

# Legal news

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**HIGH LIGHT****1. Credit institutions entitled to apply procedures under Law on Bankruptcy**

*On January 18, 2010, the Prime Minister has signed to issue Decree No. [05/2010/ND-CP](#) providing for the application of Law on Bankruptcy to credit institutions established and operated in accordance with Law on Credit Institutions.*

A credit institution, which is unable to pay due debts at the request of creditors, after the State Bank of Vietnam has given a written notice on non-application or termination of applying winding-up measures or termination of applying special control, shall be regarded to fall in bankruptcy status.

The Decree gives competence of carrying out bankruptcy procedures to people's court of province or central city where credit institution's business is registered at the business registration authority of such province or city. In case of a foreign-invested credit institution, provincial people's court of the locality where its head office is placed, shall be competent.

Person entitled to apply for opening bankruptcy procedures with respect to credit institution includes: Unsecured or partly-secured creditor(s) of the credit institution, labour working in the credit institution; owner of State-owned credit institution; shareholder(s) of joint-stock credit institution. Lawful representative of the credit institution is obliged to submit application for opening bankruptcy procedures upon being aware of his/her credit institution's fall in bankruptcy.

In cases where the applicant does not pay advance of fee for bankruptcy fixed by the court, the applicant is not entitled to apply; there is another court that has opened bankruptcy procedures regarding such credit institution in bankrupt situation; or there is a ground clearly showing that the submission of application for opening bankruptcy procedures is not objective or adversely affects honour or prestige of the credit institution; such credit institution, that is being put under special control by the State Bank or it is decided that effective measures for liquidation recovery are applied to such credit institution; or the credit institution can prove that it does not fall in bankruptcy status; then the Court shall make a decision to return the application for opening bankruptcy procedures.

After a decision on opening bankruptcy procedures is made, operation of the credit institution shall be carried out under the supervision and control of the judge and the asset management and liquidation team. As from the date of receiving the decision on opening bankruptcy procedures, the credit institution is prohibited from concealing and dispersing assets; repaying unsecured debts; waiving or reducing right to claim debt; conversion from unsecured debts into debts secured by the enterprise's assets. The Decree also stipulates that after receipt of the decision on opening bankruptcy, such activities of the credit institutions as pledge, mortgage, assignment, sale, gift and offer, lease of properties; receipt of asset from an assignment contract;

termination of a contract that has took effect; Loan; Sale and conversion of shares or assignment of ownership over asset; Payment of new debts arisen out of business operation of the credit institution and payment of wages to labour in the credit institution must be approved in writing by the judge before action.

In case where restoration of business operation has been failed and the liquidation is applied, though credit institutions have received special loans from the State Bank or other credit institutions, and financial support from Vietnam Deposit Insurance to restore their business operation before the date of the court's receipt of application, they will have to pay back the amount of such special loans to the State Bank or financial support to Vietnam Deposit Insurance, before carrying out orderly division of their assets.

This Decree takes effect as of March 15, 2010.

## **2. Tax obligation of Vietnamese investing abroad**

*On January 19, 2010, the Ministry of Finance issued Circular No. [11/2010/TT-BTC](#) providing guidelines on implementation of tax obligations of Vietnamese directly investing abroad. In detail, the Circular providing for their obligations regarding export tax, import tax, corporate income tax, value-added tax, personal income tax, and other taxes, fees charges.*

Under the new Circular, exported goods such as machinery, equipment, spare parts, materials and fuels exported abroad to create fixed assets of oversea investment projects will be subject to current laws on export and import taxes. It also provides for dossiers to be submitted to customs authorities for tax exemption, comprising: the request made by Vietnamese enterprises investing abroad, Customs Declaration Form for Exported Goods, a self-declared list of goods exported abroad to carry the oversea investment projects under export tax exemption (in particular, the type, quantity and value of goods), a self-certified true copy of the License for oversea investment granted by competent authorities, or a self-certified true copy of the Contract of export authorization if applicable.

