

Client Alert

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New Chemicals Regulations Impose Additional Requirements for Production and Trading of Hazardous Substances

On 28 June 2010, the Ministry of Industry and Commerce (“**MOIT**”) issued Circular No. 28/2010/TT-BTC providing guidelines to the Chemicals Law and Decree No. 108/2008/ND-CP dated 7 October 2008 (“**Circular No. 28**”). Circular No. 28 took effect on 16 August 2010 and requires organisations and individuals who engage in the production and trading of hazardous chemicals to apply for certificates for producing and trading hazardous chemicals from 1 January 2011.

In this client alert, we highlight some changes in Circular No. 28 that will trigger new obligations associated with the production and trading activities of two groups of hazardous substances in Vietnam.

1. New List of Conditional Substances

Circular No. 28 provides a detailed list of chemicals of which production and trading are conditional in industrial sectors in Vietnam with UN codes for reference (the “**Conditional Substances List**”). For the chemicals that production and trading are restricted, the existing list under Appendix II of Decree No. 108/2008/ND-CP dated 7 October 2008 (“**Decree No. 108**”) is still applicable (the “**Restricted Substances List**”).

This Circular, however, does not provide details on the application of the chemicals regulations to substances that are contained in a mixture. For example, there are no provisions specifying a threshold upon which the presence of substances in a mixture will trigger relevant statutory requirements under chemicals regulations. Thus, the ambiguity remains as to whether a low-level presence of a chemical specified in the Conditional Substances List, Restricted Substances List or other lists under Decree No. 108 would trigger the obligations associated with these substances.

2. Certificate/Permit is Required for Production and Trading of Hazardous Chemicals

Under Circular No. 28, organisations and individuals must apply for a certificate or a permit for the production and trading of hazardous substances respectively specified in the Conditional Substances List and Restricted Substances List from 1 January 2011.

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Specifically, an organisation or individual who engages in the production and trading of chemicals in the Restricted Substances List must submit a dossier to the Chemical Department of the MOIT to apply for a permit to engage in these activities. This permit will be valid for three years from the date of issuance.

On the other hand, the production and trading of chemicals listed in the Restricted Substances List will trigger the obligations to apply for a certificate from local Departments of Industries and Trade. This certificate will be valid for five years from the date of issuance.

Under this Circular, the above permit and certificate will be issued within 20 days from the receipt of the valid application dossier.

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