

NEW REGULATIONS ON MANAGEMENT AND USE OF SEALS

On 1 April 2009, the Government promulgated Decree No. 31/2009/ND-CP amending and supplementing a number of Articles of Decree No. 58/2001/ND-CP dated 24 August 2001 on the management and use of seals.

Accordingly, economic organizations established under the Law on Enterprises and the Law on Investment are no longer required to apply for their seal engraving permits but still need to register their seal specimens at the relevant police before seals are put into operation.

In case agencies, organizations or State agencies - who desire to propose engraving their new seal or to be granted new seal specimen registration certificate because the current seal has been lost, worn, damaged or the seal specimen registration certificate has been lost, torn to pieces - are required to submit their dossiers to the competent police together with their valid reasons.

The seals of agencies, organizations can be revoked in the following cases: (i) when there are effective decisions

on separation, split-up, merger, dissolution or discontinuation of assigned tasks, conversion of the form of property; (ii) the business registration certificate of the enterprise is revoked under the effective decisions of competent authorities or have breached legal provisions; (iii) the lost seal has been found after the notice of its loss. Regarding such above-mentioned case of recovering, the heads of such agencies and organizations of which the seal have shall recover the seal and the seal specimen registration certificate to submit to police office where the registration has been made.

In case of temporary suspension of the use of seals, agencies or organizations which are competent to establish agencies, organizations using their seals and permit the use of seals are required to revoke such seals and seal specimen registration certificates and notify the police where the registration has been made and the concerned agencies thereof.

This Decree shall be of full force and effect from 1 June 2009.

ENTERPRISES - INVESTMENT - SECURITIES

New regulations on management and use of seals	Page 1
Granting certificates of origins for textiles and garments exported to the unites states of america	Page 2
Regulations on organization and operation of private universities	Page 2
New regulations on competence in settling administrative procedures in ho chi minh city	Page 3
Cap of foreign investors involving in securities market of vietnam	Page 4

TAXATION - FINANCE - BANKING

Interest rate support for medium and long-term loans	Page 5
Adjustment of some interest rates	Page 6
Supplementing the regulations on guarantees for enterprises to borrow capital at commercial banks	Page 6

CONSTRUCTION – REAL ESTATE

Guidelines for the selection of investors to carry out investment projects involving land-use rights	Page 7
Adjustment of estimate for building projects	Page 8

LABOUR

Adjusting the minimum wage	Page 9
How to avoid risks upon termination of labour relations	Page 9 - 10

Q & A SECTION	Page 11 - 13
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GRANTING CERTIFICATES OF ORIGINS FOR TEXTILES AND GARMENTS EXPORTED TO THE UNITED STATES OF AMERICA

On 9 April 2009, the Ministry of Industry and Commerce issued Circular No. 07/2009/TT- BCT on granting Certificates of Origins for textiles and garments exported to the United States of America.

Accordingly, all batches of textiles and garments exported to the US, in the categories coded as 338, 339, 340, 341, 345, 347, 351 and 352 are required to obtain the certificate of origin (C/O).

The registration and issuance of C/O will be made through the Vietnam Chamber of Commerce and Industry (“VCCI”). The granting of C/O must

be completed within 4 working hours after C/O grantors receive all valid and adequate required documents.

The General Department of Customs (GDC) will transmit daily the data of the exported batches to the Ministry of Industry and Trade and the Vietnam Chamber of Commerce for cross check and supervision. VCCI is responsible for providing the data of the issuance of C/O to the Ministry within the first five days of the following month.

The Vietnam Textile and Garment Association (Vitas) shall be responsible to provide information of

the production capacity of member enterprises, average price of each category to help the General Department of Customs (GDC) and VCCI for the purpose of preventing commercial frauds on a timely basis. When detecting the amount of goods is over the production capacity, batches of products with too low price, batches of goods assembled from imported semi finished products, mobile inspectorate of textiles and garments of Ministry of Industry and Commerce shall apply appropriate measures to check and propose sanctions.

This Circular shall be of full force after 45 days from its signing date.

REGULATIONS ON ORGANIZATION AND OPERATION OF PRIVATE UNIVERSITIES

On 17 April 2009, the Prime Minister issued Decision No. 61/2009/QD-TTg on organization and operation of private universities.

Accordingly, a private university has its legal entity status with a separate seal and is entitled to open account at banks, treasuries; has the same legal status, functions, responsibilities, obligations and benefits compared with public universities in the national education system.

Private universities shall be under the state management in education of the Ministry of Education and Training; and under the territorial administrative management of People’s Committees of central provinces or cities where their head offices are located.

A new private university is required to have at least three founding shareholders, none of them may contribute capital towards the establishment of more than two universities, with ownership of more than 51 percent of the charter capital of each university.

This regulation also stipulates that a private university is required to have sufficient Board of Management, Board of Inspection, Council of Science and Training, organization of communist party and other organizations, departments, boards, wards and faculties. The Head Master of private universities shall have academic title of at least associate professor or academic distinction of at least doctor of philosophy with a minimum 5 years of managerial

experience in tertiary education from the echelon of head of wards, departments, boards, and shall not be civil servant or official within the state personnel.

Besides the source of capital contribution from the shareholders, private universities shall be entitled to generate further revenue from tuition fees, charges paid by students and from other services provided by such universities such as: scientific consultancy, technology transference, production, operation within the lines of their educational fields.

This regulation shall be of full force and effect from 1 June 2009 and shall replace Decision No. 14/2005/QD-TTg dated 17 January 2005.

NEW REGULATIONS ON COMPETENCE IN SETTLING ADMINISTRATIVE PROCEDURES IN HO CHI MINH CITY

On 18 April 2009, People's Committee of Ho Chi Minh City enacted Decision No. 31/2009/QD-UBND on assigning, authorizing to settle certain procedures within the function of state administration applicable to state owned enterprises and investment projects in Ho Chi Minh City.

Accordingly, People's Committee of Ho Chi Minh City shall assign the Director of Department of Planning and Investment ("DPI") to consider and sign documents within the competence of the Chairman of People's Committee of Ho Chi Minh City in accordance with the Law on Enterprises 2005, Decree No. 180/2004/ND-CP, and Circular No. 04/2005/TT-BKH as below:

(i) To approve Charters of Organization and Operation of independent state owned enterprises, state corporations, state enterprises operating under the form of Parent company and subsidiary after the Decision on establishment and re-organization of state enterprises promulgated by the Chairman of People's Committee of Ho Chi Minh City;

(ii) To decide the change of business registration of state owned enterprises within the management of Ho Chi Minh City with the following contents: name, address of the head office, lines of business, Charter capital.

People's Committee of Ho Chi Minh City assigns the Director of DPI to settle a number of administrative procedures concerning the investment projects in Ho Chi Minh City as below:

(i) To consider and sign the grant in the first time, the adjusted one and revoke the following documents: Investment Certificate, Certificate of Adjusting Investment License,

Investment License for investment projects with investment capital of at a maximum 300 billion VND which are subject to be registered in accordance with Article 42, 43, 44 of Decree 108/2006/ND-CP; Investment Certificate, Certificate of Adjusting Investment License, Investment Certificate for investment projects with investment capital of at a maximum 300 billion VND and with the operating purpose in the information technology sector which are subject to the investigation before the granting of Investment Certificate in accordance with Article 46 of Decree 108/2006/ND-CP; and Operation Registration Certificate of Representative Office, Branch (which is not investment project) for FDI enterprises.

(ii) To consider and grant the adjusted Investment Certificates, Investment License for investment projects in the list of Investment fields with condition in such cases as: changing contents relating to investors (but no changes of investors); changing name, address of head office of enterprises (only for the case that such head office is not the location for implementing the projects); changing the location for implementing the projects for such projects with service operation as the purposes (other than purposes of such services as education, training, healthcare and trade); establishing, changing operation location (other than investment projects) of enterprises; and supplementing, adjusting Investment Certificate, Investment License on the changes of the address of Representative Offices, Branches of enterprises.

People's Committee of Ho Chi Minh City authorizes Department of Planning and Investment to consider

and sign official letters of approval for administrative procedures concerning investment projects within the competence of People's Committee of Ho Chi Minh City (other than enterprises, business co-operation contract ("BCC") within the areas that have been authorized by People's Committee for other agencies) for enterprises, BCCs established under Law on Foreign Investment ("LFI") and have not been re-registered in accordance with Law on Investment ("LI") yet. Accordingly:

(i) For enterprises, parties to BCCs established according to LFI and have not re-registered in accordance with LI: establishing, changing and terminating the operation of branches, transaction offices, stores, store of introduction and sale of products (without production nature), managing office of foreign party in BCCs; changing address of head office within the area of Ho Chi Minh City.

(ii) For enterprises, BCCs established in accordance with LFI and have not been re-registered regarding to the Law on Investment such as: adjustment of investment projects that is not the case in which adjustment of Investment Certificate is required in accordance with Clause 1 of Article 51 of Decree 108/2006/ND-CP; changing a Legal Representative of an enterprise, a Head of Branch; a Head of a Representative office provided in an Investment Certificate, a Operation Certificate of a Branch, a Representative Office; and other arising tasks assigned by People's Committee of Ho Chi Minh City.

This Decision shall be of full force and effect after 10 days from its signing date and shall replace Decision No. 65/2007/QD-UBND dated 2 May 2007.

CAP OF FOREIGN INVESTORS INVOLVING IN SECURITIES MARKET OF VIETNAM

On 15 April 2009, the Prime Minister issued Decision No. 55/2009/QĐ-TTg on cap of foreign investors in securities market of Vietnam.

Accordingly, foreign investors purchasing or selling securities on the securities market of Vietnam shall be permitted to hold a maximum of 49% of the total number of shares in a public shareholding company. If any provision of a specialized branch of law contains some other provision, then the provision of such specialized branch of law shall prevail. If the percentage ownership of foreign parties is limited in lists of specific businesses and lines, such limitations shall prevail.

In respect of public investment fund certificates and charter capital of any one public securities investment company, foreign investors shall be permitted to hold a maximum of 49%.

In respect of bonds, the issuing organization may regulate the limits on percentage ownership of circulating bonds of such issuing organization.

This Decision also stipulates that only foreign securities business institutions shall be permitted to contribute capital [and] purchase shareholding establishing a securities company provided that the capital contribution percentage of foreign parties shall be a maximum

49% of the charter capital of the securities company; only foreign securities business institutions with the professional operation of managing securities investment funds [and] foreign insurance business institutions shall be permitted to contribute capital [and] purchase shareholding establishing a fund management company provided that the capital contribution percentage of foreign parties shall be a maximum 49% of the charter capital of the fund management company.

This Decision shall be of full force and effect as from 1 June 2009 and shall replace Decision 238/2005/QĐ-TTg dated 29 September 2005.

INTEREST RATE SUPPORT FOR MEDIUM AND LONG-TERM LOANS

On 7 April 2009, the State Bank of Vietnam enacted Circular No. 05/2009/TT-NHNN giving details provisions for the implementation of interest rate support for organizations and individuals who apply for medium or long-term loans for the implementation of new investment projects for the purpose of business & operation development.

The goals of interest rate support of the State for medium and long-term loans from banks in Vietnamese Dongs of organizations and individuals for their new investment projects for business and operation development and infrastructure are to reduce investment costs, to increase fixed assets and production capacity, competitiveness of products, and to create new jobs.

Accordingly, there are 09 economic sectors and fields which shall be entitled for the interest rate support for the medium and long-term loans include: agriculture, forestry; fishery; mining; processing industry; production and distribution of electricity, gas and water; construction of office building for rent, building projects, warehousing for sale); commerce, repair of vehicles with motors, motorbikes, individual and family products; transportation, warehousing, and telecommunication, and scientific and technological activities.

The subjects that shall be entitled to enjoy this supporting policies shall include also loans for investment granted by Vietnam Development Bank that are in the list of investment projects that are subject to credit

support enacted attached with Decree No. 106/2008/ND-CP dated 19 September 2008.

An interest rate support to client is 4% per annum, based on the amount borrowing and the actual loan term for the period from 1 April and 31 December 2011. The longest term, which is enjoyed interest rate support, is 24 months, starting from the date of disbursement under credit contract signed before or after 1 April 2009 and the fund is released in the duration from 1st April to 31 December 2009. The favor in interest rate shall be implemented from 1 April to 31 December 2011.

