

FINANCIAL ADMINISTRATION OF STATE-OWNED-ENTERPRISES AND ADMINISTRATION OF STATE CAPITAL INVESTED IN OTHER ENTERPRISES

On 5 February 2009, the Government issued Decree No. 09/2009/ND-CP on issuance of the Regulations on financial administration of State-owned-enterprises (“SOEs”) and administration of state capital invested in other enterprises.

In accordance with this Decree, SOEs shall have the right to use the capital allocated by the State, other capitals and funds managed by such SOEs and shall be responsible before the representative of the owner in respect of preserving, developing, and using efficiently the capital.

When investing in the enterprises operating in the same fields as their main ones, SOEs must use at least 70% their total investment capitals. When investing in the enterprises other than SOEs (including long-term and short-term investment), the total of investment capitals shall not exceed the charter capital of such SOEs. For investment in such fields as banking, insurance, securities, SOEs shall invest in only one enterprise for each field with

investment of 20% in maximum of the charter capital of the invested organization, provided that the capital contribution of a parent company and its subsidiary companies in a corporation or a group does not exceed 30% of the charter capital of the invested organization.

Cost administration and profit distribution:

The net profits (profit after taxes) of SOEs shall be used to distribute to their capital contributors; to offset the losses of the previous years which is overdue to be deducted from profits before tax; to make an appropriation of 10% for the financial preservation funds; to make an appropriation for the other special funds; the rest of the net profits shall be distributed in the proportion to the capital invested by the State in the company and the capital mobilized by the company in the year.

This Decree shall be effective as from 25 March 2009 and replace Decree No. 199/2004/ND-CP dated 3 December 2004.

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INVESTMENT – CORPORATIONS

PENALTIES FOR ADMINISTRATIVE BREACHES COMMITTED DURING THE PROCESS OF BANKRUPTCY PROCEEDINGS

On 6 February 2009, the Government issued Decree No. 10/2009/ND-CP on penalties for administrative breaches committed during the process of bankruptcy proceedings.

In accordance with this Decree, an administrative offence in the bankruptcy must be subject to either of the two following main forms of penalty being a warning or a fine for each administrative breach in the bankruptcy sector. The maximum amount of a fine for a breach in the bankruptcy sector shall be VND fifteen (15) million dong.

Administrative breaches and the forms and levels of penalties for breaches:

- A warning or a fine of from VND 500,000 to VND one (1) million dong

shall apply to an act of obstructing or causing difficulty for the exercise of the right to file a petition to commence bankruptcy proceedings;

- A fine of from VND 500,00 to VND one (1) million shall apply to any person filing a petition to commence bankruptcy procedures who is guilty of breach of the obligation to supply data or to present documents;

- A fine of from VND ten (10) to VND fifteen (15) million shall apply to any petitioner for commencement of bankruptcy proceedings who, due to a lack of objectivity, causes harm to the honour, reputation or business operation of the enterprise or co-operative;

- A fine of from VND five to VND ten million shall apply to any enterprise or co-operative that, after receiving a

decision commencing bankruptcy proceedings against it, takes any of the following acts without a written consent of the judge: pledges, mortgages, transfers, sells, donates or leases out assets, conceals or disposes of assets.

- A fine of from VND five (5) to VND fifteen (15) million shall apply to any bank where an enterprise or co-operative has an account, which bank after the date of receipt of the decision of the court applying liquidation procedures against such enterprise or co-operative, continues to pay any debt of the enterprise or co-operative, takes any action aimed at clearing or paying loans from the bank to such enterprise or co-operative.

This Decree shall be of full force and effect from 23 March 2009.

INVESTMENT – CORPORATIONS**NEW REGULATIONS ON DIRECT INVESTMENT ABOARD IN OIL & GAS**

On 16 February 2009, the Government issued Decree No. 17/2009/ND-CP amending and supplementing a number of articles of Decree No. 121/2007/ND-CP dated 25 July 2007 on direct investment aboard in oil & gas.

In accordance with this new Decree, an Executive Officer of the oil & gas projects shall be an enterprise established by the investors to implement the oil & gas project abroad. If the investors delegate the Executive Officer to implement the oil & gas projects, such Executive Officer should be named in the Investment Certificate and shall be entitled to use the Investment Certificate and the amended Investment Certificate to facilitate the activities regarding the implementation of the projects.

