

DC LAW
International

NEWSLETTER

Issue May 2010



INDEX

Part 1. Legal News

1. [Guidelines on issuance of bidding permits to foreign contractors in Hanoi](#) Page 2
2. [Amendment of and addition to the duties of the Department of Finance](#) Page 3
3. [Guidelines on use of capital from international bonds](#) Page 4
4. [New decree on enterprise registration](#) Page 5-6

Part 2. Legal Advice

- [The Equitization of Vietnamese State Owned Companies](#) Page 7-8

Legal News

During this April of 2010, the Government has enhanced the legal structures in Vietnam by clarify duties of Government bodies and explain more about the process of enterprise registration. Also, further guidelines are now provided for foreign contractors in Vietnam and for the use of international bonds in Vietnam.

1. Guidelines on issuance of bidding permits to foreign contractors in Hanoi

The Ministry of Construction recently issued Official Letter 607/BXD-HDXD providing guidelines to the Department of Construction of Hanoi City on issuance of bidding permits to foreign contractors.

Accordingly, foreign contractors operative in construction in Vietnam must act in accordance with the provisions of Decision No. 87/2004/QĐ-TTg dated May 19, 2004 of the Prime Minister promulgating Regulations on Management of the Operations of Foreign Contractors in Construction in Vietnam, whereby foreign contractors must perform the rights and obligations set out in clause 2 of Article 7 of these Regulations, including application for bidding permits, opening of executive offices, registration of accounts in Vietnam.

Pursuant to the above regulations, the Department of Construction of Hanoi City is requested to provide guidelines for contractors to know and act in accordance with the regulations of Vietnam. These regulations need to be incorporated into the terms of Contracts to be executed with contractors as a basis for contractors to act and deal with in case of disputes.



2. Amendment of and addition to the duties of the Department of Finance

The Ministry of Finance on April 15, 2010 issued Circular No. 54/2010/TT-BTC making amendment of and addition to Joint Circular No. 90/2009/TTLT-BTC-BNV dated May 6, 2009 providing guidelines on the functions, duties, powers and organization structure of specialized governmental agencies in the field of finance under the authority of the People's Committees of provincial and district levels.

This Circular is effective and enforceable as of June 1, 2010.

Specifically, clause 11 of Article 2 of the aforementioned Joint Circular No. 90/2009/TTLT-BTC-BNV was amended, whereby a Department of Finance of provincial level shall be entitled to "Stipulate the functions, duties and powers of the office, the inspectorate, specialized functional divisions and administrative agencies under the authority of the Department; manage the regular personnel, realize the payroll system and policies on treatment, training, development, rewards and disciplines for officers, civil servants and officials under the management of the Department in accordance with the hierarchical system of the provincial-level People's Committee and the laws. The stipulation of the functions, duties and powers of branches under the Department of Finance is carried out in accordance with Decree No. 13/2008/ND-CP dated February 4, 2008 of the Government stipulating the organization of specialized agencies under the People's Committees of provinces and cities under central authority."



3. Guidelines on use of capital from international bonds

The Ministry of Finance recently issued Circular No. 56/2010/TT-BTC dated April 16, 2010 providing guidelines on management, supervision and use of capital from international bonds of the Government issued in 2010.



Accordingly, proceeds from sale of bonds of the Government on the international capital market, after deduction of fees and expenses related to the issuance of international bonds, are used for refund to the State Budget, the remaining amount pursuant to the instruction of the Prime Minister. The Ministry of Finance authorized the bank which had opened a bank account for the Ministry of Finance to receive the capital from international bonds and act as a lender of loans from the international bonds issued in 2010. A borrower must open a foreign currency account with this bank to carry out disbursement in accordance with the schedule registered by such borrower.