This Circular shall be of full force and effect from its signing date.

ADJUSTMENT OF SOME INTEREST RATES

On 10 April 2009, the State Bank of Vietnam (“SBV”) promulgated Decision No. 837/QD-NHNN on refinancing interest rate, discount interest rate, and interest rate on overnight loans for inter-bank electronic payments on loans to banks to cover shortages for settlements conducted by the State Bank.

Accordingly, a refinancing interest rate has reduced from 8% per annum to 7% per annum; a discount interest rate has reduced from 6% to 5% per annum. An interest rate on overnight loans made by the State Bank to banks for inter-bank electronic payments and loans to

cover shortages for settlement has reduced from 8% to 7% per annum.

This Decision was of full force and effect as of 10 April 2009 and replaced Decision No. 173/QD-NHNN dated 23 January 2009.

SUPPLEMENTING THE REGULATIONS ON GUARANTEES FOR ENTERPRISES TO BORROW CAPITAL AT COMMERCIAL BANKS

On 17 April 2009, the Prime Minister enacted Decision No. 60/2009/QD-TTg amending and supplementing a number of Articles of Decision No. 14/2009/QD-TTg dated 21 January 2009 on the Regulations on guarantees for enterprises for enterprises to borrow capital from commercial banks.

Accordingly, companies of all economic sectors, including cooperatives, which have their charter capital of no more than VND 20 billion and employ less than

1,000 workers shall be guaranteed by the Vietnam Development Bank (“VDB”) to borrow capital from commercial banks. Guaranteeing the enterprises who borrow capital for implementing projects, business production methods in terms of consulting, trading real estate (other than projects of constructing houses to sell to the low-income people; rental houses for workers and students and building cemeteries), stock; service, borrowing capital to pay the debts of other credit contracts is not allowed.

Enterprises that have overdue debts at credit institutions but have investment projects and commit to pay the overdue debts will be considered for guarantees. The timeline for guaranteeing the borrowing of capital have to be suitable for timeline of guaranteeing when the guaranteed party (including the extended period, if any).

This Decision shall be of full force and effect from its signing date.

GUIDELINES FOR THE SELECTION OF INVESTORS TO CARRY OUT INVESTMENT PROJECTS INVOLVING LAND-USE RIGHTS

On 16 April 2009, Ministry of Planning and Investment issued Circular No. 03/2009/TT-BKH guiding the selection of investors to carry out investment projects involving land-use rights.

Accordingly, right after obtaining the approval of the list of projects with land-use rights seeking investors, the bid solicitor must publish the bidding information in Bidding Newspaper in 3 successive issues or in the mass media, in which there shall be general method on compensation, support and resettlement when the State recovers land-use rights. Bidding solicitor shall not refuse any investor as well as shall not apply any condition contravening laws and regulations to limit the participation of investors.

Conditions for investor submitting a tender:

(i) has its legal entity status if the tender is an organization or if the tender is an individual who has his/her full civil capacity in accordance with laws and regulations;

(ii) has its owned capital at least 15

per cent of the total budget of a project using less than 20 ha of land, and not less than 20 per cent of the budget of the project using more than 20 ha;

(iii) has a total investment capital proposed by investors themselves in tendering documents or proposal documents provided that are not less than floor price, in the case of partnership tenderer, capital owned shall be calculated based on total capital that investors being parties of partnership commit to contribute in partnership agreement;

(iv) demonstrates ability to raise capital to implement the projects through commitment of lending by commercial banks or credit or financial institutions;

(v) participates in tendering in only one tendering unit under the form of an independent tenderer or partnership tenderer;

(vi) be responsible to support the supplemented amount of money for the State equal to the value added for the adjusted plan after the selection of investors, the boundaries of using land are adjusted in the increasing trend of coefficient of using land or increase

the surface of using construction building;

Methods for selection of investors:

(i) Tendering – it can be applied for all projects with at least 2 investors participating in tendering;

(ii) Direct appointment tender – it can be applied if there is only one investor registering for the participation of tendering or for urgent project decided by the Prime Minister.