This new Decree has amended the authority to approve the investment project as follows: the Prime Minister shall approve the investment in such oil & gas projects established by the

oil & gas contracts using the State capital from VND 3,000 billion or capital invested by other economic sectors from VND 5,000 billion. These levels of capital are higher than those in Decree No. 121 to an amount of VND 1,000 and 3,000 billion respectively.

In addition, the Prime Minister shall have authority to approve investments in the oil & gas projects established through the transfers of rights to participate in the oil & gas projects, the transfer of a part or the entire capital of the enterprises with State capital of at least VND 5,000 billion or capital of other economic sectors of at least VND 8,000 billion.

The duration of appraisal and issuance of Amended Investment Certificate has been shortened in comparison with Decree No. 121. Particularly for oil & gas projects which are not within the approval of the Prime Minister or the oil & gas projects after being amended the total investment having used State

capital from VND 3,000 billion or capital of other economic sectors from VND 5,000 billion, the Ministry of Planning and Investment shall appraise the documents and issue the amended Investment Certificate within 25 working days upon receipt of valid documents.

Especially for the oil & gas projects established through the transfer of rights to participate in the oil & gas projects, the transfer of a part or the entire capital of the enterprises and the other oil & gas project of which the Investors persuasively explain the reasons for the shortening of the appraisal, the duration shall be reduced only to 3 working days.

In the case of the termination of the operation of the projects, investors shall report to competent authorities for the consideration and final decision.

This Decree shall be of full force and effect from 6 April 2009.

TAX – FINANCE - BANKING**GUIDING THE DEFERRED PAYMENT OF PERSONAL INCOME TAX**

On 6 February 2009, the Ministry of Finance issued Circular No. 27/2009/TT-BTC guiding the application of deferred time for payment of Personal Income Tax ("PIT").

In accordance with this Circular, taxpayers who are entitled to defer the time for payment of PIT shall comprise: (i) Resident individuals having taxable income from business, salary and wages, capital investments, capital transfers (including transfer of securities), copyright, franchises, inheritances, or income from receipt of a gift; (ii) Non-resident individuals having taxable income from capital investments, capital transfers (including transfer of securities), copyright, or income from franchises.

The period for the deferred payment is from 1 January 2009 until 31 May 2009.

In respect of the income subject to withholding, income-paying entities must deduct personal income tax of taxpayers entitled to the deferment of time for payment of PIT, and must still calculate the deductible amount of PIT when paying income and notify the individuals receiving income of the deductible amount of PIT eligible for the provisional deferment of time for payment, and must prepare a declaration of such withheld amount of PIT on a monthly basis in accordance with current regulations and lodge such declaration with the tax office so that the tax office knows the amount of PIT arising but eligible for the

deferment of time for payment.

In respect of income which must be directly declared with the tax office by individuals paying tax: Any individuals who are entitled to the deferment of time for payment of PIT and have income as stipulated and are required to directly declare tax with the tax office must still prepare and lodge a tax return in accordance with current regulations.

Individuals having income shall be entitled to retain the amount of PIT eligible for the deferment during the period of deferment.

This Circular shall be of full force and effect after forty-five (45) days from the date of its signing, and was applied to individual incomes arisen from 1 January 2009.

**GUIDELINES ON PERSONAL INCOME TAX PAYMENT
APPLICABLE TO INDIVIDUALS BEING INSURANCE AGENTS**

On 21 January 2009, the Ministry of Finance issued Circular No. 10/2009/TT-BTC guiding Personal Income Tax ("PIT") registration, withholding tax, and tax declaration and finalization applicable to individuals being insurance agents ("IA").

In accordance with this Circular, income subject to personal income tax from IA activities shall comprise agent's commission, bonuses in all forms, and other subsidies and payments receivable from the establishment which is the principal of IA.

Insurance business establishments (hereinafter referred to as principals) shall be responsible to withhold PIT on income from agency activities payable to the principal's agents at the appropriate percentage. Particularly, provisional percentage to be collected on monthly income payable to the agent is 0%, 5%, 10% in the case of monthly income of the agent is up to VND 4 million, above VND 4 to VND 15 million, above VND 15 million, respectively.

