

# LegalNews

*December, 2001*

Issue 12

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## Foreign Investment

### Minimum Required Export Ratio Adjusted for Foreign Invested Projects

On 7 December 2001, the Minister of Planning and Investment issued **Decision No. 718/2001/QĐ-BKH** ("**Decision 718**") on promulgating the List of Industrial Products that must be exported at least 80%. According to Decision 718 applicable to foreign invested enterprises, there are only 14 industrial products that are required to meet the minimum required export ratio of 80%, reduced from 24 products as required under Decision No. 229/1998/QĐ-BKH dated 29 April 1998 of the MPI.

The industrial products now subject to the 80% export ratio include: Motorcycles; buses and lorries having tonnage of less than 10 tons; water pumps used for irrigation having capacity of less than 30,000m<sup>3</sup> per hour; low and medium voltage electricity cable; communication cable; cargo liners of less than DWT30,000, fishing boats of less than 1,000cv, river boats, motor boats and barges (applicable to 100% foreign owned projects); video and audio products; shaped aluminum products; construction steel (Ø<40mm); NPK fertilizer; PVC; bicycles and accessories; assorted distribution transformers of less than 35KV; diesel engines of less than 15cv.

Decision 718 also provides that those foreign invested projects licensed before the effective date of this Decision may adjust their export ratio in accordance with Decision 718. These regulations are in compliance with Article 21(a) of the amended Law on Foreign Investment in Vietnam issued in June 2000. As viewed by foreign invested enterprises operating in the country, the reduction of the products subject to the minimum required export ratio would have positive impacts on their operations.

Decision 718 took effect as of 22 December 2001 and replaced Decision 229.

### More Administrative Reforms to Boost FDI in Ho Chi Minh City

To attract more foreign direct investment into the City, on 23 October 2001, the Chairman of the Ho Chi Minh City People's Committee issued **Directive No. 28/2001/CT-UB** ("**Directive 28**") regarding measures of administrative reforms in the area of foreign direct investment in Ho Chi Minh City (HCMC). Directive 28, effective from 10 November 2001, shall be applied to foreign invested projects outside industrial zones and export processing zones only.

In accordance with Directive 28, the HCMC Department of Planning and Investment ("DPI") and the Management Board of Saigon South ("MBSS") - a body having its function similar to the DPI in receiving, providing guidelines, managing and granting the investment licenses except for Phu My Hung project - shall be responsible for implementing the measures for administrative reforms in respect of foreign invested projects. The noted measures provided by Directive 28 are as follows:

#### *Approval in principle*

For those projects with licensing precedents in HCMC and those projects not under Group A (i.e. subject to the Prime Minister approval) or not under the authority of the Ministry of

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Planning and Investment, an approval in principle for the implementation of the projects will be not required except for these projects, an approval in principle must be issued within 15 working days from receipt of a foreign investor's request.

### *Time for issuance of investment license shortened*

With respect to those projects subject to investment approval, the investment license shall be granted within 20 working days instead of 45 days as provided for in Decree No. 24/2000/ND-CP dated July 31, 2001 ("Decree 24"). The investment license will be issued within 10 working days in lieu of 15 days under Decree 24, for the projects subject to investment registration only. For those projects, which the DPI is authorized by the HCMC People's Committee to consider, then the time for investment registration and issuance of investment license is just 5 working days.

### *Information and guidelines on the investment policies*

The DPI and the MBSS shall be responsible for providing information and guidelines in response to all requirements of the investors in relation to the agreement on the construction site, architecture, land rental, the current status and the origin of the land and other issues regarding the implementation of the investment projects.

### *Environmental issues*

No longer than 5 working days, the Department of Science, Technology and Environment shall be responsible for approving the Registration for Compliance with Environmental Standards submitted by the investors instead of 20 working days as set out in Part III.6 of Circular No. 490/1998/TT-BKHCMNT of the Ministry of Science, Technology and Environment ("Circular 490"). The time for evaluation and issuance of approval on the report on assessment of the environment impact is now reduced to 15 working days from the 60 working days as under Circular 490.