For goods exported as temporary export and re-import to implement investment projects in foreign countries, when exporting export duty shall be declared and paid as prescribed by laws on export tax and import tax, and when re-importing, import tax shall not be paid and paid export tax (if any) can be refunded corresponding to the quantity of goods actually re-imported. For goods like machinery, equipment and spare parts that were previously exported to foreign countries in order to form fixed assets of offshore investment projects, and if re-imported into Vietnam upon the liquidation or termination of such projects, their paid export duty (if any) can be refunded corresponding to the quantity of goods actually re-imported, and exempted from import tax payment.

Value-added tax (VAT) on goods like machinery, equipment, spare parts and supplies, raw materials, fuels (except for raw natural resources and minerals exploited and unprocessed into other products), exported to foreign countries in order to form fixed assets of offshore investment projects, shall be applied

at the rate of 0%; moreover, such goods are entitled to deduction of input VAT as exported goods under Law on VAT and its guidelines.

This Circular also provides guidelines to Vietnamese enterprises that invest overseas and have incomes from offshore production and business activities in declaring and paying corporate income tax (CIT) under the Agreements for Avoidance of Double Taxation between Vietnam and the countries where they implement their investment projects (if any), Vietnam's Law on CIT and its guidelines, including cases where enterprises are enjoying CIT exemption or reduction in accordance with the laws of countries receiving investments.

CIT rate used for calculation and declaration of overseas incomes is 25%, and preferential tax rates (if any) that Vietnamese enterprises investing abroad enjoy under the Law on CIT currently in force are not applicable.

Where their incomes from offshore investment projects have been subject to CIT (or any similar kind of tax) payment in foreign countries, the corporate income tax payable in Vietnam, Vietnamese enterprises investing abroad are entitled to deduct the tax amount paid in foreign countries or paid by their partners in the countries receiving investments (including tax on dividends), but the deducted tax amount should not exceed the income tax amount calculated according to Vietnam's Law on CIT. Total income tax Vietnamese enterprises investing abroad be exempted or reduced regarding the incomes from their investment projects in foreign countries under the laws of the countries receiving investments, can also be deducted upon determination of the income tax amount to be paid by such enterprises in Vietnam (not subject to the tax calculation).

Where investment projects in foreign countries have not yet generated taxable incomes (or bear losses), when declaring the annual finalization of enterprise income tax, Vietnam enterprises investing abroad have to submit only Financial Statements certified by independent auditing agencies or competent agencies in the foreign countries where the enterprises have investment and Corporate Income Tax Declarations of the overseas investment projects (copies certified by the duly authorized representatives of the overseas investment projects). The losses incurred from the Investment Project abroad shall not be deducted from the income gained by domestic enterprises when calculating the corporate income tax.

Income from investment projects in foreign countries shall be declared in the CIT finalization for the year subsequent to the fiscal year when overseas income is generated, or declared in the CIT finalization for the fiscal year, which is also the year when the income is generated in foreign countries, if the enterprise has a sufficient basis and adequate documentation to determine the income and the income tax already paid by the investment projects in foreign countries.

Besides, with respect to enterprises that violate the regulations on tax declaration and payment in accordance with the Law on Tax Administration, tax authorities can fix their taxable incomes from overseas production and business activities of Vietnamese enterprises investing abroad.

Moreover, the Circular also clearly stated that Vietnamese investors who are small business households and individuals conducting investment projects in

foreign countries or working for offshore investment projects shall pay personal income tax (PIT) in accordance with the Agreements for avoidance of double taxation between Vietnam and the countries where the investment projects are implemented (if any), Vietnam's Law on PIT and its guidelines. This Circular takes effect after 45 days as from the signing date.

### **3. Supplementing a number of regulations on Personal Income Tax**

*On January 11, 2010, the Ministry of Finance issued Circular No. [02/2010/TT-BTC](#) providing guidelines on the supplement to Circular No. 84/2008/TT-BTC dated September 30, 2008 of this Ministry providing guidelines on the implementation of a number of articles of Law on Personal Income Tax (PIT) and the same on the implementation of Decree No. 100/2008/ND-CP dated September 8, 2008 detailing a number of Law on PIT. Under this Circular, exemption of PIT shall be applied only to individuals assigning a single residential house and/or residential land for which State management authorities have granted a certificate of ownership or use rights.*

With respect to individuals, who have had their residential house and/or residential land, now assign their capital contribution contract for the right to purchase house ground or apartment, or assign a contract on purchase of house ground or apartment, then their incomes from such assignment activity shall be subject to PIT.

Where inheritance or gift being a capital contribution contract for the right to purchase house ground or apartment, is received, it is not exempted from PIT in accordance with Clauses 1 and 4 of Decree No. 100/2008 dated September 8, 2008.

With respect to incomes from assignment of real estates, the Circular stipulates that, individuals who have incomes from such assignment, and are subject to a 25% tax rate payment over taxable income, must fully satisfy four conditions on assignment price; purchase price and relevant costs; individuals as assignor self-declare and self-determine applicable tax rate and shall be responsible for the accuracy of their declared dossier; individuals declaring to pay tax at the rate of 25% over assignment price, however, through checking, it is found that the assignment price recorded in the contract and tax declaration is lower than those prescribed by the provincial people's committees, the tax shall be calculated at the rate of 2% over such those prices as prescribed.

In addition, for resident individuals who have incomes from business, wages and remunerations, and pay obligatory insurance premiums as stipulated by Labour Code and Law on Social Insurance, such premiums will be deducted from taxable income before tax calculation. Insurance premiums of a year will be deducted from the taxable income of such year.

Foreign individuals who are resident in Vietnam and Vietnamese who are resident individuals and work abroad, have incomes from business, wages and remunerations generated abroad, and pay obligatory insurances under the laws of the country of resident individual's nationality, which are similar to the same of Vietnam on social insurance, health insurance, unemployment

insurance, obligatory professional liability insurance and other obligatory insurances (if any) will be entitled to enjoy such deduction of premiums from taxable incomes from business, wages and remunerations upon calculation of personal income tax.

The above-mentioned subjects entitled to tax deduction must have vouchers evidencing their payment of obligatory insurances under foreign laws. Such vouchers include receipt of insurance agency or certification of income paying organization in relation to the amount of premium paid or deducted (if paid directly by the paying organization).

With respect to foreign individuals and Vietnameses paying the above-mentioned premium in foreign countries, it shall be temporarily deducted from their incomes for deduction of tax in the year (if vouchers are available) and finalize its official amount at the end of year; in case where vouchers are not available for temporary deduction in the year, it will once be deducted entirely upon tax finalization.

This Circular takes effect after 45 days as from the signing date.

**4. [Regulation on Tender Invitation Dossier for small-scale construction-engineering packages](#)**

*On January 6, 2010, the Ministry of Planning and Investment has issued Circular No. [01/2010/TT-BKH](#) detailing the preparation of Tender Invitation Dossier for construction-engineering packages.*

Entities affected by this Regulation include organizations and individuals in charge of setting up Tender Invitation Dossier with respect to engineering package of projects falling within the application scope of Law on Tendering when all forms of tendering, whether domestic or international, open or limited are carried out.

With regard to engineering tender package of projects funded by ODA, the Circular permits to apply a set form of Tender Invitation Dossier issued with such Circular, or amend and add a number of contents in accordance with tendering regulations in international treaties to which Vietnam is a member or international agreements signed by competent authorities or organizations of Vietnam.

This Circular takes effect as of March 1, 2010.

