

LIST OF FEES AND CHARGES IN SECURITIES BUSINESS SECTOR

On July 01, 2009, the Ministry of Finance issued Circular No. 134/2009/TT-BTC providing the level and regime of collection, remittance, management and use of fees and charges in the securities sector by the State Securities Committee (SSC). The Circular has (i) extended the scope of work regarding the issuance of operation license in the securities field and (ii) increased considerably the level of charges and fees in comparison with Circular No. 110/2002/TT-BTC of the Ministry of Finance dated December 12, 2002 guiding the regime of collection, remittance, management and use of charges and fees in the field of banking, securities and insurance.

The subjects of fees and charges required to be paid for the activities regarding the issuance of operation license in the field of securities. Fees and charges to be paid by relevant organizations, individuals conducting activities in the securities field as stipulated in the List of charges and fees issued together with this Circular.

Level of collection of fees and charges are detailed as follows:

(i) A fee for issuance of an operation license to a securities company:

VND20 million applied to each professional business activity of securities brokerage and investment consultancy, VND60 million applied to each professional business activity of securities self-trading, VND100 million applied to each professional business activity of underwriting issues of securities;

(ii) A fee for issuance of an operation license for a fund management company: VND30 million; a fee for the issuance of an operation license for a branch of a foreign investment fund management company: VND20 million;

(iii) A fee for issuance of an establishment and operation license for a public securities investment fund: from VND20 to 50 million depending on the scale of each fund;

(iv) A fee for issuance of an establishment and operation license for a members fund: from VND10 to 30 million depending on the scope of each fund;

(v) A fee for approval of public offers of stocks, bonds, investment fund certificates: from VND10 to VND50 million depending on value of stocks, bonds, investment fund certificates to be offered for sale;

ENTERPRISE – INVESTMENT – SECURITIES

List of fees and charges in securities business sector Page 1-2

Amending and supplementing regulations on organization and management of securities trading of unlisted public company Page 2

Guiding on export of minerals used for construction materials Page 3

TAX – FINANCE – BANKING

Financial regime to be applied for goods, services within border-gates' economic zones Page 4

Exemption, reduction of tax on trading and investing residential house Page 4

Exemption, reduction of personal income tax Page 4

New regulations on organization and operation of commercial banks Page 5

CONSTRUCTION – REAL ESTATE

Management of construction investment in industrial zone, economics zone Page 6

New regulations on rights of vietnamese residing overseas to own residential housing and land in viet nam Page 6

Amending laws relating to fundamental investment construction Page 7

INTELLECTUAL PROPERTY

Amending, supplementing the law on intellectual property Page 8

Standards, qualifications, abilities of mining director Page 8 - 9

LABOR

Draft of amended labor code Page 10

Project on management of foreign indirect invested capital Page 10

Q&A SECTION Page 11 - 12

ENTERPRISES – INVESTMENT – SECURITIES**LIST OF FEES AND CHARGES IN SECURITIES BUSINESS SECTOR
(cont)**

(vi) A fee for issuance of an establishment license for a security investment company: from VND20 to 50 million depending on the capital size of each company;

(vii) A fee for issuance of an establishment license of a branch of a domestic securities companies, a securities investment fund management company: VND10 million per license;

(viii) A fee for issuance of an establishment license or for extension of an establishment license for a representative office of a foreign securities organization in Viet Nam: VND01 million per license;

(ix) A fee for issuance of a practising license for individuals conducting securities services and fund management: VND01 million per license; a fee for issuance of a depository operation license: VND06 million per license.

In addition, the Circular has supplemented provisions on the management fees applied to public companies, supervising fee of a Stock Exchange, a Securities Trading Centre and a Securities Depository Centre.

Regime of collection, remittance:

The fees and charges in the

securities field applied by SSC are collected in Viet Nam Dong. Organizations, individuals are responsible to pay the total amounts of fees when being granted their practising licenses.

