

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

No. 12/2011

December, 2011

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## FINANCE – SECURITIES – INSURANCE

### LEGAL BASIS FOR OPEN-END FUNDS

On 16th December 2011, the Ministry of Finance issued Circular no. 183/2011/TT-BTC guiding the establishment and management of open-end funds.

Accordingly, from the effective date of this Circular on 1st March 2012, investors shall have legal basis to establish new open-end Funds. Open-end Funds may be formed by converting from closed-end funds provided that:

- There exists at least VND 50 billion of net assets at the time of lodging the application file for fund conversion;
- Investment portfolio includes only the shares listed and registered at the Stock Exchanges, cash and cash equivalent at the percentage of restriction on investment as stipulated;
- There is a plan for fund conversion approved by the general meeting of investors.

The initial public offer of open-end fund certificates shall be allowed once the following conditions are satisfied:

- It has been granted the certificate of acceptance of registration of the public offer of fund certificates by the State Securities Commission;
- Fund management companies ensure that fund certificate purchasers have accessed the prospectus and the summary prospectus in the application file for registration of the public issue of fund certificates at distributors' location.

### Finance – Securities – Insurance

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## FINANCE – SECURITIES – INSURANCE

Purchase monies for fund certificates in the initial public offer must be paid into an escrow account at the custodian bank.

Fund management companies must complete the distribution of fund certificates within 90 days from

the effective date of the certificate of acceptance (of registration) of the public offer of fund certificates. This time limit may be extended if so approved by the State Securities Commission.

### COMMERCIAL BANKS MUST HAVE AT LEAST 2 FOUNGING SHARE-HOLDERS BEING ORGANIZATIONS

On 15th December 2011, the State Bank issued Circular no. 40/2011/TT-NHNN on licensing, organization and operations of commercial banks, branches of foreign banks, representative offices of foreign credit institutions and other foreign institutions engaged in banking activities in Vietnam.

In order to be licensed for the establishment and operations of commercial banks, in addition to the satisfaction of conditions under item 1 Article 20 of the Law on Credit Institutions, the investors must have at least 02 founding members being organizations.

With respect to branches of foreign banks, the parent banks must meet the following conditions:

- Having the total assets at least equivalent to USD 20 billion in the year preceding the year of lodging the application file for the license;
- Not committing any serious violation of the regulations on banking operations and other laws of their home country during 05 consecutive years preceding the year of lodging the application file for the license;
- Generating profits from their business in 05 consecutive years preceding the year of lodging the application file for the license.

This Circular shall take effect from 1st February 2012

### NEW REGULATION ON AUDIT OF CREDIT INSTITUTIONS

On 15th December 2011, the State Bank of Vietnam (SBV) issued Circular no. 39/2011/TT-NHNN on independent audit of credit institutions and branches of foreign banks (hereinafter referred to as credit institutions).

Accordingly, annually credit institutions should select an independent audit agency to conduct the independent audit for the financial statements and operations of their internal control system.

SBV requires credit institutions to use one or several independent audit services if necessary in the following cases: credit institutions are at risk of be-

ing put under special control, or are being considered for termination of special control period, or are reorganized.

Within 30 days from the date of receipt of the auditor's report with except-for opinion, credit institutions must select 01 other independent audit institution to audit the contents relating to the except-for opinion.

This Circular has come into effect from 1st January 2012 and replaced Decision no. 121/2005/QD-NHNN.

### PROCUREMENT OF ASSET AND LIABILITY INSURANCES FOR STATE-FUNDED PROJECTS MUST BE PUT OUT TO TENDER

This is the condition prescribed by Decree 123/2011/ND-CP with effectiveness from 15th February 2012.

Investors of projects with 30% state capital or more, owners or users of assets under ownership of the State or State enterprises must put the pro-

urement of asset and liability insurances for their projects, assets or operations out to tender to select insurance provider.

This requirement is not applied to compulsory fire insurance and compulsory insurance of civil liability of vehicle owners.

**FINANCE – SECURITIES – INSURANCE**

According to this Decree 123, the legal capital of insurance companies are required as follows:

- VND 300 billion with respect to health insurance enterprises;
- VND 200 billion with respect to branches of foreign non-life insurance enterprises.

In addition, with respect to the supply of cross-border insurance services into Vietnam, foreign insurance companies must supply their services via an insurance brokerage enterprise having License of Incorporation and Operation in Vietnam.

**TAXATION****NEW POINTS ON CORPORATE INCOME TAX**

On 27th December 2011, the Government issued Decree no. 122/2011/ND-CP amending and supplementing a number of articles of Decree no. 124/2008/ND-CP. Accordingly, the list of incomes subject to corporate income tax (CIT) has been restructured.

In particular, a number of types of income are added as CIT taxable incomes, including:

- Income from the transfer of projects;
- Income from the transfer of rights to explore, mine and process minerals;
- Income from selling by-products or scraps which are not directly related to the business subject to tax incentives;

On the other hand, it is stipulated that the reversal

of provisions for inventory devaluation, financial investment loss, bad debts, warranty for products and goods of the enterprises shall not be included in the list of taxable incomes.

In addition, Decree 122 also exempts tax for enterprises employing disabled persons, people after detoxification and people infected with HIV provided that such enterprises:

- Have an average number of employees in the year from 20 employees or more;
- Have 30% of average number of employees in the year or more being disabled persons, people after detoxification and people infected with HIV /AIDS;
- Not being enterprises operating in the financial sector and real estate business.

