

# Legal news

January 2013

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## HIGHLIGHTED UPDATES

### 1. Promotion and perfection of the process of business registration

*On 9 January 2013, the Government issued Decree No. 05/2013/ND-CP on the amendments and supplements to a number of provisions on administrative procedures of Decree No. 43/2010/ND-CP dated 15 April 2010 of the Government on registration of enterprises ("Decree 05").*

Decree 05, in a more open way, amends Article 7.4 in order to better meet the requirements of business registration of the enterprises: "With respect to business lines which are neither recorded in the Vietnam's economic system nor defined in other legal documents, the business registration agency shall consider to record them in the certificates of enterprise registration provided that they are not prohibited business lines, and at the same time inform the Ministry of Planning and Investment (General Statistics Office) such business line's new code addition"; instead of just requiring to inform the Ministry of Planning and Investment as stipulated in Decree 43.

Decree 05 also adds new Article 8.c on *announcement of enterprise registration contents* requiring:

1. Within a time-limit of 30 days as from the date of establishment or registration of changes in the contents of enterprise registration, the enterprise must upload such contents of enterprise registration on the National Enterprise Registration Information Portal (NERIP) in accordance with Article 28 of Law on Enterprises and pay the related fee for such announcement.
2. If joint stock companies issue more ordinary shares and offer for selling such shares to all ordinary shareholders in proportion to their existing shares in the company, they must send a written notice of the issuance of more ordinary shares to permanent residential addresses of the shareholders in the form of registered mail.

This notice must be published on the NERIP or newspaper in three consecutive issues within a time-limit of 10 working days as from the date of notification.

3. Within a time-limit of 7 working days as from the date of the decision on enterprise dissolution in compliance with Clause 1, Article 158 of Law on Enterprises, the enterprise must send a copy of that decision to the business registration agency; all creditors; persons having related rights, obligations and benefits; and its employees.

Enterprise must make the decision publicly available at its head office and branches, and upload it on the NERIP.

Decree 05 also adds a new provision: "Within a time-limit of 5 working days as from the date of receipt of a valid dossier, business registration body shall issue a written confirmation on the registration of a temporary operational suspension to the enterprise or household according to the set form prescribed

by the Ministry of Planning and Investment” in Article 57 - *Temporary suspension of doing business*.

Decree 05 shall take effect on 25 February 2013.

## **2. Strict punishment for acts of producing and trading counterfeit goods**

*On 10 January 2013, the Government issued Decree No. 08/2013/ND-CP on the administrative penalties for acts of producing and trading counterfeit goods (“Decree 08”).*

Accordingly, depending on the behavior, nature and extent of violations, acts of trading counterfeit goods may be subject to fines varying from VND100,000 to VND70,000,000, and acts of producing counterfeit goods may be subject to fines varying from VND200,000 to VND100,000,000.

According to this Decree, counterfeit goods are identified as: those that are useless, of which the utilities are not consistent with their origin and nature or not as registered; of which the quantitative amount of or content of main substances is below 70% of the standards; the medicines for use in humans and domestic animals without no pharmaceutical substances, or their amounts are below the same registered; the plant protection preparations that do not contain active ingredients; the goods using counterfeit labels and packages such as fake trade names, trademarks, registration codes, stamps, labels, addresses ...; the counterfeit goods infringing intellectual property rights, etc.

With regard to the acts of trading the counterfeit goods that are useless, a fine varying from VND500,000 to VND1,000,000 may be imposed in the case they are equivalent to the real one of the value up to VND1,000,000; a fine varying from VND1,000,000 to VND3,000,000 may be imposed in case of the value is in the range of from more than VND1,000,000 to VND3,000,000; a fine varying from VND3,000,000 to VND5,000,000 - the value is in the range of more than VND3,000,000 to VND5,000,000; etc.