This Circular takes effect after 45 days from the signing date and officially repeals the regulations on fees and charges applied in the field of securities at SSC as stipulated in Circular No. 110/2002/TT-BTC of the Ministry of Finance dated December 12, 2002 guiding the regime of collection, remittance, management and use of fees and charges in the field of banking, securities and insurance.

AMENDING AND SUPPLEMENTING REGULATIONS ON ORGANIZATION AND MANAGEMENT OF SECURITIES TRADING OF UNLISTED PUBLIC COMPANY

On June 23, 2009, the Ministry of Finance issued Circular No. 128/2009/TT-BTC amending and supplementing Regulations on Organization and Management of securities trading of unlisted public companies on Ha Noi Securities Trading Centre (HASTC). The Regulations is issued together with Decision No. 108/2008/QD-BTC of the Ministry of Finance dated November 20, 2008.

The Circular amends regulation on procedures of registration and de-registration of trading as follows:

(i) Public companies must carry out the procedures for registration, depository of securities with the Securities Depository Centre (SDC) under guidelines of SSC;

(ii) SDC will provide specific regulations on procedures for registration, depository, settlement and payment for securities of unlisted companies;

(iii) Securities Trading Centre (STC) shall provide specific regulations on procedures of registration and de-registration for trading.

The companies registered as public companies with SSC prior to the effective date of these Regulations must carry out the procedures of registration, depository of securities with SDC within six (06) months from the effective date of these Regulations. The companies registered as public companies with SSC after the effective date of these

Regulations must carry out the procedures of registration, depository of securities with SDC within six (06) months from the date of registration as public companies with SSC.

The Circular supplements regulations on trading of members as follows: Members registered for self-trading may be permitted to purchase and then sell the same class of shares on the same trading day, aimed at promoting their role as a market maker. SSC shall provide further guidelines on implementation of this regime.

This Circular takes effect from June 23, 2009.

GUIDING ON EXPORT OF MINERALS USED FOR CONSTRUCTION MATERIALS

On June 30, 2009, the Ministry of Construction issued Circular No. 15/2009/TT-BXD guiding the export of minerals used for construction materials. This Circular applies to domestic organizations, individuals and foreign traders taking part in exporting minerals used for construction materials in Viet Nam. The Circular provides detailed guidelines on the export of minerals used for construction materials in comparison with Circular No. 02/2006/TT-BCN of the Ministry of Industry dated April 14, 2006.

The Circular lists certain types of minerals in the list of export restriction, including: (i) limestone, additive from mines planned for exploring, mining, processing and processing for use as cement production materials under Decision No.

105/2008/QD-TTg of the Prime Minister dated July 21, 2008 and from mines permitted by the Prime Minister to add in its approved plans; (ii) all types of clay; (iii) feldspar; (iv) construction sand; (v) pebble, gravel, grit of all type; and (vi) construction stone in mines located in provinces of South-East and South-West areas.

Minerals used for construction materials permitted for exporting are minerals excluded in the list of export restriction. In case where having demand of export of minerals falling in the list of export restriction, the Prime Minister shall decide on the export permission. In case where minerals are not in list of export restriction but at the time of exporting, their exporting affects to the balance of

domestic supply and demand, the Prime Minister shall decide on the temporary suspension of export.

Organizations, individuals may be permitted to export minerals if they satisfy all the conditions under commercial laws.

This Circular takes effect after forty five (45) days from the signing date, replaced regulations on the export of minerals used for construction materials in Circular No. 02/2006/TT-BCN the Ministry of Industry dated April 14, 2006 guiding export minerals. The contracts which are satisfying all the conditions for exporting and are currently implementing before the effective date of this Circular will be entitled to implement until they are terminated.

TAX – FINANCE – BANKING

FINANCIAL REGIME TO BE APPLIED FOR GOODS, SERVICES WITHIN BORDER-GATES' ECONOMIC ZONES

On July 03, 2009, the Ministry of Finance issued Circular No. 137/2009/TT-BTC guiding the implementation of a number of Articles of Decision No. 33/2009/QD-TTg of the Prime Minister dated March 02, 2009 providing financial regime and policy applied in border-gates' economic zones.