## Other Sectors

### Banking

- Decision No. 11/QD-NHNN dated January 6, 2010 of the State Bank of Vietnam on the list of valuable papers used in transactions of the State Bank of Vietnam.
- On January 22, 2010, the State Bank of Vietnam issued Circular No. 02/2010/TT-NHNN detailing the implementation of interest rate assistance by bank loan in 2010 for purchase of machinery, equipment and materials used for agriculture production and construction materials for building houses in rural areas.

### Taxation

- Decision No. 108/QD-BTC dated January 14, 2010 of the Ministry of Finance providing for the functions, duties, authority and organizational structure of the Taxation Department under the General Department of Taxation.
- On January 25, 2010, the Ministry of Industry and Trade stipulated Circular No. 05/2010/TT-BCT on the amendment and supplement to Circular No. 02/2007/TT-BTM dated February 2, 2007 of the Ministry of Trade classifying in detail productional raw materials, materials and spare parts exempted from import duty according to Clause 15 of Article 16 of Decree No. 149/2005/ND-CP dated December 8, 2005 detailing the implementation of Law on Export Duty and Import Duty.
- Circular No. 07/2010/TT-BTC dated January 14, 2010 of the Ministry of Finance providing guidelines on the amendment and supplement to Circular No. 45/2008/TT-BTC dated June 5, 2008 of the Ministry of Finance providing guidelines on the financial regime and customs procedures applied to the economic zone of Cau Treo international border-gate of Ha Tinh Province.
- On January 13, 2010, the Ministry of Finance issued Circular No. 06/2010/TT-BTC providing guidelines on the determination of taxable turnover subject to corporate income tax with respect to activities of selling golf tickets and golf member cards.

### Trade

- Decision No. 02/2010/QD-TTg dated January 15, 2010 of the Prime Minister providing for the functions, duties, authority and organizational structure of the General Department of Customs under the Ministry of Finance.

- On January 14, 2010, the Ministry of Industry and Trade stipulated Circular No. 02/2010/TT-BCT providing for the import of tobacco serving the business in duty free trade.
- Circular No. 08/2010/TT-BTC dated January 14, 2010 of the Ministry of Finance providing guidelines on the implementation of Decision No. 93/2009/QD-TTg dated July 10, 2009 of the Prime Minister amending and supplementing Clause 4 of Article 21 of Decision No. 33/2009/QD-TTg dated March 2, 2009 of the Prime Minister promulgating the financial regime and policies regarding economic zones of border-gates.

### Transport

- On January 25, 2010, the Hanoi People's Committee issued Decision No. 07/2010/QD-UBND amending and supplementing Decision No. 23/2009/QD-UBND dated January 9, 2009 of the Hanoi People's Committee on the collection of fees for use of pavements, sidewalks, stations, quays and water surfaces within the area of Hanoi.
- Decision No. 140/QD-TTg dated January 21, 2010 of the Prime Minister approving of the detailed planning of North Eastern highways in the East.
- On January 18, 2010, the Prime Minister stipulated Decision No. 129/QD-TTg approving of the detailed planning on coastal roads of Vietnam.
- Circular No. 01/2010/TT-BGTVT dated January 11, 2010 of the Ministry of Transport providing for the prevention from, fighting against and remedy of floods or storms' consequences; dealing with incidents, natural disasters, and rescues in railroad activities.

### Construction

- On January 8, 2010, the Ministry of Construction issued Circular No. 01/2010/TT-BXD providing for the management of commercial porland cement clinker's quality.
- Circular No. 01/2010/TT-BKH dated January 6, 2010 of the Ministry of Planning and Investment detailing the preparation of tender invitation dossier for engineering packages.

