

Legal news

January 2003

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Foreign Investment

Foreign investment in education and training

Official Letter 180/VPCP-QHQT dated 10 January 2003 of Government's Office:

- Re-confirms the encouragement to vocational training;
- Says that since the Ministry of Education and Training has not so far issued the guidance for the implementation of Government's Decree 06/2000/ND-CP, foreign investment in university education shall therefore be considered carefully, taking into account the regional master program with priorities given to projects training high quality human resources and engaging in science and high technology, etc.;
- And, consideration of any new university education project shall be temporarily ceased until the issuance of the said guidance by the Ministry of Education and Training for the implementation of the Government's Decree 06/2000/ND-CP.

Trade

Goods and services banned from trading

On 31 December 2002, the Ministry of Fisheries issued Circular 03/2002/TT-BTS providing guidance for the implementation of Government's Decree 73/2002/ND-CP dated 20 August 2002, by adding some goods and services into List 1 (goods and services banned from trading) and List 3 (goods and services subject to conditional trading), which were attached to Decree 11/1999/ND-CP dated 03 March 1999 of the Government.

Under this Circular, some kinds of goods and services banned from circulation and execution starting from 15 January 2003 include: some chemicals, antibiotic medicaments, biological products belonging to the list of chemicals and antibiotics prohibited from manufacturing, circulating and use in sea-product processing and trading.

The Circular lists also the goods and services being required the Certificate of trading condition satisfaction and the specific requirements for granting of the Certificate of trading condition satisfaction for aquatic veterinary medicines and aquatic feeds.

Regulations for exhibition trading

Decision 41/2002/QD-BVHTT dated 15 December 2002 of the Ministry of Culture and Information provides some amendments of the Regulations on exhibition operations, concretely:

- The Decision covers only some types of exhibitions having political, social and cultural contents. Exhibitions presenting other specific subjects like arts, books, photographs and trade fairs are not fallen under the governing scope of this Decision;
- The Ministry of Culture and Information and its provincial departments have the authority to grant permits for abroad exhibitions by Vietnamese organizations and individuals, and exhibitions in Vietnam by foreign organizations and individuals;

- A set of documents applied for exhibition permits must include: (1) a letter requesting the permit; (2) letter of invitation issued by or agreement of exhibition signed with foreign partner(s) with respect to exhibition in Vietnam by foreign organizations or individual, or to abroad exhibition by Vietnamese organizations or individuals; (3) list of documents and materials to be exhibited; (4) contract for lease of exhibition place, etc.. The application document shall be considered within 15 days from the satisfactory submission.

Conditions for trading in medical equipment

In order to implement Decree 59/2002/ND-CP of the Government on abolishing some licences and replacing some licences by other management methods, the Ministry of Health issued on 13 December 2002 its Circular 13/2002/TT-BYT guiding the conditions for trading in medical equipments as follows:

Regarding personnel, the person who take the main responsibility for technical matters of medical equipments must have good health, an university diploma specialised in technology, medicine or pharmaceuticals, a certificate of medical equipment technology training, and not be the subject of criminal prosecution;

Regarding the facilities, business entity or individual must have a transaction place, storehouse to maintain medical equipments, technological tools and equipments to install and maintain medical equipments, and means to prevent fire and protect the environment.

Labour

Changes to salary regime and social pensions

On 15 January 2003, the Government issued Decree 03/2003/ND-CP making adjustment of salary regime, social pensions and a further step of reform of salary management regime.

Under this Decree, from 1 January 2003, the minimum wage paid to persons being subject to the State budget and labourers in all enterprises (except for foreign invested capital enterprises) is increased from VND 210,000 to VND 290,000 per month. Subsistence allowances to retired officials working for wards, communes, towns are also increased accordingly.