An amount guaranteeing the participation in tendering applying for both of above-mentioned forms of tendering, provided in tender invitation documents, requiring documents equal to 1 to 3% base value of the land-use rights provided in tender invitation documents and requiring documents. Tender invitation documents, requiring documents shall be sold for interested investors at a price decided by the bidding solicitors, but shall not exceed VND 30 million for a domestic tendering and US\$ 5,000 for an international tendering.

This Circular shall be of full force from 45 days from its signing date.

ADJUSTMENT OF ESTIMATE FOR BUILDING PROJECTS

On 15 April 2009, the Ministry of Construction enacted Circular No. 05/2009/TT-BXD guiding adjustment of estimate for building construction.

This Circular provides guidance the adjustment of estimate from 1 January 2009 in accordance with minimum wage of the region where the construction projects are implemented) regulated by Decree No. 110/2008/ND-CP dated 10 October 2008 of the Government for the residual volume of work of the project, tendering package of investment projects of construction projects using state capital that are under implementation and the investment decider have not decided to transit the management of investment cost for construction project according to Decree No. 99/2007/ND-CP dated 13 June 2007 of the Government.

Adjustment of estimate for construction projects made based on unit prices of constructing, assembling, investigating phases of each provinces and central cities shall be calculated based on the salary scale of the payroll A.18 enacted attached to Decree No. 205/2004/ND-CP and minimum wage of VND 450,000 per month regulated in the Annex enclosed to this Circular.

For construction projects that have set up their own unit prices or price list of each shift of the projects with minimum wage enacted by the competent people, based on principles, guiding method of this Circular to implement the adjustment in accordance with new regional minimum wage.

Adjustment of the value of contracts, payment of volume of work implemented from 1st January 2009 under the contracts and provisions agreed and signed in contracts. In case that in the contracts, parties have no provisions on adjustment of price during the implementing process, Investors and construction tenderer should negotiate to supplement the contracts to ensure the benefit of employees according to regulations.

The coefficient of adjusting estimate of cost of construction investigation and experimenting the materials of construction composition, and other costs regulated specifically in the Annex attached to this Circular.

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

LABOUR

ADJUSTING THE MINIMUM WAGE

On 6 April 2009, the Government promulgated Decree No. 33/2009/ND-CP on the minimum wage.

From 1 May 2009, a new minimum wage of VND 650.000 per month shall apply and shall replace the old one of VND 540.000 per month. This is also the basis for the calculation of salary grade, payroll, allowance and grant for redundant labour because of the re-structuring of state

enterprises, experts and other benefits that are calculated based on minimum wage.

This new grade of minimum wage shall apply for: state agencies, armed forces, political organizations, politico-social organizations; state non-productive agencies; non-productive units of political organizations, non-productive units out of the scope of public sector that have been established, managed

and operating in accordance with Law on State Enterprises, limited liability company with one member of which 100% charter capital owned by the State that is organized, managed and operate under the Law on Enterprises.

This Decree shall replace Decree No. 166/2007/ND-CP dated 16 November 2007 and shall be of full force and effect from 45 days from its signing date.

HOW TO AVOID RISKS UPON TERMINATION OF LABOUR RELATIONS (1)

The global financial crisis and economic recession have rapidly brought about the crisis in labour market all over the world. Vietnam is not an exception when a series of labour relations have ended and more employees become jobless, leading to an increasing number of labour disputes and posing numerous difficulties for both employees and enterprises.

In the market mechanism, termination of labour relations is an objective element. This matter nevertheless must be conducted in accordance with legal regulations. In fact, many enterprises fail to comply with the labour law when lay off their employees, thus becoming the losing party in labour cases.

There are many reasons leading to the termination of labour relations,

for instance, the expiry of labour contract, or termination of labour contract through mutual agreement between both sides, or the unilateral termination of labour contract by either the employee or the employer. In these times of economic recession, job loss is deemed the main reason causing enterprises to terminate labour relations. However, according to Article 17 of the Labour Code and Decree No. 39/2003/NĐ-CP dated 18 April 2003, there have been specific stipulations regarding the basis, conditions and procedures for termination of labour relations as well as employee entitlements for any person losing his job, namely the following cases due to changes of structure or technology:

(i) A change to part or all of machinery, equipment or

technological process leading to an increase in labour productivity;

(ii) A change of product or product structure resulting in less employment;

(iii) A change in organizational structure: if an employee who has been working in the enterprise for a period of twelve (12) months or more becomes unemployed due to the merger or dissolution of a number of sections within an entity, the employer shall be responsible for re-training and assigning such employee to a new job; if a new job cannot be created, the employer must pay an allowance for loss of job equivalent to the aggregate amount of one-month salary for each year of employment, but not less than two months' salary. The enterprise will be entitled to lay off employees only after notifying the local body in charge of labour administration.

