

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

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Capital Market –Banking

STATE SECURITIES COMMISSION DECIDED TO PUT AN END TO THE USE OF FREELANCERS IN SECURITIES BROKERAGE

In practice, many securities companies (“SC”) extending their business via freelancers in securities brokerage. These persons will introduce securities transactions, give advice to clients and get benefit by earning commission fee based on the value of clients’ transactions at the SC. The major standards to choose these freelancers are their knowledge and experiences of financial and securities investment. If they possessed securities practice certificates, it would be an advantage but it is not required. Therefore, in practice, there are many persons easily claim themselves as “brokers” but not professional and unskilled. Totally believing in these persons could lead to disadvantages to investors. Meanwhile, pursuant to Point C, Clause 1, Article 62 of Law on Securities, director or general director and staff members conducting securities business operations specified in Clause 1, Article 60 and Clause 1, Article 61 of this Law must possess securities practice certificates. In respect of Reports of securities brokerage practitioners in securities brokerage activity and Results of inspecting some SC, to regulate this activity, on 17th May 2010, State Securities Commission issued Official Letter No. 1386/UBCK-QLKD which requires all SC to duly implement the provision of staff

Capital Market –Banking

State Securities Commission decided to put an end to the use of freelancers in securities brokerage.....1

Enterprise – Investment

Drug quality control.....2

Land And Construction

Contracts in Construction Activities.....2

Tax

Some guidelines for implementation provisions Tax Law of Natural Resources.....3

New regulations of invoices of good sales or providing services and determination of market prices in business link relationship.....4

Certificates of deposit interest of foreign contractors must be subjected to income tax.....5

Guidance on registration fee.....6

Labour

Administrative sanctions for violations of labor laws.....6

Administration

A citizen is only entitled to register permanent residence at his/her one lawful domicile.....7

Draft

Ministry of Finance Amended and Implemented Law on Insurance Business.....8

Capital Market – Banking

members conducting securities business operations under the Law on Securities.

Accordingly, SC will no longer be permitted to use freelancers in securities brokerage.

Enterprise – Investment

DRUG QUALITY CONTROL

In order to ensure compliance with laws and regulations on drug quality control during production, export, import, distribution and use in Vietnam, in accordance with international practice, and meet for international integration of pharmacy, on 28 April 2010, the Ministry of Health issued the Circular No. 09/2010/TT-BYT.

This Circular is applied to all organizations and individuals dealing in drugs and other agencies, organizations and individuals who are involved in drug quality management activities in Vietnam.

Accordingly, the Circular guides the creation, publication and application of quality standards of drugs, management and control of drug quality in

the process of production, preparation, distribution and use, circulation suspension, recovery and treatment of violations to quality, and the responsibility of the drug business, etc.

Besides, to meet the requirements of international integration of pharmacy, in accordance with the Circular, the drug business in Vietnam are allowed to apply directly to the pharmaceutical dictionaries used commonly in international drug trade: Europe, UK, U.S., and Japan.

The Circular takes effect from 01 July 2010, and replaces Decision No. 2412/1998/BYT-QD dated 15 September 1998 of the Minister of Health promulgating the Regulation on management of drug quality.

Land And Construction

CONTRACTS IN CONSTRUCTION ACTIVITIES

On 07/5/2010, the Government issued Decree No. 48/2010/ND-CP on Contracts in Construction Activities

This Decree regulates the for contracts in construction activities with regards to the construction projects that use 30% of the state capital. For construction contracts under the projects using ODA capital, if the international treaties to which Vietnam is a member has other regulations with the provisions of this Decree shall comply with the provisions of the international treaties.

Some points to note in this Decree are as follows:

- Contract price does not exceed the bid price

(in case of bidding), not exceeding the approved estimate package (in case of contractor). The adjustment of prices and construction contract adjustment applies only during contract performance under the contracts signed. Where the adjustment does not change the investment objectives or do not exceed the total approved investments, the investors may decide, contrary to reports from the competent authority to decide the investment decision. For package contract, the contract is adjusted only for the additional workload beyond the signed contract.

Decree also specified, the price adjustment contract only applies to contracts under fixed unit price, unit price adjustments and contract

Land And Construction

over time. This provision creates favorable conditions for investors to compare the regulations for the implementation of the contract price adjustments appropriately, to avoid price fluctuations due to stagnation of build.