An agent's income in accordance with the above tariff means the agent's income without deductions for dependants, for compulsory insurance premiums or for contributions to charitable funds and so forth.

Individuals acting as agents and who have income subject to PIT must make a tax finalization declaration if the amount of tax payable born by them in a year is greater than the amount provisionally withheld or paid, or they have income arising in the year for which tax has not been provisionally withheld or paid; or they claim a tax refund or a set-off in the following tax period of tax already paid.

This Circular has been of full force and took effect from the 7 March 2009, and applies to income of insurance agents as from 1 January 2009.

IMPLEMENTATION OF DEFERMENT OF TIME FOR PAYMENT OF PERSONAL INCOME TAX

On 18 February 2009, the Ministry of Finance issued Official Letter No. 1823/BTC-TCT providing the guidelines on implementing deferment of time for payment of Personal Income Tax ("PIT") in accordance with Circular No. 27/2009/TT-BTC dated 06/02/2009.

The following shall be deemed to be non-residents with income arising in Vietnam and ineligible for the deferment including individuals without a presence in Vietnam; individuals who leave Vietnam prior to 30 June 2009; individuals who arrive in Vietnam as from 1 January 2009 and leave Vietnam on an unidentified date, who do not have a registered place of permanent residence or a house lease contract in Vietnam with a term of ninety (90) or more days.

A determination of income arising of each taxpayer in such period and entitled to the deferment, and the amount of taxable income shall be made as follows:

- In respect of income being salary of resident individuals, it is the amount of salary which the income-paying entity pays to the employee from 1 January 2009 to the end of 31 May 2009 irrespective of whether such income arose in year 2009, 2008 or earlier;
- In the case of business income of a resident, it is PIT taxable income from business operation turnover arising as from 1 January 2009 up until the end of 31 May 2009;
- In the case of income from capital transfers (including transfers of securities):

+ In the case of transfer of a capital contribution portion, the time for calculating eligibility for the deferment is the time of lodging a valid application file on such transfer of the capital contribution portion with the competent State administrative body within the period of 1 January 2009 up to the end of 31 May 2009.

+ In the case of transfers of securities: it is the time when the securities company, Stock Exchange or Securities Trading Centre announces the successful transaction within the period 1 January 2009 up to the end of 31 May 2009 (in the case of listed securities, or unlisted securities but registered for trading at a Securities Trading Centre); and is the time when the securities transfer contract is effective, and if there is no such contract then it is the time of registration of the transfer with the issuing organization within the period 1 January 2009 up to the end of 31 May 2009 (in the case of securities other than the cases stipulated above.)

+ In the case of income being copyright or income from franchising: it is the income paid within the period 1 January 2009 up to the end of 31 May 2009 consistent with the time for payment stipulated in the contract.

- In the case of income from an inheritance or receipt of a gift by a resident, the time is the time of lodging the file on transfer of ownership or use right to the assets received by way of inheritance or gift with the competent State administrative body within the period 1 January 2009 up to the end of 31 May 2009.

Declaration of amount of tax entitled to provisional deferment of time for payment:

Income paying-entities must not, during the period of deferment, retain amounts of tax entitled to the deferment; individuals in the category of those who must declare PIT directly with the tax office need also not pay the amount of tax entitled to the deferment, but income-paying entities and such individuals must still declare PIT directly with the tax office including the amount of PIT entitled to the deferment and they must lodge these declarations in accordance with the guidelines in Circular No. 84/2008/TT-BTC of the Ministry of Finance dated 30 September 2008.

In cases of transfer of a capital contribution portion, receipt of an inheritance or gift and so forth to which the deferment of time for payment of PIT applies, the Tax Department shall, based on the tax declaration file as checked by it, provide a notice of deferment of payment of PIT (on the standard form No. 1/GNT-TNCN issued with this Official Letter) so that individuals and the State administrative body with the function of registering transfers will have the basis for transferring ownership or use right to assets.

Any problems arising during implementation of this Letter should be promptly reported to the Ministry of Finance (the General Department of Taxation) for further guidelines.

NEW REGULATIONS ON ISSUING LICENCE FOR PUBLISHING

On 10 February 2009, the Government issued Decree No. 11/2009/ND-CP (“Decree No. 11”) amending and supplementing Decree No. 111/2005/ND-CP detailing and implementing a number of articles of the Law on Publishing.