(1) Article of Lawyer of LuatViet Advocates & Solicitors printed in Column: Management Manual of Saigon Economics Newspaper on 9 April 2009.

HOW TO AVOID RISKS UPON TERMINATION OF LABOUR RELATIONS (Cont)

The salary serving as basis for calculation of job loss allowance is the contractual salary calculated as being equal to the average salary of the 6 preceding consecutive months before an employee becomes jobless, including the rank and position salaries, region and position allowances (if any).

Term of employment used for calculation of job loss allowance is the total working time of an employee in the enterprise, including probation period.

Economic crisis leaving employees jobless is regarded as an objective fact. Nevertheless, it is not stipulated in the labour law yet. Therefore, to terminate labour relations, firstly the enterprise should initiate agreement with the employee on termination of labour contract based on legal regulations regarding the rights and benefits, which the employee may enjoy as losing his job. The agreement must be made in writing and signed by the two sides. Then the enterprise will make the decision on termination of labour contract accordingly based upon such mutual agreement. The written

decision must clearly specify the basis for termination of labour contract and the rights and obligations of the sides concerned.

If the enterprise has a trade union, the trade union committee should be invited to attend the meeting on such mutual agreement.

In the event that the two sides fail to mutually agree on termination of labour contract, the enterprise needs to do the followings:

- To make decisions on the merger & dissolution of the sections where numerous employees become unemployed;
- To exchange views and agree with the trade union committee on the estimated list of laid off employees (if the trade union is available in the enterprise);
- To make out the list of laid off employees which will be published in the enterprise;
- To send a written notice on termination of labour contract with the employee to the local body in charge of labour administration, in which it will specify the current number of employees in the enterprise, the number of employees

to be laid off, the reason for the layoff, the list of laid off employees, severance policies intended for laid off employees.

Within 30 days from the date of notifying the local body in charge of labour administration, the enterprise will issue the decision on termination of the labour contract with the employee(s).

To assist the employees who become jobless due to economic recession and to solve some difficulties for enterprises laying off large numbers of employees, the Prime Minister promulgated Decision No. 30/2009/QĐ-TTg on 23 February 2009 allowing enterprises to borrow loans with the preferential interest rate of 0% after these enterprises had used their own sources of funds but could not fully pay the salary, social insurance premiums and job loss allowance or job severance allowance to the unemployed. Enterprises should grasp this decision in a timely manner, nevertheless they must comply with the order and procedures for termination of labour relations as prescribed by law in order that they will avoid legal risks arising.

Q & A SECTION**Question 1:**

I am a shareholder of Joint Stock Company A, I would like to pose a question: "That Company A actively develops new projects out of Resolution of General Shareholders' Meeting of 2008, including a series of projects in real estate is it illegal?" Which regulations should be complied for the legality in this case?

Note that Article 24.4.7 of the Charter of this Company provided that: Board of Management approve all investment out of the operating plan and annual budget of the Company with the value exceeding 10% of annual operating budget. (2)

Answer:

According to point d, clause 1, Article 96 of the 2005 Enterprises Law, the General Meeting of Shareholders shall include all the shareholders entitled to vote and shall be the highest decision-making authority of a shareholding company, have the right to make investment decisions or decisions on sale of assets valued at fifty (50) or more per cent of the total value of assets recorded in the most recent financial statement of the company, unless the charter of the company stipulates some other percentage;

Based on the above Article, the Law on Enterprises 2005 allows the Charter of the Company to provide a different proportion, for example, the General Shareholders' Meeting has the right to decide the investment equal to or more than 60% of the total assets printed in the latest financial report of the Company, this proportion shall be compulsory applied. Hence, if the Charter of the Company has no stipulation, it is possible to interpret that all investment decisions with the value equal to or more than 50% the total assets printed in the latest financial report of the Company are within the competence of the General Shareholders' Meeting.