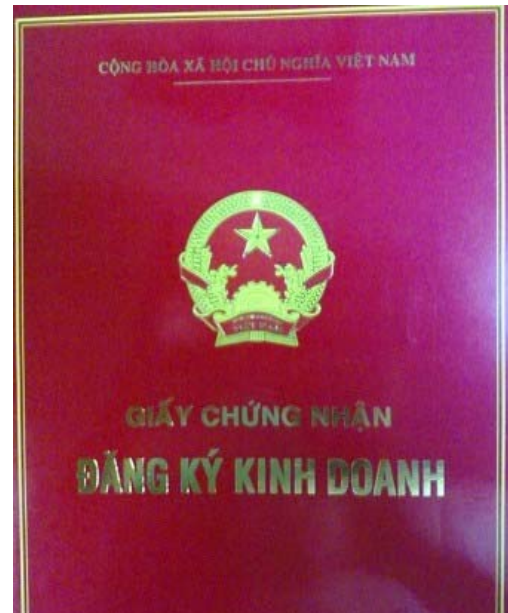
In order to improve the efficiency of use of capital, the borrower is permitted to use the temporarily idle capital which has not been disbursed in the principle of ensuring safety and efficiency and not affecting the plan on use of the capital from bonds for the purposes approved by the Prime Minister and the general plan approved by the Ministry of Finance. Periodically on a monthly, quarterly and yearly basis, the borrower shall be responsible for reporting to the lender and the Ministry of Finance on the situation of withdrawal, arrangement and use of temporarily idle capital from bonds. In case the borrower fails to fulfill its obligations, the Ministry of Finance, through the lender, will request the borrower to make compensation in accordance with the agreement made; in case of failure by the borrower to make compensation in accordance with the agreement made, the Ministry of Finance may request all relevant banks to freeze the accounts of the borrower for payment of debts.

4. New decree on enterprise registration

From June 1, 2010, business registration and tax registration for enterprises operative under the Law on Enterprises shall be implemented in accordance with Decree No. 43/2010/ND-CP dated April 15, 2010 of the Government.

Furthering to the Law on Enterprises of 2005, on 29 August 2006 Decree No. 88/2006/ND-CP was issued to monitor various stages that enterprises shall walk through from its incorporation to its interim cessation of businesses. The said Decree is named “business registration” and it requires enterprises to register with a business registration office under a local Department of Planning and Investment (“MPI”) of a city or a province when they are first incorporated and thereafter whenever they set up branches, representatives offices, change their main addresses, their names, their charter capital, their shareholders and so on.

After several years of accomplishment of the said Decree, new developments occur, new issues are to be addressed; consequently, the Decree No. 43/2010 was issued. It will become effective from June 1, 2010.



To a great extent, the replacing Decree improves the previous “business registration”. There are provisions for merger, consolidation, change of company type (from a single shareholder to a multi one, from a limited liability to a joint stock). Most importantly, it creates the national registered corporate information system which will provide the identities and information of all enterprises to those who are interested in a particular entity. Such a system will make enterprises more transparent and give comfort to those who want to deal with “a legal but invisible entity”.

The Decree also makes a great progress. The enterprise registration certificate will be simultaneously the business registration and tax registration certificate of an enterprise. Enterprises having obtained business registration certificates or business registration and tax registration certificates prior to the effective date of this Decree will not be obliged to perform procedures for shifting to the enterprise registration certificate; enterprises will be issued enterprise registration certificates upon registration for changes in the contents of enterprise registration. Each enterprise will be issued a sole code called the enterprise code. This code will be simultaneously the business registration code and tax code of the enterprise. The enterprise code will exist throughout the duration of operation of the enterprise and will not be reissued to another organization or individual; upon termination of operation of the enterprise, its enterprise code will cease to be in force and must not be reused.

The business lines set out in the enterprise registration certificate are recorded and encoded in accordance with the level-4 industries under the Vietnam Industrial Classification System, except for those industries that are banned from business. Enterprises are only permitted to use the business lines and investment form in constituting the name of the enterprises if such enterprises register such business lines or make investments in such form. From January 1, 2011, it is not permitted to make enterprise names which are confusing or similar to the names of other enterprises which have been registered nationwide, save those enterprises having their enterprise registration certificates withdrawn or having been dissolved. From the effective date of this Decree to December 31, 2010, the fight against similarity and confusion in the names of enterprises is carried out within provinces and cities under central authority. Enterprises that have registered their names in accordance with applicable regulations but not in accordance with regulations on the fight against similarity and confusion in the names of enterprises nationwide are not obliged to register name changes; enterprises with similar or confusing names are encouraged and facilitated to negotiate with one another for registration of changes in their names or addition of place names to their names for differentiation of enterprise names.

