilities for technology decoding, and entities conducting technology decoding;
 - d) science and technology organizations owning the results of SR&TD cooperating with local organizations in technology application and transfer in order to perfect such results for compliance with the special characteristics of the locality.
- (3) This Decree also lists out technologies encouraged to transfer, technologies restricted from transfer and technologies prohibited from transfer.

COMMERCE

Decree No. 81/2018/ND-CP detailing the Law on Commerce regarding commercial promotion activities

Effective date: 15 July 2018

This Decree replaces Decree No. 37/2006/ND-CP and provides detailed regulations on (1) sale promotion and (2) trade fairs and exhibitions.

(1) Sale promotion

- a) Below are forms of promotion:
 - (i) giving free examples of goods or providing sample services to customers for trial use;
 - (ii) giving goods as gifts or providing free services;
 - (iii) giving discount;
 - (iv) selling goods or providing services together with coupons for purchase of goods or for use of services;
 - (v) holding a contest and awarding prizes;
 - (vi) holding lucky sale promotion programs;
 - (vii) holding programs for regular customers in which prizes awarded to customers are based on the volume or value of goods or services purchased by the customer as shown on the customer card or coupon recording the purchases or expressed in some other form; and
 - (viii) other forms as approved by the competent authority.
- b) Holding a promotion must ensure:
 - (i) Not stipulating condition that any customer entitled to the sale promotion must waive, reject or change the goods or services of any other traders or organizations;
 - (ii) Not creating a direct comparison between the goods and services of the traders organizing the sale promotion with those of any other traders, organizations or individuals.
- c) Promoted goods and services, and goods and services used for promotions must comply with the following specific provisions:
 - (i) promoted goods and services must NOT include: wine, lotteries, tobacco, milk replacing mother's milk, treating medicines; medical diagnostic and treatment services of public medical agencies, educational services of public agencies, vocational training agencies; goods and services prohibited from circulation in Vietnam and other goods and services which the law prohibits from promotion;
 - (ii) goods and services used for promotions must NOT include: wine, lotteries, tobacco; goods and services prohibited from circulation in Vietnam and other goods and services which the law prohibits from promotion;
 - (iii) money may be used as goods and services used for sale promotion except for some sale promotion forms as stipulated under the laws.
- d) Maximum limit on the value of goods and services used for sale promotion
 - (i) The material value used for sale promotion of each unit of the promoted goods or services shall not exceed fifty per cent (50%) of the price of such unit of the promoted goods or services prior to sale promotion period, except for some cases as stipulated under the laws;
 - (ii) The total value of goods and services used in the promotion must not exceed fifty per cent (50%) of the total value of the promoted goods or

services, except for some cases as stipulated under the laws.

- e) Maximum discount of promoted goods and services
 - (i) The maximum discount of promoted goods and services is 50% of the prices of such goods and services before the sale promotion.
 - (ii) The above maximum discount shall not be applied for (i) goods or services when implementing the price stabilization policy of the State; (ii) fresh/raw foods or (iii) goods or services sold in case of enterprise bankruptcy, dissolution, change of manufacturing/trading location or industry.
- f) Traders organizing sale promotion is responsible for notifying or registering (where applicable) with competent authority prior to implementing the sale promotion and reporting the results after completion.

(2) Trade fairs and exhibitions

- a) Goods to be displayed or introduced at trade fairs and exhibitions must be labelled in accordance with the laws.
- b) Display of counterfeit goods or goods in breach of intellectual property rights at trade fairs and exhibitions must be specified in the registration application of trade fairs and exhibitions. There must be a notice specifying that they are counterfeit or goods in breach of intellectual property rights.
- c) Traders must register for organization of trade fairs and exhibitions with the competent authority.

TELECOMMUNICATION

Law on Cybersecurity

Effective date: 1 January 2019

The National Assembly of Vietnam passed the Law on Cybersecurity ("**Law**") on 12 June 2018. The full text of the Law has not been officially issued yet. However, news reports indicate that the draft passed on 12 June 2018 incorporates changes to the most recently published version of the draft law, which can be viewed under this link:

http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=1382&LanID=1533&TabIndex=1

Below are key provisions.

(1) Data localization and Local office requirements

- a) Domestic and foreign enterprises, which
 - (i) provide services on the telecom network, the internet and value-added services in cyberspace in Vietnam; and
 - (ii) are involved in the collection, exploitation, analysis and processing of personal information, data about users' relationship and all other data generated by users in Vietnam,

must have such information and data stored in Vietnam for a duration of time (which will be specified by the Government in implementing regulations).
- b) Foreign businesses that fall within the above circumstance are also required to establish either a branch or a representative office in Vietnam.

(2) Those domestic and foreign enterprises are also required

- a) to verify users' information when they register accounts; keep users' information and accounts confidential; provide users' information to the cybersecurity authorities upon written request for investigation and handling of acts of violating the Law;
- b) to prevent the sharing and to delete certain information in cyberspace such as information used for propaganda against the Socialist Republic of Vietnam or slanderous; or information is in violation of the economic management order ("**Banned Information**") within 24 hours upon the request of competent cybersecurity authorities;
- c) not to provide or to stop providing services to the organisations or individuals posting the Banned Information in cyberspace upon the request of competent cybersecurity authorities.

Disclaimer: All materials have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your particular factual and legal circumstances

For more information please contact

Benjamin Yap (Mr.)

Senior Partner

Tel +84 28 38206448

Mobile +84 97 3753111

benjamin.yap@rhtlawtaylorwessing.com.vn

Dang Thi Tuong Vi (Ms.)

Partner

Tel +84 28 3820 6448

Mobile +84 90 3 325 346

vi.dang@rhtlawtaylorwessing.com.vn