LEGAL UPDATE

DRAFT AMENDMENTS TO FOUR KEY COMMERCIAL LAWS

1. Background

The Ministry of Industry and Trade has published a draft law proposing amendments and supplements to a number of articles of several laws, including (i) the 2005 Law on Commercial, (ii) the 2018 Law on Competition, (iii) the 2017 Law on Foreign Trade Management, and (iv) the 2023 Law on Protection of Consumer Rights ("**Draft Law**"). The Draft Law is scheduled for discussion at the 16th National Assembly session in October 2026 and, subject to approval, is anticipated to take effect on 1 March 2027.

As part of Vietnam's legislative drive to deepen decentralization and streamline administrative and licensing procedures, the Draft Law aims to remove legal bottlenecks and enhance commercial activities, thereby improving legislative consistency, closing regulatory gaps, and aligning the legal framework with international trade commitments.

This legal update outlines the key proposed amendments under each of the four laws and highlights their practical implications for businesses operating in Vietnam.

2. Amendments to the 2005 Law on Commerce

2.1. Introduction of Statutory Definition of Counterfeit Goods

The Draft Law proposes to introduce, for the first time, a statutory definition of "counterfeit goods" into the Law on Commerce. The definition of "counterfeit goods" is designed to comprehensively cover the most common forms of counterfeiting, including falsification of content, misrepresentation of form, or the use of fake labels, stamps, and packaging.

While the concept of counterfeit goods has been recognized under Vietnamese law since 1991, it has primarily been regulated at the sub-law level, particularly through decrees, without a consolidated definition under the Law on Commerce as the foundation statute governing commercial activities.[1]

If adopted, the amendment would establish a statutory foundation for the regulation of counterfeit goods and provide a unified reference point across the legal framework. This is expected to enhance legal certainty, promote greater consistency in enforcement, and reduce interpretative discrepancies among competent authorities. Businesses may also benefit from clearer compliance standards and more predictable enforcement environment in relation to counterfeit-related violations.

2.2. Elimination of Overlapping Regulations

The Draft Law proposes to repeal a number of provisions under the 2005 Law on Commerce, including those relating to the 8% cap on contractual penalties, other commercial remedies, dispute resolution, prohibited goods and services, restricted business lines, and conditional business activities.[2]

While the 2005 Law on Commerce served as a cornerstone of Vietnam's commercial legal framework during its WTO accession process, subsequent legislative developments have resulted in certain provisions becoming duplicative or outdated. The proposed repeal is intended to reduce regulatory overlap, enhance legal clarity, and facilitate a more coherent and efficient compliance framework for businesses.

3. Amendments to the 2018 Law on Competition

3.1. Expanded Liability for Facilitating Anti-Competitive Conduct

The Draft Law proposes to expand the scope of prohibited conduct under the 2018 Law on Competition by extending liability to entities that assist enterprises in engaging in anti-competitive or unfair competition practices.

Under the current law, organizations and individuals are prohibited from: (i) organizing or coercing others to engage in anti-competitive or unfair competition practices, or (ii)

[1] Article 3 of Decree 140/HDBT; Article 3.8 of Decree 08/2013/ND-CP; Article 3.8 of Decree 185/2013/ND-CP; Article 3.7 of Decree 98/2020/ND-CP

[2] Chapter VII and Articles 25, 76, and 257 of 2005 Law on Commercial

advocating or encouraging enterprises to engage in such practices.[3] However, the Draft Law would broaden this framework by additionally prohibiting acts of assisting enterprises in carrying out such practices.

The proposed amendment appears intended to address situations where a party may not engage in anti-competitive conduct itself but nevertheless enables or facilitates its implementation. This may be particularly relevant in corporate group structures and business ecosystems, where an enterprise may influence anti-competitive conduct through the provision of technology platforms, distribution systems, capital, customer data, or other essential resources, without directly participating in the conduct itself.

By extending liability to facilitating conduct, the Draft Law seeks to close potential regulatory gaps and strengthen competition law enforcement in increasingly complex business structures and supply chains. If adopted, businesses should review their commercial arrangements and group structures to assess potential competition law risks arising from indirect involvement in anti-competitive conduct.

3.2. Market Share Assessment in Digital Platform Environment

The Draft Law introduces a mechanism for determining market share in the digital platforms environment. In addition to traditional indicators such as revenue, sales volume, or the volume of goods and services sold or purchased[4], market share may be assessed based on (i) the percentage of suppliers participating on a digital platform compared to the total number of suppliers across all enterprises' digital platforms in the relevant market; and (ii) the number of transactions or visits on a digital platform compared to the total number of transactions or visits across all enterprises' digital platforms in the relevant market.

The proposed approach reflects the characteristics of digital markets, where market power is often driven by user scale, data, and network effects rather than revenue alone.

3.3. Economic Concentration: Flexibility and Reform

The Draft Law requires the Government to issue detailed guidance on transactions involving corporate reorganizations, acquisitions, or joint ventures that do not constitute economic concentrations.

In practice, certain transactions fall within the categories set out in Article 29 of the 2018 Law on Competition and meet the notification thresholds under Article 13 of Decree No. 35/2020/ND-CP. However, these transactions neither alter the market structure nor affect competition, and they have no potential to restrict competition in the Vietnamese market. Despite this, they remain subject to notification requirements. Typical examples include a parent company increasing its ownership stake in a subsidiary or internal restructurings among companies within the same corporate group.

This amendment aims to reduce the administrative burden on enterprises for transactions that have no potential to restrict competition in Vietnam, while at the same time ensuring that there is no legal loophole for businesses to exploit internal restructuring as a way to "avoid" notification obligations for transactions that do, or may, restrict competition in the market.

4. Amendments to the 2017 Law on Foreign Trade Management

4.1. Re-Importation of Previously Exported Goods

One of the most practically significant proposed amendments addresses the mechanism permitting enterprises to import certain categories of goods that are currently prohibited from importation. Although the existing law allows the importation of such goods, it permits such importation only for narrowly defined purposes. In contrast, the Draft Law adopts a more expansive approach by removing the limitation on the purposes for which prohibited goods may be imported.

This amendment is particularly relevant given the challenges posed by the current framework under the 2017 Law on Foreign Trade Management regarding the re-importation of exported goods. For instance, right-hand drive vehicles produced and shipped under contracts with foreign partners

[3] Article 8.2 of 2018 Law on Competition

[4] Article 10.1 of 2018 Law on Competition

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cannot be brought back into Vietnam due to import restrictions. Such limitations hinder enterprises in managing production and business operations while reducing the flexibility of international trade. The proposed amendment aims to ease these constraints, helping manufacturers, exporters, and supply chain participants maintain production schedules and enhance operational flexibility.

4.2. Reform of Self-Certification & Free Sale Reform

The Draft Law seeks to facilitate the implementation of a mechanism allowing traders to self-certify the origin of goods by assigning ministries the authority to define certification criteria.

The proposed amendment is intended to align Vietnam's legal framework with its international commitments, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), under which qualified importers may self-certify the origin of goods in certain circumstances.

The Draft Law also proposes to expand the definition of a Certificate of Free Sale (CFS) to include certificates issued by competent organizations, rather than limiting issuance to state authorities.[5] This amendment is expected to address practical difficulties encountered by businesses where CFS documents are issued by industry associations or other authorized organizations, thereby facilitating compliance with specialized import requirements.

5. Amendments to the 2023 Law on Consumer Rights Protection

Overall, the Draft Law primarily proposes to supplement and clarify provisions of the 2023 Law on Protection of Consumer Rights by requiring the Government to assign ministries and ministerial-level agencies to issue detailed regulations. These regulations would specify the responsibilities of business organizations and individuals in protecting consumer rights. The purpose of this amendment is to ensure consistency, transparency, and effective enforcement of consumer protection obligations.

6. Conclusion

The Draft Law reflects Vietnam's ongoing efforts to modernize its commercial legal framework, streamline administrative procedures, and align domestic regulations with international commitments. By clarifying definitions, removing outdated provisions, and introducing new mechanisms for competition oversight, foreign trade management, and consumer protection, the proposed amendments aim to reduce compliance burdens while closing regulatory gaps.

For enterprises, these reforms promise greater transparency, consistency, and operational flexibility, particularly in areas such as digital markets, economic concentration, and trade certification. The Draft Law therefore represents an important step toward fostering a more competitive, integrated, and business-friendly environment in Vietnam.

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[5] Article 36.1 of 2017 Law on Foreign Trade Management

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