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## THE BUSINESS, TAX AND SEAL REGISTRATION

On 29 July 2008, the Ministry of Planning and Investment, the Ministry of Finance and the Ministry of Public Security issued Joint Circular No. 05/2008/TTLT-BKH-BTC-BCA providing guidelines on the State co-operative regime for business, tax and seal registration by enterprises established for operations pursuant to the Law on Enterprises.

### Principles:

The business registration office shall only be responsible for the validity of application files in that the files must comply with Article 4.3 of the Law on Enterprises and contain all the documents and declared items required by the Law on Enterprises.

The persons establishing an enterprise and members thereof (if any) shall be responsible for the accuracy, truthfulness and legality of the contents of an application file for business and tax registration, and for ensuring that the company charter complies with law.

### Terms

The business registration office of the provincial Department of Planning and Investment ("DPI") shall, within a maximum time-limit of five (5) business days from the date of receipt of a valid application, issue a Business and Tax Registration Certificate to an enterprise or a Business Operation and Tax Registration Certificate to a branch office or a representative office of the enterprise.

The local police office shall be responsible, within two (2) business days from the date it receives a seal from the engravers, to check the seal and register it in order to hand over the seal and the Certificate of Registration of Sample Seal to the enterprise.

### Co-Operative Regime

The DPI shall be the focal body to receive application files and to respond with the results of the administrative procedures in accordance with this Circular.

The DPI shall, within two business days from the date of receipt of a valid application for registration from an enterprise, send the provincial Tax Division a copy of the request for business registration (in the case of establishment of an enterprise) or a notice on establishment of a branch office or a representative office (in the case of establishment of a branch office or a representative office) and also a copy of the Declaration of Information for Tax Registration.

The provincial Tax Division shall, within two business days from the date of receipt of information about the enterprise, provide a notice of results of an enterprise code number to the DPI in order for the latter to record such number on the Business and Tax Registration Certificate of the enterprise [or] on the Business Operation and Tax Registration Certificate of the branch office or the representative office.

This Circular shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette.

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## ISSUANCE OF AUTOMATIC IMPORT PERMITS FOR CERTAIN LINES OF GOODS

On 1 August 2008, the Ministry of Industry and Trade issued Decision No. 24/2008/TT-BCT on issuance of automatic import permits for certain lines of goods

### Subjects of application:

Issuance of automatic import permits applies to the specific lines of goods on included in the Appendix 1 (List of Goods) issued together with this Decision.

Conducting the business of temporary import for export, temporary export for re-import, border gate transit and other transit, import within non-commercial limits and import for production purposes, and processing of export goods for foreign parties shall not be regulated by this Decision but shall be subject to other current regulations.

### Issuance of automatic import permits:

The actual issuance of an automatic import permit shall be conducted in the form of certification on the import registration lodged by a business entity for each consignment of goods.

The time-limit for issuance of an automatic import permit shall be ten (10) business days from the date on which the Ministry of Industry and Trade receives a complete and valid application file.

### An application dossier requesting issuance of an automatic import permit

The dossier shall include: a request to register an automatic import; a copy of the Business Registration Certificate in the case of a business entity registering import for the first time; a copy of the Import Contract (a copy with the seal of the business entity certifying it is a true copy of the original); a copy of the Letter of Credit or payment voucher certifying payment via a bank; a copy of the Bill of Lading or transportation voucher for each consignment of goods; a report on any previously imported consignments of goods for which the Ministry of Industry and Trade issued an import permit(s) together

with the customs declaration certifying such import (a copy with the seal of the business entity certifying it is a true copy of the original).

This Decision shall be of full force and effect twenty-one (21) days after the date on which it is published in the Official Gazette, and its effectiveness shall expire after 31 December 2008.

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## PROVISION OF INFORMATION ABOUT CONTRACTS AND ENTERING INTO CONTRACTS VIA COMMERCIAL WEBSITES

On 21 July 2008, the Ministry of Industry and Trade issued Circular No. 09/2008/TT-BCT providing guidelines on the E-Commerce Decree regarding provision of information about contracts and entering into contracts via commercial websites.