- Generally, investors must buy building insurance. Where the premium has been calculated into the contract, the contractor shall buy this insurance. Also, the contractor shall buy the insurance necessary to ensure their activities.

- Decree also stated that the contractor is responsible for warranty work, warranty and equipment in accordance with the agreement. For special projects and grade level, the warranty period of not less than 24 months from the date of acceptance of the works are put into use, the warranty is 3% of contract value. The work remaining warranty period of not less than 12 months, then the warranty rate is 5% of contract value.

Decree takes effect from 01/7/2010 and replace Decree 99/2007/ND-CP dated 13/6/2007 of the Government on contracts in construction activities.

Tax

SOME GUIDELINES FOR IMPLEMENTATION PROVISIONS TAX LAW OF NATURAL RESOURCES

On 14/05/2010, the Government issued Decree No. 50/2010/ND-CP detailing and guiding the implementation of Articles 2, 5, 6, 7, 9 of the Tax Law on Natural Resources.

Decree has clarified the following issues:

- For taxable resources are very specific provisions, including: metallic minerals, crude oil (a liquid hydrocarbon in the natural state, asphalt, ozokerite and liquid hydrocarbons obtained from natural gas by means of condensation or extraction) of natural gas (the entire hydrocarbon in gaseous, from exploitation wells, including wet gas, dry gas, gas wells and the gas remaining after extract liquid hydrocarbons from wet gas) coal gas (a hydrocarbon, the main component is methane in gaseous or liquid, is contained in coal seams or in the nearby reservoir.) Also, for taxable resources: natural forest products, including plants and other products of natural forests, except for animals and anise, cinnamon, fire personnel, cardamom by taxpayers planted in natural forest areas assigned regeneration, protection, marine natural products, including marine animals and plants, natural water, swallow's nests and

natural resources by the ministries concerned Government agencies reporting to the National Assembly Standing Committee for consideration and decision.

- Production of natural resource tax calculation: For natural mineral water, natural hot water, natural water used for industrial purposes, the production of resource taxation is determined by m³ or liter measurement system achieved quality measurement standards in Vietnam. Where not directly determined the taxable output measured through the system above the contractual production of natural resources are exploited by tax periods.
- Price for calculating royalties on natural water used for hydroelectric production of commercial electricity, the price is average. For timber traffic yard sale prices are used. Where the price has not been identified at the site of delivery, the taxable value is determined based on taxable value prescribed by the provincial People's Committee. Taxable price for resource exploitation for domestic consumption but not export is the export unit price of resource products (FOB). For crude oil, natural gas, coal gas is the price at point of delivery. Point here is the point of delivery agreed in the contract in which oil and gas,

Tax

crude oil, natural gas, coal gas was transferred ownership to the parties to the oil and gas contracts.

This Decree takes effect from the date 01/7/2010,

annul Decree No. 05/2009/ND-CP dated 19/01/2009 of the Government detailing the implementation of the Ordinance and the Ordinance on Royalties amend and supplement Article 6 of the Ordinance on Royalties.

NEW REGULATIONS OF INVOICES OF GOOD SALES OR PROVIDING SERVICES AND DETERMINATION OF MARKET PRICES IN BUSINESS LINK RELATIONSHIP

Invoices of goods sale or providing services

On 14 May 2010, the Government issued the Decree No. 51/2010/ND-CP with effect from 01 January 2011 (Decree 51) and replaced Decree No.89/2002/ND-CP of 07 November 2002 which provided regulations on printing, publishing, using and managing invoices (Decree 89). According to Decree 51, the sale of goods or services with total payments under 200,000 VND/time (at present is 100,000VND), there may be no sales invoice unless the buyer requests.

Decree 51 regulates that organizations and individuals doing business at the same time can use many different forms of invoices: self-printed invoices, electronic invoices and invoices being printed invoices. The State however encourages the use of electronic invoices, a new form of invoices.

