

Technical Update

October 2021

1. The 3rd Draft Law amending and supplementing a number of articles of Law on Intellectual Property (“Draft Amendment to Law on IP”)

On 4 October 2021, the Government issued the 3rd Draft Law amending and supplementing a number of articles of *Law on Intellectual Property No. 50/2005/QH11 dated 29 November 2005, (revised in 2009 and 2019)* (“**Law on IP**”). The Draft Amendment to Law on IP includes a comprehensive revision and supplementation of 94 articles and is scheduled for submission to the National Assembly for comments in October to November 2021.

Some notable amendments in the Draft Amendment to Law on IP are as follows:

- Amends copyright regulations aimed to assist authors and copyright owners in commercializing their intellectual assets including:
 - Clarifies the scope of economic rights, including the expansion of the right to communicate their work to the public using means accessible to the public.
 - Supplements situations where published works can be used without the author’s consent or without the payment of royalties, such as: personal research and study; public service activities; library activities; the visually impaired and other disabilities. Note that these cases must not be used for any commercial purpose.
 - Clarifies the copyrights owner to receive royalties where the use of published works can be used without permission yet at the rate and payment method be agreed by the parties, failing agreement, these matters will be determined according to the legal regulations or by initiating a lawsuit at court.
- Amends and supplements regulations regarding industrial property rights:
 - Lists the “*sound mark represented graphically*” as a type of mark entitled to be registered for trademark protection.
 - Amends the criteria to identify whether a trademark is indistinguishable. Specifically, a registered trademark confusingly identical/similar with the reference trademark will be regarded as distinctive if such reference trademark has expired for more than 03 years. In comparison with the current Law on IP, the expiry period is shortened from 05 years to 03 years to facilitate the registration of new trademark.
 - Specifies 03 cases where IP protection can be terminated, namely: (i) using trademarks that cause consumers to misinterpret the characteristics, value, or geographical origin of goods and services in question; (ii) the protected trademark becomes the common name of goods and/or services registered for such trademark; and (iii) geographical indications protected overseas which are no longer protected in the origin country.
 - Adds new regulations for compensation for the owner of an invention due to delays in granting a license for circulating pharmaceutical products.
- Allows the submission of registration dossiers for copyright, copyright related rights, or filing a complaint online.
- Proposes 02 penalizing approach for that would constitute a breach of intellectual property rights, namely:
 - i) if an act breaches copyright, copyright related rights, trademarks, geographical indications, rights to plant varieties causing damage to the authors, owners, consumers, or the society; and ii) if an act which causes damage to the authors, owners, consumers, or the society.



2. The 2nd Draft Decree on sanctions against administrative violations in cybersecurity

On 21 September 2021, the Government published the 2nd Draft Decree on sanctions against administrative violations, penalties, levels of sanctions and remedial actions in cybersecurity, which will be led by the Ministry of Public Security. Below are some notable points of the Draft:

- Vietnamese nationals and foreign enterprises (including branches, representative offices and business locations of foreign enterprises) providing telecommunications services, Internet, contents on cyberspace, information technology, cybersecurity, cyberinformation security are covered under the scope of regulation of this decree.
- The statute of limitations for administrative penalties for cybersecurity offenses is 01 year. However, for administrative violations relating to manufacture, trade, import, provision, exploitation and export of cybersecurity goods and services, the statute of limitations for administrative sanctions will be 02 years.
- Regulates the violations and penalties in the following 05 categories: (i) information security assurance; (ii) personal data (“**PD**”) protection; (iii) prevention of and combat against cyberattacks; (iv) implementation of cybersecurity protection activities; and (v) prevention of and combat against social order and safety. It is worth noting that the regulations on administrative violations for PD will also be in aligned to draft Decree on PD protection. The monetary penalties may reach an amount of up to VND200 million for a number of acts such as violation of children’s PD; disclosing or losing PD of 10,000 or more Vietnamese citizens after cross-border transfer.
- Principal form of sanction against violations is warning or monetary penalty, with a maximum of 05 times of the prescribed monetary penalty amount or 05% of the enterprise’s revenue in the Vietnamese market. Furthermore, other forms of sanctions can be applied:
 - Additional forms of sanction such as: revoking the right to use the operation licenses, certificates, practice licenses or suspension of operation for a definite term; confiscating the exhibits, means and documents of administrative violations; prohibiting practicing or doing related work.
 - Remedial measures such as: removal of misappropriated, illegal traded and exchanged data; being forced to return IP address, ASN, domain name, digital account, etc.
- The government bodies with the authority to apply sanctions in the field of cybersecurity include: (i) People’s Public Security; (ii) Information and Communications Inspector; and (iii) People’s Committee.

The Draft Decree is expected to be issued soon and takes effect from 01 December 2021.

3. The 2nd Draft Decree providing guidelines on Law on Real Estate Trading 2014 (“LRET”)

The Government is drafting a Decree to replace *Decree No. 76/2015/ND-CP* dated 10 September 2015 (“**Draft Real Estate Decree**”) issued by the Government providing details about the implementation of some articles of the Law on Real Estate Trading (“**Decree 76**”). The draft has a number of notable points as follows:

- Supplements the definitions of terms such as “real estate”, “real estate project”, “transfer of the whole real estate project”, “transfer of a part of real estate project”, “transfer of contract regarding purchase, lease purchase of houses, construction works”, etc. which yet to be defined in the LRET.
- Modifies the conditions applied for real estate enterprises such as removing statutory capital of no less than VND20 billion requirement for real estate enterprises in compliance with the provisions of Law on Investment 2020 and supplements additional conditions applied for organizations and individuals doing real estate trading as follows:
 - The enterprise must have successfully registered for a business line of real estate trading and publicized the enterprise’s information onto the National Portal on Business Registration and the provincial Portal of the housing authority.
 - Investors of a real estate project, must satisfy the conditions on equity: (i) for projects with a scale below 20 hectares: equity must not be less than 20% of the total investment capital; (ii) for projects with a scale from 20 hectares and above: equity must not be less than 15% of the total investment capital.
- Clearly distinguishes between small real estate trading and irregular real estate trading instead of combining such cases into “small and irregular real estate trading” according to the old regulations.
- Clearly separates cases of transfer to be governed by LRET and by Law on Investment:
 - Transactions governed by Law on Investment: (i) real estate projects approved for investment guidelines in accordance with Article 29.3 and Article 29.4 of Law on Investment 2020; or (ii) real estate projects granted with Investment Registration Certificate in accordance with the laws on investment.
 - Transactions governed by LRET: (i) real estate projects approved or decided on investment guidelines before the effective date of Law on Investment 2020; or (ii) real estate projects approved for investment guidelines from the effective date of Law on Investment 2020, excluding real estate projects where the Law on Investment is to be applicable.

The Draft Real Estate Decree is currently undergoing public consultation.

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