

Legal news

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Contents

Domestic Investment	2
Changes to the Regulations on investment and construction management	2
Trade	2
New Ordinance to help policing of arbitration rulings	2
Settlement for outstanding debts of SOEs	4
Other documents	4
Import - Export	5
Customs control over import, export commodities	5
Other documents	5
Banking	5
Regulations on bank guarantees	5
Other documents	6
Labour	6
Guidance for adjustment of retirement salary and social insurance allowance	6
Intellectual Property	6
Copyrighting architectural works.....	6

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Domestic Investment

Changes to the Regulations on investment and construction management

On 30 January 2003, the Government issued Decree 07/2003/ND-CP on amendments of and additions to a number of articles of the Regulations on investment and construction management issued in conjunction with Decree 52/1999/ND-CP dated 08 July 1999 which was then amended by Decree 12/2000/ND-CP dated 05 May 2000.

The most salient points of Decree 07 is the expansion of the local state management bodies' authority in decision of investment, concretely:

- Prime Minister shall make the decisions on investment for important national projects advocated by the National Assembly. Now the Ministers; the heads of ministerial equivalent bodies, the Government's bodies, financial management authorities under the Party Central Committee, the central bodies of political organizations and socio-political organizations; and the chairpersons of provincial People's Committees shall decide investments for Group A projects (in the past, this power belonged to the Prime Minister only). Those persons shall evaluate feasibility studies, obtain written opinions from supervisory Ministries, MPI, MOC, MOF, and other related Ministries and agencies, and report the evaluation results to the Prime Minister;
- There is no change in provisions on investment decision making authority with respect to Group B & C projects. Decree 07 however allows the competent authorities to empower their sub-ordinates (as listed in the Decree) to decide investment projects pursuant to approved programme;
- Within its authority, district's and commune's people's committees must gather written opinions from related specialized bodies and consulting organizations during their appraisal process for making proper investment decisions.
- Decree 07 further sets down other additions and alterations aiming to more effectively and efficiently manage investment and construction activities. Decree 07 takes full effect 15 days after the date of promulgation on the Official Gazette.

Trade

New Ordinance to help policing of arbitration rulings

This Article was published on the Vietnam Investment Review.

Recent history show that businesses prefer arbitration when it come to commercial disputes. This last decade in Vietnam, however, has witnessed a trend to the contrary. Courts, not arbitrators, have been dealing with the majority of commercial disputes. This has come about because of the Government's lack of enforcement of arbitrators' awards.

Vietnam's arbitration centers, which were instituted in accordance with the Government's Decree 116/CP dated 5 September 1994 on organization and operation of economic arbitration centers pass cases onto courts if there is a disagreement by both sides on the outcome of arbitration.

This situation will hopefully be changed as a result of the National Assembly Standing Committee's newly adopted Ordinance 08/2003/PL-UBTQH11 dated 25 February on commercial arbitration (the Ordinance). The Ordinance lays out a legal frameworks for enforcement of domestic arbitrators' awards.

According to the Ordinance, if parties want to bring their dispute to arbitration they must have written agreement on dealing with disputes by this way. Since then, this binds upon parties so that they can choose either a commercial arbitration center or a committee to judge over the dispute.

Type of disputes can be settled through arbitration procedures

According to the Ordinance, the purpose of "commercial arbitration" is to deal with dispute in "commercial activities in accordance with the agreement of parties". In other words, only disputes arouse from commercial activities can be fallen under the awarding by commercial arbitrators.

It seems that the definition of commercial activities by the Ordinance is wider than those defined by the Law on Commerce. Under the Ordinance, commercial acts may be carried out by business individuals and organization, including sale and purchase of goods, provision of services, distribution, trade representation and agent, consignment, lease, construction, advisory, licensing, investment, banking, insurance, exploitation and exploration, transportation of goods and passengers etc. This broadened definition is to overcome the insufficient coverage of commercial acts set by the Law on Commerce which will be amended in the forthcoming time.

More arbitration centers

The Government shall issue regulations for newly setting up arbitration centers nationwide. Under the ordinance, the Vietnam Lawyer Association is entitled to introduce five persons, each must be qualified to become arbitrator, for an arbitration center establishment. The Ministry of Justice reserves the right to grant licence for the establishment.

Qualification for becoming an arbitrator is not difficult. Amongst all, the most difficult requirement is university degree and having 5 year in experience. The Ordinance does not require mandatory law diploma.

