



LEGAL UPDATE

STRICTER SANCTIONS FOR VIOLATING COMPETITION LAW

An amended Law on Competition came into effect on 1 July 2019, and the Government has issued Decree 75/2019/ND-CP (**Decree 75**) providing guidelines on administrative sanctions applicable to breaches of the law.

Decree 75 will come into force on 1 December 2019 and will replace Decree 71/2014/ND-CP of 2014 which was applicable under the former Law on Competition.

Following the amended Competition Law, Decree 75 contains a general framework for administrative penalties such as warnings and fines, additional sanctions and remedial measures. Suspension of operations, confiscation of profits or revocation of enterprise registration are amongst the additional sanctions, and correction of false information, restructuring of dominant entities, removal of illegal terms, etc. are some of the remedial measures.

1. Scope

In line with the amended Law on Competition, the scope is extended to include breaches made by foreign individuals and organisations. The Law on Competition applies to investments in any business irrespective whether such investment is carried out in or outside the territory of Vietnam as long as there is an impact on the Vietnamese market. This is expected to have an impact on foreign investments.

2. Breaches

2.1 Economic Concentrations, Dominant Market Position or Monopoly

With respect to economic concentrations, Decree 75 specifies a maximum fine valued at 5% of the total turnover of the violating enterprise in the relevant market, in the fiscal year immediately preceding the year when the breach occurs.

In case of *anti-competitive agreements, abuse of dominant position or monopoly position*, the fine will be up to 10%.

The fine at the maximum rate of 10% shall, however, not exceed the relevant minimum fine imposed under the Criminal Code.

Where the total revenue is zero, the applicable fine will be between 100 and 200 million VND (~USD 4,350-8,700).

2.2 Unfair Competition

Decree 75 also sets out a considerable increase of the maximum threshold, from VND 200 million (~USD8,600) to VND 2 billion (~USD 86,000), applicable to penalties for *unfair competition*.

2.3 Other Violations

The maximum threshold applicable to penalties for the other breaches remains unchanged at VND 200 million (~USD 8,600).

2.4 Vertical Agreements

Where parties are in a vertical relationship, the turnover is to be calculated from all markets relevant to the breach.

2.5 Reduced Fine

Note that in case the violations are committed by individuals, the fines will be reduced by 50%.

2.6 Additional Penalties

In addition and subject to the nature and seriousness of the breach, further punishments may apply, including withdrawal of the business license and certificate; temporary suspension of the business for a period of 6 to 12 months; and confiscation of material evidence and facilities used to commit the breach as well as the profit earned from the breach.

2.7 Remedial Measures

The following remedial measures are introduced which apply depending on the type of violation:

- public retraction;
- restructuring of an enterprise which has abused its dominant market position or monopoly position;
- division, split or re-sale of the entire or part of the capital contribution, and assets of an enterprise formed after the economic concentration;



- restoration of the initial conditions, or conditions for technical or technological development which an enterprise has impeded, or contractual terms and conditions which have been changed or liquidated without any reasonable reason; and
- removal of disadvantageous conditions imposed on customers, or other illegal clauses from an agreement, contract or business transaction.

In addition to the above, Decree 75 introduced 3 remedial measures to alleviate the consequences of a breach:

- a compulsory removal of violating elements on the goods, goods label, means of trading or articles;
- placement under a competent authority's control over prices of goods and/or services or other transaction terms and conditions in contracts entered into by a merging or transferee enterprises or an enterprise that is formed following the economic concentration; and
- mandatory provision of relevant information and documents in full.

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