Legal Advice

QUESTIONS:

Questions Regarding the Equitization of Vietnamese State Owned Companies

1. **Is it correct that foreign investor is capped at 30% of total charter capital of an equitized company?**

No.

Foreign investors who want to purchase shares from equitized enterprises will abide by Decision No. 88/2009/QĐ-TTg on selling shares to foreign investors in Vietnamese enterprises. They may purchase shares at such rates as determined by the enterprise; however, such rates must have been set in advance by the supervisory unit of the said enterprise.

In law, the 30% ratio has been abolished by the said Decision. A higher or a lower rate is set by an enterprise during the process of equitization. In general, foreign investors may hold a maximum of 49% shares in a listed company; or to purchase shares in enterprises operating in the so called “specialized branch”, such as insurance, banking, posts and telecommunications, aviation, rare mineral exploitation, the rate of shares auctioned to investors shall be considered and specifically decided by the supervisory unit of the enterprise¹.

As to enterprises engaging in trading, the permissible ratios are subject to international treaties of which Vietnam is a member.

We note that according to the WTO commitments of service sector of Vietnam, since 11 January 2008, generally, the 30% foreign equity limitation for purchase of shares of Vietnamese enterprises was eliminated. However, the elimination does not extend to capital contribution in the form of purchase of shares of joint-stock commercial banks and the sectors not committed in the WTO Commitments.

For the other sectors and sub-sectors committed in the WTO Commitments, the level of shares held by foreign investors in purchase of Vietnamese enterprises shall be corresponding to the limitations on foreign capital participation set forth therein, including the limitations in the form of transitional periods, where applicable.

It should be noted that, just a few equitized State owned enterprises fall in the categories listed above.

2. **Shall strategic investors include both local and foreign investors?**

Yes.

Pursuant to Decree No. 109/2007/ND-CP of government on conversion of SOEs into joint stock ones (“**Decree 109**”), “strategic investors” are defined as local and foreign investors who have financial and enterprise management capability; transfer new technology, supply raw materials, and develop markets for product consumption; and whose long-term interests are closely connected with the enterprise.

However, selection of who being a strategic investor will be made by the steering committee for equitization. This unit will assist the equitized State owned enterprises on criteria for selection and on shares sold to the same.

When being selected, strategic investors shall be entitled to purchase shares at a price not less than the average auction prices recently made; but they may not transfer their shares for 3 years from the date of purchase; usually being the date establishment of the equitized State owned enterprises. Any sale prior to expiration of the above period, there must be approval from an annual general meeting.

Please contact us at DC Law offices or visit us at www.dclaw.com.vn for further information

Ho Chi Minh Office

Email: info@dclaw.com.vn
Website: www.dclaw.com.vn
11A-11C Phan Ke Binh Street, DaKao Ward,
District 1, Ho Chi Minh City
Tel: 84 8.3821 9928
Fax: 84 8.3821 9929

Hanoi Office

Email: info@dclaw.com.vn
Website: www.dclaw.com.vn
Harec Building, Suite 1, Floor 9,
4A Lang Ha street, Ba Dinh District, Hanoi
Tel: 84 4.37772 6972
Fax: 84 4.37772 6973



The Newsletters do not constitute legal advice or the creation of an attorney/client relationship. DC LAW has made every effort to insure the accuracy of the information provided in the Newsletters. However, DC LAW does not guaranty the content and cannot be held responsible for any errors in or reliance upon the Newsletters. DC LAW accepts no liability for the content of the Newsletters, or for the consequences of any actions taken on the basis of the information provided. The Newsletters are not intended or written to be used, and cannot be used, for the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein.