

Legal news

May & June 2003

Contents

Foreign Investment	2
Foreign investment projects in Hochiminh hi-tech zone	2
Import-Export	2
Export labelling.....	2
VISA for exported textiles and garments.....	2
Piloting tariff quota on imports	3
Other documents.....	3
Securities	3
New Draft Decree to breathe new life into securities market.....	3
Accounting	5
New law to sharpen cumbersome accounting rules.....	5
Other documents.....	6
Banking	6
Security for loans from credit institutions.....	6
Safety ensuring rate in operations of credit institutions	7
Other documents.....	7
Labour	8
New guidance on the labour contracts.....	8
Changes to Labour Code provisions on working disciplines and material responsibilities	8
Other documents.....	9
Taxation	9
Tax laws improved	9
Adjustments to the rate of business registration tax	9
Basis for the calculation of business registration tax	10
Exemption and reduction of business registration tax	10
Other documents.....	10
Fees and Charges	11
Regulations on licence fees applied to the foreign contractors.....	11
Vehicles registration fees adjustment.....	11
Other documents.....	11
Legal Service	12
New Decree clears path for non-profit legal consultant	12
Intellectual Properties	13
NOIP to hand over trademark matters to the MoT	13
Integrated circuit topography get specific copyright	15
Other documents.....	17
Other sectors	17

This **Legal news** is solely published for our clients and other interested persons. It is intended to be used for general information purpose only and should not be relied upon as legal advice or opinion. Professional advice should be sought for any specific situation. Please direct your inquiries to our offices or persons listed at the end of this Legal news.

This **Legal news** is also available online at www.vision-associates.com

© Vision & Associates 2003. All rights reserved

Foreign Investment

Foreign investment projects in Hochiminh City hi-tech zone

By Decision 270/2003/QD-BKH dated May 2, 2003, the Ministry of Planning and Investment (MPI) authorized the Management Board of Hochiminh Hi-tech Zone to receive application dossiers, evaluate and issue investment licences for the following investment projects in the Zone:

- Industrial export processing enterprises with invested capital of upto USD40 million;
- Industrial manufacturing enterprises with invested capital of upto USD10 million; and
- Industrial service enterprises with invested capital of USD5 million or less, and satisfying the conditions for the Management Board to issue investment licences, including the followings:
 - (i) Being in line with the approved detail scheme and Hi-Tech Zone Charter;
 - (ii) Engaging in industrial sector, industrial services, or high-tech sectors with the value of upto USD40 millions but not fallen within Group A as stipulated in Decree 24/2000/ND-CP, amended by Decree 27/2003/ND-CP;
 - (iii) Having plan to balance foreign currency or belonging to the sectors to be guaranteed by the State;
 - (iv) Having equipments, machines and technology complied with the current legal regulations. Otherwise they must be accepted by competent state agencies being in charge of management;
 - (v) Satisfying the requirements on environment protection, labour safety and fire and explosion prevention.

Import-Export

Export labelling

The General Department of Customs continued to guide for labelling of exports. Under Dispatch 1932 TCHQ/GSQL dated May 2, 2003, in case foreign customers require that the goods manufactured in Vietnam for export must have special labels, the legend "Made in Vietnam" or "Product of Vietnam" must always be stated in the labels.

Name of foreign countries may be stated in the labels of goods processed in Vietnam for export in accordance with processing contracts signed with foreign parties. The phrase "product of [name of foreign country] assembled/packaged in Vietnam" may be stated in the labels of products manufactured in foreign countries but assembled or packaged in Vietnam.

VISA for exported textiles and garments

Decision 0665/2003/QD-BTM was issued by the Ministry of Trade on June 4, 2003 regarding granting of VISA for textiles and garments exported to the US. Under this

Legal news

May & June 2003

Decision, the Offices of Import-Export Management of Hanoi, Da Nang, Vung Tau, Hochiminh City, and Dong Nai are authorized to grant VISA for textile and garment items exported to the US;

According to the Ministry of Trade's Dispatch 1620/TM-XNK dated June 30, 2003 regarding textile and garment exports to the US, there are too many applications for VISA of textiles and garments to the US so that the Ministry and provincial departments of import-export management are in burden of works. The Ministry of Trade thus requests such provincial departments to more seriously implement in strict and right procedures but do not raise impediments to businesses.

Piloting tariff quota on imports

The Prime Minister issued Decision 91/2003/QD-TTg on May 9, 2003 on application of tariff quota on imports. Cotton, tobacco materials and salts shall be in the first time applied tariff quota on the pilot basic. Tariff quota is a regime to impose different levels of duty on different quanta of imports.

Other documents

- Decision 52/2003/QD-BTC dated April 26, 2003 of Ministry of Finance on conditions for establishment and management of customs checking points outside the border gates;
- Decision 55/2003/QD-BTC dated April 26, 2003 of Ministry of Finance on customs formalities and management applied to entering, existing international trains;
- Decision 1378/2003/QD-BGTVT dated May 15, 2003 of Ministry of Transport on the issuance of temporary regulations on the quality control of imported motors, motorbikes and engines for domestic manufacturing and assembling;
- Circular 03/2003/TT-BTM from the Ministry of Trade issued on June 5, 2003 guiding for granting of VISA for export of textiles and garments to the US under the Vietnam – US Textile and Garment Agreement.

Securities

New Draft Decree to breathe new life into securities market

The Article published in the Vietnam Investment Review's Legal Column

It is about to celebrate the 3rd anniversary of its first stock exchange stage in Hochiminh City. Difficulties facing the domestic securities market exist not only in law but also in the foundations of the economic development.