## **Amendments of Import and Export Rules for Foreign Invested Enterprises**

The Ministry of Trade, on 04 December 2001, issued **Circular No. 26/2001/TT-BTM** ("**Circular 26**") providing amendments of and additions to a number of provisions of Circular No. 22/2000/TT-BTM dated 15 December 2000 guiding the import, export and other commercial activities of foreign invested enterprises ("FIEs"). Effective from 19 December 2001, Circular 26 provides the following major amendments:

It is expressly stated under Circular 26 that FIEs may purchase the commodities other than those produced by themselves (under the investment license) in order to process for export or to export, except for those products included in "the list of commodities which foreign invested enterprises may not purchase for export" (which included products prohibited from export and some others such as rice and wild animals).

Circular 26 also provides the application dossier for import duty exemption for raw materials for production. Accordingly, apart from those documents such as the application for import duty exemption, utilization level of raw materials, etc., FIEs must submit certain other documents depending on each project so as to prove that they are entitled to this tax incentive (e.g. projects in especially difficult socio-economic conditions, projects subject to 80% export ratio, projects processing agricultural products for export over 50%, and so on).

With respect to the procedures for re-export of the machinery of foreign investors, a confirmation from the tax authority regarding the completion of financial obligations as set out in Circular 22 is now no longer required. Clarifications are also provided for the procedures of liquidation of assets of FIEs.

In addition, Circular 26 provides new rules for sales of the liquidated machinery and means

*"The Government approaches foreign invested enterprises' demands by having entitled them to purchase the commodities other than those produced by themselves to process for export or to export. Such new policy will certainly help raising export of domestic commodities"*

of transportation of export processing enterprises into the domestic market. Accordingly, the enterprises must pay import duty and other financial obligations when selling the said machinery and means of transportation.

# Import-Export

## Used Cars Allowed to Import via Non-merchant Routes for certain Individuals

Under **Circular No. 27/TTLT-BTM-TCHQ** dated 6 December 2001 of the Ministry of Trade and the General Department of Customs, as from 21 December 2001, the following persons are allowed to import used cars via non-merchant routes into Vietnam:

- Vietnamese citizens permanently residing overseas who are allowed to repatriate; and
- Vietnamese citizens who are dispatched by the State organs to work abroad, experts working in foreign countries more than three years excluding postgraduates, apprentices, abroad students and laborers working abroad under definite term.

## Import Policies for the Year 2002

On 13 December 2001, the Prime Minister issued **Directive No. 31/2001/CT-TTg** on enhancing and strengthening the import and export activities in the year 2002 ("**Directive 31**"). According to Directive 31, the following measures shall be applied: (i) to give priorities to import new materials, advanced equipment and technology for the industrialization and modernization process; (ii) to use more domestic materials and equipment which are domestically produced for saving foreign currencies and the development of domestic production; (iii) to further develop the existing plans in respect of production of materials for replacement of the imported goods; (iv) to apply advanced technology for the reduction of import; (v) to limit the importation of consumption goods; and (vi) to closely supervise the importation of automobiles and components of motorbikes for encouragement for local production of components, spare parts.

## Other Documents

- Decision No. 1245/2001/QD-TCHQ dated 30 November 2001 of the General Department of Customs on promulgating Standard Forms and Regulations on collection, updates, management, and use of information on violation of Customs laws;
- Decision No. 65/2001/QD-BKHCMNT dated 11 December 2001 of the Ministry of Science, Technology and Environment on promulgating the List of the treated wastes satisfying environmental requirements to be allowed to import for production materials purpose;
- Decision No. 1257/2001/QD-TCHQ dated 4 December 2001 of the General Department of Customs on promulgating the import and export goods declaration, tax notification and Decision on tax adjustment;
- Decision No. 136/2001/QD-BTC dated 18 December 2001 of the Ministry of Finance regarding the supplementation to the List and minimum price of items of which price used for calculation of import duty is controlled by the State.