The most critical point in this Decree 11 is that the establishments - having

business in publication import, the office representative (“RO”), the publishing house (“PH”) and the foreign publication issuing organizations in Vietnam that were issued the operation licence before the date of 1 January 2009 - are required to conduct procedures for re-issuance of the licence. The term of the operation licence of a RO of

the foreign publication issuing organizations in Vietnam shall be five (05) years from the date of issuance and shall be extended for each time not exceeding five (05) years.

This Decree shall be effective after 45 days as from the signing date.

INTEREST RATE SUPPORT SCHEME FOR PRODUCTION AND BUSINESS PURPOSES

On 3 February 2009, the State Bank of Vietnam issued Circular No. 02/2009/TT-NHNN providing in detail the implementation of interest rate support for organizations and individuals borrowing loans from banks for their production and business purposes.

In accordance with this Circular, organizations and individuals who are subject to interest rate support are borrowers having debt return capacity to implement domestic investment, production or business projects.

The loan forms which are subject to interest rate support are short-term loans (the term of 12 months or less) in Vietnam Dong under the credit contracts signed and disbursed

within the duration from 1 February 2009 to 31 December 2009 (except for the short-term loans for buying foreign currencies to pay consumption imports, the loans recorded in accordance with the economic sectors in Annex 7 of Decision No. 477/2004/QD-NHNN).

An interest rate support for borrowers is 4% per year, calculated on the balance of loans and the actual duration of loans within the period from 1 February 2009 to 31 December 2009. The longest duration of the interest rate support is 08 months from the date of disbursement, applicable in 2009 for the loans under the credit contracts signed and disbursed from 1 February 2009 and 31 December 2009; the loans having the term over

2009 shall be entitled to enjoy the interest rate support for the duration within the year of 2009; the overdue loans or the loan granted an extension shall not be entitled to enjoy rate support for the period of late and extension.

The method for implementing the interest rate support is that on the due date of interest payment, the commercial banks shall deduct immediately the payable interest equal to the amount with the interest rate support. The State Bank of Vietnam shall transfer the interest amount supported based on the report on the interest support amount from the commercial banks.

This Circular has been of full force and took effect from the date of its signing.

GUIDELINES FOR BIDDING PLANS

On 17 February 2009, the Ministry of Planning and Investment issued Circular No. 02/2009/TT-BKH providing the guidelines on drawing up bidding plans.

The applicable subjects of this Circular are organizations and offices that are responsible to propose the bidding plans (hereinafter so-called: “investors”) of the approved projects that are in the governing scope of the Law on Bidding. If the bidding package for consultancy service is implemented before obtaining the approval of the project, the drawing the bidding plans should be referred to this Circular.

Basic principles in scheduling bidding plan:

- The bidding plan must be approved by the competent authorities in writing after approval of investment decision or be approved at the same time with the investment decision in the case that legal conditions for investors to select the tenders are sufficient.
- The bidding plan must be drawn up for the whole project, in the case of insufficiency of conditions for the complete the plan of the whole project, it is permitted to draw up the plans of some bidding packages that are implemented before the rest ones.

- The bidding plan must specify the number and the content of each bidding package. The content of each bidding package shall include the name, price, source of capital; the forms of tender selection; the bidding method, the time of tender selection; the forms of contract; the term of contract.

The form of Approval for the bidding plans and the Annexes relating to the legal documents and tables are attached to this Circular.

This Circular shall be of full force and effect after 45 days from the signing date.

CONSTRUCTION – REAL ESTATE**MANAGEMENT OF CONSTRUCTION INVESTMENT PROJECT**

On 12 February 2009, the Government issued Decree No. 12/2009/ND-CP on management of construction investment projects.

According to this Decree, for the national important projects or Group A project having some sub-projects, if each sub-project can be independent in operation or can be implemented under each investment period and stage, each sub-project shall be managed and implemented as an independent project. The division into the sub-projects shall be decided by the body that has authority to make decision on investment. In respect of the other projects using other financial sources including private financial resources, the Investor shall decide the formality and content of project management; in respect of projects using mixed financial resources, the parties contributing capital shall agree on the method of management and administration.