If the counterfeit goods are foods, medicines for disease prevention and/or treatment, animal feeds, fertilizers, veterinary medicines, plant protection preparations, plant varieties or breeds of animals; or food additives, cosmetics, medical equipment, cement, construction steel or helmets; the above fines shall be doubled, but not exceeding VND100,000,000. The acts of producing and trading counterfeit goods infringing intellectual property rights may be dealt with in accordance with the regulations on administrative sanctions in the field of intellectual property.

Decree 08 shall take effect on 1 March 2013.

## **3. Specific regulations on management and operation of condominiums in Hanoi**

*On 4 January 2013, the People's Committee of Hanoi City issued Decision No. 01/2013/QĐ-UBND promulgating the regulation on the management and use of condominiums in the area of Hanoi (“Decision No. 01”), which clarifies a number of issues relating to the determination of the areas under*

***common ownership and private ownership, application dossier for recognition of Management Board, condominium service charges, etc. which are applied to the condominiums in the area of Hanoi.***

Clauses 7 and 8, Article 4 of the Regulation require that “Areas of the condominium under private ownership must be clearly specified in condominium sale and purchase contracts, contracts for sale and purchase of other areas”, and “Areas of the condominium under common ownership stipulated herein must expressly be specified in condominium sale and purchase contracts”.

The time-limit for submitting application dossier for, and that for issuing decision on recognition of condominium Management Board are decreased from 15 to 10 days in Decision 01. The application dossier for recognition is specifically prescribed as follows:

- (a) Minutes of Condominium Conference;
- (b) Minutes of the Management Board’s meeting in which President and Vice President are elected;
- (c) Internal rules on management and use of the condominium, which has been approved in the Condominium Conference.

For transitory period, Decision 01 provides as follows:

1. Determination of areas in the condominiums under private ownership and common ownership (Article 26):
  - (a) With respect to the case where an investor has sold the condominiums since 8 August 2010 (the effective date of Decree No. 71/2010/ND-CP), the areas under private ownership and common ownership must comply with provisions of Clauses 7 and 8, Article 4 of the Regulation. In case the investor has not yet shown the locations and boundaries of the areas under private ownership and common ownership, as stipulated in Clauses 7 and 8, Article 4 of the Regulation, on the drawings attached to the house sale and purchase contracts, the investor has to add them and notify the buyers thereof.
  - (b) With respect to the case where an investor has sold the condominiums during the period from 1 July 2006 to a date prior to 8 August 2010, the areas under private ownership and common ownership must comply with provisions of Clauses 7 and 8, Article 4 of the Regulation. In case where the car parking area in the basement as included in the approved investment project, but the investor has not yet allocated its investment costs to the sale price of the condominiums and the areas under private ownership, such area shall be under the private ownership of the investor. In case the investor has not shown the locations and boundaries of the areas under private ownership and common ownership, as stipulated in Clauses 7 and 8, Article 4 of the Regulation, on the drawings attached to the house sale and purchase contracts, the investor has to add them and inform the buyers accordingly.

- (c) With respect to the case where an investor has sold the condominiums before 1 July 2006 (the effective date of Law on Residential Housing), the investor has not taken the investment costs for construction of parking area for bikes and motorbikes, areas for community activities and other areas (if any) to the condominium sale price and has not yet shown the locations and boundaries of the areas under private ownership and common ownership, as stipulated in Clauses 7 and 8, Article 4 of the Regulation, on the drawings attached to the house sale and purchase contracts, then the investor shall hire auditing companies to cooperate with the Condominium Management Board in inspecting and establishing a method of allocating the costs to the areas under private ownership. The method of allocating the costs to the areas under private ownership, which is approved in the Condominium Conference, shall be taken as the basis on which the owners pay the costs to the investor in order to have such areas be under common ownership in accordance with provisions of Clauses 7 and 8, Article 4 of the Regulation.
  - (d) With respect to the case where an approved investment project on construction of a condominium has not yet arranged an area for community activities, then the investor is responsible for reserving the retained area under the private ownership for being used as the area for community activities with satisfaction with the minimum standard of  $0.8\text{m}^2$  multiplied by numbers of apartments, but not less than  $36\text{m}^2$ ; the owners are equally responsible for paying the expenses in accordance with construction costs.
2. Condominium service charges (Article 27): In case where the condominium service charges have been agreed in the condominium sale and purchase contracts, they shall be applied in accordance with such agreement. After a Condominium Management Board is established and the areas in the condominium under private ownership and common ownership are determined in accordance with the Regulation, the determination of the condominium service charges shall be in compliance with this Regulation.

