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In Brief

Development of Vietnam Legal System

On 9 November 2001, Vision & Associates participated in the Conference on Commenting on the Draft Overall Report on Valuation of Vietnam Legal System Development Demands, held at Hanoi Horizon Hotel. The draft of the Overall Report on Valuation of Vietnam Legal System Development Demands ("**Report**") was commenced since January this year and led by the Inter-Branched Steering Committee for Valuation of Vietnam Legal System Development Demands. Vision & Associates was invited to participate in such Conference to give comments on the Report.

The Report includes four major themes, (i) valuation on legal framework completion demands; (ii) valuation on legal institutions completion demands; (iii) valuation on legal education system completion; and (iv) valuation on demands on the completion of legal information and legal education dissemination system. The Report sets out numerous important information on overall orientations and strategies to develop Vietnam legal system for the ten year period 2001-2010. The most important and concerned contents set out in which comprise:

- Demands and strategies on the development of Vietnam legal system for the ten year period 2001-2010;
- Action plan to bring the strategies into effect; and
- International cooperation to support the completion and development of Vietnam legal system.

The Report is scheduled to be completed by March 2002.

Foreign Investment

Investment in Construction of Residential Houses

"Good news for real estate developers in Vietnam, the Governmental policies on encouragement of the construction of multi storied buildings for sale and lease are launched on 5 October 2001.

Hopefully, such policies would bring about more favorable for the development of high buildings in Vietnam".

Decree No. 71/2001/ND-CP on incentives for investment in construction of residential houses for sale and lease was issued by the Government on 5 October 2001, taking effect 15 days after its signing date.

The high residential buildings, in accordance with Decree 71, are the buildings having at least 5 or more floors in Hanoi and Ho Chi Minh City and at least 3 or more floors in other provinces or the buildings using at least 60% of the total construction areas for multi storied building.

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In accordance with Decree 71, enterprises engaging in residential houses for sale and lease shall enjoy incentives including foreign invested enterprises established and operating under the law on Foreign Investment in Vietnam (“FIEs”); enterprises established and operating under the Law on State Owned Enterprises, the Law on Enterprises, Law on Cooperatives; social – political enterprises and enterprises established by overseas Vietnamese, foreigners permanently residing in Vietnam or between Vietnamese and overseas Vietnamese or Vietnamese and the said foreigners (hereinafter referred to as “Domestic Enterprises”)

Decree 71 stipulated conditions and incentives which Domestic Enterprises would be enjoyed consisting of:

- To create favorable procedures on investment and construction;
- To create simple formalities on site clearance and compensation;
- To create favorable conditions on bidding for construction;
- To support the mobilization of invested capital;
- To create favorable for construction of infrastructure facilities;
- To exempt and reduce the land use fee, land rental and the related taxes.

Likewise, Decree 71 provides the FIEs with the favorable conditions and incentives as follows:

- To create favorable conditions on the use of land;
- To reduce and exempt land rental; and
- To allow preferential corporate income tax.

Regulation on Equitization of Foreign Invested Enterprises

After a long time waiting, the **Regulation on equitization of foreign invested enterprises** (FIEs) has been drafted by the Ministry of Planning and Investment in order to gather comments from various ministries, branches and enterprises, especially FIEs. The Regulation, as anticipated, expects to be issued in December this year.

According to draft Regulation, FIEs would be equitized and newly established under the form of joint stock companies for the purposes as listed below:

- To complete and enhance the management capacity of FIEs;
- To mobilize capital from domestic and foreign investors for the renovation of technology and creation of more employments;
- To diversify the forms of investment for the purpose of improving and creating the attractive investment environment for foreign investors into Vietnam; and
- To create more goods for the development of the market of Vietnam.

In accordance with the Regulation, the equitization of FIEs shall only be carried out upon the three conditions are satisfied:

- The legal capital has been fully contributed;
- The FIEs have been operated at least 3 years and having profits; and
- The FIEs have a number of shareholders as requested by the Law on Enterprise.

Import-Export

More Simply Formalities for Checking of Certificate of Origins

According to **Inter-Circular No. 22/2001/TTLT-BTM-TCHQ** dated 2 October 2001 of the Ministry of Trade and the General Department of Customs amending and adding to Inter-Circular No. 09/2000/TTLT-BTM-TCHQ dated 17 April 2000 guiding for the definition and checking of origin of goods, exported goods are all exempted from checking of C/O by customs offices.

