

LegalNews

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Issue 2

Enaction of the Ordinance on Hanoi Capital

Contents

Enaction of the Ordinance on Hanoi Capital.....	1
Import - Export.....	1
Taxations	2
Foreign Exchange.....	2
Banking.....	3
Labour.....	4
Law on enterprises	4
Accounting - Auditing	5
Medicine	6
Intellectual Property	6
Other legal documents	7

On February 13, 2001, the National Assembly Standing Committee promulgated three new Ordinances, passed on December 28, 2001, comprising: **The Ordinance on Hanoi Capital; the Ordinance on State Secrets Protection and the Ordinance on Library.**

The Ordinance on State secrets protection set out provisions in adequacy on objects referred to State secrets and rights and obligations of relevant agencies in protection against State secrets disclosing aiming at strengthening the consciousness and responsibilities of building and defending the fatherland. This Ordinance will come into effect from April 1, 2001.

In order to develop, maintain, explore and utilize in efficiency documentation properties of library, serving for study and entertainment of the people, the Ordinance provides for library operations, rights and obligations of relevant individuals and organizations toward library operations, organizing and operating forms of library and incentive policies on investment in and development of library. This Ordinance will be of full force and take effect from April 1, 2001.

The Ordinance on Hanoi Capital, effective from February 3, 2001, is the first regulations in Vietnam on Hanoi Capital which was promulgated in order to develop Hanoi Capital to be a wealthy and modern capital and to strengthen the thousand-year traditional history of Thang Long. Under the Ordinance, the State commits to provide favorable conditions and incentives to constructions of and investments in Hanoi, of which the following shall be prioritized:

- Economic development, prompt movements of economic structure towards service - industry - agriculture;
- Service diversifications and quality improvements in the areas of information, tourism, commerce, finance, banking, technology transfer, human resource training, insurance, aviation, telecommunication and the others;
- Encouragement's toward areas in need of using high technology, accelerating the production of the goods for export and the import substitutions;
- Agricultural and economic developments in the suburb;
- Focus upon training the human resources and nursing the talents, and building up the infrastructures for the training and education sector;

Import - Export

On February 5, 2001, the Ministry of Trade issued **Decision No.0093/2001/QD-BTM**, dated February 5, 2001, on the amendments of and supplementations to the Regulations on consideration of premiums for exports which was promulgated in conjunction with Decision No.1555/1999/QD-BTM, dated December 30, 1999, of the Ministry of Trade.

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Under Decision 0093, enterprises with foreign investment which fulfil in especial excellence their export activities shall be in addition considered the premium for exports. The consideration of premiums for exports is based on export turn-over of each item. The export turn-over shall be not calculated in addition up mixed items for the consideration.

This Decision took effect from its signing date.

Taxations

Corporate income tax applied to branches of foreign organizations

From February 2, 2001, branches of foreign organizations operating in Vietnam are subject to corporate income tax rate in accordance with **Circular No. 08/2001/TT-BTC** of the Ministry of Finance, providing additional guidelines for corporate income tax applied to branches of foreign organizations operating in Vietnam, in compliance with Circular No.99/1998/TT-BTC, dated July 14, 1998, of the Ministry of Finance.

This Circular applies to branches of foreign law firms, foreign credit institutions, foreign tobacco companies and the others permitted to operate in Vietnam.

Under this Circular, the aforesaid branches of foreign organizations are subject to the corporate income tax rate of 32%. In addition, taxable incomes, tax declaration, tax payment and balance are also defined in the Circular.

Foreign Exchange

Amendments of and supplementations to provisions on foreign exchange control

From February 4, 2001, foreign exchange control which were stipulated in **Decree No.63/1998/ND-CP**, dated August 17, 1998 of the Government has been amended and supplemented in compliance with Decree No.05/2001/ND-CP, dated January 17, 2001, of the Government.

