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## **Industrial property**

### **Government Decree On Administrative Fines On Industrial Property Fields To Come**

*By Le Ba Thanh Chung*

The year of 2004 marks an important turning point in the Vietnam's integration in the global economy as it witnesses the Vietnam's huge efforts to finalize negotiations with various partners to join the World Trade Organization and the ending course of the first phase of the US-Vietnam bilateral trade agreement in December 2004.

An outstanding issue often be raised in the negotiations is the protection of intellectual property rights and enforcement measures against their infringements.

In efforts to meet these requirements, a draft Government Decree on administrative sanctions on Industrial Property fields has been, recently, released to collect opinion and comments. The draft which has been built by the Ministry of Science and Technology aims at replacing the current version of the Governmental Decree No. 12/1999/ND-CP dated March 6, 1999.

The new Decree shall be based on the compliance with 2002 Ordinance on Administrative sanction for violation, Decree No. 54/2000/ND-CP on the protection of the industrial property rights related to trade secrets, geographical indications, trade names and unfair competition and the Government Decree No. 43/2003/ND-CP on the protection of Integrated Circuit Topography.

Some salient points of the draft is that it: (i) stipulates ground to determine act of infringement of IPRs which previously regulated in Circular 825/2000/TT-BKHCNMT and Circular 49/2001/TT-BKHCNMT guiding the implementation of the provisions of Decree 12/1999/ND-CP, (ii) sets detailed penalties for each act of infringement/violation which gradually increase subject to the nature of act and the value of infringed goods, and (iii) ascertains competence and duties of State authorities which are assigned to execute administrative fines in the industrial property fields.

Specifically, the draft adds punishments corresponding to acts of unfair competition in intellectual property stipulated in Decree No. 54/2000/ND-CP and acts of infringement against industrial property rights related to Integrated Circuit Topography which promulgated in Decree No. 43/2003/ND-CP. According to those new regulations, acts of unfair competition may subject to monetary fines up to VND20 million and infringement against industrial property rights related to Integrated Circuit Topography may be fined up to VND100 million. Detailed legal provisions on punishments for acts of unfair competition are long hoped by IP right owners as well as industrial property (IP) practitioners in Vietnam. During the years, acts of unfair competition are happen more popularly but there are no sanctions has been seen applied.

The draft also regulates grounds to determine act of infringement of IPRs which previously regulated in Circular 825/2000/TT-BKHCNMT and Circular 49/2001/TT-BKHCNMT guiding the implementation of the provisions of Decree 12/1999/ND-CP

which can be considered as a development in the process of building the legal systems concerning the IP fields.

Competence and duties of State authorities are covered in the draft decree, including those issuing administrative fines for industrial property infringements. According to these provisions, the State bodies involved in the IPR enforcement include: the People's Committees at local levels, the Market Management Bureau, the Police (specifically Economic Police) belonging to the Ministry of Public Security, the Customs Office (in respect of border control and measures), and the specialized Inspector of Industrial Property. Besides, the National Office of Intellectual Property will carry out the appraisal functions for settlement of IP infringements on request. According to the draft, the decision on settlement of infringement must be sent to infringers within 3 days from the signing date and make a carbon copy to the specialized Inspector of Industrial Property under Ministry of Science and Technology for monitoring and coordination.

However, there are some points are under controversial including the provision that an IPR infringement which is brought to the Civil Court shall not be subject to the Government Decree of Administrative fines; and the nature of act of infringement is determined according to the value of counterfeit goods, etc.

It is vital that the Government Decree on Administrative fines on Industrial Property is eventually enforced. Given the current situation this document is urgently needed to improve the regulatory environment for industrial property in Vietnam and solid feedback and revaluation could result in an improved version of this legal document.

## Other Sectors

### Taxation

- On December 24, 2004, the Government issued Decree 213/2004/ND-CP, on the supplementation of 19 items of goods to the List of goods and tariff of import duty of Vietnam for 2004-2006.
- Circular 10/2004/TT-BTM, dated December 27, 2004, of the Ministry of Trade, guiding the implementation of Decision 91/2003/QD-TTg, dated May 09, 2003, of the Prime Minister, on applying quota for commodities imported into Vietnam for 2005.
- On December 27, 2004, the Ministry of Finance issued Circular 128/2004/TT-BTC, on amendments of Circular 127/2003/TT-BTC and Circular 88/2004/TT-BTC, guiding the preparation of declaration for self-finalisation of corporate income tax.
- On December 31, 2004, the Ministry of Finance issued Circular 133/2004/TT-BTC, guiding the implementation of Agreements, which is effective in Vietnam, on avoidance of double taxation imposed on income and assets between Vietnam and other nations.

- Circular 05/2005/TT-BTC, dated January 11, 2005, of the Ministry of Finance, on the implementation of tax obligations of foreign organizations or individuals doing business in or receiving income in Vietnam.

### Accounting - Auditing

- On December 22, 2004, the Ministry of Finance issued Circular 122/2004/TT-BTC, providing guidelines for the implementation of accounting and auditing policy toward enterprises, organizations having foreign capital, operating in Vietnam.
- Decision 1471/QĐ-TTg, dated December 27, 2004, of the Prime Minister, on the approval of State Audit's auditing plan in 2005.

### Labour

- On January 04, 2005, the Government issued Decree 04/2005/ND-CP, with detailed regulation and guiding the implementation of a number of articles of the Labor Code on complaint and denunciation in the field of labor.