### Land

- On January 18, 2010, the Hanoi People's Committee stipulated Decision No. 02/2010/QD-UBND promulgating regulations on land recovery, land allocation, land lease, change in land use purpose for implementation of investment projects and residential housing construction in rural residential zones in the area of Hanoi;



- Decision No. 12/QD-UBND dated January 6, 2010 of the People's Committee of Ho Chi Minh City on the authorization in granting certificates of land use rights and of ownership over residential house and other properties attached to land.
- On January 8, 2010, the Ministry of Natural Resources and Environment and Ministry of Finance jointly issued Inter-ministerial Circular No. 02/2010/TTLT-BTNMT-BTC providing guidelines on the development, evaluation and issuance of land price list and amendment of land price list under the competence of people's committees of provinces and central-run cities.
- Inter-ministerial Circular No. 01/2010/TTLT-BTNMT-BNV-BTC dated January 8, 2010 of the Ministry of Natural Resources and Environment, the Ministry of Home Affairs and the Ministry of Finance providing guidelines on the functions, duties, authority, organizational structure and financial regime of organization for land fund development.

### Science - Technology

- On January 25, 2010, the Government stipulated Decree No. 07/2010/ND-CP detailing and providing guidelines on the implementation of a number of articles of Law on Atomic Energy.
- Circular No. 03/2010/TT-BCT dated January 22, 2010 of the Ministry of Industry and Trade providing for a number of contents on safety protection of high voltage electricity works.
- On January 19, 2010, the Ministry of Labour, War Invalids and Social Affairs issued Circular No. 03/2010/TT-BLDTBXH promulgating the list of products and commodities under Group 2 and guidelines for order, procedures and contents of quality inspection of products and commodities in production.
- Circular No. 01/2010/TT-BLDTBXH dated January 12, 2010 of the Ministry of Labour, War Invalids and Social Affairs promulgating the process of technical verification for the safety of passenger suspension cable car systems, high-speed hang glidings, and slide-gutter systems.

### Interior Affairs

- On January 25, 2010, the Government stipulated Decree No. 06/2010/ND-CP to specify who are public officials.
- Decree No. 03/2010/ND-CP dated January 13, 2010 providing for the duties, authority and organization of statistics of ministries, agencies of ministry level, and government bodies.

### Agriculture

- On January 8, 2010, the Government issued Decree No. 02/2010/ND-CP on agricultural promotion.
- Decision No. 03/2010/QD-TTg dated January 25, 2010 of the Prime Minister providing for the functions, duties, authority and organizational structure of the General Department of Irrigation under the Ministry of Agriculture and Rural Development.
- On January 8, 2010, the Prime Minister stipulated Decision No. 29/QD-TTg approving of Vietnam's programme on development of cotton plant till 2015 with orientation to 2020.

### Miscellaneous

- Decree No. 04/2010/ND-CP dated January 15, 2010 on sanctioning administrative violations in the field of floods and storms' prevention and control.
- On January 4, 2010, the Government issued Decree No. 01/2010/ND-CP on the private placement.
- Decision No. 154/QD-UBND dated January 13, 2010 of the Hanoi People's Committee promulgating Plan on review of legal documents in the area of Hanoi in 2010.
- On January 13, 2010, the Prime Minister stipulated Decision No. 63/QD-TTg approving of the planning on safe development of national digital information until 2020.
- Decision No. 90/QD-BTC dated January 13, 2010 of the Ministry of Finance promulgating the list of MoF-promulgated legal documents of promulgated by the Ministry of Finance of which the validity is expired.
- On January 9, 2010, the Prime Minister issued Decision No. 32/QD-TTg promulgating the list of documents detailing the implementation of laws and ordinances, which took effect as of January 1, 2010 and earlier, and assignment of tasks to direct the preparation and submission for issuance.
- Circular No. 03/2010/TT-BTC dated January 12, 2010 of the Ministry of Finance providing guidelines on the implementation of Decree No. 41/2009/ND-CP dated May 5, 2009 on sanctioning administrative violations in the field of insurance business.
- On January 11, 2010, the Ministry of Labour, War Invalids and Social Affairs stipulated Circular No. 02/2010/TT-BLDTBXH promulgating the list of legal documents issued by this Ministry to the end of December 31, 2009, which are no longer valid.

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