Articles 12, 13 and 24 of Decree No.63, were amended and supplemented, as follows:

- Residents who are Vietnamese economic institutions, branches of foreign companies and foreign parties to business co-operation contracts referred to in provision: obligations of selling foreign currencies by residents being institutions□ has been added to the following: Vietnamese economic institutions, foreign invested enterprises and foreign parties to business cooperation contract, branches of foreign companies, foreign bidders, foreign joint venture bidders, Vietnamese credit institutions, State agencies, arm forces units, political organizations, socio-political organizations, social organizations, socio-profession organizations, social funds, voluntary funds. According to Decree No.05, the aforesaid institutions and foreign invested enterprises are all required to sell foreign currencies they earned from current transactions;

From February 2, 2001, branches of foreign law firms, foreign credit institutions, foreign tobacco companies etc. which are operating in Vietnam are subject to corporate income tax rate of 32%.

- The conditions for foreign invested enterprises and foreign parties to business co-operation contracts to purchase foreign currencies, are “having specially important projects under the Government’s programs; or having infrastructural construction projects; or having other important projects being subject to the Government’s guarantee on foreign currency balance”.
- Domestic lending and loan collection in foreign currencies shall be in accordance with the regulations of the Governor of the State Bank of Vietnam.

Foreign Exchange control toward overseas direct investment

On January 19, 2001, the State Bank of Vietnam issued its **Circular No. 01/2001/TT-NHNN**, guiding the foreign exchange control toward overseas direct investment by Vietnamese enterprises. The subjects to this Circular are State-owned enterprises; cooperatives; and enterprises established under the Law on Enterprises. Foreign invested enterprises, foreign parties to business co-operation contracts, and Vietnamese enterprises doing overseas investment in form of credit lending, share purchasing, and in the banking and insurance areas, shall not fall within the governance of this Circular. Vietnamese enterprises doing overseas direct investment must open a foreign currency deposit account at a bank permitted to engage in foreign exchange trading. All money transfers in/ out Vietnam related to their overseas direct investment must be made via this account. Any profit earned from their overseas direct investment must be remitted to Vietnam no later than 6 months since the end of each fiscal year.

This Circular will come into effect from March 3, 2001.

Banking

Regulations on Treasury Bill Bidding

From February 4, 2001, treasury bill bidding at the State Bank of Vietnam is subject to Regulations on Treasury Bill Bidding at the State Bank of Vietnam, in conjunction with his **Decision No.53/2001/QD-NHNN**, dated January 17, 2001, of the Governor of the State Bank of Vietnam.

Tenders to such a bidding comprise: banks (i.e. commercial banks, investment banks, policy banks, cooperation banks, joint venture banks, branches of foreign banks in Vietnam and the others operating under the Law on Credit Institutions); financial institutions; insurance institutions; insurance funds and investment funds, operating in Vietnam. These tenders, if having eligible conditions, shall be certified by the State Bank of Vietnam, as members of the treasury bill bidding market. Specific guidelines on bidding procedures and timelimit are also clarified in the Regulations.

Branches, representative offices, exchange transaction offices of commercial banks

On February 7, 2001, the State Bank of Vietnam issued its Regulations on opening, setting up and termination of exchange transaction offices, branches, representative offices, non-profitable units of local commercial banks, in conjunction with its **Decision No.90/QD-NHNN** which replaced Decision No.175/QD-NH5, dated July 3, 1996, of the Governor of the State Bank of Vietnam, regarding the opening, setting up and termination of branches and domestic representative offices of local joint stock commercial banks.

This Decision governs nationwide the opening, setting up, splitting, unifying, merging and termination of all affiliates of local commercial banks, including exchange transaction offices, branches, representative offices and non-profitable units. All and every aforesaid action of local commercial banks shall be subject to the approval of the State Bank of Vietnam, and carried out in accordance with this Regulations.

This Decision took effect from February 22, 2001.

Labour

Vocational training

From January 26, 2001, detailed provisions on vocational training activities stipulated in the Labour Code and the Law on Education have been guided for and are implemented in compliance with **Decree No.02/2001/ND-CP** issued by the Government.