A value added tax rate of 0% is applied to goods which are checked before repaying value added tax are goods, services from other functional zones within border-gates' economic zones and applied to goods, services provided from Viet Nam into non-tariff zones in border-gates' economic zones. Such goods and services include: all sorts of beer;

soft drink, wine and alcohol drink; tobacco cigarette; motor-bike; soap, shampoo, shower cream, toothpaste; all sorts of milk, baby foods, all sorts of cooking oil; instant noodle, vermicelli, rice gruel, instant noodle soup; all sorts of confectionary; mobile phone, mobile-phone cards, gas used for refrigeration equipment.

Investors carrying out their projects in border-gates' economic zones and using technique-service-society infrastructure, are payers of fees for using technique-service-society infrastructure and fees for using infrastructure, services and other public facilities in border-gates' economic zones. The level of fees is

determined by either (i) the Board of Management of border-gates' economic zones; or (ii) by Enterprises investing and conducting business of technique-society infrastructure with regard to their projects invested and developed by them. The fee is calculated on the basis of a percentage based on one of following criteria: (i) total revenue of export sales; or (ii) total revenue of production, services or (iii) total re-lease rental of the land which already build up its infrastructure.

This Circular takes effect after forty five (45) days from the signing date. Other financial regimes which are note mentioned in this Circular will be carried out under the current guidelines in the separate field.

EXEMPTION, REDUCTION OF TAX ON TRADING AND INVESTING RESIDENTIAL HOUSE

On July 22, 2009, the Prime Minister signed Decision No. 96/2009/QD-TTg amending and supplementing a number of Articles of (i) Decision No. 65/2009/QD-TTg; (ii) Decision No. 66/2009/QD-TTg; and (iii) Decision No. 67/2009/QD-TTg of the Prime Minister dated April 24, 2009.

The Decision cuts down by 50% of the applicable value added tax rate from the effective date of this Decision until the end of December 31, 2009 and exempts the corporate income tax payable in 2009 that is applicable to activities of investment and trade of residential houses for lease to the following subjects:

(i) pupils, students in universities, colleges, technical secondary schools, occupational colleges, occupational intermediates; (ii) employees working at industrial zones; and (iii) low income earners facing some difficulties in residential houses.

This Decision takes effect from the signing date.

EXEMPTION, REDUCTION OF PERSONAL INCOME TAX

On June 19, 2009, the National Assembly issued Resolution No. 32/2009/NQ-QH12 on exemption, reduction of personal income tax.

The National Assembly still allows

the exemption of personal income tax from July 01, 2009 until the end of year 2009 for the individual incomes from capital investments, capital transfers, copyright and franchises.

The National Assembly also allows the exemption of entire personal income tax as previously deferred for taxpayers from January 2009 until the end of June 2009.

This Resolution takes effect from the signing date.

NEW REGULATIONS ON ORGANIZATION AND OPERATION OF COMMERCIAL BANKS

On July 16, 2009, the Government issued Decree No. 59/2009/ND-CP regulating organization and operation of commercial banks (CBs) granted their establishment and operation licenses by the State Bank of Viet Nam (State Bank).

Applicable entities of this Decree are CBs and organizations, individuals involved in organization and operation of CBs.

The concept of CBs has extended broadly compared with those of CBs as specified in Decree No. 49/2000/ND-CP of the Government dated September 12, 2009 on organization and operation of commercial banks. CBs now comprise State owned CBs, shareholding CBs, joint venture CBs, CBs with 100% foreign capital.

Organization of management of CBs:

The organizational structure of the management of shareholding CB, shareholding CB in which the State owns more than 50% of the charter capital shall comprise: General Meeting of Shareholders, Board of Management, Inspection Committee, General Director and assisting section.