This Decree also provides the investment supervision, evaluation to the construction investment projects. Accordingly, the projects using the stated budget with the proportion of more than 50% of total invested

capital must be supervised and evaluated. In respect of projects using other financial resources, the supervision and evaluation shall be decided by the body that has authority to make decision on investment.

In respect of authority to make the decision on the investment construction project, if the projects using stated budget, the Prime Minister shall decide the investment on the national important projects pursuant to Resolution of the National Assembly and the other important projects; the Ministers and the Head of the ministerial level agencies can authorize or allocate to their direct subordination to decide on investment applicable to Group B, C. The Chairman of the People Committee at all levels shall decide on investment of Group A, B, C within its territory and ability to balance the state budget of the local upon approval by the People's Council at the same level.

This Decree also provides in details the implementation of the construction investment project. Construction works must be designed and obtained the construction license before being

constructed.

Regarding the management of construction implementation, the construction progress must comply with the general schedule of the approved project. In respect of large scale and long-term projects, the construction schedule must be planned for each stage of monthly, quarterly and yearly that encourage the construction schedule to be pushed up. In case the construction speed can be implemented more quickly than expected that brings more effectiveness to the projects, the construction contractors must be awarded in accordance with the contract. Otherwise, the contractors must compensate for their late for meeting the construction schedule and shall be fined for their failure.

In addition to that, this Decree provides in details the conditions for issuance of the professional certificate for architects, construction supervising engineers; the conditions and requirements on ability of individual and organization who take part in construction projects.

This Decree shall come into effect from 2 April 2009.

ADMINISTRATIVE PENALTIES IN REAL ESTATE BUSINESS

On 27 February 2009, the Government issued Decree No. 23/2009/ ND-CP on administrative penalties including administrative penalties in real estate business.

A fine of VND 50 million to VND 60 million applicable to the organizations and individuals having the following offence activities:

- Having the sale, lease, lease purchase of real estates which are required to trade on the real estate transactions floor but not through the transactions floor;
- Having the sale, lease, lease purchase of real estates through the real estate transactions floor that are not in compliance with the procedures, orders required by the law;
- Not certifying or certifying the real estate trading through the transactions floor that is not in compliance with the laws;

- Having violation of the provisions on establishment of the real estate transactions floor;

- Having violation of the provisions on operation of the real estate transactions floor; and

- Other activities.

A fine of VND 60 million to VND 70 million applicable to the organizations and individuals having the following offence activities:

- Having business on the real estate which is not eligible or not permitted to business;
- Having violation of the provisions on capital mobilization in the investment projects of the housing, new urban zones and the technical infrastructure based industrial zones;
- Having violation of the provisions on transferring the projects of the housing, new urban zones and the technical infrastructure based industrial zones.

In addition to the above penalties, the organizations, individuals who committed a breach are required to comply with the provisions on the real estate business conditions, on the procedures on sale, lease, lease purchase; certification of the real estate trading through the transactions floor and capital mobilization; project transfer.

For activities of (i) having the sale, lease, lease purchase of real estates through the real estate transactions floor that are not in compliance with the procedures, orders required by the laws; and (ii) having violation of the provisions on capital mobilization in the investment projects of the housing, new urban zones and the technical infrastructure based industrial zones that are relapsed, the Business Registration Certificates of the organizations, individuals who committed a breach shall be revoked from one (01) to three (3) years or unlimited.

This Decree shall be effective as from 1 May 2009.

LABOUR**GUIDING UNEMPLOYMENT INSURANCE**

On 22 January 2009, the Ministry of Labour, Invalids and Social Affairs issued Circular No. 04/2009/TT-BLĐTBXH implementing some articles of Decree No. 127/2008/ND-CP dated 12 December 2008 guiding in details the implementation of a number of articles of the Law on Social Security on Unemployment Insurance (UI).

According to this Circular, a level of monthly unemployment benefit is equal to a rate of 60% of the average of monthly wage and salary used to determine the contribution of UI of the previous consecutive 6 months before the jobless or the termination of the labour contract.

In the case that some last months before the unemployment, labourer has an interrupted period of UI contribution because he or she is not subject to the contribution of UI, then the consecutive 6 months for calculation of the level of unemployment benefit are the average of 6 months of UI contribution before his or her jobless or the termination of labour contract.