Also under Circular 22, as from 17 October 2001, goods originated from the nations subject to the Most Favored Nations upon importing in Vietnam would be subject to “green files” policy. To which, enterprises frequently purchasing such goods in more than six months are only forced to present C/O at the first importation.

Trade

Protection of Consumers’ Interests

After over two years from the date of promulgation of the Ordinance on Protection of Consumers’ Interests, the Government issued **Decree No. 69/2001/ND-CP** dated 2 October 2001 providing guideline for the implementation of such Ordinance (“Decree 69”). Decree 69 is applicable to all institutions and individuals manufacturing and trading in goods and services. Under Decree 69, the legitimate rights of the customers may be protected by a consumer protection organization which is set up and operate solely for the purpose of protecting the legitimate rights and interests of consumers. In special, Decree 69 provides with a list of legal framework applicable in case of violating the customer’s legitimate rights. Decree 69 takes effect as from October 17, 2001.

Production of and Trading in Cigarettes

The Government issued on 22 October 2001 **Decree No. 76/2001/ND-CP** on production of and trading in tobaccos, which came into force from 6 November 2001. Under this Decree, principles in management of production and trading in tobaccos are clearly provided as follows:

- No encouragement on tobacco domestic consumption.
- Only State owned enterprises and joint venture companies which are licensed and satisfying conditions set out in this Decree shall be allowed to produce tobacco;
- The State will supervise the consumption of tobacco products in the market, both wholesale and retail;
- Organizations and individuals are only allowed to do business in tobacco raw materials, production of tobacco products, wholesale or wholesale agents of tobacco products upon satisfying all conditions as follows: (i) already registered the tobacco business, (ii) to have a stable business place and (iii) to meet the conditions on environment protection and preventing the fire

“The State will remain its monopoly in manufacturing and trading in tobaccos. Tobacco production and trading activities are all put under the strict management by the State to restrain the adversely impact on people health”

Taxation

Decree Detailing the Ordinance on High Incomes Tax

Decree No. 78/2001/ND-CP detailing the implementation the Ordinance on High Incomes Tax was issued by the Government on 23 October 2001. Decree 78 was effective from 1 July 2001 and replaces (i) Decree No. 05/CP dated 20 January 1995 detailing the Ordinance on High Incomes Tax dated 19 May 1994, (ii) Decree No. 30/CP dated 5 April 1997 amending and adding to Decree 05 above and (iii) Decree No. 170/1999/ND-CP dated 6 December 1999 amending and adding to Decree 05 above.

Decree 78 stipulates in detail the personal incomes tax applicable to foreigners as follows:

- Taxable monthly income of foreigners residing in Vietnam for 183 days or more shall be determined as the total amount of income originated inside and outside of Vietnam divided by 12 months;
- Taxable monthly income of foreigners residing in Vietnam from 30 days to 182 days shall be determined as the total amount of income originated in Vietnam, irrespective of where the income is received;
- Tax rates applicable to foreigners are provided as follows:

| Level | Average monthly incomes | Tax rate (%) |
|-------|---------------------------|--------------|
| 1 | up to 8,000(*) | 0 |
| 2 | over 8,000 up to 20,000 | 10 |
| 3 | over 20,000 up to 50,000 | 20 |
| 4 | over 50,000 up to 80,000 | 30 |
| 5 | over 80,000 up to 120,000 | 40 |
| 6 | over 120,000 | 50 |

(*) Unit: VND1000

Banking

Opening of L/C on Deferred Payment

Article 15 of the Regulation on opening of letter of credits on deferred payment issued in conjunction with Decision No. 711/2001/QD-NHNN dated 25 May 2001 of the State Bank of Vietnam was amended by **Decision No. 1233/2001/QD-NHNN** dated 26 September 2001 of the State Bank of Vietnam. Accordingly, fixed fees for the opening L/C on deferred payment are no longer provided by the State Bank of Vietnam. Taking this place, the banks, where the opening of L/C on deferred payment is made, are allowed to determine the fees based on its expenses and risks.

Land

Plan for the Use of Land

As mentioned in our Issue June 2001, the Law on Land was firstly enacted on 29 December 1987 and experienced once replacement and twice alterations. The Law on Land enacted in 1987 was replaced in 1993, which was firstly revised and added to on 2 December 1998 and secondly revised and added to on 29 June 2001 (hereinafter referred to as “2001 Law on Land”). In detailing the implementation of the 2001 Law on Land, on 1 October 2001, the Government issued **Decree No. 68/2001/ND-CP** on Scheme and plan for the use of land, taking effect upon its signing date.

Decree 68 provides that the scheme for the use of land must be made in accordance with a number of certain basis such as orientation for the social – economic development, urban development, environment, technology, etc. The General Department of Cadastral presides and coordinate with the Ministry of Planning and Investment, the Ministry of Finance and other related ministries to make the 10-year scheme for the use of land. Such scheme must be submitted to the State competent authority in the first year of each scheme period of time.

In accordance with Decree 68, the General Department of Cadastral in coordination with the relevant ministries to make the 5-year plan for the use of land in accordance with the contents as described as follows:

- Valuing and analyzing the implementation of the previous plan for the use of land;
- Making the 5-year plan and annual plan for the use of land;
- Adjusting the 5-year plan in compliance with the scheme for the use of land;
- Proposing the methods for the implementation of the plan for the use of land.

The scheme and plan for the use of land must be approved by the State competent authorities as provided for in Decree 68.

Decree Detailing the Law on Land

Decree No. 04/2000/ND-CP dated 11 February 2000 of the Government providing guidelines for the implementation of the 2001 Law on Land was amended and supplemented by the Government’s Decree No. 66/2001/ND-CP dated 28 September 2001. Decree 66 entered into force from 1 October 2001.

In general speaking, all amendments of and additions to Decree 04 are in compliance with the Law on amending and adding to a number of the 2001 Law on Land, including:

- Authorization of the State organs for allocation and lease of land;
- Authorization of the State organs for granting of the land use rights certificate;
- Changing of purposes of the use of land; and
- Pledges and guarantee by the land use rights at credit institutions;

Securities

Dissemination of Securities and Bonds to the Public

Circular No. 02/2001/TT-UBCK detailing Decree No. 48/1998/ND-CP dated 11 July 1998 on issuance of securities and bonds to the public was issued on 28 September 2001 by the State Securities Committee. Circular 02 provides in details for the following matters:

- Conditions for issuance of securities;
- Conditions for issuance of bonds;
- Application dossier for the issuance;
- Issuance, suspension and withdrawing the certificate for the issuance of securities and bonds;
- Distribution of securities and bonds;
- Guarantee for the issuance;
- Representative of the bond owner;
- Reporting regime;
- Inspection and supervision of violations; and
- Registration of securities.

Labor

Changes on Recruitment of Vietnamese Laborers Working for Foreign Organizations and Individuals

Decree No. 85/1998/ND-CP dated 20 October 1998 of the Government on recruitment, use and management of Vietnamese laborers working for foreign organizations and individuals in Vietnam and Decree No. 46/1999/ND-CP dated 1 July 1999 amending and adding to a number of Articles of Decree 85 was amended and supplemented by Government's Decree No. 75/2001/ND-CP dated 19 October 2001.

In accordance with Decree 85, the foreign organizations and individuals must recruit their staffs through a labor supply agency. The major amendment this time of Decree 75 is representative offices of foreign organizations of economic, trade, finance, banking, insurance, science – technology, culture, healthcare and other related fields, which are expressly provided that they are **operating to for non-profits purposes**, are considered as “foreign organizations in Vietnam” and therefore must be recruit Vietnamese staff through a labor supply agency.

The recruitment of Vietnamese employees working for foreign organizations and individuals must be carried out in accordance with the labor supply contract signed between foreign organizations and individuals and the labor supply agency. Where the labor supply agency fails to recruit within 15 days from the date of receipt of a request for labor supply, the foreign organizations and individuals shall be entitled to recruit Vietnamese employees directly.

Decree 75 further stipulates that the recruitment of Vietnamese employees of foreign organizations which are not subject to Decree 75 shall be carried out in accordance with the

Labor Code and the Law on Foreign Investment in Vietnam.

Decree 75 came into effect as from 3 November 2001.

Fees-Charges

The Ordinance on Fees and Charges Enacted

The **Ordinance on Fees and Charges** was enacted by the National Assembly Standing Committee on 28 September 2001 ("Ordinance"). The Ordinance will take effect from 1 January 2002.

The Ordinance, including 36 Articles 8 Chapters, provides for the authorization of issuance, collection, payment, management and use of fees and charges, eliminating fees for social insurance, health insurance and other insurance fees.