# Trade

## VN - US Bilateral Trade Agreement Takes Effect

According to **Notice No. 5036/TM-VP** dated 11 December 2001 of the Ministry of Trade, at 3.p.m on 10 December 2001 at Washington time (i.e. 3.a.m. on 11 December 2001 at Hanoi time), Trade Minister Vu Khoan and US trade representative Robert Zoellick exchanged official letter approving Vietnam - US Bilateral Trade Agreement ("**BTA**").

As such, from 10 December 2001, import duties imposed upon Vietnamese commodities (including textile and garments, wooden furniture, electronic house items, fine arts, etc.) exported to the United States are reduced to average 3% instead of 40% as previously applied. This is good news for Vietnamese enterprises having export activities to the US market. However, on the other hand, Vietnamese enterprises would face fierce competition from the US businesses because, like Vietnamese enterprises, the US businesses also enjoy incentives from the BTA.

## Business Conditions Introduced for Inland Waterway Transportation and Automobile Transportation

To further improve the implementation of the Law on Enterprises, on 11 December 2001, the Government issued **Decree No. 91/2001/ND-CP** on conditions for trading in inland waterway transportation and **Decree No. 92/2001/ND-CP** on conditions for trading in transport by automobiles. The following is the brief of the contents of these decrees:

### *Business conditions for inland waterway transportation under Decree 91*

The business sectors which are subject to business conditions under Decree 91 includes: (i) Inland waterway transportation; (ii) Inland waterway passengers transportation across the borders of Vietnam; (iii) Loading and unloading cargos at domestic ports; (iv) Designing inland waterway means of transportation; and (v) building, repairing inland waterway means of transportation.

Enterprises, wishing to be involved in the above sectors, must satisfy the following conditions:

- The business registration as issued includes inland waterway passenger transportation;
- Means of transportation must satisfy the technical standards;
- Crew members must have certificate or degree in compliance with the current regulations; and
- To register with the local transport management authority in respect of lines, business plan or area of operation.

### *Business conditions for automobile transportation under Decree 92*

In accordance with Decree 92, enterprises involving (i) passenger transportation at the fixed route; (ii) passenger transportation by buses; (iii) passenger transportation by taxi; (iv) passenger transportation on contractual basis; and (v) maritime transportation, must meet the following business conditions:

- The business registration as issued include the above business lines;
- Means of transportation must satisfy the transportation requirements and ensure the time for the use;

- The name of the business (individual or organization) must be stated outside the means of transportation;
- Transportation prices have been registered with the local transport management authority;
- Taxes must not exceed 8 seats, and must have the money counter and the light placed on top; and
- Taxi drivers must be trained on communications and passenger transportation service held and certified by the Vietnam Automobile Transportation Association.

### Other Documents

- Treaty on transit of goods between the Socialist Republic of Vietnam and Cambodian Kingdom;

# Advertisement

## New Rules for Advertising under the Ordinance on Advertisement

The Standing Committee of the National Assembly issued on 16 November 2001 the **Ordinance on Advertisement** (“**Ordinance**”). The Ordinance will take effect as of 1 May 2002 and replace the former regulations in this field (i.e. Government Decree No. 194/CP dated 31 December 1994 and its implementing regulations).

According to the Ordinance, means for advertising include:

- Press (printed magazines, illustrated magazines, e-magazines);
- Computer information networks;
- Publications;
- Cultural and sport activity programs;
- Exhibitions;
- Boards, posters, hoarding, banners, monitors placed at public locations;
- Luminescent objects, aerial objects, under-water objects;
- Transport means, other portable objects;
- Commodities; and
- Other means of advertisement as stipulated by laws.