Every month, the employer shall contribute 1% of its Fund of Wage and Salary and shall extract 1% of wage or salary of each employee to contribute at the same time to the Fund of UI. In the case the

employers have more than 10 employees subject to UI but in some months in a year, there are less than 10 employees, the employers shall be subject to contribute UI for employees participating in UI.

Beneficiary of unemployment benefit shall be entitled to health insurance. In the case of the termination of unemployment benefit, the beneficiary shall no longer have benefit health insurance and return the health insurance's card to the Social Insurance organization.

This Circular has been of full force and took effect from 1 January 2009

SUPPORT EMPLOYEES LOSING THEIR JOBS IN ENTERPRISES WITH DIFFICULTIES CAUSED BY THE ECONOMIC DOWNTURN

On 23 February 2009, the Prime Minister issued Decision No. 30/2009/QĐ-TTg supporting employees losing their jobs in enterprises with difficulties caused by the economic downturn.

The State has a policy on granting credit for enterprises facing difficulties caused by the economic downturn and having no finance capacity to pay wage, to contribute social insurance and severance allowance or allowance for loss of jobs.

The subjects of this credit support are enterprises facing difficulties caused by the economic downturn that must reduce the number of employees by at least 30% or from or more than 100 ones (casual employees with working duration less than 03 months are not taken into account) and after the utilization of all resources, such enterprises still fail to be solvent to pay wage, social insurance and severance allowance

or allowance for the loss of work.

In accordance with this Decree, such enterprises shall be entitled to borrow from the Vietnam Development Bank with credit term of up to 12 months, with an interest rate of 0%, the maximum amount of credit equal to the one for the payment of wage, social security and severance allowance or allowance for the loss of work.

For employees losing their jobs whose employers decamped in 2009, the Provincial People Committees shall advance their local budget to pay all the wages owed by such enterprises for the employees in the payroll of enterprises.

Employees losing their jobs in 2009 in enterprises facing difficulties caused by the economic downturn that are still insolvent to pay wage, social insurance and severance allowance or allowance for the loss of work; employees losing job in

2009 in such enterprises of which the employers ran away; employees working aboard but losing job caused by the difficulties of their enterprises and having to return before the due of labour contract are subject to borrow National Fund on Employment to create job themselves, to learn a career within 12 months since the jobless, or borrow Social Policy Bank within 12 months since the jobless or the date they return to Vietnam.

Enterprises having difficulties caused by the economic downturn that are still insolvent to pay wage, social security and severance allowance or allowance for the loss of work shall be responsible to pay wage, social insurance and severance allowance or allowance for the loss of work within 07 days since the disbursement of the credit.

This Decision has been of full force and effect since the signing date.

SOME REMARKABLE ADVANTAGES OF DOMESTIC LAW FIRMS IN GLOBAL ECONOMIC RECESSION

In the context of this global economic downturn and financial crisis that are more and more expanding now, enterprises (including FDI ones) tend to use the professional service provided by the domestic law firms, instead of the habit of using the same provided by international law firms presented in Vietnam as before.

In the past, FDI enterprises had a habit to use the professional service of the international law firms in Vietnam because of their globalization characteristics to use professional services from international firms even though the legal fees requested to be paid to such law firms were very high.

However, when the global economy is being crisis, the finance is a great problem to the enterprises. Therefore, using the professional services of the international laws firms with the high legal fees is under consideration of the enterprises.

In some extent, the quality of legal consultancy of the domestic law firms is getting better and better, the qualification and international experience of domestic lawyers have improved days by days. Besides, domestic lawyers have more and more opportunities to be in deep contact with international transactions, trans-border transactions, so that the market of legal consultancy is no longer

exclusive for international law firms.

With the well-qualified and well-trained domestic lawyers who are able to give practical and valued added legal solutions; together with competitive legal fees in comparison with the same of international law firms, the domestic law firms have more significant advantages than the international law firms in the period of economic downturn now. The current issue is that if the domestic law firms need to register for professional liability for their lawyers, the FDI enterprises shall be ready for utility of their legal services.