In addition, Decision 01 has 1 article (Article 28) on resettlement condominiums.

This Decision takes effect after 10 days from 4 January 2013.

## **Other Sectors**

### **Finance**

- On 24 January 2013, the Prime Minister stipulated Decision No. 08/2013/QD-TTg on the accounting regime applicable to the State Bank of Vietnam.
- Decision No. 07/2013/QD-TTg dated 24 January 2013 of the Prime Minister on the financial regime of the State Bank of Vietnam.
- On 17 January 2013, the Ministry of Finance issued Decision No. 128/QD-BTC on the Action plan of the Ministry of Finance implementing Resolution No.01/NQ-CP on key solutions in directing the implementation of the plan on socio-economic development and estimates of the State budget and Resolution No.02/NQ-CP on a number of solutions to remove difficulties for business and production, to support the market, and to handle bad debts.
- Decision No. 01/2013/QD-TTg dated 7 January 2013 of the Prime Minister promulgating the regulation on setting up, use and management of Cumulative fund for repayment of debts.
- On 21 January 2013, the Ministry of Finance issued Circular No. 11/2013/TT-BTC amending and supplementing Circular No. 04/2012/TT-BTC dated 5 January 2012 and Circular No. 107/2012/TT-BTC dated 28 June 2012 of the Ministry of Finance.
- Circular No. 03/2013/TT-BYT dated 21 January 2013 of the Ministry of Health providing guidelines for the accounting of the State budget applicable to non-refundable aids managed by the Ministry of Health.
- On 10 January 2013, the Ministry of Finance issued Circular No. 08/2013/TT-BTC providing guidelines for the implementation of the State accounting applicable to treasury and budget management information system (TABMIS).
- Circular No. 07/2013/TT-BTC dated 10 January 2013 of the Ministry of Finance on the repeal of legal documents within the State management scope of the Ministry of Finance.
- On 9 January 2013, the Ministry of Finance issued Circular No. 06/2013/TT-BTC providing guidelines for the financial regime with respect to microfinance institutions.

### **Banking**

- Circular No. 03/2013/TT-NHNN dated 28 January 2013 of the State Bank of Vietnam providing for the credit activities of the State Bank of Vietnam.
- On 21 January 2013, the State Bank of Vietnam issued Circular No. 02/2013/TT-NHNN providing for the classification of credited assets, set-aside rates, set-aside

method for the establishment of a reserve for risk prevention and the use of such reserve in order to handle risks during the operations of credit institutions and branches of foreign banks.

- Circular No. 09/2013/TT-BTC dated 17 January 2013 of the Ministry of Finance amending Circular No. 104/2012/TT-BTC dated 25 June 2012 of the Ministry of Finance providing for the loan interest rates of the investment credits and export credits of the State and the difference of the interest rates calculated as post-investment support.
- On 9 January 2013, the Ministry of Finance issued Circular No. 05/2013/TT-BTC providing guidelines for the financial regime with respect to credit institutions and branches of foreign banks.
- Circular No. 01/2013/TT-NHNN dated 7 January 2013 of the State Bank of Vietnam amending and supplementing a number of articles of Circular No.21/2012/TT-NHNN dated 18 June 2012 of the Governor of the State Bank of Vietnam on the operations of termly lending, borrowing, purchase and sale of valuable papers among foreign credit institutions and branches of foreign banks.