**PROVIDING GUIDANCE FOR CASES NOT SUBJECT TO**

Pursuant to Decree no. 121/2011/ND-CP amending and supplementing a number of articles of Decree no. 123/2008/ND-CP detailing and guiding the implementation of a number of articles of the Law on Value-Added Tax, as from 1st March 2012, the following cases shall not be subject to VAT declaration and payment:

- Goods and services are provided overseas by taxpayers in Vietnam, except for international transport activities in which international transport passages includes departures and arrivals in a foreign country.
- The revenues from compensation, bonuses, subsidies, transfer of Certificates of Emission Rights and other financial revenues.
- Organizations and individuals producing and trading in Vietnam purchase from foreign organizations having no permanent establishments

in Vietnam, foreign individuals who are non-residents in Vietnam such services as repairing means of transport, machines, equipment (including materials and spare-parts); advertising and marketing; investment and trade promotion; brokerage for the sale of goods and provision of services; training; dividing the charges of international post and telecommunications services between Vietnam and foreign countries where such services are performed outside Vietnam.

- Organizations and individuals that are neither businesses nor value-added taxpayers shall not declare or calculate VAT upon the sale of assets.
- In addition, this Decree also amends and supplements several regulations regarding taxable price, direct VAT calculation method, deduction of input VAT and refund of VAT.

**TAXATION**

**REMOVING ENVIRONMENTAL PROTECTION TAX IN CALCULATION OF SPECIAL CONSUMPTION TAX**

On 8th December 2011, the Government promulgated Decree no. 113/2011/ND-CP amending and supplementing a number of articles of the Government’s Decree no. 26/2009/ND-CP dated 16th March 2009 detailing the implementation of a number of articles of the Law on Special Consumption Tax.

Pursuant to Decree no. 113/2011/ND-CP, the special consumption tax calculation price for home-made goods will be defined as follows:

$$\text{Special consumption tax calculation price} = \frac{\text{Prices not including value added tax} - \text{Environmental protection tax (if any)}}{1 + \text{special consumption tax rate}}$$

The removal of environmental protection tax in the

calculation of special consumption tax helps eliminating double taxation issues.

Under Decree 113, “naphtha, condensate, reformed components and other components used as materials for producing products (except for petrol production) which are directly imported or directly purchased from manufacturers by business establishments” shall be no longer subject to special consumption tax as stipulated previously.

With respect to a large amount of naphtha used for polymer production (mainly ethylene), the cost price of plastic products on the market will be reduced if special consumption tax is not imposed on such products.

This Decree takes effect from 1st February 2012.

**ADMINISTRATIVE PROCEDURE**

**AMENDING AND SUPPLEMENTING ADMINISTRATIVE PROCEDURES IN COMMERCIAL ACTIVITIES**

The Government promulgated Decree no. 120/2011/ND-CP on 16th December 2011 amending and supplementing administrative procedures stipulated in a number of Decrees of the Government detailing the implementation of Commercial Law. This Decree takes effect from 1st February 2012.

For the dossiers related to the Commodity Exchange and the dossiers of representative offices and branches of foreign traders in Vietnam, the Copy will be:

- a notarized copy (for cases where the dossiers are submitted by post, administrative documents);
- a copy attached with the original for comparison (for cases where the dossiers are submitted directly);
- a scanned copy of the original (if the dossiers

are submitted via an electronic network).

With respect to the issuance, amendment, supplement, renewal and re-issuance of licenses of representative offices and branches of foreign traders in Vietnam, enterprises are required to submit only one set of dossiers.

According to this Decree, franchising registration shall be not required for any franchising transactions being domestic franchising or franchising from Vietnam to overseas. However, in the cases as mentioned above, traders are still required to follow report regime to the Department of Industry and Trade.

This Decree also abolishes the cases which are related to professional stamps in commercial assessment services, such as registration, dossiers for issuance of professional stamps, deletion of registration of professional stamps, etc.

**ADMINISTRATIVE PROCEDURE****ADMINISTRATIVE PROCEDURES IN COMPETITION MATTERS**

On 16th December 2011, the Government issued Decree no. 119/2011/ND-CP amending and supplementing a number of administrative procedures stipulated in the Government's Decree no. 116/2005/ND-CP dated 15th September 2005 detailing the implementation of a number of articles of the Law on Competition.

According to Decree 119/2011/ND-CP, the following files are allowed to be submitted directly or sent via e-mail in the form of copies (scanned copies from the originals or soft copies of documents):

- Files for notification of economic concentration;
- Explanatory reports by the parties intending to enter into an agreement in restraint of competition or to participate in an economic concentration;
- Complaint files of competition cases.

Those above files must contain the legal electronic signature of the legal representative of enterprises.

Simultaneously, the enterprises shall prepare and bear all responsibilities for the Detailed Explanatory Report on how the conditions for entitlement to exemption for economic concentration are satisfied and the agreement in restraint of competition. Previously, this report must be presented in the form of feasibility study report and prepared and assessed by the scientific and technological organizations or R&D organizations.

There is a notable remark that during the assessment of the Detailed Explanatory Report on how the conditions for entitlement to exemption, the administrative body for competition may arrange to ask for opinion from the scientific and technological organizations and R&D organizations.

These above changes shall be applied from 1st February 2012.