The organizational structure of the management of (i) a State CB in which the State owns 100% of the charter capital, (ii) a joint venture CB and (iii) a CB with 100% foreign owned capital shall comprise the Board of Management, Inspection

Committee, General Director and assisting section.

In order to ensure the safety in banking operation and restrict self-interest, the Decree regulates a number of subjects who may not hold the position of: (i) a Chief Accountant; (ii) a Director of a transaction department; (iii) a Director of a branch, a Director of a subsidiary of a bank; (iv) members of the Board of Management and of the Inspection Committee; (v) a General Director and (vi) a Deputy Directors of a CB. In addition, this Decree also provides in detail certain cases in which certain persons may not hold certain positions at the same time.

The Decree stipulates that after a Chairman or a member of the Board of Management and other position of a bank is removed or dismissed, he/she shall remain personally liable for any decision he/she made contrary to law or contrary to the charter of the bank, or for any deliberately incorrect decision which he or she made during the term of office.

The Decree regulates in detail organization of management for each sort of CB.

Operation of CBs:

CB may be permitted to conduct the activities: (i) mobilization of capital (ii) credit operations (iii) payment and budgetary services and (v) other operations stipulated at the Law on Credit Institutions, the Amended Law

on Credit Institutions and in current relevant regulations of the Government and of the State Bank. CBs must formulate and implement eleven (11) necessary rules and policies during the banking operation, such as rules on management of investment activities, on redemption or on control of large investments; rules on providing credit aimed at maintaining an appropriate credit management system; a system permitting qualification, supervision and control of global risks... Banks must implement the regime on information, information confidentiality, and independent auditing regime in accordance with current provisions.

Banks must publicly declare at trading locations information on interest rate on deposits and loans, level of fees, exchange rate, trading time...

Any changes in the level of charter capital of CBs must be approved in writing from the State Bank and must comply with the financial regime stipulated in Government regulations and guidelines of Ministry of Finance. Within one hundred and twenty (120) days after the end of financial year, banks must publicize their financial statement in accordance with laws.

This Decree takes effect from September 15, 2009 and replaced Decree No. 49/200/ND- CP on organization and operation of commercial banks.

MANAGEMENT OF CONSTRUCTION INVESTMENT IN INDUSTRIAL ZONE, ECONOMICS ZONE

On June 30, 2009, the Ministry of Construction issued Circular No. 19/2009/TT-BXD providing regulations on management of construction investment in industrial and economic zones.

A preferential import duty rate applicable to fuel oils (2710.19.79.00) has been reduced by the Ministry

The Circular regulates in detail responsibilities of Board of Management of industrial and economic zones with regard to (i) management of construction in accordance with the approved plan; (ii) management of construction design; (iii) issuance of construction permit; (iv) management of construction quality;

(v) management of projects of new urban areas, residential houses in economic zones; and (vi) management of construction investment fees.

This Circular takes effects from August 15, 2009. During the implementation process; any difficulties should be submitted to the Ministry of Construction for settling.

NEW REGULATIONS ON RIGHTS OF VIETNAMESE RESIDING OVERSEAS TO OWN RESIDENTIAL HOUSING AND LAND IN VIET NAM

On June 18, 2009, the National Assembly passed Law No. 34/2009/QH12 amending, supplementing Article 126 of the Law on Residential housing and Article 121 of the Land Law.

Any Vietnamese person residing overseas who is in the following categories and is permitted by the competent Vietnamese authority to reside in Viet Nam for a duration of three (3) months or more shall be entitled to own a house in Viet Nam for such person and his or her family members to live in:

(i) A person with Vietnamese nationality;

(ii) A person of Vietnamese origin in the categories: a person returning for a direct investment in Viet Nam pursuant to the law on investment; a person whose work has contributed to the country; a scientist, cultural activist or person with special skills needed by a body or an organization of Viet Nam, and who is working in Viet Nam; person whose husband or wife is a Vietnamese citizen living in Viet Nam.