Since 1998, Vietnamese securities market has been operating under the Government's Decree 48/1998/ND-CP, which seems to no longer keep up with the current situation and could not help the market gets out of the silence. Stakeholders in the country are urging the State to impose new measures making the market more vigorous.

Amongst a slew of proposals made by relevant State agencies, issuance of a new Decree for replacement of Decree 48 is a must, with hopes a law on securities shall be considered soon. With this in mind, a draft Decree with 122 Articles with a lot of changes to Decree 48 is being prepared by the State Securities Committee (SSC).

It has been proposed that the requisite minimum charter capital for issuing securities in public be reduced. Decree 48 requires the minimum charter capital issuing any type of securities in public be VND10 billion. Under the draft Decree, minimum charter capital need only be VND5 billion. This however must be VND10 billion in case of bond issuance.

Furthermore, many requirements stipulated in Decree 48 are to be removed in the draft. These include the requirement that management be experienced company's personnel, the requirement that 20 percent of the company's equity be held by the company founding shareholders, the required minimum ratio of 20 percent of company's equity sold to over 100 outside stakeholders.

The draft Decree requires issuance of prospectus before any distribution of securities. The prospectus must be provided at least 15 days prior so investors can register their securities purchase. Where the registered amount of securities purchase exceeds the amount permitted to be issued, the issuing company or the underwriting organization has to sell out all the underwriting securities to the investors in proportion of the registered amounts. The distribution must be completed within 90 days from the date of the licence was issued. This can be extended by the SSC.

The draft Decree sets forth three main principles for listing securities. First, securities listing must be licensed by the SSC. Second, the listing within 6 months since the completion of an issuance package does not require a licence from the SSC. Each type of security can be listed in each exchange centre only.

Under the draft Decree, conditions for listing stocks in Hochiminh City are different from those in Hanoi.

A joint-stock company eligible for listing stocks in the bourse if it meets all of three conditions. For listing in Hochiminh City, the company must have actual charter capital of VND10 billion or more; have made a profit for the two last years before the application for listing; and have the proportion of shares held by 100 shareholders (or more) is at least 20 percent the company's equity.

Conditions for listing stocks in Hanoi are easier. The minimum requirement for actual charter capital is VND5 billion, and no less than 20 percent of the company's equity is required to be held by at least 50 shareholders.

Transaction of securities shall be put into supervisory or suspension where occurrence of certain events, such as suspension of listed company's operation from 3 to 12 months; financial statements of the listed company are refused by auditors; listed company violated regulations on information announcement, delayed in submitting annual financial reports in more than 30 days; no longer satisfied conditions for listing.

The draft Decree also discusses ways of overcoming the lack of stipulations regarding the listing and issuing of companies' obligations on announcement and publication of information.

Accounting

New law to sharpen cumbersome accounting rules

The Article published in the Vietnam Investment Review's Legal Column

The legal framework that regulates accounting activities in Vietnam has been assessed as complicated and unhealthy as it is set out in so many legal instruments from ordinances, circulars, decisions, to an uncountable number of guiding dispatches.

This has caused businesses to face such impediment in their accounting activities that some have established different accounting systems for the same transactions, and are accounting untrue information.

In the ratification of the Law on Accounting (LA) by the National Assembly on May 19, 2003, the business community heard the news as a new prospect for advancing the accounting legal system.

Since 1988, there has been only one law-level legal instrument that regulates accounting activities, which is the 1988 Ordinance on Accounting and Statistics Law. The Ordinance governs mainly state-owned enterprises, public-private co-operatives, collective units, and organizations using State and social unions' budgets.

Meanwhile, the accounting activities of private enterprises, foreign-invested enterprises, business households and co-operative groups have been governed by a variety of law subordinate legal instruments, especially a huge number of guiding dispatches on a case-by-case basis.

The LA consists of 64 articles in seven chapters, aiming at ensuring the proper auditing of economic activity and helping both state-owned and private enterprises better organize and manage themselves.

The LA confirms that accounting is one of the tools of economic and financial management, playing a great important role in governance of the national economy.

The LA is applicable to all entities including state agencies, professional units, business enterprises of all economic sectors, branches and representative offices of foreign companies, co-operatives, business households, and co-operative groups.

The currency unit used in accounting activities is Vietnamese dong. In the economic and financial transactions relating to foreign currencies, both these currencies and Vietnam dong may be applicable. To ensure the unification in examining, evaluating and controlling economic activities, the State Bank shall announce the common exchange rates. Where the exchange rate between a foreign currency and Vietnamese Dong is not existent, such foreign currency may be converted through other foreign currency which has an exchange rate with Vietnamese Dong. Businesses have the right to select an

Legal news

May & June 2003

applicable currency unit. However, whenever setting up financial reports, Vietnamese Dong records are required.

Chapter II of the LA sets up in detail the contents of accounting activities such as accounting records; account and accounting books; financial reports; auditing; assets inventory, backing up and preserving accounting documents; and accounting in the case of a business unit being split, consolidated, merged, transferred, dissolved, terminated and bankrupted.

Notably, electronic records accordant with the laws and that meet required technical standards shall be considered as a legal form of accounting records.

The LA reserves Chapter III to promulgate the provisions on accounting mechanism systems and accountants. All business enterprises have to organize either their own accounting mechanism system, or assign personnel, hire certified persons or organizations to be accountants and chief accountants. The accountants must reach the specified standards on professional morals, professional skills and qualifications.

But, anyone who has been accused with either economic, financial or accounting crimes or is related to the managerial personnel of state-owned enterprises, joint-stocks companies, state agencies, non-profit and administrative units shall be prohibited from being accountants.

Accounting college graduates will have to work two years before being eligible to become chief accountants, those with lesser qualifications will have to work three years and both of them must obtain the chief accountant training certificate.

