

“I don't need lawyers who win at all cost.  
I really need them to win, but calculate the costs ”

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## FINANCE –BANKING

### TIGHTENED RULES ON ISSUING CORPORATE BONDS

On 14 Oct 2011, the Government promulgated Decree No. 90/2011/ND-CP on issuance of corporate bonds. Coming into effect from 1 Dec 2011, this Decree replaces Decree No. 52/2006/ND-CP dated 19 May 2006 on issuance of corporate bonds and Decree No. 53/2009/ND-CP dated 4 Jun 2009 on issuance of international bonds.

To restrict enterprises from the risk of being unable to pay bonds' principal and interests which are due, the Decree set higher requirements for issuing corporate bonds. An issuing company must maintain a minimum equity ratio of 20 percent of total investment capital of the program or project. Furthermore, a company issuing domestic bonds must have profitable operations for the year preceding the year of issuance and have its financial statements audited. For international bonds, time requirement is three consecutive years instead of one year preceding the year of issuance.

For enterprises in conditional businesses such as banking or finance, the issuance of bonds must comply with requirements on capital safety limit under relevant laws.

The issuance of international bonds is considered as a form of foreign borrowing by the companies. Therefore, a company issuing bonds internationally has to comply with legal regulations regarding foreign borrowing and repayment and the registration of foreign borrowing with the State Bank of Vietnam.

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**FINANCE –BANKING****PRODECURES FOR REVOCATION OF LICENSES AND LIQUIDATION OF ASSETS OF FOREIGN CREDIT INSTITUTIONS**

On 28 Oct 2011, the Governor of the State Bank of Vietnam (SBV) issued the Circular No. 34/2011/TT-NHNN guiding the order and procedures for revocation of licenses and liquidation of assets of commercial presences of foreign credit institutions in Vietnam.

SBV Governor is the competent person to decide the revocation of licenses of foreign credit institutions and representative offices of foreign banks. Time limit for liquidation of assets of foreign credit institutions and representative offices shall be 12 months from the effective date of the Decision on revocation of license.

From the date the license is revoked or SBV Governor issues official document requesting foreign

credit institution to cease its operation, foreign credit institution is prohibited to:

- Disperse and hide assets;
- Repay unsecured debts;
- Waive or ease the right of debt claims;
- Transfer unsecured debts into debts secured by assets of foreign credit institution and foreign bank branch.
- Grant, collateralize or lease the assets;
- Sign new contracts not for the purpose of terminating operations;
- Transfer money or assets abroad.

**INCREASING PENALTY AMOUNT IN FOREIGN EXCHANGE AND BANKING SECTOR**

The Government has just issued the Decree No. 95/2011/ND-CP amending and supplementing a number of articles of the Decree No. 202/2004/ND-CP dated 10 Dec 2004 on administrative sanction in the monetary area and banking activity.

With validity from 20 Nov 2011, the Decree has increased the penalty amount by 7 - 10 times compared to the former amount. This document also added a number of acts to be fined in foreign exchange activities and gold trading.

Previously, there was no specific penalty amount stipulated for the acts of listing prices, advertising goods, services and land use right in foreign currency and gold contrary to provisions of applicable laws. Now, under this new Decree, such acts shall be subject to a fine of 300-500 million dong.

It becomes obvious that the Government is taking its utmost efforts to fight against the “dollarization” and “gold speculation” which are becoming popular these days.

**TAX****EXTENDING 2011 CORPORATE INCOME TAX PAYMENT DEADLINES FOR LABOR-INTENSIVE ENTERPRISES IN SOME SECTORS**

Confronted with current economic challenges, the Government has recently issued the Decision No. 54/2011/QD-TTg dated 11 Oct 2011 extending 2011 corporate income tax payment deadlines for labor-intensive enterprises in some sectors.

The payment of 2011 corporate income tax shall be extended for one (01) year if enterprises and cooperatives meet these two conditions, including:

Firstly, enterprises have the total of more than 300 regular employees in 2011, excluding employees under short-term contracts of less than 3 months. For enterprises organized after the model of parent-subsidiary company, the number of employees of the parent company does not include employees of its subsidiary companies.

Secondly, such enterprises must have income from

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the production or processing of agricultural-forestry-fishery products, textile and garment, leather and footwear and electric components, or the construction and installation of socio-economic infrastructure facilities.

Amounts of corporate income tax eligible for payment deadline extension exclude income tax amounts on other operations and incomes other than those from the operations mentioned above.

**COMMERCE - ADMINISTRATION****SIMPLIFYING ADMINISTRATIVE PROCEDURES FOR LICENSES OF INTERNATIONAL MULTIMODAL TRANSPORTATION BUSINESS**

The Government has recently issued the Decree No. 89/2011/ND-CP amending and supplementing a number of articles of the Decree No. 87/2009/ND-CP dated 19 Oct 2009 on multimodal transport.

This Decree has simplified procedures of granting licenses for international multimodal transportation business and shall be applied to enterprises established in Vietnam, ASEAN's members and those who have signed the international treaty on multi-

modal transport with Vietnam.

Such enterprises are only required to submit a dossier of application for issuance, re-issuance of international multimodal transport business licenses either directly at the office of Ministry of Transport or via postal service.

Time limit for granting, re-granting licenses is reduced from 10 business days to 07 business days upon receipt of a complete and valid dossier.

**REGULATION ON PROTECTION OF CONSUMERS' RIGHTS UNDER DECREE 99/2011/ND-CP**

On 27 Nov 2011, the Government issued the Decree No. 99/2011/ND-CP to guide the implementation of the Law on protection of consumers' right in 2010.

