

# LegalNews

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## Constitution

### Amendment of and Additions to the 1992 Constitution

On 25 December 2001, the ninth Session of the tenth National Assembly ratified Resolution No. 51/2001/QH10 amending and supplementing a number of Articles of the 1992 Constitution of the Socialist Republic of Vietnam (**1992 Constitution**). This time adjustments and additions made to the 1992 Constitution focus on the organization of the State system, economic, cultures education, science and technology for ensuring the compliance with the ninth Congress Party's Resolution. Followings are important adopted adjustment and additions to the 1992 Constitution.

#### *Political Regime*

Setting up "*the socialist republic jurisdiction State*" is a long term target of Vietnam for the forth coming time, therefore, in this amendment of the 1992 Constitution, the concept "*the socialist republic jurisdiction State*" is mentioned in Article 2 of the 1992 Constitution as a confirmation of such target.

#### *Economic system*

This time of amendment, the State of Vietnam keeps undertaking its policy to treat equally with economic sectors in various forms, regardless the form of ownership. Accordingly, the Constitution now confirms that "*Economic sectors are all integral parts of the socialist republic oriented market economy. Organizations and individuals of all economic sectors are entitled to do business in the sectors not to be banned under the laws; to develop in long term, collaboration, equality and competitiveness basis under the laws*"

#### *The National Assembly*

In accordance with Clause 4 Article 84 of the 1992 Constitution, the National Assembly is entitled to make decision on estimation, distribution and balance of the State budget, including the Central State budget and local ones. This is unreasonable and does not comply with the requirement of the decentralization in management of economy, finance and budget, and is not practicable in the current situation of Vietnam, therefore, Clause 4 Article 84 is revised as the National Assembly has the right "*Making decisions on the National finance and monetary policies; making decisions on estimation of the State budget and disbursement of the Central State budget, approving balance of the State budget; amending or abolishing taxes*"

In addition, Article 84.(5),(7),(13) of the 1992 Constitution are amended as the National Assembly is now given the rights to make policies on the National religious; to vote for prestige of persons in the positions elected or approved by the National Assembly; and to approve or revoke international treaties signed by the State President.

#### *The State President*

A number of the President's authorities are now downsized in accordance with the new

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*"The National Assembly abolished authority to issue legal instruments of the header of the Government's organs. This authority formerly adopted in the 1992 Constitution is one of causes of instable and conflicting legislative system of Vietnam"*

amendments, such as the right to request the National Assembly Standing Committee to make reconsideration on declaration of war status as stipulated in Clause 7 Article 103; the right to appoint diplomatic honorary and ranks as stipulated in Clause 9 Article 103, remaining only right to appoint ambassador honorary.

### *The Government*

In accordance with Article 112.8 of the 1992 Constitution, the Government is only entitled to sign international treaties on behalf of the Government. However, from now on, the Government is allowed to sign the international treaties on behalf of the State of Vietnam in case such international treaties are signed with the persons who are not the Heads of other States which is currently under the authorization of the State President in accordance with Article 103.10 of the 1992 Constitution.

Especially, a positive amendment made to Article 116 is adopted that the right to issue legal instruments is no longer given to header of the Government's organs. This, certainly, would partially help to unify the legislative system of Vietnam.

### *The People's Procuracy*

Article 137 of the 1992 Constitution is revised towards: the People's Procuracy shall only act as prosecutor and investigate the jurisdictional activities, but not investigate the legality of operations of bodies, organizations, army force units and individuals.

The above amendments and supplementations take effect from 25 December 2001.

## Promulgation of New Laws

Along with the amendments of and additions to the 1992 Constitution, on 25 December 2001, the National Assembly adopted two new laws, namely the **Law on Organization** of the Government (replacing the repealed Law of 30 September 1992) and the **Law on Organization of the National Assembly** (replacing the repealed Law of 15 April 1992). These new Laws are enacted aiming to raise the effectiveness of the State management in the forth-coming time and to ensure the conformity to the amendments of and additions to the 1992 Constitution as above introduced.

Reviewing through these new Laws, there are a number of significant changes to operating regime, functions, tasks and rights of the supreme executive organ (i.e. the Government) and the supreme legislative organ (i.e. the National Assembly). Other relevant contents to the organization of such organs remain unchanged.

# Import-Export

## New Legal Instruments Guiding the Customs Law

From 01 January 2002, the Customs Law dated 12 July 2001 officially came into effective. In order to provide guidelines for the implementation of the Law as well as ensuring the feasible Law in practice in a timely manner, on 31 December 2001, the Government issued Decree No. 101/2001/ND-CP detailing the implementation of the Customs Law with respect to customs formalities, customs examination and supervision regimes ("**Decree 101**"); and Decree No. 102/2001/ND-CP detailing the examination of import, export goods after customs clearance ("**Decree 102**").