The most significant part of the LA is Chapter IV with provisions on accounting profession activities, which are completely new in comparison with the Ordinance on Accounting and Statistics.

Other documents

- Circular 52/2003/TT-BTC was issued by the Ministry of Finance on May 30, 2003 providing guidelines for balancing of investment capital. The investors are obligated to inform their projects' balancing status no later than 10 July for their 6 month reports and no later than 15 January of the next year for their annual reports.

Banking

Security for loans from credit institutions

On May 19, 2003, the State Bank of Vietnam issued Circular 07/2003/TT-NHNN providing guidelines for implementation of some provisions on security for loans from credit institutions, replacing Circular 06/2000/TT-NHNN guiding Decree 178/1999/ND-CP and Circular 10/2000/TT-NHNN1 detailing Resolution 11/2000/NQ-CP dated July 31, 2000.

Circular 07 specifies the kinds of properties which can be accepted as loan security. Of note, under Circular 07, the moveable assets or immoveable properties to be formed in the future may be considered as pledged, mortgaged or guaranteed assets.

Circular 07 sets out the principal contents of contracts for mortgaging, pledging or guaranty. Contracts signed before the effective date of the Government's Decree 85/2002/ND-CP on amending Decree 178/1999/ND-CP shall still remain in force.

Safety ensuring rate in operations of credit institutions

The State Bank of Vietnam issued Decision 381/2003/QD-NHNN on April 23, 2003 to revise the Regulations on safety ensuring rate in operations of credit institutions issued in conjunction with Decision 297/1999/QD-NHNN5 dated August 25, 1999.

Decision 381 increased the ceiling limitation of using short-term capital sources for medium- and long-term lending by State owned, joint venture credit institutions and branches of foreign banks from 25% to 30%.

Other documents

- The Law on amendments of and additions to a number of articles of the Law on State Bank of Vietnam, was passed by the National Assembly on May 27, 2003;
- Decision 376/2003/QD-NHNN was issued by the State Bank of Vietnam on April 22, 2003, issuing the Regulations on filing and keeping used electronic documents to account and make capital balance of Payment Service Provider;
- Decision 465/2003/QD-NHNN dated May 12, 2003 of the State Bank of Vietnam amending and supplementing Clause 1, Article 1 of the Regulations on Inter-Bank electronic clearance payment issued in conjunction with Decision 1557/2001/QD-NHNN dated December 14, 2001;
- Decision 516/2003/QD-NHNN dated May 26, 2003 of the State Bank of Vietnam promulgating the regulations on organization and operation of the Board of Management, the Board of Inspectors, General Director (Director) of non-banking credit organizations;
- Decision 648/2003/QD-NHNN dated June 24, 2003 of the State Bank of Vietnam promulgating the Regulations on dealing with security assets at the State Bank of Vietnam;
- The Ministry of Finance issued Circular 56/2003/TT-BTC on June 9, 2003 detailing the Regulations on financial management with respect to the Bank for Social Policies as under the Prime Minister's Decision 180/QD-TTg dated December 19, 2003;
- The State Bank of Vietnam has instructed to more seriously improve the internal supervision within the Bank, under Directive 04/2003/CT-NHNN dated June 18, 2003;
- The State Bank of Vietnam issued Circular 08/2003/TT-NHNN on May 21, 2003 guiding the implementation of obligation to sell and right to purchase foreign currencies from current transactions of the residents being organizations.

Labour

New guidance on the labour contracts

On May 9, 2003, the Government issued Decree 44/2003/ND-CP detailing and guiding the implementation of the Labour Code provisions on labour contract.

With regards to the types of labour contract ("LC"), apart from the types of definite term contracts, the indefinite term labour contract shall only apply to the works which last more than **36** months (previously **12** months).

In addition, Decree 44 regulates that where the definite term labour contract or the LC for a specific or seasonal job expires and the employee continues to work, if the two parties don't enter into a new LC within 30 days, the executed LC shall become indefinite term LC. In particular, where a new definite term LC is signed, its duration shall not last more than 36 months.

Decree 44 provides further details on LC's effective date. When a LC is executed, the two parties have to commit the effective date of LC or the commencement date of working. In case the employee works right after the conclusion of LC, the effective date of LC is the signing date. But in case the employee works and then concludes the LC, the effective date of LC is considered as the commencement date of working.

Decree 44 shall be effective after 15 days since the publication on the Official Gazette and replace the Governmental Decree 198 dated 31 December 1994.

Changes to Labour Code provisions on working disciplines and material responsibilities

With an aim of amending and supplementing a number of the Labour Code provisions on working disciplines and material responsibilities, on 2 April 2003 the Government issued Decree 33/2003/ND-CP.

Accordingly, state management over the enterprises in the industrial zone is tightened. In accordance with Decree 33, the management board of industrial zones has the responsibility of summarising and reporting every 6 months the registration of labour working regulations of all enterprises within its zone.

There is a significant change regarding to the prescription for handling breaches of labour working rules. This prescription is now **3** months since the occurrence of the breach. The previous prescription of **6** months as stated in Decree 41/ND-CP shall only apply to breaches related to the rules on finance, assets, disclosing of technological and trading secrets.

Decree 33 also specifies the cases of employee's reasonable days off by which the employees shall not be subject to dismissal discipline: employees suffering injury, fires, sickness (including their relative's illness) certified by an establishment of health duly incorporated and other cases stipulated in the registered labour working rules.