Particularly, Decree 51 has officially set the legal framework for enterprises to use self-printed invoices instead of waiting to buy invoices at the branches of the tax departments. Specifically, enterprises now under the new decree has the right to use printed invoices when the enterprises have the appropriate legal capital levels as required by the Ministry of Finance; the enterprises were established according to laws located in industrial zones, economic zones, export processing zones, high tech and other public units having production and business according to regulations of laws. Other individuals and organizations only has right use the printed invoices for use in connection with the sales of goods and services if they meet all of the following conditions: have been granted tax code; have profit of sales of goods and services; have not

been sanctioned for the violation of tax laws in 365 consecutive days as of the date of notification issued in invoices by themselves; have equipment systems guaranteeing for the printing and billing when selling goods or services; are the accounting unit and have sales software of goods and services associated with accounting software; make sure the printing and billing invoices shall be made only when arising the accounting profession.

Organizations and individuals having the tax code are not eligible to use self-generated invoices or electronic receipts, must ask to use the print invoices. Invoices be asked to printed can be printed under the current printed form.

Determine market prices in business transactions between the parties having related links

"The parties having related links" are the parties having the relationships in one of these following cases: (i) A party involved directly or indirectly to the operation, control, capital contribution or investment in any form to another party; (ii) The parties directly or indirectly is subjected to the executive, control, capital contribution or investment in any form by another party; and (iii) The parties involved directly or indirectly to the operation, control, capital contribution or investment in any form to another party.

"Business transactions" are the transactions of purchase, sell, exchange, rent, lease, transfer or assignment of goods and services in business process between the parties having related links, except for business transactions between enterprises in Vietnam with the parties having related links related to products subject to price adjustment by the State are implemented with the provisions of the law on price.

Tax

This Circular provides guiding on the implementation of regulations on the determination of market values in business transactions between the parties having related links is a basis consistent of declaration to determine enterprise income tax liability of the business entities. Application subjects are the organizations of production, goods business and services (hereinafter referred to as Enterprises) to perform business transactions with parties having related links, have obligation to declare and define the corporate income tax liability in Vietnam.

This Circular specifies the method of determining the market prices of the products in trading links, including comparison method of independent transaction price, method of prime cost added interest; comparison method of interest; method of dividing interest. Depending on each specific method the market values of the products can be calculated directly to the unit price of products or indirectly through gross profit rate or interest rate

of the product. For the indirect calculation method, when determining the business results for declaration purpose and calculation of the enterprise income tax, the enterprises are not necessarily to calculate a specific product unit price.

The Circular also specifies the determination of the market prices for some special cases and store instructions as much as provides data and documents on methods of determining market values. The data, receipts and documents when used as a basis consistent for comparative analysis must specify the origin for checking and verifying of tax office. The enterprises having linked transactions have obligations and responsibilities to store information, documents and receipts as a basis consistent for applying the method of determining the market prices for the products in linked transactions and presented according to the testing requirements and inspection of tax offices.

CERTIFICATES OF DEPOSIT INTEREST OF FOREIGN CONTRACTORS MUST BE SUBJECTED TO INCOME TAX

On 22 April 2010, the Ministry of Finance issued the Circular No. 64/2010/TT-BTC (Circular 64) amendment, supplementation the Circular No.134/2008/TT-BTC guiding the performance of tax obligations applicable to foreign organizations and individuals doing business or earning incomes in Vietnam.

The Circular 64 has two basic matters to be amended, supplemented. They are:

Firstly, supplementing income of bonds interest (except tax exemption bonds) and income of

certificates of deposit interest in incomes of loan interest of foreign contractors, subcontractors arising in Vietnam must be subjected to the enterprise income tax (EIT).

Secondly, EIT revenue of foreign enterprise for the transfer of securities, bonds (except tax exemption income), certificates of deposit will be determined generally which is turn – over at the time of transfer instead of being determined in two previous ways separately.

This Circular takes effect after 45 days from the signing date.

GUIDANCE ON REGISTRATION FEE

On 26 April 2010, the Ministry of Finance issued Circular 68/2010/TT-BTC on registration fee. The Circular takes effect after 45 days from the date of approval and replaces Circular 95/2005/TT-BTC and Circular 79/2008/TT-BTC.