QUESTIONS AND ANSWERS**Q 1:**

An electric construction joint stock company is a State-Owned-Enterprise converting into Joint Stock Company since October 2003, a part of its employees was entitled to buy shares paid by installments within 10 years. Currently, it has become a publicly company and on the way of listing its shares in Stock Exchange Market. Thus, it is necessary to amend its organizational and operational Charter in accordance with Decision No. 15/2007/QD-BTC dated 19 March 2007 issued by the Minister of Finance. According to the Article 8.2 of the standard form of the Company's Charter ("Standard Charter"): "Shares that have not been paid fully yet shall not be entitled to transfer and benefit dividends". Hence, how could this Company deal with the shares paid by installments by its employees? (1)

A 1:

Based on the facts, we understand that in the process of equalization, the State would like to create the advantages for employees who are entitled to buy shares in their Company by paying for such shares by installments within 10 years.

This policy is complied with the provisions of Article 27.2 of Decree 64/2002/ND-CP dated 19 June 2002 on conversion of State-Owned-Enterprises into Joint Stock Companies: *"the poor employees working in the equitized enterprises shall be entitled to buy shares at preferential price, to benefit deferment for payment in the first 3 years and pay by installments in the remaining 7 years with no interest rate..."*.

On the other hand, the Article 8.2 of the standard form of the Company's Charter provided that: *"Shares that have not been fully paid shall not be transferred or benefit dividend"*. In other words, shares that have bought or registered to buy but have not been fully paid for the Company shall not be transferred or benefit dividends. However this Article 8.2 shall not be applicable for such case because:

The shares bought by employees from the States have been fully paid for the Company; the employees are in debt to the State, instead of the Company. Thus, they shall be entitled to be distributed the dividend in accordance with legal regulations.

However, in this case, employees shall be restricted to transfer their shares in the Company. The reason is not due to the un-fulfillment of paying obligation corresponding to the regulation of Article 8.2 of the Sample Charter; however, it is because pursuant to the regulation of Article 27.2 of Decree 64, "The shareholders (employees) of this type of shares shall only be permitted to transfer their shares after at least 3 years since the full payment for the State".

In accordance with Article 8.2 of the standard form of the Company's Charter: *"All shares shall be freely transferred, unless otherwise stated in this Charter or other legal regulations"*. Hence, in the amended Charter of the Company, it is possible to add other regulations to restrict the transference of shares bought buy employees mentioned above.

(1) Consultancy of lawyers of LuatViet Advocates & Solicitors published in Investment Bridge Column, Security Investment Newspaper No. 22 (650), dated 20 February 2009.

QUESTIONS AND ANSWERS**Q 2:**

Upon having been approved at principle on establishment by the State Securities Commission of Vietnam, a security company ("SC") sold its shares to parties other than founding shareholders. After that, the SC could not be established as the founding shareholders did not continue to contribute their capital. In this case, how can we deal with those sold shares? (2)

A 2:

Clause 2 of Article 62 of the Law on Securities provides that *"the founding shareholders or founding members must use their own capital funds to contribute capital to the establishment of the securities company"*. Clause 4 of Article 84 of the Law on Enterprises also provides that *"in the case the founding shareholders do not register to subscribe for all the shares offered for sale, the remaining shares must be offered for sale and sold out within a time limit of three years from the date of issuance of the business registration certificate to the company."*

From a legal perspective, the SC shall only be permitted to sell its shares offered for sales after obtaining the establishment and operation license (simultaneously being the business registration certificate). In the case SC sold its shares without obtaining the establishment and operation license, such sale and purchase is illegal in accordance with the provisions of the Law on Securities and the Law on Enterprises. The transactions relating to buying and selling such shares should be considered as null and void. The rights and obligations of the relevant parties shall be settled in accordance with the resolution principles applicable to the void and null civil transactions of the current Civil Code by reimbursing to each other all received. This means that such SC shall refund to the outstanding shareholders all the amounts gaining from buying shares to them.

In addition to that, for the purpose of determining the compensation for the damage caused (if any) according to principles of Civil Code, the level of mistakes of the SC and relevant shareholders leading to the invalidity of the civil transactions should be considered.

(2) Consultancy of lawyers of LuatViet Advocates & Solicitors published in Investment Bridge Column, Security Investment Newspaper, No 16 (644) dated the 6th February 2009

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