### Securities

- On 8 January 2013, the State Securities Commission of Vietnam stipulated Decision No. 09/QD-UBCK on the amendment to the Regulation providing guidelines for securities escrow transactions.
- Circular No. 13/2013/TT-BTC dated 25 January 2013 of the Ministry of Finance on the supervision of securities transactions on the securities market.
- On 8 January 2013, the Ministry of Finance issued Circular No. 02/2013/TT-BTC amending and supplementing Circular No. 27/2010/TT-BTC dated 26 February 2010 of the Ministry of Finance providing for the collection rates and regime on collection, submission, management and use of charges for securities operations to be applied at the Stock Exchanges and Vietnam Securities Depository Centre.

### Taxation

- Circular No. 12/2013/TT-BTC dated 21 January 2013 of the Ministry of Finance amending preferential import tax rates applicable to item of non-alloy steel wire of code 7217.10.39 in the Preferential Import Tariff.
- On 18 January 2013, the Ministry of Industry and Trade issued Circular No.02/2013/TT-BCT providing for the import of raw material tobacco imported under quota in 2013.

### Trade

- Decision No. 194/QD-TCHQ dated 22 January 2013 of the General Department

of Vietnam Customs on the supplement of a number of type codes managing exported and imported commodities.

- On 16 January 2013, the Prime Minister issued Decision No. 168/QD-TTg on the approval and execution of the Protocol amending a number of ASEAN economic Agreements related to Trade in Goods.
- Decision No. 22/QD-TCHQ dated 5 January 2013 of the General Department of Vietnam Customs amending a number of regulations accompanying Decision No.1183/QD-TCHQ dated 17 June 2009 of the General Director of the General Department of Vietnam Customs.
- On 2 January 2013, the General Department of Vietnam Customs issued Decision No. 02/QD-TCHQ promulgating a set of type codes managing exported and imported commodities.
- Circular No. 01/2013/TT-BCT dated 3 January 2013 of the Ministry of Industry and Trade amending and supplementing Circular No. 06/2011/TT-BCT dated 21 March 2011 of the Ministry of Industry and Trade providing for the procedures for grant of the Certificate of origin of preferential goods.

## Education

- On 9 January 2013, the Government stipulated Decree No. 07/2013/ND-CP amending Point b, Clause 13, Article 1 of Decree No. 31/2011/ND-CP dated 11 May 2011 of the Government on the amendments and supplements to a number of articles of Decree No. 75/2006/ND-CP dated 2 August 2006 detailing and providing guidelines for a number of articles of Law on Education.
- Decision No. 12/2013/QD-TTg dated 24 January 2013 of the Prime Minister providing for the policy on supporting general high school's students in the areas with specially difficult socio-economic conditions.
- On 15 January 2013, the Prime Minister issued Decision No. 05/2013/QD-TTg providing for the overseas study of Vietnamese citizens.

## Health

- Decision No. 229/QD-TTg dated 25 January 2013 of the Prime Minister approving the “National strategy on preventing and fighting against the harmful effects of tobacco up to 2020”.
- On 9 January 2013, the Prime Minister issued Decision No. 92/QD-TTg approving the project on reduction of hospital overload for the period from 2013 to 2020.
- Decision No. 04/QD-BYT dated 2 January 2013 of the Ministry of Health promulgating the Regulation on assessment, inspection and acceptance of projects on application of information technology in the healthcare sector.

- On 15 January 2013, the Ministry of Health issued Circular No. 02/2013/TT-BYT providing for the co-ordination between medical establishments in the management of tuberculosis.
- Circular No. 01/2013/TT-BYT dated 11 January 2013 of the Ministry of Health providing guidelines for the implementation of managing tests' quality in disease examination and treatment establishments.