According to the Ordinance, fees and charges are defined as follows:

"Fees are a sum of money that organizations or individuals to be imposed where they are supplied with services by other organizations which are set out in the List attached to the Ordinance"

and

"Charges are a sum of money that organizations or individuals have to pay when they are served by the State organs conducting the State management activities as set out in the List attached to the Ordinance"

Specially, the Ordinance sets out in details all categories of fees and charges for all sectors for making the State organs to define specific levels and kinds of fees and charges. The Ordinance also stipulates that fees and charges must be listed or publicly announced.

Other Documents

Resolutions and Decrees

- Resolution No. 11/2001/NQ-CP dated 1 October 2001 of the Government on Government's meeting September 2001;
- Decree No. 70/2001/ND-CP dated 3 October 2001 of the Government providing guidelines for the implementation of the Law on Marriage and Family;
- Decree No. 72/2001/ND-CP dated 5 October 2001 of the Government on classification of cities and cities' management;
- Decree No. 73/2001/ND-CP dated 5 October 2001 of the Government on operation and organization of guarding forces in bodies and enterprises;
- Decree No. 74/2001/ND-CP dated 19 October 2001 of the Government on amendments of and addition to Article 14 of Decree 183/CP dated 18 November 1994 of the Government providing guidelines for the implementation of the Ordinance on Diplomatic Representative Offices of the Socialist Republic of Vietnam in foreign countries;
- Decree No. 77/2001/ND-CP dated 22 October 2001 of the Government providing

guidelines some provisions on marriage registration as stipulated in Resolution No. 35/2000/QH10 of the National Assembly on the implementation of the Law on Marriage and Family;

Decisions

- Decision No. 94/2001/QD-BTC dated 1 October 2001 of the Ministry of Finance on amendment and addition to import duty rates for a number of items in the Preferential Import Duty Tariff;
- Decision No. 1247/2001/QD-NHNN dated 28 September 2001 of the State Bank of Vietnam promulgating basic loan interest for the definite loans interest denominated in VND;
- Decision No. 105/2001/QD-BTC dated 10 October 2001 of the Ministry of Finance on amendment of and addition to the import duty rates for a number items under Group 2710 of the Preferential Import Duty Tariff;
- Decision No. 95/2001/QD-BTC dated 1 October 2001 of Finance Minister amending and adding to Decision No. 83/2000/QD-BTC dated 29 May 2001 promulgating the table of official fees for granting of the business registration certificates;
- Decision No. 96/2001/QD-BNN dated 26 September 2001 of the Ministry of Agriculture and Rural Development promulgating “the List of breeding foods of which quality criteria is forced to be announced“;
- Decision No. 783/2001/QD-BTS dated 21 September 2001 of the Ministry of Fisheries on amending Decision No. 344/2001/QD-BTS dated 2 May 2001 of the Ministry of Fishery on management of import and export of aqua-products in the 2001-2005 period;
- Decision No. 53/2001/QD-BKHCNMT dated 8 October 2001 of the Ministry of Science, Technology and Environment on eliminating exported aqua-products from the list of import, export products of which quality must be checked;
- Decision No. 980/2001/QD-TCHQ dated 10 October 2001 of the General Department of Customs issuing the temporary regulations on professional process, organizational outline, human resource preparation to experimentally implement Article 28, 29, 30 & 32 of the Law on Customs at Area IV, Saigon Port Customs Office of Ho Chi Minh City Customs Office and at Areas VI and VII, Hai Phong Port Customs Office of Hai Phong Customs Office;
- Decision No. 53/2001/QD-QLD dated 12 October 2001 of the Ministry of Health’s Drugs Administration Bureau on issuing the list of cosmetics directly affected on human health that are granted for circulation in Vietnam;
- Decision No. 158/2001/QD-TTg dated 18 October 2001 of the Prime Minister approving the strategies for the development of post and telecommunication sectors in Vietnam by 2010 and orientations of the year 2020;
- Decision No. 159/2001/QD-TTg dated 19 October 2001 of the Prime Minister establishing the Steering Committee for the Implementation of the National Program on enhancement of competition ability of Vietnamese goods and services;

Circulars

- Circular No. 06/2001/TT-BKH dated 20 September 2001 of the Ministry of Planning and Investment guiding for the implementation of the Regulation on management and use of ODA attached with Decree No. 17/2001/ND-CP dated 4 May 2001 of the

Government;