Other documents

- Governmental Decree 39/2003/ND-CP dated 18 April 2003 promulgating detailed stipulations and guidelines for implementing some articles pertaining to employment in the Labour Code.
- The Ministry of Labour, War Invalids and Social Affairs on May 30, 2003 issued three Circulars, Nos 13/2003, 14/2003, and 15/2003/TT-BLDTBXH guiding the Government's Decree 114/2002/ND-CP dated December 31, 2002 on wage regime applicable to foreign organizations and enterprises, enterprises operating under the Law on Enterprises, and the State owned enterprises;
- Circular 15/2003/TT-BLDTBXH was issued by the Ministry of Labour, War Invalids and Social Affairs on June 3, 2003 guiding for overtime works as stipulated in the Government Decree 109/2002/ND-CP;
- Circular 16/2003/TT-BLDTBXH was issued by the Ministry of Labour, War Invalids and Social Affairs on June 3, 2003 guiding for working time and rest time for the seasonal works and processing for export.

Taxation

Tax laws improved

The Law on amendments of and additions to a number of articles of the Law on Value Added Tax, was passed by the National Assembly on May 27, 2003. Some items are added into subjects of VAT. National Assembly Standing Committee has no longer right to adjust the list of items subject to VAT or to amend VAT rates.

The Law on amendments of and additions to a number of articles of the Law on Special Consumption Tax, was passed by the National Assembly on May 27, 2003. Motors are included into the subjects of special consumption tax. Tax rates of trading in discotheques, karaoke, massage are increased, and those imposed on draft beer (or 'bia hoi') are reduced.

The Law on amendments of and additions to a number of articles of the Law on Corporate Income Tax, was passed by the National Assembly on May 27, 2003. Tax rate of 28% is applicable uniformly to domestic enterprises and foreign invested ones.

Adjustments to the rate of business registration tax

Circular 42/2003/TT-BTC was issued by the Ministry of Finance on May 7, 2003 amending Circular 96/2002/TT-BTC dated October 24, 2003 guiding Decree 75/2002/ND-CP on adjustment of business registration tax. Circular 42, retroactive from April 1, 2003, provides for four levels of business registration tax based on registered charter capital. VND3 million for charter capital of over VND10 billion. VND2 million applied to registered charter capital of VND5 to 10 billion. For registered capital of from VND2 to under 5 billion, tax shall be VND1.5 million, and VND1 million for the last.

Basis for the calculation of business registration tax

Under the Circular 42, the rate of business registration tax is no longer dependent on the types of business entities. The business registration tax, as from the Circular 42 is effective, shall be paid on basis of the registered capital in Certificate of Business Registration or Investment License of the year prior to the year of tax calculation.

For the State-owned Enterprises, Limited Liability Companies, Joint-stocks Companies, Co-operatives, the registered capital is determined to be charter capital and for Foreign-Invested Companies, Private Companies, investment capital.

As registered capital is the basis for calculation of business registration tax, therefore where there is the increase or decrease of registered capital, the tax payer has to declare this change with the tax agency in charged of calculating the business registration tax of the following year. As for the newly-established enterprise, the business registration tax is calculated basing on the registered capital declared in Certificate of Business Registration in the year of establishment.

Exemption and reduction of business registration tax

Under Circular 42, **the business registration tax is temporally exempted to:**

- Family households that produce salt, the commune's post office, newspapers of all kinds in accordance with Official Letter 237/CP-KTTH dated 25 March 1998;
- Service groups and shops directly under the Co-operatives having operations on the technical services serving agricultural manufacturer.

The business registration tax is reduced by 50% to the fishing family households; commune's credit fund, co-operatives trading in agricultural services, shops of co-operatives and private enterprises trading in mountainous regions.

This Circular shall become effective as of 1 April 2003 and apply immediately to the newly-established enterprises.

Other documents

- Decision 64/2003/QD-BTC dated 5 May 2003 of the Ministry of Finance amending the import tax rate of a number of goods belonging to Group 2709 and 2710 in Preferential Import Tariff;
- Decision 72/2003/QD-BTC dated May 20, 2003 of the Ministry of Finance adjusting the minimum price of some motor items;
- Circular 53/2003/TT-BTC dated June 2, 2003 of the Ministry of Finance on tax regime applicable to lawyer offices and partnership law firms;
- Decision 80/2003/QD-BTC dated June 9, 2003, of the Ministry of Finance adjusting the minimum import duty tariff applicable to some import items (vehicles, vehicle

Legal news

May & June 2003

spare parts and set of components) as provided by Decision 164/2002/QĐ-BTC, dated 27 December 2002.

Fees and Charges

Regulations on licence fees applied to the foreign contractors

On 13 May 2003, Ministry of Finance issued Circular 43/2003/TT-BTC governing the regime of collecting, paying and utilising fees for the issuance of construction and consultancy practising permits to foreign contractors and construction design practising certificate.

Under this Circular, must pay the fees for issuance of construction and consultancy practising permits and construction design practising certificate the following entities:

- Foreign contractors winning construction or consultancy tenders and are licensed to implement the construction and consultancy in Vietnam in accordance with the regulations of Governmental Decree 24/2000/ND-CP dated 31 July 2000 detailing the Law on foreign investment;
- Domestic and foreign individuals who have the Certificate of construction design practising in accordance with the regulations of Governmental Decree 03/2000/ND-CP dated 03 February 2000 implementing a number of articles of the Law on Enterprise.

The fees chargeable are stated as bellows:

- Fees for issuance of a construction and consultancy practising permits to foreign contractors: VND2,000,000;
- Fees for issuance of a construction design practising certificate: VND200,000

These fees must be paid in *dong*. The body who is in charge of collecting fees must publish the fees, indicate where the payment is to be made and deliver the invoices to the payer.