There are significant provisions in The Circular, as follows:

Apart from the cases which are not required to pay registration fees, such as land assigned to

Tax

organizations and individuals to use for public purposes as prescribed land use exploration, mining, scientific research, etc., most of business organizations and individuals need to know about other cases not required to pay registration fees, such as the case of land for construction of houses for sale that have paid land use fee; land assigned to economic organizations for investment and construction of infrastructure for assignment or lease, regardless of land in or outside industrial zones, export processing zones; land leased from the State or hired from organizations and individuals having legal land use rights.

The Circular also specifies cases exempted from the registration fee includes housing, land of poverty housing, land of ethnic minorities in communes, wards and towns in difficult areas, etc.

All remaining objects will be required to pay a registration fee based on percentage of property value. A few specific cases such as the 10-seat cars will be required to pay from 10-15%, house and land is 0.5%, motor vehicles waterway, fishing equipment and transportation of aquatic products is 1% (particularly offshore fishing vessels with a capacity of 90 horsepower or more is 0.5%), hunting guns, sporting guns as 2%, motorcycles registered for the first cities in the central city provincial capitals and provincial towns where its office is 5% of passenger cars under 10 seats (including driver) do not include vehicles, cars designed passenger, cargo is just from 10% to 15% of vehicles remaining 2%.

In order to apply uniformly, the Circular also provide the method to define property valuation calculated registration fee in some specific cases.

Labour

ADMINISTRATIVE SANCTIONS FOR VIOLATIONS OF LABOR LAWS

On May 6, 2010, the Government issued Decree No. 47/2010/ND-CP on administrative sanctions for violations of labor laws ("Decree 47") replacing Decree No. 113/2004/ND-CP dated April 16, 2004 of the Government on administrative sanctions for violations of labor laws ("Decree 113").

This Decree regulates administrative violations ("Violations"), sanctions, penalties, recovery measures, authority, procedures to punish violations of labor laws, excluding violations of labor laws regarding such areas as vocational training and learning; sending labor to work overseas under contracts; social insurance.

With regard to applicability, apart from regulations on subjects being individuals, organizations violating labor laws, including Vietnamese and foreign individuals and organizations stipulated in Decree 113, Decree 47 excludes officials, civil servants, functionary in administrative and professional agencies and units, political

organizations, political – social organizations from the applicability of this Decree.

Principals for punishment of administrative violations shall be applied in accordance with the Ordinance for Punishment of Administrative Violations dated July 2, 2002; the amended Ordinance for Punishment of Administrative Violations dated April 2, 2008. Exclusively, the authority to punish violations of labor laws was increased. Accordingly, the President of the People's Committee at district and provincial levels, Head of the Inspections of the Department and Ministry of Social, War Invalid and Labor Affair are authorized to monetary penalties up to 30 million VND (the old level was just 20 million VND). Sector Inspectors of Labor is authorized to monetary penalties up to 500 thousand VND (the old level was just 200 thousand VND).

With related to sanctions, in addition to such sanctions stipulated in Decree 113 as: principal sanctions (warning, monetary penalties), supplementary sanctions such as revoking

Labour

professional licenses, Decree 47 states another supplementary sanction that is confiscating means and objects used to commit violations. Moreover, Decree 47 also determines that foreigners violating labor laws can be expelled, which is applied as a principal or supplementary sanction from time to time. Meanwhile, Decree 113 also mentions the confiscation of means and objects used to commit violations and expel foreigners, but it is not yet recognized as a principal or supplementary sanction.

Prescription for punishing violations, alike Decree 113, the prescription is one year, however, it is identified clearly that it begins from the date of committing violations. If the period is over due, violators will be exempted from punishment but still applied recovery measures stipulated in Decree 47.

With related to violations, sanctions and penalties, basically, Decree 47 increases the framework of sanctions for each group of violations. Accordingly, the highest monetary penalty is up to 30 million dong (the old one was just 20 million).

Accordingly, violations of regulations on jobs, labor relations, including violations of job, labor contracts, salary, bonus, foreign labors working in Vietnam, labor dispute settlement and strike could be applied the monetary penalty of 30 million dong. Regarding regulations of labor safety, labor hygiene, the maximum sanction is 20 million dong.

In addition, Decree 47 also issues form of minutes and decisions used to punish violations of labor laws. This is a new point creating conditions to settle violations well.

Decree 47 will take effect from June 25, 2010 and will replace Decree 113.