## Transport

- On 11 January 2013, the Government stipulated Decree No. 10/2013/ND-CP providing for the management, use and exploitation of infrastructure assets of road traffic.
- Decision No. 165/QD-TTg dated 15 January 2013 of the Prime Minister on the approval and execution of the Memorandum of Understanding between the Government of the Socialist Republic of Vietnam, the Government of Kingdom of Cambodia and the Government of the People's Democratic Republic of Laos on road transportation.
- On 18 January 2013, the Ministry of Transport issued Decision No.168/QD-BGTVT correcting Circular No. 45/2012/TT-BGTVT dated 23 October 2012 of the Ministry of Transport on the inspection of quality in terms of technical safety and environmental protection in the production and assembly of motorbikes and mopeds.
- Decision No. 163/QD-BGTVT dated 19 January 2013 of the Ministry of Transport approving the Plan of maintaining the maritime infrastructures in 2013.
- On 5 January 2013, the Ministry of Transport issued Decision No. 27/QD-BGTVT promulgating the Plan of testing, handling, reviewing and systemizing the legal documents in the field of transport in 2013.
- Decision No. 12/QD-BGTVT dated 2 January 2013 of the Ministry of Transport announcing the list of legal documents on the transport, which are expired in the last 6 months of 2012.
- On 9 January 2013, the Ministry of Finance issued Circular No. 04/2013/TT-BTC providing guidelines for the regime on collection, submission, management and use of ferry fares.

## Construction

- Decree No. 11/2013/ND-CP dated 14 January 2013 on the management of urban development investment.
- On 4 January 2013, the Government issued Decree No. 03/2013/ND-CP detailing and providing guidelines for the implementation of a number of articles of Resolution No. 49/2010/QH12 dated 19 June 2010 of the Government on

projects and works of national importance to be submitted to the National Assembly for deciding on investment policy.

- Decision No. 62/2012/QĐ-UBND dated 25 December 2012 of the People's Committee of Ho Chi Minh City amending and supplementing a number of articles of Decision No. 50/2011/QĐ-UBND dated 12 July 2010 of the People's Committee of Ho Chi Minh City on the preparation, assessment and approval of urban planning in the area of Ho Chi Minh City.

### Land

- On 9 January 2013, the Government stipulated Resolution No. 06/NQ-CP on the planning for use of land up to 2020 and land use plan in the first five periods (from 2011 to 2015) of Hanoi.
- Decision No. 02/2012/QĐ-UBND dated 7 January 2013 of the People's Committee of Hanoi amending and supplementing a number of articles of the Regulation accompanying Decision No. 108/2009/QĐ-UBND dated 29 September 2009 of the People's Committee of Hanoi on compensation and resettlement support upon land recovery by the State in the area of Hanoi.

### Natural Resources - Environment

- On 24 January 2013, the Prime Minister issued Decision No. 11/2013/QĐ-TTg on prohibition of export, import, purchase and sale of the specimens of a number of wild fauna species stipulated in Appendices to the Convention on international trade in endangered species of wild fauna and flora.
- Decision No. 386/QĐ-BCT dated 18 January 2013 of the Ministry of Industry and Trade approving the "Planning for the exploration, exploitation and processing of minerals including mica, pyrite, quartz, quartzite, silimanite, sericite, vermiculite for the period until 2020, with orientation to 2030".
- On 14 January 2013, the Prime Minister stipulated Decision No. 04/2013/QĐ-TTg on authority for making decision on the list of and measures dealing with establishments causing serious environmental pollution.
- Decision No. 02/2013/QĐ-TTg dated 14 January 2013 of the Prime Minister on the issuance of operational regulation on response to oil spills.

### Science - Technology

- On 15 January 2013, the Prime Minister issued Decision No. 160/QĐ-TTg approving the National action plan on sustainable development for the period from 2013 to 2015.
- Decision No. 03/2013/QĐ-TTg dated 14 January 2013 of the Prime Minister amending and supplementing a number of articles of Decision No.51/2011/QĐ-

TTg dated 12 September 2011 of the Prime Minister providing for the list of facilities and equipment subject to energy labelling, application of the minimum energy efficiency, and implementation roadmap.

**Information - Communications**

- On 24 January 2013, the Prime Minister stipulated Decision No. 06/2013/QD-TTg providing for the functions, duties, powers and organizational structure of the Government's Electronic Portal.
- Decision No. 04/2013/QD-UBND dated 21 January 2013 of the People's Committee of Hanoi promulgating the Regulation on the State management of external information in the area of Hanoi.
- On 22 January 2013, the Ministry of Information and Communications issued Circular No. 03/2013/TT-BTTTT providing for the application of standards and technical regulations with respect to data centres.