Vehicles registration fees adjustment

Decree 47/2003/ND-CP was issued by the Government on May 12, 2003 amending Article 6 of Decree 176/1999/ND-CP dated December 12, 1999 on registration fee. Fee for the first registration of automobiles having 7 seats or less and of motorcycles within cities under the centre, provincial cities and towns is increased to 5% from 2%.

Other documents

- Circular 52/2003/TT-BTC dated May 30, 2003 of the Ministry of Finance on amending and supplementing Circular 109/2002/TT-BTC on fees for use of roads;

- Circular 55/2003/TT-BTC dated June 4, 2003 of the Ministry of Finance amending and supplementing Circular 28/2000/TT-BTC dated April 18, 2002 guiding Decree 176/1999/ND-CP dated December 12, 1999 on registration fees.

Legal Service

New Decree clears path for non-profit legal consultant

The Article published in the Vietnam Investment Review's Legal Column

The Government has continued its completion of legal instruments for the operation of legal consulting services. Government Decree 65/2003/ND-CP was issued on June 11, 2003 to govern the organization and operation of legal consulting provided by socio-political and socio-professional organizations for non-profit purposes. Legal consulting activities of lawyers in lawyer offices, partnership law firms and state legal support centres are excluded from the governing scope of this Decree.

Those falling within the governance of Decree 65 are 'legal consulting centres'. There appears in the Decree another kind of person like lawyer, namely 'legal consultants', who, after being granted a certificate, is also allowed to provide legal consulting services but likely through the legal consulting centres only.

A centre may be set up with at least three qualified legal consultants. Provincial Departments of Justice have competence to evaluate application dossiers and accept or reject the registration for setting up legal consulting centres within their province.

Like the partnership law firms, the centres are allowed to provide legal consulting services, excluding litigation services and comprising of providing legal guidelines and advices; advising on drafting applications, restatements and other documents; advising on drafting contracts valued from VND100 millions to less; and providing legal instruments and information.

Notably, legal consulting centres are entitled to provide services with charges subject however to the ceiling limitations set by Decree 65. For the verbal provision of legal guidelines and advices, provision of legal information and instruments, service charge shall not exceed VND50,000 per case. Charge for written provision of legal guidelines and advice and for drafting of applications, restatements and other documents shall not be over VND100,000 a case. And the advising on drafting of contracts must not be charged at over VND200,000 for a case.

Provincial Departments of Justice have also the authority to issue the Certificate of Legal Consultant if the applicants satisfy all of four conditions. The most vital conditions are: being bachelor of laws; having three year experience in legal works; and passed the course of training legal consulting skills. Decree 65 explicitly stipulates that a legal consultant is permitted to work for a centre only, and State officials, public servants shall not be granted with the Certificate to become legal consultants. However, the State officials and public servants may work as legal collaborators for the centres. Collaborators must meet requirements to become consultants, except the requirement of participation in a training course. A collaborator may be not a bachelor of laws but he/she must have at least 10 years in experience in legal works.

Legal news

May & June 2003

With very useful purposes, Decree 65 is highly appreciated and hoped to assist the poor in accessing to legal services and more importantly to better play the roles of legal propagation and diffusion. However, Decree 65 also revealed some unclear provisions:

First, it is unclear on the legal status of the legal consulting centres and the delimitation of responsibilities between the organizations in charge of the centres, the centres, and the centres' legal consultants and collaborators. Unlike the other forms, the lawyer offices or the partnership law firms' member lawyers shall be unlimitedly responsible for the operations of the offices or the firms.

Second, the legal consulting centres are allowed to advise on drafting of the contract valued not more than VND100 millions. However, what is the ground of such limited amount is still unclear.

Third, as mentioned, Decree 65 provides ceiling limitations for charging. Limited amounts are provided for 'a case'. However, there is not any definition for 'a case'. To this extent, the centres shall be easy to break down 'a case' to many 'a-cases' for service charge increasing purposes. How this situation shall be managed is still unclear in the Decree.

Forth, the permission of State officials to become legal collaborators of the legal consulting centres is plausible. Decree 65 carefully states that "State officials and public servants may become legal collaborators of legal consulting centres providing that this is not contradictable to the Ordinance on public servants and officials".

Intellectual Properties

NOIP to hand over trademark matters to the MoT

The Article published in the Vietnam Investment Review's Legal Column

In early 2003, both the Vietnamese businesses and intellectual property (IP) circle have been caught in shock by rumours that the Trademark Division of the National Office of Industrial Property of Vietnam, or NOIP, would be handed over to the Ministry of Trade (MoT). This came out to be true on May 19, 2003 when the Government issued Decree 54/2003/ND-CP amending the functions, tasks, jurisdiction and structure of the Ministry of Science and Technology (MoST), the body in charge of the NOIP.

By adopting this Decree, the IP system of Vietnam has undergone an unexpected re-structure, making it likely to be "fragile".

According to Decree 54, as from June 21, 2003, the MoST is in charge of intellectual property, but excluding trademarks and copyright over literary and artistic works. Along with this provision, the function of the NOIP is restricted to non-trademark matters, meanwhile it is extended to cover the copyright over the non-literary and art works, which are used to be parts of the functions of the National Office of Copyright under the Ministry of Culture and Information. Decree 54 also changes the name of the NOIP to the National Office of Intellectual Property of Vietnam.

Decree 54 immediately has raised emotion in the businesses and the IP community. As the body overtaking the trademark matters instead of the NOIP is unidentified while the disintegration date of the NOIP's Trademark Division has been come, the businesses are

thus flocking into the NOIP to file applications for their trademarks. As a result, during one month from middle May, the number of trademark applications filed with the NOIP steadily increases up to nearly 2,000, making the total number of applications in the first half of 2003 mount to more than 5,500, an increase of 80% in comparison with the same period of last year. Especially, on one day of June 20, the number of applications has reached a record level of nearly 190 applications, about one third of the normal monthly average.