Different settlement procedures compared to courts

Contrary to those under the court procedures, the arbitration hearings are not required public. If a claimant is absent from the hearing without arbitrator's permission, the litigation shall be cancelled. The duration for claiming at arbitration center is 2 years, provided that no law stipulates otherwise. The Ordinance creates more rooms for foreign related disputes settled in Vietnam by permission of applying foreign laws and international commercial practices, arbitrators, languages, and location in abroad as well which are not contrary to the basic principles of Vietnamese laws.

Courts still play important roles

Subject to agreement of concerned parties, courts shall have their influence in selecting arbitrators for arbitrator committees. The provincial court in the province where the arbitrator committee being in charge of dispute settlement, shall be entitled to apply urgent measurements, upon request by parties.

The relevant parties can resort to the courts to invalidate arbitrators' awards on one of the following grounds: (i) there is no agreement on selection of arbitration settlement or such agreement is invalid; (ii) arbitration procedures are held not in accordance with the Ordinance's stipulations; (iii) the settlement of dispute is not fallen under the competence of arbitration; (iv) arbitrators violate their obligations; or (v) arbitrator's award damages the national interests.

And the last vital role of court is to issue decision on enforcement of arbitrator's award where one of the parties failed to follow the arbitrator's award.

The Ordinance shall replace the said Decree 116/CP, the Prime Minister's Decision 204/TTg dated April 28, 2003 on organization of Vietnam International Arbitration Center, or VIAC, and Decision 114/TTg dated February 16, 1996 on expanding authority of VIAC.

Settlement for outstanding debts of SOEs

On 24 February 2003, the State Bank of Vietnam issued Circular 05/2003/TT-NHNN providing guidelines for dealing with outstanding debts of state-owned enterprises (SOEs) remained at State commercial banks as detailed provisions of the Government's Decree 69/2002/ND-CP dated 12 July 2002.

Under this Circular, commercial banks are entitled to convert outstanding debts of a SOE into capital shares therein or to sell debts to debt service organizations.

The State Bank also sets down in the Circular some solutions for each type of indebted SOEs such as:

- Debts of SOEs being subject to mandatory liquidation or bankruptcy that are unrecoverable by commercial banks shall be settled in accordance with bankruptcy/liquidation decisions;
- Debts of SOEs making losses but having been reorganized to be able to develop shall be froze or extended for a period of not exceeding 5 years as decided by the banks;
- Debts of SOEs having divestiture decisions but still facing difficulties, unable to balance capital and debts, shall also be froze or extended for a period of from 3 to 5 years.

Other documents

- Decision 21/2003/QD-BTC dated 17 February 2003 of the Ministry of Finance on gasoline ceiling price.

Import - Export

Customs control over import, export commodities

Due to the fact that enterprises take use of the regime on 'green light' checking on import, export goods, by fraud to avoid duty payment, on 13 February 2003, the Ministry of Finance and the General Department of Customs issued Circular 558/TCHQ-GSQL intensifying customs control over export commodities and export processing goods.

Enterprises that were found took use of the full freedom from the checking on import and export goods, to do import and export not in compliance with their customs declaration, shall no longer be entitled to be free from checking on import and export goods and all of their subsequent imports and exports shall be fully checked upon import and export.

Enterprises that were found took use of the partial freedom from the checking on import and export goods by percentage, to do import and export not in compliance with their customs declaration, shall be subject immediately to the full checking on import and export goods, and some other controlling measures will be applicable to identify the fraud.

With respect to enterprises importing input materials for processing the exports that were found took use of the said checking regime, to export with under declared quantity or import with over declared quantity, provincial customs will examine and verify all of the finished customs documents, including the tax refund documents.

Other documents

- Decision 20/2003/QD-BTC dated 17 February 2003 of the Ministry of Finance amending import duty rate of some items under 2710 group of the preferential import duty tariff.

Banking

Regulations on bank guarantees

On 11 February 2003, the State Bank of Vietnam issued Decision 112/2003/QD-NHNN amending a number of articles of the Regulations on bank guarantees issued in conjunction with Decision 283/2000/QD-NHNN14 of the State Bank of Vietnam dated 25 August 2000.

Decision 112 applies to guarantees provided by joint venture banks, foreign bank branches and Vietnamese credit institutions, and widens the bank guarantees.