Also under the Ordinance, the advertisement on computer information networks; boards, posters, hoarding, banners, monitors placed at public locations; luminescent objects, aerial objects, under-water objects; and transport means, other portable objects must obtain the advertisement license granted by the State competent authority.

Advertisement activities within Vietnamese territory conducted by foreign entities are provided as follows:

- The advertisement of goods and services of foreign entities not having operations in

*“Offshore advertising companies may set up in Vietnam either advertisement representative offices to promote its advertisement or branches or joint ventures with local partners to provide advertising services”*

Vietnam must be conducted throughout a Vietnamese advertisement organization.

- Foreign entities may establish in Vietnam either their advertisement representative offices to promote advertisement activities or advertisement branches to trade in advertisement services;
- Foreign entities may cooperate with Vietnamese organizations and individuals to set up a joint venture for trading in advertisement services in compliance with the relevant regulations.

## Legal Practice

### Guidelines for the Ordinance on Lawyers

On 12 December 2001, the Government issued **Decree No. 94/2001/ND-CP** providing guidelines for the implementation of the Ordinance on Lawyers, effective from 27 December 2001 ("**Decree 94**"). Accordingly, a person wishing to be a lawyer must satisfy the following conditions: (i) Being a member of the Bar Association where he or she reside (the definition of residence is interpreted in accordance with Article 48 of the Civil Code); (ii) having been granted Lawyer Practicing Certificate (from the Ministry of Justice). Decree 94 provides that one lawyer is only allowed to set up or participate to set up one legal practice organization, i.e. either a law office or partnership law firm.

The Law Office and Partnership Law Firm may recruit foreign lawyers. In addition to the branches established in other provinces in Vietnam, a law office or partnership law firm may set up their offices in foreign countries as long as an approval is obtained from the Ministry of Justice in accordance with the following conditions:

- Having been established at least 3 years;
- The operations are proven to be effective for the last two years; and
- Not subjected to administrative sanctions for the last 3 years.

## Other Documents

### Labor

- Decision No. 1742/QD-TLD dated 3 December 2001 of the Vietnam Trade Union promulgating temporary regulations on wage payment for personnel of the Trade Union, who are working in non-State enterprises;
- Inter-Circular No. 80/2001/TTLT-BTCCBCP-BTC-BYT dated 5 December 2001 of the Committee for Organization of Government's Personnel, the Ministry of Finance and the Ministry of Health guiding for the implementation of Decision No. 97/2001/QD-TTg dated 26 June 2001 of the Prime Minister regarding supplementation of the regime on allowances applicable to officials of health industry;

### Finance-Accounting

- Circular No. 98/2001/TT-BTC dated 5 December 2001 of the Ministry of Finance guiding for accounting of petroleum and gasoline expenses;

### Science-Technology

- Circular No. 99/2001/TT-BTC dated 5 December 2001 of the Ministry of Finance

guiding for the priority in expenses for application and development of information technology.

### Credit

- Decision No. 193/2001/QD-TTg dated 20 December 2001 of the Prime Minister promulgating the Regulations on establishment, organization and operation of the Fund of Credit Security for Small and Medium Enterprises;

### Intellectual Property

- Inter-Circular No. 01/2001/TANDTC-VKSNDTC-BVH dated 5 December 2001 of the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Culture and Information on guiding for the implementation of a number of Articles of the Civil Code on the settlement of disputes relating to author's right at People's Courts;

### Marriage-Family

- Circular No. 07/2001/TT-BTP dated 10 December 2001 of the Ministry of Justice guiding for the implementation of a number of Articles of Decree No. 77/2001/ND-CP dated 22 November 2001 of the Government providing in details for registration of marriages in accordance with Resolution No. 35/2000/QH10 of the National Assembly.

### Miscellaneous

- Decision No. 26/2001/QD-CHK dated 11 December 2001 of the Vietnam Civil Aviation on prices of passenger transport via domestic flight routes;

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