Along with the increase of applications, the concern of IP agents also gears up. In the mountain of papers at such moment, the risk of missing and loosing documents, mostly are in original and sent from overseas, is at the highest level. Consequently, the IP agents are hurry up to review their dossiers filed with the NOIP, while the overloaded NOIP staff are urged to finalize their pending trademark-related works before the deadline of June 20, 2003.

In the tension, the publics are bursting to know the body that will officially overtake the trademark works as from June 21. However, the laws have been still silent even when the Office of Government issued Dispatch 3080/VPCP-CCHC dated June 20, 2003 to refrain the fuss.

According to the Dispatch, in the transition period, the NOIP shall temporarily continuously receive and handle trademark applications until the management of trademarks is completely transferred to the MoT. It is firstly disclosed in the Dispatch that the MoT shall take over management of trademarks. According to experts, Dispatch is not a legal instrument and could not supersede Decree 54. It may be therefore considered that there is currently no state body officially in charge of trademark matters in Vietnam, and the NOIP can receive but not handle applications, according to the NOIP's officers.

After nearly one month, the Government's Decree and its temporary solution are still controversial. While some hope for less beaurocratic procedures and shorter duration for registration of trademarks under the new management regime, the major are of the opinion that the withdrawal of the NOIP's trademark functions when the new in-charge body is not yet prepared has shown many irrationalities:

First, the former IP administrative system of the Vietnam (i.e. the NOIP in charge of industrial property matters, and the National Office of Copyright for copyright) is still outdated in comparison with other countries that are following the principle of one clue organ in charge of both copyright and industrial property matters.

Now Vietnam seems to be stepping backwards to separate three different systems, one for intellectual property, one for copyright of literary and artistic works, and another for trademark matters.

Second, the removal of the Trademark Division seems to show a tendency of categorizing the IP objects according to their commercial characteristics, but not basing on their nature. If following this trend, there should be more State bodies involved in IP management in Vietnam, varying with IP features divided such as literature-artistic works, non literature-artistic works, medical, industrial or commercial objects.

And if so, to enjoy full protection for one product bearing different IP features, manufacturers should have the product registered for its trademark, copyright, and design in two or more offices. This may cause unnecessary obstacles for the manufacturers in establishing and enjoying their lawful rights over such product.

Third, as there is a “blank” period in management, with the extremely large volume of trademark cases received recently by the NOIP, it is obvious that the trademark applications will get stuck in handling.

At the moment, IP related international organizations also express their astonishment on such change in Vietnam. Whether such change is in line with the State policy of protecting and building up of Vietnamese trademarks is still in question.

Integrated circuit topography get specific copyright

Decree 42/2003/ND-CP dated May 2, 2003 was issued by the Government on protection of industrial property right with respect to layout of integrated circuits. Integrated circuit may be abbreviated as IC or chips. This is the first time Vietnam recognizes protection for layout of integrated circuits as an object of industrial property which had been protecting in many countries and international treaties. We introduced below the Article of Vision & Associates published in the Vietnam Investment Review's legal column.

Vietnam is bidding for joining the WTO. In order to succeed, it is a must that the country should comply with all requirements of the TRIPS Agreement. Until recent, Vietnamese legislation has successfully provided with a decent protection of intellectual property (IP), more or less fitting with standards laid by international multilateral and bilateral treaties. However, integrated circuit topography (IC) was the only field of IP that had been left without protection despite the worldwide trend of providing with an independent legal stand, adding to or replacing existing regulations under copyright or patent legislation based on the Washington Treaty on Intellectual Property in respect of Integrated Circuits (IPIC Treaty) signed in 1989, later incorporating by reference into the TRIPS Agreement. Worldwide practice has shown that IC is a big-issue due to its complicated nature, mixing rules on patent and copyrights, and increasing value in nowadays hi-tech world. Despite that, Vietnamese legislators fell quite laid-back with situation when IC is directly excluded from the scope of governance under Decree 63/CP dated September 30, 1992, the main legal tool of IP protection in Vietnam, since they did not see the demand of domestic market for protection of such newly emerged feature. Moreover, their suggestions that IC may be protected part-by-part under either copyright or patent regulations seemed to be satisfying enough. As soon as foreign investment flowing to Vietnam in various fields of economy, foreign investors, who dominantly drives in high-tech investment, started deeply concerning about protection of IC which was expected to have increasing value but left without any protection, especially Vietnam is a member to neither Berne Convention nor the TRIPS Agreement. The first experience of granting IC an independent protection was laid down in the US-Vietnam Bilateral Trade Agreement in 1999. Finally, under stress of effort to join the WTO and maintain foreign investment flow, on May 2, 2003 the *Government's Decree 42/2003/ND-CP on protection of Intellectual Property in respect of Integrated Circuits Topography* (Decree 42) was adopted, pushing Vietnamese IP legislation one step closer to well-set world standards on IC related matters and adding one more plus way for Vietnam's accession to the WTO.

Applicable objects

Fully adapted IPIC Treaty and TRIPS Agreement's wording, Decree 42 defines "integrated circuit" as "a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function" which is often used interchangeably with such terms as "IC", "chip", "micro-electronic device". Meanwhile, "topography" is a three-dimensional configuration of miniature electronic circuits and interconnections of an integrated circuit. Together, Integrated Circuit Topography is a subject of protection under Decree 42. However, this Decree does not protect: principles, process, methods performed by such IC, and information, software which are included in IC.