Briefs below are notable contents of Decree 101 and Decree 102 as above-mentioned.

### *Decree 101*

Decree 101 includes 4 Chapters and 56 Articles, detailing customs formalities, customs examination and supervision regime set out in the Customs Law.

Customs formalities for import and export goods detailed in Decree 101 include:

- Formation of and registration for customs documents;
- Factual inspection of goods;
- Analysing, classification, inspection and State examination of quality of goods;
- Examination of origin of goods;
- Customs clearance;
- Supervision of import, export goods;
- Procedures for border gate transition of goods; and
- Procedures for ceasing customs formalities following requests for protection of intellectual property right.

Regarding the ceasing customs formalities, as introduced in our July 2001 Issue, it may cease the customs formalities if there is requested for protection of intellectual property rights. For ceasing the customs formalities, the applicant shall submit the following documents to the customs office where the goods are imported, exported:

- An application for the ceasing the customs formalities;
- Advanced payment amounting to 20% of value of goods as stated in commercial contract, or a guaranty document granted by a credit institution for compensation for the goods owner and actual expenses resulted from the improper request on ceasing;
- Primary evidences proven the violations of intellectual property rights;
- Presenting certificate and other documents proving the industrial property right; and
- Power of attorney for the submission of application (in case of empowered applicant).

After receipt the application, the Head of Customs Department shall be entitled to issue decision on ceasing the conduction of customs formalities. The ceasing duration is remained within 10 days from the dated of issuance of decision and can be extended in certain circumstances.

Furthermore, Decree 101 also provides guidelines for procedures for import, export of some other special goods such as transited goods; goods temporary imported, exported for showing in trade fairs, exhibitions; temporary imported, exported specialized machines and equipment etc.

Decree 101 became effective from 1 January 2002 and replaces the following documents:

- Decree No. 16/1999/ND-CP dated 27 March 1999 of the Government providing for customs formalities, customs supervision and customs fees; and
- Decision No. 212/1998/QD-TTg dated 2 November 1998 of the Prime Minister promulgating the Regulations on bounded warehouse.

### Decree 102

Upon incurring any violation of the regulations on customs with respect to import, export goods after customs clearance, customs offices are entitled to examine the goods for purposes of verifying the accuracy and faithfulness of documents submitted to the customs offices.

Subjects to the examination are receipts, accounting books and other documents relating to the goods. The examination can be taken place within 5 years from the date of customs clearance and the duration of examination of each unit to be examined shall be 5 days.

### Other Documents

- Dispatch No. 1160/CP-KTTH dated 24 December 2001 of the Government regarding the application of tariff quota as to imported goods;
- Dispatch No. 5846/TCHQ-KTTT dated 24 December 2001 of the General Department of Customs regarding the adjustment of norms.

# Law on Enterprises

## Business Registration

On 22 November 2001, the Ministry of Planning and Investment issued Circular No. 08/2001/TT-BKH providing guidelines for procedures for business registration, which are stipulated in Government's Decree No. 02/2000/ND-CP on business registration. Circular 08 replaces Circular No. 03/2001/TT-BKH dated 02 March 2001 issued by Ministry of Planning and Investment.

In general, provisions on steps and procedures for registration for business set out in Circular 08 are remained unchanged in comparison with Circular 03. However, those in Circular 08 are more detailed. Some other documents required for carrying out procedures for business registration under Circular 08 include:

- An individual applying for business registration must submit some additional documents as follows:
  - (i) Original family-register or ID card or passport in case directly submitted by the applicant;
  - (ii) Original family-register or ID card or passport and power of attorney with respect to empowered applicant; and
  - (iii) A copy of family-register or ID card or passport with respect to manager and legal representative of enterprise.
- Organization that applies for business registration must submit the Certificate of Business Registration and a written acceptance issued by competent State body or by other members of the organization;
- With respect to the applications for the setting up branches, representative offices; changes of contents of business registration; or termination of operation, applicant must submit a decision of all members of the enterprises, and a minutes of adjustment of the Charter in case of changing name of the enterprise.

In addition, Circular 08 supplements some provisions on reissuance and change of the Business Registration Certificates, including those granted in accordance with the Law on Private Enterprises and the Law on Companies.