### Principles for provision of information on commercial websites:

A commercial website must provide complete information about the business entity, the goods and services, and the terms and conditions of the contract for purchase and sale of any of the goods or services introduced on such website including: information about goods and services; information about prices; information about terms and conditions of a transaction; information about transportation and delivery; and information about payment methods.

### Entering into contracts using the function of online ordering of goods:

If any commercial website has a function of online ordering of each specific commodity or service which is introduced on such website, then all information introducing such commodity or service and the relevant terms and conditions shall be deemed to be an announcement and offer to enter into a contract by the business entity which owns such commodity or service. Electronic data which a client formulates and sends by using the function of online ordering of goods shall be deemed to be an offer to enter into a contract from that client for whatever goods or services are coupled with such online ordering function.

If a website announces a time-limit within which a reply will be made to an offer by a client to enter into a contract, and if at the expiry of that time-limit the client has not received a reply from the business entity, then the offer from the client to enter into the contract shall no longer be valid. Any reply accepting an offer after the expiry of the time-limit shall constitute a new offer by the business entity to enter into a contract.

If a website does not clearly announce the time-limit within which a reply will be made to an offer by a client to enter into a contract, and if after eight (8) business hours from the time of sending its offer the client has still not yet received a reply consenting to enter into the contract, then the offer by the client to enter into the contract shall no longer be valid.

### Protection of rights of clients when entering into contracts via a commercial website

A website must have a mechanism enabling a client to check, add to, amend and confirm the contents of a transaction prior to the client using the function of online ordering goods by sending its offer to enter into the contract.

This Circular shall be of full force and effect fifteen (15) days after the date on which it is published in the Official Gazette.

## NO INCREASE IN PERMISSIBLE LEVEL OF SHAREHOLDING OF FOREIGN INVESTOR IN VIETNAMESE BANKS

Recently there have been words on the finance - banking market that the Government has increased the permissible level of shareholding of foreign investors and foreign strategic investors stipulated in Decree 69/2007/ND-CP of the Government dated 20 April 2007 on purchase by foreign investors of shareholding in Vietnamese commercial banks (Decree 69). The State Bank confirms that the shareholding levels stipulated in Article 4 of Decree 69 are still in place and shall be implemented as follows:

1. The total level of shareholding of [all] foreign investors (including existing foreign shareholders) and affiliated persons of such foreign investors shall not exceed thirty (30) per cent of the charter capital of any Vietnamese bank;
2. The level of shareholding of any one foreign investor not being a foreign credit institution and affiliated persons of such foreign investor shall not exceed five (5) per cent of the charter capital of any Vietnamese bank;
3. The level of shareholding of any foreign credit institution and affiliated persons of such foreign credit institution shall not exceed ten (10) per cent of the charter capital of any Vietnamese bank;
4. The level of shareholding of a foreign strategic investor and affiliated persons of such foreign strategic investor shall not exceed fifteen (15) per cent of the charter capital of any Vietnamese bank. In special cases, the Prime Minister, based on a proposal submitted by the State Bank, may make a decision permitting the level of shareholding of any foreign strategic investor and affiliated persons of such foreign strategic investor to exceed fifteen (15) per cent, but it shall not exceed twenty (20) per cent of the charter capital of any Vietnamese bank;
5. Where a foreign credit institution holds convertible bonds which are then converted into shares, the share ownership ratios stipulated above must be remained;
6. The total level of shareholding of all foreign credit institutions in any State commercial bank undergoing equalization shall be the same as the total level of shareholding of Vietnamese banks in such

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## NEW REGULATION ON FOREIGN EXCHANGE AGENTS

On 11 July 2008, the Governor of the State Bank signed Decision No. 21/2008/QĐ-NHNN providing Regulations on Foreign Exchange Agents, and shall replace Decision No. 1216/2003/QĐ-NHNN of the Governor of the State Bank dated 9 October 2003.

The economic organizations from all economic sectors shall be permitted to act as foreign exchange agents, if all the following conditions of this Decision are satisfied:

Any organization may only act as a foreign exchange agent for one credit institution and such former organization may agree to establish foreign exchange agency (counters or offices) at one or a number of locations within the geographical area where such organization has its head office or branches.