Any Vietnamese person residing overseas who: (i) is of Vietnamese origin; (ii) is not in the above-mentioned categories; and (iii) is issued by competent Vietnamese authority with a visa

exemption certificate and permitted to reside in Viet Nam for a duration of three (3) months or more (instead of the current duration of six (6) months) shall be entitled to own one separate residence or one apartment in an apartment block in Viet Nam for such person and his or her family members to live in, in Viet Nam.

Vietnamese residing overseas who fall in the above-mentioned categories shall be entitled to own residential housing attached to the right to use residential land in Viet Nam.

This Law takes effect on September 01, 2009.

AMENDING LAWS RELATING TO FUNDAMENTAL INVESTMENT CONSTRUCTION

On June 06, 2009, the National Assembly passed the Law No. 38/2009/QH12 amending and supplementing a number of Articles of the Laws relating to fundamental investment construction.

Regarding the Law on Construction No. 16/2003/QH11: the amendments include: capability for construction practice, capability for construction activities; changes to investment projects for construction of works with 30% or more of State capital; supervision and assessment of investment projects for construction of works; control of costs of investment projects for construction of works; steps in design for construction of works; competitions and selection of architectural designs for construction of works; and evaluation and approval of design for construction of works.

Regarding the Law on Tendering No. 61/2005/QH11: the amendments include: definition of “assessment price” and “tendering evaluation”; ensuring competitiveness in tendering; prohibited conduct in tendering; direct appointment of contractor; method of assessment of tenders; cancellation of the tendering; principles for formulation of

contracts; adjustment contracts; responsibilities of authorized person; rights and duties of investors; dealing with any exceptional situation in tendering; deal with breaches of the law on tendering.

Regarding the Law on Enterprises No. 60/2005/QH11: the amendment focuses on time limit to carry out re-registration with regard to enterprises with foreign invested capital established before July 01, 2006. Such term shall be five (5) years instead of two (2) years as before from July 01, 2006.

Regarding the Land Law No. 13/2003/QH11 and the Law on Residential House No. 56/2006/QH11: the amendments are as follows:

The National Assembly replaces the term “Land use right Certificate”/“Residential housing and assets attached to the land ownership Certificate” with the term “Certificate of ownership of land use right, residential housing and assets attached to the land”. Certificate of ownership of land use right, residential housing and assets attached to the land shall be granted to the person having land use right, residential housing ownership in only one form. Such form is issued by the

Ministry of Natural Resources and Environment and used nationwide. Regarding the residential housing and assets attached to the land, the competent State body shall only certify the ownership in the Certificate of ownership of land use right, residential housing and assets attached to the land prescribed as per requested.

The former Certificates such as: Certificates of land use right, Certificates of residential housing ownership and residential land use right, Certificates of residential housing ownership, and certificates of project for construction of works ownership issued in accordance with the Land Law, the Law on Residential Housing, the Law on Construction and the Civil Code prior to August 01, 2009 shall remain in effect. They are not required to be changed into the Certificate of ownership of land use right, residential housing and assets attached to the land. However, if there is a need to change, the people granted such former certificates shall be granted Certificate of ownership of land use right, residential housing and assets attached to the land without any payment of fees.

The new Law takes effect from August 01, 2009.

AMENDING, SUPPLEMENTING THE LAW ON INTELLECTUAL PROPERTY

On June 19, 2009, the National Assembly passed the Law No. 36/2009/QH12 amending and supplementing some Articles of the Law on Intellectual Property.

A term of copyright protection has been increased to seventy-five (75) years with cinematographic works, photographic works, applied art works, anonymous works as from the date of first publication (previous regulation is fifty (50) years). A term of protection for a cinematographic work, photographic work or applied art work has not been published

within twenty five (25) years from the date of its formulation is one hundred (100) years from the date of its creation.

The new Law supplement the right to register marks: the registration of any other geographic name, other signs indicating geographical origins of local specialties of Viet Nam, must be approved by State competent authority.