# Trade

## Sanction Against Administrative Violations in Commerce

According to Decree No. 01/2002/ND-CP issued by the Government on 3 January 2001 amending and supplementing a number of Articles of Decree No. 01/CP dated 3 January 1996 of the Government on sanction against administrative violations in commercial sector, acts committing provisions on labeling and stamps of goods shall be subject to administrative sanctions under Decree 01. Other amendments of and additions to Decree 01 are related to levels and forms of sanction.

## Other Documents

- Decree No. 02/2002/ND-CP dated 03 January 2002 of the Government amending and supplementing a number of Articles of Decree No. 20/1998/ND-CP dated 31 March 1998 of the Government on development of commerce in mountainous, island and ethnic areas;
- Dispatch No. 12/CP-QHQT dated 4 January 2002 of the Government approving Vietnam-Brunei Trade Pact;
- Dispatch No. 5112/TM-AM dated 17 December 2001 of the Ministry of Trade on trade relationship with Taiwan;
- Dispatch No. 5242/TM-AM dated 24 December 2001 of the Ministry of Trade on organizing the implementation of Vietnam-US Bilateral Trade Agreement;
- Dispatch No. 6263/VPCP-QHQT dated 21 December 2001 of the Government Office on the draft of Free Trade Agreement with Russia.

# Land

## Application for Land Allocation and Leasing

On 14 December 2001, the General Department of Cadastral issued Circular No. 2074/2001/TT-TCDC guiding for steps of formation and consideration of application for land allocation and leasing with respect to domestic households and individuals, effective from 1 January 2002 and replacing Circular No. 293/TT-DC dated 14 March 1997 of the General Department of Cadastral and Interministerial Circular No. 07/TTLB/TL-DC dated 13 September 1995 of the Ministry of Irrigation and the General Department of Cadastral guiding for setting up application for land allocation for irrigational works.

Under Circular 2074, steps of formation and consideration of application for land allocation are as follows:

- Households and individuals who are wishing to use land shall submit application to the Commune People's Committee. If the demanded land is for business, the applicant must submit with the application a plan for business and operation; plan for site clearance compensation (if any) and extract cadastral map or extract cadastral survey of the land area;
- Organizations having demands on land allocation or leasing must submit the following documents to the Department of Cadastral:
  - Application;

- Incorporation or business registration Certificate;
- Investment decision or approval of technical design issued by competent State bodies, or acceptance of land location and area with respect to projects not using the State capital in accordance with Article 19 of the Land Law;
- Extract cadastral map or survey;
- Plan for site clearance compensation;
- Permission attached with mineral exploitation map (with respect to mineral exploitation projects).

## Dispute Resolution Regarding The Land Use Right

In order to determine the authorization of the Court in revolving the disputes regarding the land use right, the People Supreme Court, the People's Procuracy and the General Department of Cadastral issued Inter Circular 01/2002/TTLT-TAND-VKSND-TCDC regulating the authorization of the Courts in resolving the disputes regarding the land use rights. Accordingly, the disputes regarding the land as listed below are under the authorization of the Court:

- The land which was granted the land use right certificate or the certificate of house ownership right in compliance with the 1993 Land Law;
- The land had already the following documents: (i) Decision on land assignment, land lease, (ii) Documents to be granted during in each period of time of which the assigned land owners still use the land up to present, (iii) The temporary land use right certificate or having the name in the cadastral records and without dispute, (iv) Documents to be granted by former Government and without disputes; (v) Documents regarding inheritance, presents, house attached to the land and without disputes, (vi) The judgment and decision which were become effective or decision on the dispute resolution which was become effective, (vii) Documents regarding the charity houses; (viii) Documents regarding the land assignment, house sale attached to the assignment of the land use right;
- The land without the foregoing documents.

# Tourism

## Trading in Travel and Tour Guides

Circular No. 04/2001/TT-TCDL guiding for the implementation of Government's Decree No. 27/2001/ND-CP dated 5 June 2001 on trading in travel and tour guides was issued by the General Department of Tourism on 24 December 2001.

Conditions for trading in travel and issuance of certificate of tourist guide are stipulated in Decree 27. Notably, Circular 27 provides more detail of application dossier and procedures for issuance of the Permit for trading in international travel and for granting of certificate of tourist guide.

Under Circular 04, dossier applied for issuance of the Permit for trading in international travel include:

- An application under standard form;
- Plan for trading under standard form;
- Proper copy of business registration Certificate; certificate of tourist guides and long-

term labor contracts signed with tourist guides; deposit certificate granted by a bank; and Charter of enterprise (except for private enterprises).

The above documents must be submitted to the provincial Department of Tourism or Department of Trade and Tourism. However, the General Department of Tourism shall have authority to issue the Certificate.