When selling over one thousand U.S. dollars (US\$1,000) or other types of foreign currency of equivalent value, foreign exchange agencies established in separated areas at international border gates must require the purchaser to present his or

her passport, and also the invoice (receipt) for the foreign currency which was earlier exchanged at any authorized credit institution or foreign exchange agency in Vietnam. If the date stated in the invoice over ninety (90) days, the agent must retain this invoice. Cash balance in hand level maximum daily of the foreign exchange agency is two thousand U.S. dollars (US\$2,000) or the equivalent in other foreign currencies.

If a principal credit institution has foreign exchange agency discovers a breach of these Regulations, the agents and the principal credit institution are jointly liable for such breach. If a principal credit institution has three or more foreign exchange agents which within a twelve (12) month period breach these Regulations, then such credit institution shall not be permitted to enter into a new foreign exchange agency contract with any other organization. Any organizations or individual who breaches these Regulations shall, depending on the nature and seriousness of the breach, be subject to an administrative penalty or criminal prosecution.

This Decision shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette.

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## NEW REGULATION ON ORGANIZATION AND OPERATION OF FINANCE COMPANIES

On 29 July 2008, the Government issued Decree No. 81/2008/ND-CP to amend Decree No. 79/2002/ND-CP on organization and operation of Finance Companies.

### Forms of establishment:

Finance companies shall be established and operate in the following forms: multiple member limited liability finance company; single member limited liability finance company; or shareholding finance company.

Joint venture finance company means a finance company established in Vietnam with capital contributed by a Vietnamese party (including one or more Vietnamese credit institutions and/or Vietnamese enterprises) and a foreign party (including one or more foreign credit institutions) on the basis of a joint venture contract in which the capital contribution portion by the foreign party does not exceed forty-nine (49) per cent of the charter capital of the finance company and the capital contribution portion by the Vietnamese enterprise(s) does not exceed thirty (30) per cent of the capital contribution by the Vietnamese party. A joint venture finance company shall be established in the form of a multiple member limited liability company.

Finance company with one hundred (100) per cent foreign owned capital means a finance company established in Vietnam with one hundred (100) per cent of the charter capital owned by one or more foreign credit institutions. A finance company with one hundred (100) per cent foreign owned capital shall be established in the form of a limited liability company.

### Conditions for issuance of license:

A joint venture finance company or a finance company with one hundred (100) per cent foreign owned capital must satisfy the following conditions: have its permission from the competent authority in accordance with the law of its country of origin to be established and to operate in Vietnam; and have its total assets above ten (10) billion U.S. dollars at the end of the year prior to the time of lodging the application, except where a bilateral investment treaty between Vietnam and the country of origin provides otherwise.

### Forms of raising capital Finance

Decree adds form of issuance of bonds, term deposit certificates and other valuable papers with a term of one year or more in order to raise capital from domestic and foreign organizations and individuals in accordance with regulations of the State Bank of Vietnam.

### Foreign exchange operations

Finance companies shall be permitted to provide a number of foreign exchange services in accordance with the provisions of law and guidelines of the State Bank of Vietnam.

This Circular shall be of full force and effect fifteen (15) days after the date on which it is published in the Official Gazette.

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## GUIDELINES ON PROCEDURES FOR CERTIFYING LEGAL CAPITAL FOR REGISTRATION OF REAL ESTATE BUSINESS

Responding to the Official Letter No. 1905/KH&DT-DKKD dated 31 July 2008 from the Hanoi Department of Planning and Investment proposing guidelines on procedures for certifying legal capital in an application file for registration of real estate business, the Ministry of Construction issued the Official Letter No. 62/BXD/QLN dated 26 August 2008 with the following highlights:

