

LEGAL UPDATES

COMPETITION

Decree No. 35/2020/ND-CP of the Government detailing a number of articles of the Law on Competition

Effective date: 15 May 2020

The prevailing Law on Competition ("**Prevailing Law**") took effect on 1 July 2019 with significant changes compared to the old Law on Competition No. 27/2004/QH11 ("**Old Law**"). This Decree provides for detailed guidance on application of several articles of the Prevailing Law.

We set out below the notable points of the Decree.

1. Assessment of significant anti-competitive impact or ability to cause such impact of anti-competitive agreements

- a. The Prevailing Law removes the combined market share threshold which was previously prescribed under the Old Law for determining whether certain anti-competitive agreements are prohibited. Certain anti-competitive agreements are now prohibited if they cause or potentially cause significant anti-competitive impact on the market which will be assessed based on a number of factors as detailed by this Decree (such as change in market share ratio, barriers to market access or expansion, restrictions on research, development and technologies renovation).
- b. In addition, anti-competitive agreements are not deemed to cause or potentially cause significant anti-competitive impact if falling into one of the following circumstances:
 - (i) horizontal agreements (agreements between parties in the same relevant market) where combined market share of the parties is below 5%; and
 - (ii) vertical agreements (agreements between parties conducting business at different stages in the same production, distribution and supply chain for a specified type of goods or services) where market share of each party is below 15%.

2. Definition of "control or influence" in the context of an acquisition

Under the Prevailing Law, an acquisition, as a form of economic concentration, means the direct or indirect acquisition of the whole or a part of the contributed capital or assets sufficient to "control or influence" the acquired enterprise or one of the business lines of the acquired enterprise. On that basis, Decree 35 provides for a more specific definition of "control or influence" which is that:

- a. the acquiring enterprise gains ownership of more than 50% of charter capital or voting shares of the acquired enterprise;
- b. the acquiring enterprise gains ownership of or right to use more than 50% of assets of the acquired enterprise of all or one of the acquired enterprise's business lines; or
- c. the acquiring enterprise has one of the following rights:
 - (i) to directly or indirectly appoint, dismiss or remove a majority or all members of board of management, chairman of the members' council, director or general director of the acquired enterprise;
 - (ii) to amend or supplement charter of the acquired enterprise; or
 - (iii) to decide on important business matters of the acquired enterprise, including forms of business organization; business lines, geographical areas, models of business; forms and methods for capital mobilization, allocation and utilization.

3. Threshold for notification of economic concentration

While the Old Law stipulated the threshold for notifying the economic concentration on the basis of combined market share, the Prevailing Law for the first time introduces the multi-threshold approach. As clarified by this Decree, an entity will be subject to notification when falling into one of the following thresholds:

	Credit institutions	Insurance companies	Securities companies	Other enterprises
Total assets in Vietnam in the financial year preceding the economic concentration <i>[*]</i>	≥ 20% of total assets of the credit institution system	≥ VND15 trillion	≥ VND15 trillion	≥ VND3 trillion
Total revenues in Vietnam in the financial year preceding the economic concentration <i>[*]</i>	≥ 20% of total revenues of the credit institution system	≥ VND10 trillion	≥ VND3 trillion	≥ VND3 trillion
Transaction value (This threshold is not used for economic concentration outside Vietnam)	≥ 20% of total charter capital of the credit Institution system in the financial year preceding the economic concentration	≥ VND3 trillion	≥ VND3 trillion	≥ VND1 trillion
Combined market share	≥ 20% in the financial year preceding the economic concentration			

[] Total asset or revenues in the financial year preceding the economic concentration of the company participating in economic concentration or group of affiliated companies of which such company is a member*

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INVESTMENT

Decree No. 37/2020/ND-CP of the Government supplementing list of preferential investment industries and trades under Decree No. 118/2015/ND-CP of the Government dated 12 November 2015 detailing and guiding the implementation of the Law on Investment

Effective date: 15 May 2020

This Decree supplements the list of preferential investment industries and trades as prescribed in Decree No. 118/2015/ND-CP with the following:

1. Investment in distribution chains of products of small and medium sized enterprises (“SMEs”);
2. Investment in incubators of SMEs;
3. Investment in technical establishments providing supports for SMEs; and
4. Investment in co-working spaces for start-up SMEs.

PENAL LIABILITY

Decree No. 44/2020/ND-CP of the Government regulating coercion of judgment execution applicable to commercial legal entities

Effective date: 1 June 2020

Notable contents are as below:

1. Commercial legal entities that fail to duly comply with the Court’s judgments or decisions may be subject the following coercive measures: freezing accounts; distraining property; temporarily seizing records, documents, devices containing electronic data, and/or temporarily seizing or confiscating stamps of commercial legal entities.
2. One or several coercive measures may be applied at the same time to ensure the judgment execution.
3. All costs arising from the coercion are borne by the commercial legal entities.

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