Administration

A CITIZEN IS ONLY ENTITLED TO REGISTER PERMANENT RESIDENCE AT HIS/HER ONE LAWFUL DOMICILE

On May 24th, 2010, the Government issued Decree No. 56/2010/ND-CP ("Decree 56") making some amendments of and additions to some provisions of Decree No. 107/2007/ND-CP ("Decree 107") on detailing and guiding the implementation of the Residence Law.

Accordingly, a citizen is only entitled to register permanent residence at his/her one lawful domicile where he/she regularly lives. For borrowed, rented or temporary accommodation in Ho Chi Minh City or Ha Noi City, it is required to ensure a minimum area of 5m² per person. This provision is issued to limit the area where houses are too small but the host still agrees for others to get his/her home address as their permanent residence.

Previously, Decree 107 provided five prohibited acts of abusing the regulations on household registration to limit citizens' lawful rights and

interests, now Decree 56 supplements two more acts, including: (i) to allow others to enter their names into the household registration book for the purpose of seeking profits or to enter their names into the household registration book at the same spot but the minimum floor area per person is not guaranteed in accordance with current regulations (ii) to sign labor contracts with indefinite duration with workers who are not in his/her enterprise to enter their names into the household registration book.

In addition, the Decree also stipulates that citizens who have the lawful domicile in the centrally-run city and continuously stay there for one year or more will be entitled to register their permanent residence in that centrally-run city

This Decree takes effect on 10 July 2010.

Draft

MINISTRY OF FINANCE AMENDED AND IMPLEMENTED LAW ON INSURANCE BUSINESS

Since Law On Insurance Business (“IB”) took effect (1st April 2001), its application has appeared some inadequacies; therefore, Ministry of Finance has issued Drafting Law on Amending and Implementing of Law on IB (“Draft”) and held a poll for public comment on the Draft via Portal.

In respect of Vietnam’s WTO commitments in IB sector and international insurance rules, Draft has amended and implemented a number of provisions such as providing cross border insurance service, classify types of insurance operation, branch of Endowment insurance Enterprise. Complying with WTO’s commitment, Vietnam has allowed to providing cross border insurance service, however, Law on IB has not governed this activity. Providing cross border insurance service is a sensitive matter in multi-ways, especially in a competition between local Insurance firms and international insurance firms; and this activity is also related to the cash flows in and out of Vietnam. Therefore, the Draft only comprises fundamental provisions, and the Government will guide these provisions in detail under prudential criteria on managing allowed by WTO to protect for individual and enterprise’s rights and benefits that have cross border insurance activities.

In addition, in respect of related laws, Draft has amended and implemented a number of provisions such as the types of insurance enterprise, competence of managing matters related to bidding and competition, given priority to specific laws. Provisions of cooperation and competition in IB in Article 10 of Law on IB is suitable, however, in practice, providing insurance products need to be implemented via bidding to reach to a fair competition. As a result, bidding in insurance activities has been implemented in this Draft. In addition, because of its special nature, Draft states that bidding needs to be regulated by Government.

In the past ten years, there are several differences among Law on IB and the others regulations such as Civil Code, Law on Enterprise, Law on Investment that cause many different understanding and solving ways. Additionally, there are many specific matters of IB activities that the other laws could not reflect their nature as clearly as Law on IB itself. Therefore, the Draft has provided in details that in the event there is a difference among Law on IB and other regulations about IB Activities, the Law on IB will be applied.

Besides, the Draft amended and implemented some regulations to meet the requirements in practice, enhance the effectiveness of State management, such as: conditions for being granted licenses, insurance agency, provisions for protecting insurance buyers. In practice, there are various ways of understanding and implementing from both insurance enterprises and insurance buyers in order to exploit and also many disputes about the time when the insurance liability arises. To overcome these problems, Article 15 of Law on IB has been amended and implemented as following:

“The insurance liability arises when:

- 1 The insurance contracts are concluded between the insurance enterprise and insurance buyers and insurance buyers have paid the premiums, or
- 2 There are evidence that the insurance enterprises have accepted the insurance and insurance buyers have paid the premiums, or
- 3 The insurance contracts are concluded and insurance enterprise agrees to allow insurance buyers to own the premiums in the insurance contracts.”

The draft Law on Insurance Business is scheduled to take effect on January 1, 2011.