Together with Article 24.4.7 of the Charter of the Company, the Company's investment in new projects that are out of the Resolution of the General Shareholders' Meeting 2008 is legal or not that is absolutely depends on the investment value: (i) if it is equal to or more than 50% the total value of assets printed in the latest financial report (2008), it is within the competence of the General Shareholders' Meeting; (ii) if it is less than 50% of the total value of assets printed in the latest financial report (2008) but more than 10% annual operating budget, it is not within the competence of GSM but the Board of Management; (iii) if it is less than 10% of the annual operating budget, it shall be decided by the General Director.

In case the investment value of projects is equal or more than 50% of the total value of assets as stated in the latest financial report (e.g. 2008) but has not approved by and/or recorded in the Resolution of the GSM of 2008 yet, such investment shall be approved by the unusual GSM or annual GSM of 2009 to be considered as a valid report and the investment projects shall be implemented continuously. If no approval of the GSM is obtained, individuals who sign such investment projects shall not comply with laws and regulations and they shall bear all responsibilities before the laws.

(2) Article by Lawyers of LuatViet Advocates & Solicitors printed in Column: Investment Bridge of Securities Investment Newspaper, Issue 46(674) on 17 April 2009.

Q & A SECTION**Question 2:**

In the process of conversion of enterprises with 100% state owned capital into shareholding companies, how to choose strategic shareholders of such shareholding companies? (3)

Answer:

According to the current laws and regulations, the concept of a strategic shareholder has not been identified yet, instead of that; only the concept of a strategic investor has been addressed. The latter definition shall apply for enterprises with 100% state owned capital that are equitized and not apply for enterprises newly established under Law on Enterprises year 2005.

Point a of Clause 3 of Article 6 of Decree 109/2007/ND-CP of the Government dated 26 June 2007 on conversion of enterprises of enterprises with 100% state owned capital into shareholding companies ("Decree 109") and Circular 146/TT-BTC dated 6 December 2007 providing some guidelines for implementing some financial issues during the conversion of enterprises with 100% state owned capital into shareholding companies according to Decree 109 as followings:

"Strategic investors means domestic investors and foreign investors with financial and enterprise management capability; [who] transfer new technology, supply raw materials, [and/or] develop the product consumption market; [and whose] long-term interests are closely connected with the enterprise;"

According to this point, based on the volume of the Charter Capital, the nature of the lines of business and the demand of developing and expanding the enterprises, the Steering Committee for Equitization shall submit [a plan on] the initial share sale to the strategic investors and the criteria for selecting strategic investors to the person making the equitization decision. Thus, depending on the circumstances and the specific characteristics of the enterprise, the initial public offering for strategic investors, the criteria for choosing strategic investors shall be decided by the equitization deciders, based on the proposal of the Steering Committee for Equitization.

Points c & d of Clause 3 of Article 6 of Decree 109 also further provide certain limitations for Strategic Investors; Strategic Investors shall accordingly be entitled to purchase shares at a price not less than the average successful auction price. If it is absolutely necessary for a group or State owned corporation (including a State commercial bank) to select a strategic investor, then the body making the equitization decision shall report to the Prime Minister of the Government to hold separate tendering between strategic investor. Especially, strategic investors shall not be permitted to transfer purchased shares for a minimum period of three years from the date on which a business registration certificate is issued to the shareholding company.

Q & A SECTION**Answer: (cont)**

A notable point is that in accordance with Clause 4 of Article 6 of Decree 109, where an enterprise carries out equitization simultaneously with immediate listing on the Stock Exchange/Securities Trading Center, then the body authorized to approve the equitization plan shall fix the maximum or minimum number of subscribed shares applicable to the public sale in the plan for the initial share issue so that enterprise after equitization will satisfy all listing conditions. The maximum or minimum number of subscribed shares stipulated in the plan for the initial share issue shall apply to investors in all economic sectors without discrimination. In this case, there is no limitation for Strategic Investors in maximum or minimum purchase in initial public offering.

(3) Article by Lawyers of LuatViet Advocates & Solicitors printed in Column: Investment Bridge of Securities Investment Newspaper, Issue 47(675) on 20 April 2009.

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