This Decree governs all vocational institutions and activities and provides incentives to vocational training activities.

Vocational institutions under this Decree comprise: public-funded vocational institutions; semi-public-funded vocational institutions; people-funded vocational institutions of political organizations, socio-political organizations, economic organizations, socio-professional organizations, social organizations; vocational institutions of all economic sectors; private-funded vocational institutions; and the same being invested and established by overseas Vietnamese, foreign organizations and individuals, and international organizations in Vietnam.

This Decree replaced provisions on vocational training activities under Decree No.90/CP, dated November 24, 1993, on the structure of national education system and national system on education and training certificates. In addition, this Decree canceled both Decree No.115/ND-CP, dated September 5, 1994, promulgating the Regulations on the operation of foreign vocational training schools in Vietnam, and Decree No.90/ND-CP, dated December 15, 1995, providing detailed provisions for implementation of a number of articles of the Labour Code, in respect of vocational training activities.

Law on enterprises

Peace and security conditions for some business professions

On February 22, 2001, the Government issued **Decree No.08/2001/ND-CP** providing peace and security conditions for some conditional business professions.

Under the Decree, individuals and organizations doing business in areas which could impact on security and peace of society must have certification of peace and security conditions or commit to do business in accordance with provisions on peace and security.

Business professions with certification of peace and security conditions comprise:

- Seal carving;
- Production of, trade in, repair and hire of shot-gun; production of, trade in, repair and hire of cartridges of shot-gun; and production of and trade in supporting equipment thereof;
- Production of and trade in industrial bursting materials, production and trade using industrial bursting materials; and
- Gas and burned liquid trading; trade in high building with more than 10 storeys in use for hotel, living and working office.

Business professions with commitment of compliance with provisions and conditions on peace and security comprise:

- House renting for temporary residents; house renting for foreigners;
- Printing activities;
- Assets mortgaging trading; and

- Trading in karaoke, disco stages and massages.

This Decree will come into force from March 9, 2001 and replace Decree No.17/CP, dated December 23, 1992, of the Government regarding the management of especial business professions.

Accounting - Auditing

Archives of accounting materials

From January 1, 2001, accounting material archives is subject to the Regime on accounting material archives which has been promulgated in conjunction with **Decision No.218/2000/QD-BTC** of the Ministry of Finance.

This Decision applies to all enterprises of all economic sectors and individual business households; administrative and non-profitable units, armed force units, socio-political organizations, socio-professional organizations, which utilize State and collaborative budgets.

Accounting materials being subject to archives under this Decision, consist of accounting vouchers, accounting books and documents, financial statements, and other accounting-related materials. In addition, the Decision detailed the methodology, place and duration of archives and cancellation of accounting materials out of archive duration.

Accounting regime applied to investment organizations

From January 1, 2001, accounting activities of investment organizations are applied to new Accounting Regime applied to such organizations which has been promulgated in conjunction with **Decision No.214/2000/QD-BTC** of the Ministry of Finance.

The Accounting Regime is compulsory to all of investment organizations of all economic sectors and of administrative and non-profitable units having set up their-own project management boards and independent accounting divisions. The Accounting Regime covers all of the forms of accounting vouchers and the methodology for practicing accounting vouchers; the system of accounting accounts and their contents; the structures and methodology for practicing accounting accounts; the system of accounting books and the methodology for practicing accounting books; the system of the forms of financial statements and the methodology for preparing the financial statements.

Vietnamese auditing standards

Further to four Vietnamese auditing standards provided in Decision No.120/1999/QD-BTC, dated September 27, 1999, the Minister of Finance issued six Vietnamese auditing standards applicable to the independent auditing activities toward financial statements, which have been issued in conjunction with **Decision No.219/2000/QD-BTC** of the Ministry of Finance, which was put into force from January 13, 2001. The six new standards include:

- Standard No.250 □ The appraisal of the observance of and the laws and provisions on auditing financial statements;
- Standard No.310 □ The knowledge of business situations;
- Standard No.500 □ The auditing evidences;
- Standard No.510 - The first year auditing - Balance at the beginning of a fiscal year;
- Standard No.520 □ The analysis process;
- Standards No.580 □ The explanations of Director.