### Other Documents

- Circular No. 05/2001/TT-TCDL dated 28 December 2001 of the General Department of Tourism detailing Decree No. 47/2001/ND-CP dated 10 August 2001 of the Government on functions, tasks and rights of the Tourism Inspectors.

## Credit

### Registration of Secured Transactions

For perfecting the regulations on the secured transactions as stipulated in Decree 08/2000/ND-CP dated 10 March 2000, on 9 January 2002, the Ministry of Justice issued Circular 01/2002/TT-BTP providing guidelines on the authorization, procedures for registration of secured transactions and provisions of information regarding the secured transactions.

Circular 01 stipulates that the following transactions must be registered: (i) mortgaging assets which is required by law, (ii) mortgaging assets of which the mortgagor or the third party keeps the assets; (iii) mortgaging assets for undertaking the obligations, (iv) documents notifying the settlement of the mortgaged assets, guaranteed assets in case such mortgage and guarantee were registered.

In accordance with Circular 01, the related assets as above mentioned include: (i) automobile, motorbikes and other means of road and rail transports; (ii) ships, (iii) machinery, equipment, production lines, materials for production, metal ware, precious stone, (iv) Vietnamese and foreign currencies, (v) bond, stock, treasury bonds, commercial instrument or other valuable papers, (vi) property right, industrial property right, bill of exchange right, the right to receive premium and other property rights, (vii) the right of the capital contribution in enterprises including foreign invested enterprises; (viii) the right to explore natural resources, (ix) income and rights rising from the mortgaged assets; and (x) other movable assets as stipulated in the Civil Code.

For registration of the secured transactions, the applicants must submit the application for registration under standard form. The lodgment of the application may carry out by one of the following methods: lodgment directly, by post and by fax. The applicants shall be responsible for paying fee for registration of the secured transaction by the following methods: payment directly, by services provided by post, transfer to the account of the Registration Department or its branch. Circular does not specify the fee. Within 3 days from the receipt of the application, the Registration Department or its branch shall grant the certificate of registration of the mortgaged assets. The applicant may ask for an amendment of and addition to the registered contents and make procedures for renewal or cancellation of the registration.

In relation to provisions of information on the secured transactions, Circular 01 provides that foreign and Vietnamese individuals and organizations wish to get information on the secured transactions from the registration book or national database system, on the basis of a certain fee, may either submit an application under standard form or self search.

### Other documents

- Decision No. 02/2002/QD-NHNN dated 2 January 2002 of the State Bank of Vietnam

on adjustment of maximum interest rate of entities' deposits in USD in credit institution;

- Circular No. 102/2001/TT-BTC dated 20 December 2001 of the Ministry of Finance guiding for borrowing of development investment credit capital of the State with respect to domestic investment project producing motorcycles.

## Other Documents

### Foreign Investment

- Decision No. 54/QD-TTg dated 14 January 2002 of the Prime Minister on setting up the Working Group for Foreign Investment;

### Taxation

- Decision No. 137/2001/QD-BTC dated 18 December 2001 of the Ministry of Finance amending and supplementing name and import duty rate of a number of items in the Preferential Import Duty Tariff (Part 1).

### Finance-Accounting

- Decree No. 10/2001/ND-CP dated 25 December 2001 of the Government on financial regime applicable to profit non-productive units;
- Decision No. 1620/QD-TTg dated 25 December 2001 of the Prime Minister approving the State Audit's 2002 auditing plan;
- Decision No. 01/2002/QD-TTg dated 4 January 2002 of the Prime Minister on setting up the State Audit of the North of the Centre Area under the State Audit;
- Circular No. 03/2001/TT-BTC dated 14 January 2002 of the Ministry of Finance guiding for tax collection regime with respect to institutions exploiting aqua-products;
- Circular No. 108/2001/TT-BTC dated 31 December 2001 of the Ministry of Finance guiding for accounting regime applicable to entrusted import, export activities;

### Oil and Gas

- Decree No. 03/2002/ND-CP dated 7 January 2002 of the Government on protection of security and safety in oil and gas field.

### Miscellaneous

- Decision No. 06/2002/QD-TTg dated 7 January 2002 of the Prime Minister approving the General Scheme on development of railways transportation of Vietnam by 2020;
- Decision No. 148/2001/QD-BTC dated 31 December 2001 of the Ministry of Finance guiding for the implementation of Decision No. 55/2001/QD-TTg dated 23 April 2001 of the Prime Minister approving the strategy for the development of, and a number of regimes and policies supporting the implementation of the Strategy for development of textile and garment sector of Vietnam by 2010;
- Dispatch No. 6172/VPCP-TCQT dated 18 December 2001 of the Government's Office on results of examination of legal instruments for implementation of international treaties.

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