In principle, all domestic and foreign organizations and individuals can be provided with bank guarantees if they satisfy the specific conditions set out in Decision 112, except the followings:

- Members of the board of management, members of the board of inspection, or the general director or deputy general director(s) of credit institutions;

- Officials and staff of credit institutions undertaking appraisal and making decision to provide a guarantee;
- Parents, spouses or children of the above persons;
- Parents, spouses or children of the director or deputy director(s) of branch(es) of the credit institutions being in charge of appraisal and making decision.

The conditions for provision of bank guarantees are also relaxed. Guarantees have not to show only their financial capacity to take the responsibility for the guaranteed loans, not need having good reputations with banks in their mutual credit relations and feasibility studies for their own business upon the request for bank guarantees as previously required.

Other documents

- Circular 03/2003/TT-NHNN dated 24 February 2003 of the State Bank of Vietnam providing guidelines for provision of loans without asset security in accordance with the Government's Resolution 02/2003/NQ-CP dated 17 January 2003;
- Circular 04/2003/TT-NHNN dated 24 February 2003 of the State Bank of Vietnam providing guidelines for State credit institutions to maintain the balance of their deposits at the Bank for Social Policies.

Labour

Guidance for adjustment of retirement salary and social insurance allowance

In implementing the Government's Decree 03/2003/ND-CP dated 15 January 2003 on adjustment of retirement salary and social insurance allowance, the Ministry of Labour, War Invalids and Social Affairs' Circular 06/2003/TT-BLDTBXH provides some more details on the beneficiaries who include:

- Cadres, state officials, servicemen, policemen, militarymen, workers (with respect to retirement salary);
- Persons enjoying labour capability losing allowance (including those detailed in the Prime Minister's Decision 91/2000/QD-TTg dated 04 August 2000);
- Employees working in rubber field;
- Persons enjoying allowances for illness, pregnancy, accidents, professional disease, death;
- Commune, ward's officials who are enjoying allowance under the Government's Decree 09/1998/ND-CP dated 23 January 1998.

Intellectual Property

Copyrighting architectural works

According to the Ministry of Culture and Information and Ministry of Construction's Inter-ministerial Circular 04/2003/TTLT-BVHTT-BXD dated 24 January 2003 providing guidelines for copyright of architectural works, architectural works can be copyrightable in Vietnam, including:

- Architectural works whose authors are Vietnamese;
- Architectural works owned by Vietnamese citizens, legal entities and organizations;
- Architectural works of foreign citizens or legal entities which are created and expressed in accordance with this Inter-ministerial Circular;
- Architectural works of foreign citizens or legal entities which are publicized for the first time in Vietnam;
- Architectural works of foreign citizens or legal entities which are copyrighted in Vietnam in accordance with international treaties to which Vietnam is a member.

Architectural works can be copyrighted if such works are not protected as industrial property subjects and not fallen within the list of works not to be protected by the State.

The authors and owners of architectural works have the personal and property related rights with regards to the works. Rights of authors and owners are protected on basis of agreements with users of their architectural works.

Authors' rights shall be protected, as stipulated in the Civil Code and the Government's Decree 76/ND-CP dated 29 November 1996, for the whole lifetime of the authors and next fifty-years duration after the authors' death.

Dossiers for copyright registration must be submitted to the Department of Copyright under the Ministry of Culture and Information or to provincial Department of Culture and Information where the applicants are residing. A registration dossier must contain: application for copyright, two sets of architectural works, legitimate copies of the documents relating to the application, with legally notarised/certificated copies of the Vietnamese translations if they are in a foreign language.

Contact Details

Hanoi Head Office

Mr. Pham Nghiem Xuan Bac
Managing Partner
Mr. Pham Minh Hai
Partner, Consulting
Ms. Le Quynh Anh
Partner, Legal
Mr. Do Quang Hung
Partner, Intellectual Property

Unit 2, 1st Floor, International Center
17 Ngo Quyen, Hanoi, Vietnam
Tel: 84-4 934-0629 / 824-1623 Fax: 84-4 934-0631
E-mail: vision@hn.vnn.vn

Ho Chi Minh City Office

Mr. Dang The Duc
Partner, Manager

Unit 4C1, 4th Floor, Han Nam Office Building
65 Nguyen Du, District 1, Ho Chi Minh City, Vietnam.
Tel: 84-8 823-6495 / 823-6501 Fax: 84-8 823-6496
E-mail: hcmvision@hcm.vnn.vn

www.vision-associates.com