

# LegalNews

July, 2002

Issue 5

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## Foreign Investment

### DECREE 24 AMENDMENTS

The Ministry of Planning and Investment, or MPI, is proposing amendments to Decree 24/2000/ND-CP dated July 31, 2000 guiding the implementation of the Law on Foreign Investment in Vietnam. The MPI's proposals this time do not entail an alteration basically to Decree 24, just introduce some changes aiming to keep pace with demands of foreign investors. Decree 24 should be amended to ensure the uniformity of Vietnam legal documents which have many changes recently.

Following is an introduction of nine points proposed in Decree 24 amendments, which is scheduled to be officially promulgated within this year.

First, the MPI proposes that a new joint venture can be established between a 100% foreign invested enterprise (FIE) with a Vietnamese company, or with another healthcare, education or scientific research institution. 100% FIEs in Vietnam may associate with other ones or with other foreign investors to set up new 100% FIEs.

Second, more provisions on re-organization of FIE are proposed to be inserted in Decree 24 to determine in detail the forms of re-organization. Such provisions repeat the forms provided by the Law on Enterprises, including division, separation, consolidation or merger.

Third, regarding to tax provisions, previously, a FIE located in an industrial zone and exporting more than 50% of its products would enjoy corporate income tax rate of 15%. Now, the MPI proposes to apply this rate to all manufacturing FIEs which are located in industrial zones.

Fourth, relevant to rules on employee recruitment, Decree 24 shall be modified for compliance with the amended Labor Code introduced in April this year. Direct employees recruitment regime should be stated in Article 88 of Decree 24.

Fifth, the MPI agrees with the State Bank of Vietnam's proposal attached to its Dispatch 628/NHNN-CSTT dated June 17, 2002 that FIEs should be allowed to mortgage land use right and terrestrial assets at all credit institutions licenced in Vietnam, now commercial banks only.

Sixth, regarding registration for licencing. Subject to the MPI's proposals, more projects would enjoy the relief in requirements for being subjected to registration of licencing. The MPI proposes that, beside prerequisite conditions provided in Article 105 of Decree 24, a project which shall export more than 80% (now 100%) its manufactured products, or which has the investment capital of up to 5 millions USD in production and shall export from 50% (now 80%) or more its manufactured products, shall be subject to licencing registration regime.

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Seventh, authority in granting of amended investment licences. More provisions governing this matter would be inserted in Decree 24. More specifically, provincial people's committees, or the management board of industrial zones must have an acceptance of the MPI before issue an amended investment licence in the following cases:

If the amendment is to increase investment capital to an amount which is not fallen within empowered licencing competence of that provincial people's committee or management board, or to supplement conditional business lines into those licenced, or to decrease capital contribution of Vietnamese party in a joint venture, or to decrease export ratio to lower than stipulated one. Transformation of a joint venture or a business cooperation contract into a 100% FIE, or any re-organization of FIEs would also be subject to MPI's acceptance requirement.

Decree 24 is now silent on the procedures for amending an investment licence if that amendment makes a licenced project to become a class - A group project. In fact, this hole in legislation has entailed some procedural impediments in authorities' implementation. Now the MPI proposes that any amendment of this kind must be all considered and approved by the MPI.

Eighth, application dossier required for the establishment of an investment project would be simplified. Plans on terrestrial compensation and site clearance would not be required when applying for investment licences. Preliminary designs would also be subject to this exemption, providing an exception as to the investment in construction of infrastructure facilities or investment in urban areas.

The last but not least, the list of class - A group projects would be amended to remove investment in cultural sectors from the list, but to complement some other sectors such as investment in movie, art performance, games having awards, domestic distribution and importation services, and exploitation of aquatic products.

*[This article was also published on the Legal Column of the Vietnam Investment Review]*

## **VIETNAMESE CORPORATE ACCOUNTING REGIME**

The Ministry of Finance issued on 26 June 2002 Circular 55/2002/TT-BTC providing guidelines for the application of Vietnamese corporate accounting regime by foreign invested enterprises in Vietnam.

Subjects of Circular 55 include also branch, representative office of foreign firms, branch of foreign law firms, and foreign contractors doing business in Vietnam in accordance with prevailing laws of Vietnam other than the forms under the Law on Foreign Investment.

Circular 55 provides for:

- Regime on accounting records;
- Accounts system;
- Regime on accounting books;
- Finance reports system.

Circular 55 also provides for in details the amendments, additions to the Vietnamese corporate accounting regime that the said institutions might apply.

Circular 55 is applicable from the fiscal year of 2002.

# Taxation

## AMENDING TAX REGULATIONS ON FINANCE LEASING ACTIVITIES

Ministry of Finance issued on 25 June 2002 Circular 53/2002/TT-BTC amending Circular 24/2002/TT-BTC dated 20 March 2002 on implementation of tax obligations applicable to finance leasing activities. According to Circular 53, upon expiry of lease term, leased assets of lessors shall be transferred to lessees without payment of registration fee. However, lessors are required to present the following documents:

- Finance-leasing contract;
- Minutes of the finance leasing contract liquidation;
- Certificate of lessor's ownership over assets.

Thus, In comparison with Circular 24, documents of transfer of assets between parties are now not required and lease contract and liquidation minutes must not be certified competent authorities.

## OTHER DOCUMENTS IN THIS SECTOR

- Decree No. 66/2002/ND-CP dated 1 July 2002 providing for limitation of imported, exported luggage, imported gifts to be exempted from import duty;
- Decision No. 86/2002/QD-BTC dated 1 July 2002 of the Ministry of Finance on promulgating the list of goods and tariff of Vietnam to implement the schedule of reducing import duty in accordance with the Treaty on textiles and garments signed between Vietnam and EU for 2002-2005 period;
- Circular No. 62/2002/TT-BTC dated 18 July 2002 of the Ministry of Finance guiding for VAT regulations applicable to the settlement of security assets for debts recovery by credit institutions;

# Banking

## FOREIGN CURRENCIES TRADING

In order to expand the autonomy of credit organizations to trade in foreign currencies, the Governor of the State Bank issued on 1 July 2002 Decision 679/2002/QD-NHNN on promulgation of a number of regulations relating to foreign currency transactions. Under this Decision, General Directors (Directors) of such organizations are entitled to determine exchange rate of on-the-spot transactions between Vietnam dong and foreign currencies in compliance with the following principles:

With respect to United State Dollar: not exceed 0.25% average exchange rate of inter-bank market of the previous day;

With respect to other foreign currencies and the differences between buying rate and selling rate: the General Directors (Directors) shall decide.

Regarding to the term of transactions, credit organizations are only permitted to conduct transactions with the duration from 7 days to 180 days from the signing date of the contract of that transaction.

Decision 679 replaces Decision 65/1999/QD-NHNN7 dated 25 February 1999, Decision 289/2000/QD-NHNN7 dated 30 August 2000, Decision 1198/2001/QD-NHNN dated 18 September 2001 of the Governor of the State Bank of Vietnam.

### **SIX BANKING UNITS ARE PERMITTED TO ACCOUNTING BY INTER-BANK ACCOUNTS**

On 27 June 2002, the Governor of the State Bank of Vietnam issued the Decision No. 674/2002/QD-NHNN on allowing 06 banking units which are joining directly in inter-bank e-payment network to use inter-bank accounts for accounting their currency remittance transacted via inter-bank e-payment network.

These units include Hanoi transaction centers and Hanoi branch of the State Bank and other branches of the State Bank in Hochiminh City, Da Nang, Hai Phong, and Can Tho.

### **OVERDUE DEBT CONVERSION**

According to Decision No. 688/2002/QD-NHNN issued by the Governor of the State Bank of Vietnam on 01 July 2002, as from 01 July 2002, with respect to loans arisen before and after 1 February 2002, in case that a borrower does not make repayment upon maturity date for a loan and interest, without any extension for the maturity date, credit institutions shall convert all debits into overdue debts.

The above-mentioned loans include:

- Regular loans;
- Preferential loans delegated or designated by the Government or the Prime Minister;
- Preferential loans delegated by domestic or foreign organizations, individuals.

Decision 688 revokes Article 3 of Decision No. 1627/2002/QD-NHNN dated 31 December 2001 of the Governor of the State Bank of Vietnam.

### **OTHER DOCUMENTS IN THIS SECTOR**

- Decision No. 681/2002/QD-NHNN dated 1 July 2002 of the State Bank of Vietnam on promulgation of the Regulations on working regime of the Committee for directing inter-bank e-payment system;
- Decision No. 700/2002/QD-NHNN dated 4 July 2002 of the State Bank of Vietnam on deposit of mandatory reserved VND with respect to credit institutions in inter-bank e-payment system;

# Labor

## LIST OF NON-STRIKE ENTERPRISES

On 09 July 2002, The Government issued Decree 67/2002/NŞ-CP on amending and supplementing the list of enterprises which are not permitted to strike, attached to Decree 51/CP dated 29 August 1996.

As far as the functions of such enterprises are concerned, these enterprises basically fall into the following categories: (i) serving public utilities with wide influence; (ii) manufacturing or supplying essential products to the national economy or people's daily lives; (iii) manufacturing products directly serving the national securities and defense.

As identified in Decree 67, the coverage of enterprises subject to the prohibition of strike is expanded to the sectors of electricity, post and telecommunication, railway, State bank, transportation and public works, marine shipment, air transportation, national security and defense, oils and gas, foreign affairs, and irrigation.

## OTHER DOCUMENTS IN THIS SECTOR

- Decision No. 85/2002/QĐ-BTC dated 1 July 2002 of the Ministry of Finance on promulgation of the Regulations on management and use of the Fund to support redundant laborers due to reorganization of the State owned enterprises;

# Arbitration

## DRAFT ORDINANCE ON COMMERCIAL ARBITRATION

Since the Prime Minister expanded authority of the Vietnam International Arbitration Centre, or VIAC, at the Vietnam Chamber of Commerce and Industry to settle domestic economic disputes between Vietnamese companies by the Prime Minister in 1996, the number of cases settled by VIAC has been significantly increased.

Businesses prefer the way of disputes settlement by arbitration as its awards are unbiased and reliable in some measure. However, advantages of settlement by arbitration could not be all exploited, one of causes to this is that Vietnam so far has not any legal basic for enforcement of local arbitration awards. The awards are only enforced to the extent that concerned parties spontaneously accept to follow it.

Found in 2002 legislation master plan of the National Assembly, commercial arbitration ordinance, amongst other things, is scheduled to be enacted this year purporting to set down a smarter legal framework for commercial arbitration related activities. Vietnam Lawyers' Association has proposed the sixth draft of the Ordinance on Commercial Arbitration.

Most notably from the proposed ordinance, more economic arbitral centers may be established in some economic centers. The Ministry of Justice has authority in this work. When this becomes happened, businesses shall have more chances to cut costs and select arbitrators from all over the country. Another remarkable goodwill being proposed in the ordinance is that arbitration awards can be enforced by a decision of competent court of Vietnam in the case that concerned party fails to comply. Once an arbitration award is accepted by the court for enforcement, it shall be conducted in accordance with the prevailing regulations on enforcement of civil cases. But if the court rejects, parties may request

competent court of Vietnam to settle the awarded disputes in accordance with court litigation procedures.

The proposed ordinance provides for eight legal basics based upon which the court may reject an arbitration award, most importantly, disputes are not fallen within the competence of arbitration in accordance with prevailing laws and there is not any agreements of the parties on arbitration.

It should be noted that agreement of the parties to bring disputes to arbitration's settlement must meet certain conditions to be valid. Such requirements comprise of: agreement on arbitration must be made in writing, and clear on subjects of disputes and competent arbitral center; disputes raised from commercial activities; signers must have full civil capacity and authority to sign contract, and another condition is that there is not a dupey or threatening between the parties.

A new way of settlement by arbitration is proposed in the ordinance, article 17. Parties may set up an arbitration committee to settle disputes. This committee may include one or three arbitrators selected by the parties from the list of those available at arbitration centers of Vietnam. Parties may also rely on a court to select arbitrators for this committee. To settle disputes by this new way, one party must first send a statement of claims to other party but neither submits it to the courts nor arbitration centers.

Although the draft ordinance has been amended six times, there are still overlapped and unclear provisions which need to be qualified. For instance, some articles repeat provisions of other legal documents such as law on commerce and regulations relevant to litigation procedures conducted by the courts of Vietnam.

When the ordinance is officially issued, Decree 116/CP dated 5 September 1994 on organization and operation of economic arbitration, Decision 204/TTg dated 28 April 1993 on organization of VIAC, and Decision 114/TTg dated 16 February 1996 on expanding authority of VIAC shall be invalid.

There would be a problematic matter in this legislation alteration when the draft ordinance stipulates that charter and rules of all arbitration centers must be modified for compliance with the ordinance. This may not be a really difficult matter but charter and rules of VIAC would be amended basically to follow the ordinance. It is hoped that the ordinance shall be soon issued in accordance with planned time.

*[This article was also published on the Legal Column of the Vietnam Investment Review]*

## Other Sectors

### ENVIRONMENT

- Decision No. 35/2002/QD-BKHCMNT dated 25 June 2002 of the Ministry of Science, Technology and Environment on promulgation of the list of mandatory Vietnamese standards on environment;

### TRADE

- Decision No. 81/2002/QD-TTg dated 26 June 2002 of the Prime Minister on approval of the Trade Agreement between Vietnam and the Republic of Korea;

- Decision No. 0858/2002/QD-BTM dated 26 June 2002 of the Ministry of Trade on amending the List of consuming goods to determine the term of import duty payment;
- Dispatch No. 717/CP-QHQT dated 26 June 2002 of the Government on extension of the Agreement between Vietnam and Sweden on economic reform support for 1998-2002 period;
- Dispatch No. 3623/VPCP-CN dated 3 July 2002 of the Government Office on stop or extension of progress of industrial zones which are lacking of feasibilities;
- Dispatch No. 3781/VPCP-KTTH dated 9 July 2002 of the Government Office on market surveys and trade promotion;

### TOURISM

- Decision No. 97/2002/QD-TTg dated 22 July 2002 of the Prime Minister on approval of master plan for the development of Vietnam tourism industry for 2001-2010 period;

### INTERNET

- Decision No. 890/2002/QD-BCVTTH dated 15 July 2002 of the general Department of Posts on issuance of charges for the Internet installment, subscription and connection via VNN1260, VNN1269;
- Dispatch No. 3706/VPCP-KTTH dated 5 July 2002 of the Government Office on changing the Internet and telecommunication charges for 2002;

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### PHARMACEUTICALS

- Circular No. 09/2002/TT-BYT dated 2 July 2002 of the Ministry of Health on guiding for the implementation of Decision No. 71/2002/QD-TTg dated 7 June 2002 of the prime Minister on management of drugs which are used for human disease treatment and imported, exported non-commercially;
- Circular No. 10/2002/TT-BYT dated 4 July 2002 of the Ministry of Health on conditions for trading in pharmaceuticals;
- Decision No. 2557/2002/QD-BYT dated 4 July 2002 of the Ministry of Health promulgating the regulations on information and advertisement of drugs and cosmetics directly affecting human health;

### MARRIAGE - FAMILY

- Decree No. 68/2002/ND-CP dated 10 July 2002 of the Government on detailing the implementation of a number of articles of the Law on Marriage and Family with respect to marriage and family relationships having foreign factors;

### OILS AND GAS

- Decision No. 93/2002/QD-TTg dated 16 July 2002 of the Prime Minister on approving the master plans on the development of oils and gasoline stores in the country to 2010.