According to the new Law, a maximum time-limit for examination of application for registration of an invention is

eighteen (18) months; of a mark is nine (09) months, of an industrial design is seven (07) months; and of a geographical indication is six (06) months from the date of publication of the application.

In addition, the new Law also amends and supplements a number of provisions on plant varieties protection such as registration of rights to plant varieties; assignment of rights to plant varieties; rights of protection certificate holders.

This Law takes effect on January 01, 2010.

STANDARDS, QUALIFICATIONS, ABILITIES OF MINING DIRECTOR

On June 25, 2009, the Ministry of Industry and Trade issued Circular No. 15/2009/TT-BCT providing standards, qualifications, abilities of a Mineral Management Director.

These standards shall apply to the nomination, re-nomination, signing and extending of a labor contract and dismissal of a Mineral Managing Director (“MMD”) appointed by organizations,

individuals who are permitted to exploit mineral ore to manage directly mining activities (except for mining activities that exploit minerals being materials for production of cement, oil and gas, hot and mineral water).

to be continued >>

STANDARDS, QUALIFICATIONS, ABILITIES OF MINING DIRECTOR (Cont)

Standards of professional abilities:

(i) A MMD of mine exploited by underground mining method must be a mining engineer specializing in underground mining or an engineer in underground construction and mining. They must have at least five (05) year working experience directly in exploiting underground mines;

(ii) A MMD of mine exploited by opencast mining method must be a mining engineer specializing in opencast mining or underground mining. He must have at least three (03) year working experience directly in exploiting open-cast mines;

(iii) A MMD of the non-metallic mines exploited by opencast mining method without utilizing industrial explosive materials or of the metallic mines exploited by simple handcraft method must at least hold the certificate of intermediate techniques mining or certificate of intermediate exploratory geology. In case where a MMD holds an intermediate certificate, he must have at least three (03) year working experience directly in exploiting opencast mines or intermediate geologic reconnaissance with mining techniques training. In case where the MMD holds the certificate of intermediate exploratory geology, he must be trained in mining techniques.

Standards of managerial abilities:

(i) A MMD must have a thorough grasp of provisions stipulated in the law on minerals and other provisions regarding mineral exploratory, mining and process activities;

(ii) A MMD must have a thorough grasp of provisions, processes, standards in designing and exploiting mine; technique norms, labor safety regulations in exploiting mine activities and provisions on managing, using industrial exploding materials;

(iii) A MMD must have high capacity in organizing, managing and experience in managing technical exploratory, technical safety, measures on environment protection; must have capacity in proposing and organizing to execute methods of risks management, preventing and dealing breakdown during the mineral exploiting activities;

(iv) A MMD must have ability, qualification and actual experience in organizing and implementing the technical and technological application, innovation in mineral exploiting.

A MMD who is a foreigner must not only meet above-mentioned standards but also be permitted to reside and work in Viet Nam by the law.

Organizations, individuals licensed to explore mineral are not allowed to execute mineral exploiting activity without a MMD who satisfies all the above-mentioned standards.

Within seven (07) working days from the date of signing nomination decision or labor contract hiring MMD, related Dossier must be submitted to one of the following authorities: (i) Department of Industrial Safety Techniques and Environment Agency – the Ministry of Industry and Trade (for the mineral mines with the exploratory permit issued by Ministry of Natural Resources and Environment); or (ii) Department of Industry and Trade of provinces and centrally-run cities where exploratory activity is carried out (for the mines with exploratory permit issued by such location offices) for these competent authorities to check and follow up.

In case where a MMD nominated, re-nominated or signing her labor contract before the effectiveness of this Circular, if the MMD is required to be trained in accordance with Article 6 of this Circular, but has not been trained yet, a report in writing must be submitted to Department of Industrial Safety Techniques and Environment or Department of Industry and Trade within the duration of six (06) months from the effective date of this Circular.

This Circular takes effect after forty five (45) days from the signing date.