1. Where capital is contributed in cash, there must be a certificate from a commercial bank authorized to operate in Vietnam regarding the amount deposited in escrow by the founding members. The minimum amount of such deposit must equal to the capital contribution in cash by founding members. Therefore, the minimum amount of the escrow deposit must be equal to the amount of the capital contribution in cash by founding members, and the amount of capital contribution in cash means the amount stipulated in the charter of the company and as agreed by all the founding members. If the amount of the escrow deposit is equal to or more than the stipulated amount of legal capital (six billion dong) then the enterprise satisfies all the conditions for registration for real estate business;
2. In the case of a currently operating enterprise which wishes to add real estate business to its business lines, the file certifying legal capital must have a certificate from an independent auditor regarding the current amount of capital belonging to such enterprise as recorded in the most recent financial statements of the enterprise. The file certifying legal capital of a currently operating enterprise which requests addition of real estate business to its business lines shall be understood as including financial statements and a letter from an independent auditor certifying such statements, and the enterprise must lodge this data with the business registration-issuing body in order for the enterprise to add real estate business to its business lines;
3. Any enterprise conducting real estate business must, throughout its operational process, maintain the level of its charter capital at no less than its legal capital. For the organization or individual who was granted a business registration certificate for real estate business or business services prior to the date on which this Decree 153 takes effect, shall be permitted to continue to conduct business, and need not conduct procedures for re-registration. It should be understood that enterprises granted registration for real estate business prior to the date on which Decree 153 took effect must conduct procedures to increase their charter capital (if their charter capital is lower than 6 billions Vietnamese Dong) to satisfy the conditions for real estate business (maintaining their charter capital at no less than their legal capital), but shall not be required to conduct procedures to certify their legal capital.

## FURTHER GUIDELINES ON ADJUSTMENT OF CONSTRUCTION CONTRACTS AND PRICES DUE TO CHANGES IN THE COSTS OF RAW MATERIALS, FUEL, AND BUILDING MATERIALS

After conducting checks to clarify the situation and after obtaining opinions from the relevant entities, ministries and branches about application of Circular 09-2008-TT-BXD of the Ministry of Construction dated 17 April 2008 ("Circular 09") providing guidelines on adjusting construction contracts and prices due to changes in cost of raw materials, fuel, and building materials, the Ministry of Construction provided the following specific guidelines:

### 1. The types of materials subject to adjustment:

Circular 09 specified 13 types of building materials subject to adjustment. Where adjustment is required for other types of building materials due to changes in their prices, the investor shall report the matter to the chairman of a provincial people's committee, the chairman of an economic group or the chairman of the board of management of a State corporation for his decision. Components in the form of semi-finished products made from the types of building materials which are subject to adjustment shall also be subject to adjustment in accordance with regulations.

### 2. The estimated additional budget for construction costs to be formulated once time

An estimated budget for additional construction costs shall be formulated once time on the basis of the realized volume and the outstanding volume of contractual works in order to consider, after adjustment, whether or not the estimated budget exceeds the total amount of investment for the competent person to make a decision on adjustment. Where, after adjustment, prices of building materials continue to be changed resulting in the fact that the cost of building materials exceeds the estimated budget which has been added, a further adjustment shall be carried out.

### 3. The point of time for calculation of differences between prices of materials:

The point of time for calculation of differences between materials shall be the point of time of acceptance of the volume completed stipulated in the contract.

The value of the difference between prices of materials shall be the difference between the price of materials at the time of adjustment and the price of building materials specified in the contract or in the approved estimated budget for a tender package or the price of materials at the time of 28 days before the date of opening tenders (in the case of tendering) in the case of contracts signed from year 2007, or the price of materials in December 2006 or in the fourth quarter of 2006 if there was no price in December 2006 in the case of contracts signed before year 2007. Where the price of building materials stated in the contract or in the approved estimated budget for a tender package is lower than the price of building materials notified or published by the competent State body at the relevant time, the price notified or published by the competent State body shall prevail.

4. Advances for contractors to purchase of raw materials, fuel and building materials:

Where an advance of capital was made in accordance with regulations, a adjustment of prices shall be conducted when there is a change in cost of building materials. Where, upon making the advance, the two parties determined that the advance would be used to purchase raw materials, fuel and/or building materials or an exceptional advance would be made to purchase raw materials, fuel and/or building materials before the change in the cost of materials, the cost for the purchased volume of raw materials, fuel and construction materials corresponding to the advance shall not be subject to adjustment.

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