As a result, monthly retirement wages and social pensions are increased in comparison with those stipulated in Decree 77/2000/ND-CP dated 15 December 2000 of the Government as follows:

- Retirement wage is increased by 46% in favour of persons retired in accordance with Decree 218/ND-CP dated 27 December 1961; Decree 161/ ND-CP dated 30 October 1964, of the Council of Ministers (now the Government) and other amendments thereof made before 18 September 1985;
- Retirement wage is increased by 42% in favour of persons retired in accordance with Decree 236/HDBT dated 18 September 1985 of the Council of Ministers (now the Government);

- Retirement wage is increased by 38.1% in favour of other persons retired in accordance with Decree 43/ND-CP dated 22 Jun 1993; Decree 66/ND-CP dated 30 September 1993, Decree 12/ND-CP dated 26 January 1995 and Decree 45/ND-CP dated 15 July 1995, of the Government; and
- Allowance is increased by 38.1% in favour of persons whose working capacity is reduced and persons who receive allowances of social insurance.

Changes to social insurance regulations

Detailing the 2002 Amendment of the Labour Code, on 9 January 2003, the Government issued Decree 01/2003/ND-CP making amendments of and additions to some articles of the Regulations on Social Insurance issued in conjunction with Decree 12/CP dated 26 January 1995. Decree 01 replaces Decree 93/1998/ND-CP dated 12 November 1998. Decree 01 has the following salient amendments:

- Compulsory social insurance applies more widely to enterprises, bodies and organizations which have employees recruited by labour contracts having duration of three months or more, by indefinite term labour contracts, or by labor contracts having duration of less than three months, but employment relationship still continues or new labour contract is then made;
- In certain circumstances, employees paid compulsory social insurance can have from 5 to 10 leave days a year for refreshment or health recovery, subject to their health condition. Payment for such leaves shall be taken from social insurance fund which equals to 0.6% of the total wage actually funded for social insurance.
- Employees who have paid social insurance for full 15 years shall be entitled to get retirement wage equal to 45% of the average monthly wage serving as the base for social insurance contribution, plus 3% or 2% with respect to female or male employees respectively for each full year of social insurance contribution (previously under the Decree 12/CP dated 26 January 1995, only 2% was added for both male and female employees).
- In addition, there are some other changes relating to the method of calculation of social insurance contribution time and to social insurance regime applicable to pregnant employees.

Working hours

On 27 December 2002, the Government issued Decree 109/2002/ND-CP amending and supplementing the Decree 195/CP dated 31 December 1994, on working hours and rest time.

Under Decree 109, overtime must not exceed 50% normal working hours provided for each working day and for each type of work. In case working hours are provided for a week, total normal working hours and overtime must not exceed 12 hours a day. And, finally the total overtime must not exceed 200 hours a year.

Decree 109 however defines special cases where overtime may exceed 200 hours to less than 300 hours a year, subject to the negotiations between employer and employees:

- Export processing entities in such areas as textiles, garments, leather, footwear and aquatic products which are obligated to finish urgent contracts, impossible to be delayed due to the seasonal production or other unforeseeable objective reasons;
- Entities engaging in other sectors that satisfy the above-mentioned conditions if having demand for an excess of 200-300 working hours a year, must apply for an approval from supervisory Ministries, management bodies or provincial people's committees.

Other documents

- Decree 114/2002/ND-CP dated 31 December 2002 of the Government detailing wage provisions stipulated in the Labour Code;
- Decree 110/2002/ND-CP dated 27 December 2002 of the Government amending Decree 06/CP dated 20 January 1995 detailing the implementation of some provisions of the Labour Code on the occupational safety and hygiene;
- Official Letter 41/LDTBXH-CSLDVN dated 07 January 2003 of the Ministry of Labour, War Invalids and Social Affairs guiding the preferential shares purchase by labourers in equitized state owned enterprises;
- Official Letter 4515/LDTBXH-CSLDVN dated 30 December 2002 of the Ministry of Labour, War Invalids and Social Affairs guiding the finalization of salary funds in state owned enterprises.

Taxation

Abolition of the provisions on input VAT deduction by percentage

On 25 December 2002, the Ministry of Finance issued Circular 116/2002/TT-BTC detailing Decree 108/2002/ND-CP dated 25 December 2002 of the Government on abolition of the provisions on input VAT deduction by percentage applicable to some items of goods and services.