Medicine

Private healthcare service practice

The conditions and scope of setting up and activities of private healthcare service practice is provided in details in compliance with **Circular No.21/2000/TT-BYT** of the Ministry of Health, effective from January 13, 2001.

According to this Circular, units providing private healthcare services can be set up under one of the following forms:

Private hospital (general and speciality practice); Polyclinic; speciality clinic, including general speciality clinic, surgery speciality clinic, family planning-obstetric speciality clinic, dento maxcillo facial clinic, ophthalmology speciality clinic, ears-nose-throat speciality clinic, beauty surgery speciality clinic, recreation, functional restoration and massage speciality clinic, image diagnosing speciality clinic, and testing clinic; maternity clinic; and medical services.

This Circular also provides in details the conditions and scope of operation for each of the aforesaid hospitals and clinics and replaced Circular No.15/1999/TT-BYT, dated July 31, 1999, of the Minister of Health, guiding the implementation of the Ordinance on Private Healthcare and Pharmaceutical Service Practice and Decree No.06/ND-CP, dated January 29, 1994, of the Government, detailing a number of articles of such Ordinance.

Trading in equipment and instruments for health service

On February 16, 2001, the Ministry of Health issued Circular No.03/2001/TT-BYT guiding the trading in equipment and instruments for health service. This Circular entered into effect from February 31, 2001 and replaced Circular No.14/1998/TT-BYT, dated November 17, 1998, regarding guidelines for trading in equipment and instruments for health service.

Circular 03 provides in details guidelines for conditions of trading in equipment and instruments for health service in respect of enterprises and business house holds. The conditions include certificates of staff who are responsibility for major technology matters, conditions for staff working installment, warranty, maintenance and the conditions of facilities and technology.

Intellectual Property

Amendments of and supplementations to Decree No.63/CP

As said in our previous LegalNews of January, 2001, a number of vague and inappropriate provisions in Decree No.63/ND-CP, dated October 24, 1996, were amended and supplemented by **Decree No.06/2001/ND-CP**, dated February 1, 2001, of the Government, which came into effect from February 16, 2001. Below are major amendments and supplementations:

Supplementation to general provisions:

- The terminologies of "associated mark" and "well-known mark" were being supplemented to in Clause 8, Article 2 of Decree 63. Accordingly, correlative provisions concerning associated and well-known marks are added.

Unprotected industrial property subjects

- The biological process (except microbiological process) for production of plants and animals was being supplemented to in the subjects which are not protected by the State in the nature of inventions and utility solutions as provided in Article 4 of Decree No.63.

Adjustments of provisions on the establishment of industrial property right

A number of vague and inappropriate provisions in Decree No.63/ND-CP, dated October 24, 1996, on industrial property were amended and supplemented by Decree No.06/2001/ND-CP, dated February 1, 2001, of the Government

Valid duration of the certificate of the appellation of origin was revised to be unlimited now instead of each 10 year duration as stipulated in Article 9 of Decree 63;

- The acceptance on protection of internationally registered appellations of origin and trademarks, and well-known marks was supplemented to the list of certificates in Article 9 of Decree 63. Accordingly, correlative provisions concerning the certificates were also being supplemented;
- The applicants have now the right to convert their application for invention patents into the same for utility solution patents even when their inventions are under substantive examination, in addition to the only case of being rejected to grant the invention patents as previously;
- Claims against decisions concerning the establishment of industrial property right was clarified more in details, phasing into the first claim and the second one. Accordingly, the valid term for claims and the timelimit for settlement of those in Article 27, were also revised;
- Any extension of the valid term of any patent shall be subject to the discretion of the Minister of Science, Technology and Environment;