Title for protection of a IC will be granted as soon as it can prove *the originality* which means that IC must be a result of creative working of the creator and not yet widely known among IC creators and manufacturers. This requirement of "originality" is basically the same as one applied for copyrightable subjects.

Establishment of Ownership

As provided by the IPIC Treaty and TRIPS Agreement, legal requirements towards establishment of ownership are referred to each State. Thus, the Decree 42 rules out that, once the Certificate of Registration of Integrated Circuit Topography (Certificate) is granted by the National Office of Industrial Property (NOIP), IP rights over a IC of the owner/author are established. The validity of the Certificate commences on the date of issuance of the Certificate and lasts until one amongst the following days whichever comes first: (1) finishing date of 10 year period from granting of the Certificate; (2) finishing date of 10 year period since the application for protection of IC was submitted by empowered applicant, or since such empowered person allowed the IC to be commercially exploited anywhere in the world; or (3) the last day of 15 year period since the date of IC creation.

The authorized applicant has 2 years to file application for granting of the Certificate. From the date the IC is commercially exploited anywhere in the world until the date of issuance of the Certificate, if there is any third party that unknowingly uses it for commercial purposes, the authorised applicant has rights to warn such party. If the IC is still pursued to be exploited after such warning, when Certificate is granted, the IC statutory owner has full rights to request the third party pay the compensation equivalent to the payment for licensing, counted from the date of warning notice until the date of issuance of the Certificate. Decree 42 names such right as "temporary right" of the owner.

The Certificate will be issued after compulsory examination of standards compliance. Similarly to regulations of the Decree 63/CP dated October 24, 1996 on industrial property, the Director of the NOIP will be in charge of issuing, rejecting, suspending and invalidating the Certificate.

The Owner's Rights

The owner has rights to (i) exclusively reproduce, manufacture IC under the protected topography; (ii) distribute, import the copies of protected topography, IC produced under the protected topography, and goods bearing the protected IC; and (iii) assign his rights to use the protected IC by concluding license agreement in accordance with the Decree 63/CP. In case owner is not author of the IC, he is obliged to pay at least 5% of

benefits gained from use of IC annually or 15 % of lump sum gained per each license agreement.

Scope of Protection

The Decree defines scope of protection by enumerating acts which are not considered unlawful if performed without authorisation of the title holder. They are: (i) use for non-commercial purposes, i.e. private use for the sole purpose of evaluation, analysis, research or teaching; (ii) distribution, import of reproductions of products manufactured by protected IC when unaware or unable to be aware that IC is being protected (innocent infringement). (iii) distribution, import of accepted or ordered reproductions of products manufactured by IC under protection when unaware or unable to be aware that IC is being protected if the users fully pay owner an amount equally to the one paid for an assignment; (iv) Use of original IC which was created based on non-commercial analyze and evaluation of the protected IC; or an IC independently created but identical to the protected one.

Other than those actions will be alleged IP violations and are subject to administrative or criminal penalties under existing laws. Failure to pay royalty and guarantee the author's moral rights of the IC also constitute infringement under this Decree.

The Government and its authorized agencies fully protect rights and guarantee effective enforcement, provided under this Decree.

Other Provisions

The Decree shall be effective beginning from 60th day after publication in the Official Gazette. With respect to an IC which was commercially exploited anywhere in the world within period of 18 months to 2 years, the applicant has 06 months to realize its rights to file an application for granting of the Certificate. The rights of owner to prevent other from acts of distribution, import of goods bearing the protected ICs and temporary rights of third party shall not be applied for those ICs created before the effective date of the Decree.

Conclusion

Since IC is an extraordinary feature in IP legislation, merging rules from patent and copyright laws, along with a properly written Decree, IC creators and owners are awaiting an effective enforcement in order the protection can be successfully granted. Now the only further detailed circulars and dispatches, as well as serious policy towards the Decrees' enforcement from the State agencies, may justify the legislators' efforts and meet IC creators' expectations.

Other documents

- Governmental Decree 42/2003/ND-CP dated 2 May 2003 on the protection of intellectual property in respect to integrated circuits topography.

Other sectors

State administration

- Governmental Decree 43/2003/ND-CP dated 2 May 2003 governing powers, duties and organization of the Ministry of Fisheries;

Legal news

May & June 2003

- Governmental Decree 45/2003/ND-CP dated 9 May 2003 governing powers, duties and organization of the Ministry of Interior Affairs;
- Governmental Decree 49/2003/ND-CP dated 15 May 2003 governing powers, duties and organization of the Ministry of Health;
- Decree 55/2003/ND-CP issued by the Government on May 28, 2003 to provide functions, tasks, powers and organization of the Ministry of Industry;
- The Government issued three Decrees in June, Nos 61/2003/ND-CP, 62/2003/ND-CP and 63/2003/ND-CP to adjust in order the functions and tasks of the Ministry of Planning and Investment, the Ministry of Justice, and the Ministry of Culture and Information;
- The Prime Minister issued Decision 121/2003/QD-TTg on June 11, 2003 approving the Program for researching roles, functions and structure of important state organs in the first stage (2003-2005);
- The new Charter of Vietnam Chamber of Commerce and Industry was issued under the Prime Minister's Decision 122/2003/QD-TTg dated June 12, 2003;
- Decree 70/2003/ND-CP was issued by the Government on June 17, 2003 to fine against administrative violations in aquatic product sector;
- The Government issued on June 19, 2003 Decree 71/2003/ND-CP on decentralization of management of administration and profession workforce;
- The Government also issued on June 23, 2003 Decree 73/2003/ND-CP on promulgation of Regulations on examining, determining the estimates and the allocation of local budgets, adopting local budgets determination.