Under this Circular, goods and services bought from enterprises subject to direct VAT calculation method, unprocessed agricultural, forestry and aquatic products bought from enterprises not subject to VAT for production shall not be deducted input VAT. Enterprises purchasing goods subject to special sale tax for sale shall still be deducted input VAT at the rate of 1%.

Temporarily stop applying new duty tariff on imported automobiles and accessories

Under Decision 163/2002/QD-BTC dated 27 December 2002, the Ministry of Finance temporarily suspends the application of new duty tariff on some automobiles and accessories as previously provided by the Ministry of Finance in its Decision 146/2002/QD-BTC dated 4 December 2002.

Administrative management**New law creates more transparency for legislative promulgation**

This article was published on the Vietnam Investment Review.

Vietnam's legislation system is still under construction, the legal system is still young. A legal framework for adoption and issuance of laws and regulations has been in existence since 1988, with the establishment of the regulations on issuance of laws and ordinances by the State Council on 6 August 1988, which was then replaced by a law in 1996.

Following the 1988 regulations, laws are mostly developed on the case by case basis to ensure they are up-to-date and relevant to the actual situation. Many bodies contributed to making laws and regulations, and the procedures of scanning unreasonable and overlapping provisions in issuance of new laws were not always efficiently implemented. Draft laws were not widely released for comments. Publication and propagation of newly promulgated laws were somehow unsatisfactory. Such problems needed to be addressed.

To strengthen the construction and promulgation of laws and regulations, and to keep in line with international practice and requirements, including the Vietnam – US BTA, the National Assembly of Vietnam (NA) ratified on 16 December 2002 a new law amending and adding the 1996 Law on Issuance of Normative Legal Instruments, which comes into full force from the date of promulgation.

It is reconfirmed under the amended law that the system of normative legal instruments comprises: (1) the constitution, laws, resolutions of NA and ordinances and resolutions of the NA Standing Committee; (2) orders, decisions of the State President; resolutions and decrees of the Government; decisions and directives of the Prime Minister; decisions, directives and circulars of Ministers, head of Ministry equivalent bodies; and (3) other documents of the Supreme People's Court, Supreme People's Procuracy, people's councils and people's committees to detail legal provisions of higher levels. It should be therefore noted that there is no fundamental change made to the system of legal instruments and that of laws makers.

The main aim of the amended law is to create a more transparent and healthy environment to the process of drafting, commenting, issuing and publishing laws and guidance instruments. Major changes in the amended law this time include the followings:

The amended law is clearly stated that drafted laws and regulations shall be released to gather comments and opinions nation-wide from all individuals and bodies who will be directly affected by such laws and regulations. Contents of draft legal instruments shall be publicized also on the Internet for more convenient commenting.

Five specific steps are now more explicitly prescribed for the NA's process in debating and passing new legal instruments. The amended law likely sets forth more strictly provisions saying that newly drafted stipulations must conform to those set by higher levels and must fit with the competence of the drafting authority.

In consideration of the importance of laws, ordinances and resolutions, the amended law extends the time frame for submission and examination of such kind of documents from 20

days to 45 days, purporting to have enough time for more careful consideration by NA and the NA Standing Committee.

The President of the Supreme People's Court now in addition has authority to issue decisions, directives, and circulars, the authority was formerly given to, at the similar level, only chief prosecutor of the Supreme People's Procuracy.

Significantly, as to effective date of legal instruments, the amended law sets a change that legal instruments of the Government, the Prime Minister, Ministers, Head of Ministry equivalent bodies, the Supreme People's Court, the Supreme People's Procuracy and other inter-ministerial legal documents shall uniformly come into full effect fifteen days after they are published on the Official Gazette. Formerly, such legal documents issued by the said bodies are normally effective fifteen days after the date of signing, irrespective they would be propagated or not.

The Ministry of Justice shall be the main Ministry assisting the Government to unify the state management in examining and verifying legal instruments, supporting the Prime Minister to deal with legal instruments of other Ministries, the Ministry equivalent bodies, provincial people's councils and people's committees.

Significant legal steps made in administrative reform

This article was published on the Vietnam Investment Review.

