

Client Alert

October 2010

Information on the New Law on Food Safety

The National Assembly recently issued a new Law on Food Safety (the “**Food Safety Law**”) to replace the outdated Ordinance on Hygiene and Safety of Foodstuffs on 1 July 2011.¹ Some noteworthy provisions of the Food Safety Law are outlined below.

Under the Food Safety Law, the manufacture and trade of food products is still considered a conditional business activity, and manufacturers and traders are responsible for the safety of their food products. Among others, the rights and responsibilities of manufacturers and traders include: 1) right to request that the seller/manufacturer cooperate in the recall and disposal of unsafe products; 2) right to choose an organization to inspect and certify the safety of food products; 3) right to complain and sue according to the law to protect their rights; 4) right to compensation according to the law; 5) responsibility to provide truthful and complete information regarding the food product; 6) ability to discontinue the manufacture and sale of a food product in a timely manner should the food product be found unsafe; 7) maintenance of all documents, food samples and relevant information about the origin of the food product; and 8) responsibility for compensation for any loss or damages caused by manufacturing or trading unsafe products.

The Food Safety Law expands on the Ordinance’s list of prohibited activities, and adds a section on food safety conditions for food generally, as well as specific food safety conditions for products such as fresh and raw foods, processed foods, food additives and processing aids, nutritional foods, functional foods, genetically modified (“**GM**”) foods and irradiated foods.

Activities new to the list of prohibited activities include manufacturing or trading food that is: 1) packaged with improper labels or without labels; 2) not meeting technical standards; 3) prohibited from circulation for the purposes of epidemic prevention; 4) without a declaration of conformity with technical standards (in cases where such registration is required); 5) circulated without a clear statement of source material and origin; 6) circulated without proper certification of food safety; or 7) falsely advertised leading to consumer confusion.

The Food Safety Law provides conditions for assuring food safety in the manufacture and trading of food products. These include conditions for: 1) physical facilities, equipment and people directly involved in the manufacture and trading of food; 2) food preservation; 3) food

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¹ Ordinance No. 12/2003/PL-UBTVQH11 dated 31 November 2003 of the Standing Committee of the National Assembly on Hygiene and Safety of Foodstuffs (the “**Ordinance**”).

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transportation; 4) management systems regarding food safety control process; and 5) safety in small scale manufacture and trading of food. There are also specific food safety conditions for: 1) fresh and raw food; 2) processed food; and 3) businesses involved in eatery services, including street food.

In terms of certification for the right to manufacture and trade food, the Food Safety Law requires that applicants obtain a Business Registration Certificate ("**BRC**") (or Investment Certificate or "**IC**" in the case of foreign-invested companies) in which the scope of business must include food trading. The application for certification includes: 1) the form requesting certification; 2) a certified copy of the BRC/IC; 3) an explanation that the facilities and equipment meet announced standards; 4) certificates of health for the head of the organization and individuals directly involved in the manufacture and trading of food; and 5) certification that the head of the organization and individuals directly involved in the manufacture and trading of food have attended the Ministry of Health training on food safety. The certification for manufacture and trading of food is valid for three years. In order to be re-certified, the organization must apply for re-certification six months before the expiry of the certificate.

The Food Safety Law also provides particular conditions for food product imports. In addition to the safety conditions set out above, imported products must also have a registration of the declaration of conformity with technical standards and obtain a notification of confirmation of satisfactory import requirements for each shipment. Additionally, functional food, nutritional food, GM food and irradiated food must have either a certificate of free circulation or a medical certificate issued by a competent agency of the exporting country.

The Food Safety Law also creates requirements in terms of advertising and labelling. Before running an advertisement, an application to the competent State management agency in charge of healthcare must be submitted to register the contents of the food product advertisement. Also, food products must be labelled before they are circulated in the market, and the labels must meet the following requirements: 1) labels for functional food must clearly state "functional food" and must not imply in any way that functional food can replace or act as medicine; 2) labels for food additives must clearly state "food additives" and other information about additives' scope of use, dosage and methods; 3) labels for irradiated food must clearly state "irradiated food"; and 4) labels for GM food must clearly state "GM food" and state the material that has been genetically modified.

There are also chapters on information, education and communication about food safety, and State management of food safety.

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