Provisions on restricted use of industrial property rights:

- The pre-using rights are permitted prior to the application for the protection and limited to the scope and volume in use prior to such application date. The pre-using rights are not permitted to transfer to the others unless the transfer is made toward the entire business facilities;
- Any use of similar industrial designs and trademarks of goods and services, was being supplemented and now regarded as the infringement of the industrial property rights. ;

Industrial property agents:

- The conditions for acting as industrial property agents in Article 58 of Decree 63 were amended and clarified. To be an industrial property agent, the applicant must: be an enterprise duly established under the Law on Enterprises of Vietnam; have not foreign invested capital; have the function to provide industrial property agent services; and have at least 2 professional experts being patent and trademark attorneys, of which one acts as the head of the agent or is duly empowered by the head of the agent;
- The procedures on granting the certificates on patent and trademark attorney and the certificate on business registration in industrial property agent services were also clarified. Whereby, the State bodies who are entitled to grant the certificate on business registration under the Law on Enterprises, have also the right to grant the certificate on business registration in industrial property agent services.

Other legal documents

Circular No.06/2001/TT-BTC, dated January 17, 2001, of the Ministry of Finance, guiding the implementation of Decree No.78/2000/ND-CP, dated December 26, 2000, of the Government, on the petroleum fee.

Circular No.150/TCHQ-KTTT, dated January 9, 2001, of the General Customs Office, guiding the collection of import tax as per the localization proportions.

Circular No.03/2001/TT-BTC, dated January 11, 2001, of the Ministry of Finance, guiding the collection, payment and management of construction licensing fees.

Circular No.10/2001/TT-BTC, dated January 30, 2001, of the Ministry of Finance, guiding the implementation of the regime on payment of debts in goods and services to the Public Federation of Russia.

Circular No.09/2001/TT-BTC, dated January 18, 2001, of the Ministry of Finance, guiding the implementation of a number of provisions on policies and methods on management of State budget estimates in the year 2001.

Circular No.07/2001/TT-BTC, dated January 18, 2001, of the Ministry of Finance, guiding the allocation, utilization, and balance of expenditures for contracting employees in State bodies and non-profitable units.

Circular No.04/2001/TT-BTM, dated February 22, 2001 of the Ministry of Trade guiding the implementation of Instruction No.28/2000/CT-TTg, dated December 27, 2000, of the Prime Minister regarding the implementation of the Regulation on labeling which was issued in conjunction with Decision No.178/1999/QD-TTg, dated August 30, 1999.

Circular No.01/TT-BYT of the Ministry of Health, dated January 19, 2001, guiding the consideration of issuance of medicine business certificate.

Circular No.01/TT-TCHQ of the General Department of Customs, dated January 19, 2001, guiding customs declaration procedures in respect of appliances, import/export luggage and going means of foreign experts, which were stipulated in Decision No.211/1998/QD_TTg, dated October 31, 1998, of the Prime Minister.

Decision No.85/2001/QD-NHNN, dated January 31, 2001, of the Governor of the State Bank of Vietnam, on the announcement of the principal interest level which serves as the basis for credit institutions to fix the interest rate toward the commercial loans in Vietnamese currency.

Decision No.92/2001/QD-NHNN, dated February 8, 2001, of the State Bank of Vietnam, promulgating the Rules on the special control toward People's Credit Funds.

Decision No.98/2001/QD-BTC, dated February 2, 2001, of the Ministry of Finance, promulgating the Regulations on level raising examination for accountants.

Decision No.17/2001/QD-BTC, dated February 13, 2001, of the Government, on the transfer of the functions of coordination of Internet activities in Vietnam.

Decision No.07/2001/QD-BTC, dated January 19, 2001, of the Ministry of Agriculture and Rural Development, on the official, additional and exceptional registrations of a number of plant protection poisons which are subject to the limitations in use in Vietnam.