According to the Decree, form-based contracts and general trading conditions must be made in writing and fully satisfy the following conditions:

- The language to be used is Vietnamese, and the contents must be clear and easy to understand;
- The font size is at least 12-points;
- The background color and font color of the contracts and general trading conditions must be in contrast.

Consumers and social organizations participating in protecting consumers' rights are entitled to require the body in charge of state administration of protecting consumers' rights in accordance with

provisions of the Law on Protection of Consumers' Right. Such requirement may be conducted directly or by written request.

Social organizations participating in protecting consumers' rights are entitled to take legal action by virtue of public interests upon full satisfaction of the following conditions:

- Being duly established in accordance with provisions of law;
- Having the operational principle and purpose for consumers' interests or public interests relating to consumers' interests;
- Having operated for a minimum period of three (03) years from its establishment to the date it takes legal action;
- Having operational scope of provincial or higher level.

## COMMERCE - ADMINISTRATION

### FINE UP TO 40 MILLION DONGS IMPOSED ON THE ADVERTISEMENT OF FUNCTIONAL FOODS AS MEDICINES

On 18 Oct 2011, the Government issued the Decree No. 93/2011/ND-CP regarding administrative sanctions in the sector of pharmaceuticals, cosmetic and medical equipment.

According to this Decree, the maximum fine for administrative violations in this sector shall be up to 40 million dong.

In particular, a fine of 30 to 40 million dong shall be imposed on the advertisement of cosmetics, functional foods and non-pharmaceutical products with ambiguous contents resulting in the consumers' misunderstanding of such products as medicines.

Besides, Decree 93 stipulates that a fine of 30 to 40 million dong shall be imposed on the act of erasing or modifying information on expiry date, indications, contraindication, dosage and usage in the drugs' label compared to those in approved dossier.

Such fine amount shall also be applied to wholesaling establishments selling habit-forming drugs, psychotropics and pre-substances used as drugs to wrong users, or to establishments not having functions of selling such drugs, and ect.

Besides, a fine of 05 to 10 million dong shall be imposed on establishments and enterprises conducting one of these following acts: incompletely listing or not listing price of drugs which are being offered, or listing not in accordance with regulations, selling drugs at higher price than listed, or not providing customers with listed prices.

A fine of 10 to 20 million dong shall be imposed on the change of packing or label of drugs without written consent by the Ministry of Health. Such amount is also imposed on the trading of drugs without packing or drugs with label contents and forms different from those in approved dossier.

### SETTING UP NOT MORE THAN ONE TRADE PROMOTION REPRESENTATIVE OFFICE IN EACH LOCALITY

A foreign trade promotion organization is entitled to set up not more than one representative office in one province or centrally-run city. The representative office, as a subordinate unit of the foreign trade promotion organization, is not permitted to set up a representative office under it.

The above contents are stipulated in the Government's Decree no. 100/2011/ND-CP dated 28 October 2011 regarding the establishment and operation of representative offices by foreign trade promotion organisations in Vietnam.

## LUATVIET'S NEWS

### A SENIOR ASSOCIATE MAKING PARTNER

Ho Chi Minh City, 15 November 2011

It is our pleasure to announce the election of a new partner, Tran Thi Ngoc Linh, in our Hanoi-based office.

*"We are delighted to introduce our new partner, Ms. Tran Thi Ngoc Linh, a talented, intelligent and experienced lawyer who will continue to meet the*

*diversified needs of our clients", commented Tran Duy Canh, Managing Partner of LuatViet. He added, "The election of new partner reflects our commitments to continuously building up and developing our team of attorneys, creating a solid platform to further assist our clients with the challenges they are facing in the current economic environment".*

**LUATVIET'S NEWS**

Ms. Tran Thi Ngoc Linh has more than 10 years of legal experience, and her practice focuses on investment, corporate and commercial matters, intellectual property, merger and acquisition, international commercial disputes.

She received the Bachelor of Laws (LL.B) in Viet-

nam and the Master of Laws (LL.M) in Japan, and also obtained the Master of Business Administration from the University of Southern California. She is a member of the Hanoi Bar Association.

The election of the new partner is effective from 1 December 2011.

**DR. LE MINH PHIEU JOINING BACK LUATVIET**

Ho Chi Minh City, 15 November 2011

**L**uatViet is delighted to inform that Dr. Le Minh Phieu has just come back to our firm and practised as a Senior Counsel.

Mr. Le Minh Phieu obtained Ph.D in Law from Montesquieu University, Bordeaux IV, France. His research focuses on international trade and investment law, international trade institutions such as WTO and ASEAN, corporate governance and international contracts.

Dr. Phieu has worked in several law firms, including LuatViet in 2007, and advised for a high number of transnational companies. He has acted as an excellent adviser for foreign-based groups in their transactions with Vietnamese partners. He has assisted foreign companies in acquiring enterprises in Vietnam, lending two aircrafts to the Vietnamese partner, borrowing the loan and using a

vessel as collateral for financial transactions. Dr. Phieu engaged also in defending a bank from paying an amount of 150 million dollars under a guarantee agreement.

Mr. Tran Duy Canh, Managing Partner of LuatViet, said that: *"Dr. Phieu's joining back LuatViet, together with his valuable experiences and knowledge accumulated during the time of studying and working abroad, has infused new energy into our powerful team of attorneys. I warmly welcome Dr. Phieu and trust he will further contribute to the growth of LuatViet, especially in the field of international law consultancy"*.

His practice focuses on Investment, Commercial, M&A, Corporate, Real Estate, Energy and Oil & Gas, Banking and Finance.

At LuatViet, Dr. Phieu will lead International Trade group.