**Administration - Judiciary**

- Decree No. 09/2013/ND-CP dated 11 January 2013 detailing the implementation of a number of articles of Law on Human Trafficking Prevention and Combat.
- On 7 January 2013, the Government issued Decree No. 04/2013/ND-CP detailing and providing guidelines for the implementation of a number of articles of Law on Notarization.
- Decree No. 01/2013/ND-CP dated 3 January 2013 detailing and providing guidelines for the implementation of a number of articles of Law on Archives.
- On 24 January 2013, the Prime Minister issued Decision No. 09/2013/QD-TTg promulgating the Regulations on standards for access to laws by citizens at grassroots level.
- Decision No. 131/QD-BNN-VP dated 22 January 2013 of the Ministry of Agriculture and Rural Development promulgating its Plan of controlling administrative procedures in 2013.
- On 17 January 2013, the People's Committee of Ho Chi Minh City issued Decision No. 04/2013/QD-UBND promulgating the Process of inspection of responsibilities in the implementation of laws on inspection.
- Decision No. 331/QD-UBND dated 15 January 2013 of the People's Committee of Hanoi promulgating the plan of legal aid for enterprises located in the area of Hanoi in 2013.
- On 7 January 2013, the Prime Minister issued Decision No. 63/QD-TTg promulgating the Government's plan of consolidation of legal documents issued before the effective date of Ordinance on Consolidation of the legal documents.
- Circular No. 02/2013/TT-BTP dated 5 January 2013 of the Ministry of Justice

promulgating the set of standards for evaluation of legal aid cases' quality.

- On 2 January 2013, the Ministry of Finance issued Circular No. 01/2013/TT-BTC amending and supplementing Circular No. 36/2004/TT-BTC dated 26 April 2004 of the Ministry of Finance providing for the regime on collection, submission and management of use of fees for consular legalization and certification.

## Enterprise

- Resolution No. 02/NQ-CP of the Government on a number of solutions to remove difficulties for business and production, to support the market, and to handle bad debts.
- On 9 January 2013, the Government issued Decree No. 06/2013/ND-CP providing for the protection of agencies and enterprises.
- Decision No. 27/QD-BNN-TCCB dated 7 January 2013 of the Ministry of Agriculture and Rural Development supplementing the task of State management on enterprises within the its management scope in compliance with Decree No.99/2012/ND-CP.
- On 21 January 2013, the Ministry of Planning and Investment issued Circular No.01/2013/TT-BKHDT providing guidelines for registration of enterprises.
- Circular No. 10/2013/TT-BTC dated 18 January 2013 of Ministry of Finance providing guidelines for the mechanism on management and use of funds for supporting enterprise arrangement in the Parent Companies of Economic Groups and the State-owned Corporations, and the same in the complexes of Parent Company - Subsidiary Company.

## Miscellaneous

- On 22 January 2013, the Prime Minister stipulated Decision No. 201/QD-TTg approving the master plan for tourism development in Vietnam up to 2020, with orientation to 2030.
- Decision No. 32/QD-UBND dated 3 January 2013 of the People's Committee of Ho Chi Minh City correcting Decision No. 24/2012/QD-UBND dated 15 June 2012 of the People's Committee of Ho Chi Minh City.
- On 4 January 2013, the Ministry of Agriculture and Rural Development issued Circular No. 01/2013/TT-BNNPTNT amending and supplementing a number of articles of Circular No. 14/2011/TT-BNNPTNT dated 29 March 2011 providing for the inspection and evaluation of establishments manufacturing and trading agricultural materials and agro forestry and fisheries products; and replacing a number of set forms accompanying Circular No. 53//2011TT-BNNPTNT dated 2 August 2011 amending and supplementing Circular No. 14/2011/TT-BNNPTNT dated 29 March 2011.

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