Decision No.122/2001/QD-NHNN, dated February 20, 2001, of the Governor of the State Bank of Vietnam on issuance of standard form of Charter of organization and activities of State Commercial Bank.

Decision No.19/2001/QD-TTg, dated February 20, 2001, of the Prime Minister regarding the addition of computer item into the List of major industrial products being supported in accordance with Decision No.37/2000/QD-TTg, dated March 24, 2000, of the Prime Minister.

Decision No.166/QD-TTg, dated February 20, 2001, of the Prime Minister regarding the approval of feasibility study of investment in Phu My nitrogenous fertilizer factory project.

Dispatch No.78/CP-KTTH, dated January 22, 2001, of the Government, on the credit and debit of indirect taxes applied to ODA water supplying projects which re-borrow the loans from the State budget.

Dispatch No.84/CP-QHQT, dated January 31, 2001, of the Government, on the use of auditing earnings from ODA projects.

Dispatch No.754 TC/TCT, dated February 1, 2001, of the Ministry of Finance, on the principles of classifying imported diesel engines attached to mechanic machinery and equipment.

Dispatch No.434/VPCP-QHQT, dated February 6, 2001, of the Government Office, on the Draft of Vietnam-Australia Consulate Convention.

Dispatch No.459/VPCP-DK, dated February 07, 2001, of the Government Office, on the signature of Nam Con Son gas conveyance contract.

Dispatch No.309/BLDTBXH-TL, dated February 06, 2001, of the Ministry of Labour, War Invalids and Social Affairs, on the appraisal of wage unit price in 2001 toward State-owned enterprises.

Dispatch No.276 TCT/NV3, dated January 30, 2001, of the Ministry of Finance, and the General Tax Office, on the import tax applied to transformer fluids.

Dispatch No.467/TCHQ-GSQL, dated February 8, 2001, of the General Department of Customs regarding the import and export of representative offices, branches of foreign business entities in accordance with Decree No.45/2000/ND-CP.

Dispatch No.115/CP-CN, dated February 20, 2001, of the Government regarding the project of National highway No.1 rehabilitation in the stage from Can Tho to Nam Can.

Dispatch No.108/CP-QHQT, dated February 19, 2001, of the Government regarding the negotiation results of 1A National highway rehabilitation Project at 3rd stage, funded by WB.

Dispatch No.643/VPCP-QHQT, dated February 21, 2001, of the Government Office regarding the signing of cooperation declaring with Texas State of USA.

Dispatch No.632/VPCP-DK, dated February 20, 2001, of the Government Office regarding the widening of operating areas of Vietsopetro Joint Venture Enterprise.

Dispatch No.593/VPCP-CN, dated February 16, 2001, of the Government Office regarding the amendments of Vietnam - Philipin Aviation Agreement.

Dispatch No.110/CP-QHQT, dated February 19, 2001, of the Government regarding the amendments of Credit Agreement of Cuu Long Delta Irrigation Project.

Dispatch No.116/CP-QHQT, dated February 20, 2001, of the Government regarding the amendments of Loan Agreement from IFAD financed 2 projects of Quang Binh and Ha Giang.

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Dispatch No.587/VPCP-QHQT, dated February 16, 2001, of the Government Office regarding the establishment of Tuv-Rheinland Limited Liability Company (100% foreign investment).

Dispatch No.597/VPCP-QHQT, dated February 16, 2001, of the Government Office regarding the taking over the UNDP funded projects of appraisal of development rights in Vietnam.

Dispatch No.109/VPCP-QHQT, dated February 16, 2001, of the Government regarding the empowerment of signing the credit Agreement with WB.

Dispatch No.641/VPCP-QHQT, dated February 21, 2001, of the Government Office regarding the settlement of tax and loans of Viet - Nga Fisheries Joint Venture Company - SEAPRIMFICO.

Notification No.05/TB-QLNH, dated February 9, 2001, of the State Bank of Vietnam, on the cross exchange rate between Vietnamese Dong and some other foreign currencies.