- Circular No. 20/2001/TT-BYT dated 11 September 2001 of the Ministry of Health guiding for the management of foods interfaced drugs;
- Inter-Circular No. 75/2001/TTLT-BTC-BTM-TCHQ dated 24 September 2001 of the Ministry of Finance, the Ministry of Trade and the General Department of Customs guiding for the relief of import duty for Laos originated commodities as provided in the Agreement between Vietnam Socialist Republic and the People's Republic of Laos (i.e. 1999 Cua Lo Agreement) on creating favorable conditions for people, transportation means and commodities exchanged across borders;
- Inter-Circular No. 01/2001/TTLB-BNG-TCBD dated 26 September 2001 of the Ministry of Foreign Affairs and the General Department of Post guiding for the transmission of television waves to overseas by foreign reporters in Vietnam via public telecommunication network;
- Circular No. 79/2001/TT-BTC dated 28 September 2001 of the Ministry of Finance guiding for financial regime for the implementation of rural traffic projects and rural trade villages infrastructures;
- Circular No. 07/2001/TT-TCHQ dated 8 October 2001 of the General Department of Customs guiding for the implementation of the registration, management and use of import-export codes for importation and exportation;
- Circular No. 07/2001/TT-BCA (V19) dated 18 September 2001 of the Ministry of Police guiding for the implementation of Decree No. 14/2001/ND-CP dated 25 April 2001 of the Government on management of business activities in guarding services;
- Circular No. 83/2001/TT-BTC dated 4 October 2001 of the Ministry of Finance providing guidelines for the implementation of the settlement and reorganization of the State owned houses and land in Ho Chi Minh City;
- Circular No. 08/2001/TT-TCHQ dated 26 October 2001 of the General Department of Customs amending and adding to Circular No. 04/2001/TT-TCHQ dated 21 June 2001 guiding for customs formalities on gasoline imported and temporarily import for re-export;

Dispatches

- Dispatch No. 901/CP-QHQT dated 3 October 2001 of the Government on extension of duration of the Development Co-operation Agreement with Sweden;
- Dispatch No. 854/CP-QHQT dated 21 September 2001 of the Government regarding the framework Agreement on Co-operation with Spain;
- Dispatch No. 4667/VPCP-QHQT dated 4 October 2001 of the Government's Office on organization of conferences on foreign investment in Vietnam;
- Dispatch No. 4421/VPCP dated 24 September 2001 of the Government's Office regarding the organization of the meetings calling for foreign investment in industrial sectors;
- Dispatch No. 383/TM-KHTK dated 26 September 2001 of the Ministry of Trade regarding the master plan to promote trade in 2002 and the 2001-2005 period;
- Dispatch No. 3840 TM/KHTK dated 26 September 2001 of the Ministry of Trade regarding comments on the documents "Vietnam: National assistance valuation" of the World Bank;

- Dispatch No. 4763/VPCP-TCQT dated 9 October 2000 of the Government's Office regarding the Protocol on implementation of the II round commitments on ASEAN financial services;
- Dispatch No. 3886/TM-CP dated 25 September 2001 of the Ministry of Trade on reporting on situation of trade implementation in the period 1997-2001;
- Dispatch No. 3931/TM-DB dated 2 October 2001 of the Ministry of Trade regarding the preparation for the 5th meeting of the Mission Board on Vietnam's adhering to WTO;
- Dispatch No. 920/CP-DMDN dated 9 October 2001 of the Government regarding the preparation of legal documents following the 3rd Resolution of the IXth Central Party's Executive Committee;
- Dispatch No. 3857/TM-DT dated 27 September 2001 of the Ministry of Trade regarding the implementation of import and distribution services;
- Dispatch No. 4104/TM-CATBD dated 11 October 2001 of the Ministry of Trade on Trade Pact between Vietnam and Brunei;
- Dispatch No. 4807/VPCP-KTTH dated 11 October 2001 of the Government's Office on operation of Vietnamese commercial consulates in foreign countries;
- Dispatch No. 4777/VPCP-QHQT dated 10 October 2001 of the Government's Office on petitions of the Ministry of Finance for the contribution by the value of the land use rights to JVCs in Industrial Zones;
- Dispatch No. 4836/VPCP-QHQT dated 12 October 2001 of the Government's Office on adding to the list of projects calling for aids of Japanese Government;
- Dispatch No. 4117/TM-DT dated 12 October 2001 of the Ministry of Trade on amending the list of goods that foreign invested enterprises not allow to buy for export;
- Dispatch No. 4600/TCHQ-GSQL dated 17 October 2001 of the General Department of Customs on importation of parts of motorcycles under localization rates.

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