Trade

- Decision 0468/2003/QD-BTM dated 23 April 2003 supplementing Appendix 3 in Vietnam's regulation on granting ASEAN origin certificates for goods, form D, which serves access to preferences under the agreement on common effective preference tariff (CEPT);
- Decree 64/2003/ND-CP was issued by the Government on June 11, 2003 amending and supplementing Decree 174/1999/ND-CP dated November 9, 1999 on management of gold trading activities;
- Decision 83/2003/QD-BTC dated June 17, 2003 of the Ministry of Finance on the tariff of fees for granting of visa for textiles and garment exports to the US market. The fees are varied from VND1,000 to 6,000 per dozen;
- Decision 84/2003/QD-BTC dated June 18, 2003 of the Ministry of Finance on printing and management of stamps of imported liquor;

Legal news

May & June 2003

- Decision 0772/2003/QD-BTM dated June 24, 2003 of the Ministry of Trade on promulgation of the standard internal regulations of marketplaces;
- The Ministry of Trade on June 24, 2003 approved the national pivotal trading promotion programs for 2003 by its Decision 620/2003/QD-BTM.

Equitization

- Prime Minister's Decision 63/2003/QD-TTg dated 21 April 2003 on approval of master plan on reorganization and restructuring of SOEs under the Ministry of Transportation to 2005;
- Prime Minister's Decision 65/2003/QD-TTg dated 22 April 2003 on approval of master plan on reorganization and restructuring of SOEs under the Ministry of Agriculture and Rural Development to 2005;
- Decision 75/2003/QG-TTg dated April 29, 2003 of the Prime Minister approving master plans for restructuring of State owned enterprises under the Ministry of Science and Technology in 2003 – 2005 period;
- Decision 76/2003/QD-BTC dated May 28, 2003 of the Minister of Finance promulgating the Regulations on management and use of the Fund for SOEs equitization and restructuring assistance;
- Decision 97/2003/QD-TTg dated May 14, 2003 of the Prime Minister approving the master plan for reorganization and renovation of State owned enterprises under Vietnam Tourism Administration in the period to 2005;
- Decision 98/2003/QD-TTg dated May 14, 2003 of the Prime Minister approving the master plan for reorganization and renovation of State owned enterprises under the State Bank of Vietnam in the period to 2005.
- Prime Minister's Decision 241/QD-TTg dated 14 May 2003 on approval of master plan on reorganization and restructuring of SOEs under the State Bank of Vietnam for the period 2003 - 2005;
- Prime Minister's Decision 100/QD-TTg dated 16 May 2003 on approval of master plan on reorganization and restructuring of SOEs under the National Center of Natural Science and Technology for the period 2003 – 2005;
- Decision 109/2003/QD-TTg dated June 5, 2003 of the Prime Minister on establishment of the Debt and Asset Trading Company (DATC). With the charter capital of VND2,000 billion, the company is expected to improve the financial status of enterprises and accelerate the rearrangement and reform of state owned enterprises;
- Circular 11/2003/TT-BLDTBXH dated May 22, 2003 of the Ministry of Labour, Invalids and Social Affairs on policies with respect to redundant employees in reorganized State owned enterprises.

Internet

- Decision 77/2003/QD-BBCVT dated April 23, 2003 of the Ministry of Posts and Telematics on managing '.VN' domain name servers and entering International organizations of Internet resources.

Education

- Decision 83/2003/QD-TTg dated May 5, 2003 of the Prime Minister on establishment of Hatay Pedagogy University for Physical and Gymnastics Education.

Motorbike

- Decision 13/2003/QD-BKHHCN dated May 26, 2003 of the Ministry of Industry promulgating the list of motorbikes and motorbike engines, accessories compulsory for application of Vietnamese standards;
- Notice 82/TB-VPCP dated June 16, 2003 of the Government's Office on conclusion of the Prime Minister on tax policies with respect to automobiles and automobile accessories.

Drugs

- Decree 58/2003/ND-CP dated May 29, 2003 of the Government for import, export, transportation via Vietnam's border gates of opium related drugs.

Construction & Investment

- The Ministry of Planning and Investment issued Circular 04/2003/TT-BKHDT on June 17, 2003 to provide guidelines for the investigation and evaluation of investment projects as regulated under the Government's Decree 52/CP and its amended Decree 12/CP and Decree 07/CP;
- The Ministry of Construction issued Circular 07/2003/TT-BXD on June 17, 2003 amending its Circular 09/2000/TT-BXD of July 17, 2000 regarding accounting and management of construction expenses of investment projects.

Miscellaneous

- The Government issued Decree 60/2003/ND-CP on June 6, 2003 for detailing the implementation of the Law on State Budget. Including 86 articles in 7 chapters, Decree 60 becomes effective beginning from the budget year 2004;
- Decision 119/2003/QD-TTg dated June 11, 2003 of the Prime Minister approving the master application of information technology in finance sector in the period to 2010;
- To deal with the factories that are polluting Hanoi environment, the Hanoi People's Committee issued on June 17, 2003 Decision 74/2003/QD-UB to remove such factories that are not matched up with the approved master plan out of the City.

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 Centre
17 Ngo Quyen, Hanoi, Vietnam
Tel: (844) 934 0629 / 824 1623; Fax: (844) 934-0631
E-mail: vision@hn.vnn.vn

Ho Chi Minh City Office

Mr. Dang The Duc

Partner, Manager

Unit 8 A1, 8th Floor, Han Nam Office Building
65 Nguyen Du, District 1, Ho Chi Minh City, Vietnam.
Tel: (848) 823 6495 / 823 6501; Fax: (848) 823 6496
E-mail: hcmvision@hcm.vnn.vn

www.vision-associates.com