The Prime Minister's approval of the Public Administration Reform (PAR) Master Programme for 2001-2010 by his Decision 136/2001/QĐ-TTg on September 17, 2001 marked a great effort of the Government to reform administrative management system. In fact, idea about PAR was started since the launch of *doimoi* (renovation) but PAR term was officially stated in the document of the VII Central Party's Congress 8.

PAR concentrates in four key reform areas, institutional, organizational; cadres and civil servants; and public finance, purposing to nursing a real modern public administration system and well managing the market economy.

The beginning of the year 2003 records significant progress of the Government in creating an enabling legal framework for further and deeper PAR.

The first notable effort is the Government's Decree 03/2003/ND-CP dated January 15, 2003 on salary reform. This former will affect considerably the cadres and civil servants working in public sector. Under this Decree, the minimum monthly payment to all state sector employees and other beneficiaries including pensioners, wounded soldiers, parents and children of war martyrs, and the former youth volunteers will increase, as of January 1 this year, from VND210,000 to VND290,000. In addition, the monthly retiring salary and social pension are also improved. Compared with the salary of the people working in private sector, the salary of cadres and civil servants are far beyond their expectation but it's rather adequate to maintain their life and the life of their family.

The second thing concerns public finance sector. The Law on State Budget was passed by the National Assembly (NA) at the second session of the XI NA Congress, replacing the Law on amendments of and additions to a number of articles of the 1998 Law on State Budget. Raising decentralization in allocation and more effective management in use of the

state budget are the most notable purports of the new Law. It states that the fiscal allocation authority is delegated to the provincial people's committees. Therefore, in case the provinces and cities under the central have demand to develop the infrastructures belonging to the scope of provincial state budget but this demand exceeds provincial state budget's balance, the relevant authority is entitled to mobilize the domestic capital. This proposition encourages the greater participation of local agencies and widens the decentralization of state management power from central to local levels, a substantial PAR programme.

The Law on amendments of and additions to a number of articles of the Law on Promulgation of Normative Legal Instruments is regarded as the third major step of PAR. Such Law was passed also in this NA Congress, containing favourable conditions in terms of PAR. Since this new Law, all state agencies responsible for drafting legal instruments must obtain opinions from any bodies which will be directly affected by this legal instrument. Furthermore, the content of legal instruments has to be publicized not only via mass media but also via the Internet so that the whole concerning people and organizations can discuss and contribute their own opinions. In one hand, the information dissemination and communication activities are strengthened for public awareness and involvement. In the other hand, the fact that state officials were asked to engage in mass mobilization work facilitates grassroots democracy for successful implementation of the Party's policies.

A further step towards the transparency, an inherent weak point of our state apparatus was also made. On January 30, 2003, the Government issued Decree 07/2003/ND-CP amending and adding a number of articles of the Regulations on investment and construction management attached with Decree 52/1999/ND-CP dated July 8, 1999 and its amended Decree 12/2000/ND-CP dated May 5, 2000. It is explicitly stated in Article 1, Paragraph 7 of Decree 07 that investors are not allowed to require and receive the bribe from the contractors. In particular, in bidding documents, investors can't set up themselves the rules creating unfair competition among bidders and obstructing their participation. Any arrangement in bidding or issuance of regulations contravening the laws for individual benefits will be strictly punished.

In recognition of the need for continued, the 2003 Law-making Programme has been approved by NA on February 10, 2003. We all strongly hope that the proposed amendments to People's Council and People's Committee Law, the new issuance of Antitrust Law as well as the reforms in state-owned enterprises and banking system towards the end of this year will allow for an increase pace of PAR.

Other recent documents

Banking

- Decision 69/2003/QD-NHNN dated 23 January 2003 of the Governor of the State Bank of Vietnam, supplementing some accounts to the accounting system of credit institutions;
- Decision 24/2003/QD-NHNN dated 7 January 2003 of the Governor of the State Bank of Vietnam, issuing the regulations on opening and termination of operation of branches and representative offices of non-banking credit institutions;

Import – export

- Decree 06/2003/ND-CP dated 22 January 2003 of the Government, on classification of import, export commodities.

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