On January 05, 2005 the Ministry of Labor, War Invalids and Social Affairs issued following circulars:

- Circular 01/2005/TT-BLĐTBXH, guiding the implementation of Government's Decree 205/2004/ND-CP, dated December 14, 2004, on changing the old rate of salary into the new rate in favour of the members of the Board of Directors, chief accountant and workers in State enterprises.
- Circular 03/2005/TT-BLĐTBXH, guiding the implementation of business responsibility allowance in State enterprises, according to Government's Decree 205/2004/ND-CP, dated December 14, 2004.
- Circular 05/2005/TT-BLĐTBXH, guiding the implementation of the policy on allowance in State enterprises, according to Government's Decree 205/2004/ND-CP, dated December 14, 2004.
- Circular 06/2005/TT-BLĐTBXH, providing guidelines for the establishment of labor norm in State enterprises, according to Government's Decree 206/2004/ND-CP, dated December 14, 2004.
- Circular 07/2005/TT-BLĐTBXH, guiding the implementation of Government's Decree 206/2004/ND-CP, dated December 14, 2004, regulating the management of laborers, salary and income in State enterprises.
- Circular 08/2005/TT-BLĐTBXH, guiding the implementation of Government's Decree 207/2004/ND-CP, dated December 14, 2004, regulating salary policy, bonus and responsibility toward members of the Board of Management, General Director and Director of State enterprises.

- Circular 09/2005/TT-BLDTBXH, providing guidelines for calculation of average working productivity and average salary in State enterprises, according to Government's Decree 206/2004/ND-CP.
- Circular 11/2005/TT-BLDTBXH, guiding the adjustment of retiring pension and social insurance subsidize, according to Government's Decree 208/2004/ND-CP, dated December 14, 2004;

On the same day, the Ministry of Internal Affairs issued following circulars:

- Circular 02/2005/TT-BNV, guiding the implementation of policy on position allowance regarding cadres and civil servants.
- Circular 03/2005/TT-BNV, guiding the implementation of regular salary increase and early salary increase regarding cadres and civil servants.
- Circular 04/2005/TT-BNV, guiding the implementation of allowance on serving years which is exceeding the frame regarding cadres and civil servants.

## Finance

- Circular 132/2004/TT-BTC, dated December 30, 2004, of the Ministry of Finance, guiding the collection, payment, management and use of intellectual property fee.
- Circular 01/2005/TT-BTC, dated January 04, 2005, of the Ministry of Finance, guiding the collection, payment, management and use of the fees for issuance, amendment of the contents of the certificate of arbitration centre's registration, of certificate of registration of arbitrator centre's branch and court fees in connection with arbitrators.
- Interministerial Circular 08/2005/TTLT-BNV-BTC, dated January 05, 2005, of the Ministry of Internal Affairs and the Ministry of Finance, guiding the policy on the payment for extra hour of cadres and civil servants.

## Securities

- On December 29, 2004, the Ministry of Finance issued Circular 130/2004/TT-BTC, guiding the implementation of a number of articles of Government's Decree 161/2004/ND-CP, dealing with administrative violations in the field of securities and securities market.

## Banking

- The State Bank of Vietnam issued Circular 09/2004/TT-NHNN, on December 21, 2004, guiding enterprises to borrow from and pay debts to foreigners.
- Decision 02/2005/QĐ-NHNN, dated January 04, 2005, of the State Bank of Vietnam, promulgating the Regulations on issuance of valuable note of credit institution for the purpose of mobilization of domestic capital.

### Electric power

- On January 07, 2005, the Ministry of Industry issued Circular 01/2005/TT-BCN, guiding the implementation of Decision 215/2004/QĐ-TTg, of the Prime Minister, on the price on electric power.

### Industry

- Decision 1487/2004/QĐ-BCA(A11), dated December 20, 2004, of the Ministry of Public Security, on the List of secret of the State regarding the field of Industry.

### Transportation

- Decision 1485/2004/QĐ-BCA(A11), dated December 20, 2004, of the Ministry of Public Security, on the List of secret of the State regarding the field of Transportation.

### Customs

- The Ministry of Finance issued Circular 125/2004/TT-BTC, on December 24, 2004, guiding customs procedure for international multi-method transportation commodities.

### Post & Telecommunication

- Circular 05/2004/TT-BBCVT, dated December 16, 2004, of the Ministry of Post and Telecommunications, guiding the implementation of a number of articles on administrative violations and complaint, accusation regulated at Chapter IV of Government's Decree 55/2001/ND-CP, on the management, supply and using of internet service.

### Miscellaneous

- Circular 04/2004/TT-BKHDT, dated December 13, 2004, of the Ministry of Planning and Investment, on making plan for the development of collective economic area for 5 years 2006-2010.
- On December 28, 2004, the Ministry of Science and Technology issued Decision 38/2004/QĐ-BKHCH, on amendment of and supplementation to Decision 28/2004/QĐ-BKHCH, dated October 01, 2004, on the way of definition of interior rate of automobiles.

## Contact Details

### Hanoi Head Office

Mr. Pham Nghiem Xuan Bac

*Managing Partner*

Mr. Pham Minh Hai

*Partner, Consulting*

Ms. Le Quynh Anh

*Partner, Legal*

Ms. Le Thi Kim Dzung

*Partner, Intellectual Property*

Unit 2, 1st Floor, International Center

17 Ngo Quyen, Hanoi, Vietnam

Tel: 84-4 934-0629 / 824-1623 Fax: 84-4 934-0631

E-mail: [vision@hn.vnn.vn](mailto:vision@hn.vnn.vn)

### Ho Chi Minh City Office

Mr. Dang The Duc

*Partner, Manager*

Unit 8A1, 8th Floor, Han Nam Office Building

65 Nguyen Du, District 1, Ho Chi Minh City, Vietnam.

Tel: 84-8 823-6495 / 823-6501 Fax: 84-8 823-6496

E-mail: [hcmvision@hcm.vnn.vn](mailto:hcmvision@hcm.vnn.vn)

[www.vision-associates.com](http://www.vision-associates.com)