DRAFT OF AMENDED LABOR CODE

The opinions from entire classes in society on the draft of amended Labor Code is being collected. Comparing with current Labor Code with seventeen (17) chapters and one hundred and ninety eight (198) articles, a draft of the amended Labor Code includes two hundred and fifty six (256) articles, of which Article 3 with 10 clauses is designed to explain terms, phrases and

definitions. In the draft of amended Labor Code, there is a (01) new chapter regulating on training, improving professional skills; a (01) chapter on labor collective agreement regulating in details the principles, formulas and rights to require collective negotiation, negotiation subject, negotiation content, negotiation procedure relating to collective agreement. Most of opinions highly

appreciate new provisions in the draft. However, some opinions show the anxiety on such new points which seem to favor enterprises.

The draft of the amended Labor Code shall be submitted to the National Assembly of the Socialist Republic of Viet Nam for approval at Legislature XII, 7th Session.

PROJECT ON MANAGEMENT OF FOREIGN INDIRECT INVESTED CAPITAL

The Ministry of Finance and the State Securities Commission (SSC) are co-coordinating to make projects on management of foreign indirect invested capital (FII) to reinforce the

explicitness and ability catching the transfer of FII capital flow in Viet Nam Securities market.

The State Bank of Vietnam currently researches to adjust

the current regime on opening account of foreign investors for investing, contributing capital and purchasing shares in Viet Nam Securities market.

Q & A SECTION**Question 1:**

In the Charter of Joint stock company C (“Company C”) that we are a shareholder, there is one regulation as below: “Shareholder A (being an organization) holding four per cent (4%) total amount of shares of the Company C shall have the rights: approving the Charter of the Company; supplementing, amending the Charter of the Company when necessary; making a decision on annual development strategy and business plant; making a decision on increasing the Charter capital of the Company.

Please advise whether such regulation is in compliance with law?¹

Answer:

Organization A which is a shareholder of Company C shall have the rights of a shareholder in accordance with provisions stipulated in the 2005 Law on Enterprises (LOE) and the Charter of the Company (if the Charter complies with the laws and regulations of Vietnam).

Point dd clause 2 Article 96 of the LOE provides: General Meeting of Shareholders (GMS) has the right “to make decisions on amendments of and additions to the charter of the company; increase of charter capital of the company (except for adjusting the charter capital as a result of sale of new shares within the number of shares which may be offered as stated in the charter of the company)”. GMS approves the decisions within the competent by way of voting at the meeting or obtaining written opinions. If there have no regulation in the charter of company, GMS’s decision on amendment and supplement of the charter of company must be approved by voting at the meeting of GMS according to point a clause 2 Article 104 of the LOE.

According to point a clause 2 Article 108 of the LOE, “making decisions on medium term development strategies, and plans, and on annual business plans of the company” belongs to competent of the Board of Management (BOM). BOM’s decision on the issues within its competent shall be passed by way of voting at meetings or obtaining written opinions, or otherwise as stipulated in the charter of the company according to Clause 3, Article 108 of the LOE.

With regard to provisions as above-mentioned, regulation in the Charter of your company “Shareholder A (being an organization) holding four per cent (4%) total amount of shares shall have the right: approving the Charter of company; amending, supplementing the Charter of the Company when necessary; making a decision on annual development strategy and business plant; making a decision on increasing the Charter capital” is totally contrary to the LOE, thus it is illegal.

(1) Article of LuatViet’s lawyers posted on the Investment Bridge Section – Securities Investment Newspaper 80 (708) dated 06 July 2009.

Q & A SECTION**Question 2:**

We are a group of small investors holding the shares in a number of public companies. As known, on June 24, 2009, State Securities Commission (SSC) issued Official Letter No. 1234/UBCK-QLPH on checking the charter of public companies. This Official Letter enforces public companies to check their Charter and plan to adjust any regulations contrary to the current law during the annual General Meeting of Shareholders (GMS) of year 2009. After this term, any public company whose charter still contraries to the law shall be punished according to the law.

Please kindly advise how the laws deal with this case?

Answer:

According to Article 79 and articles from Article 96 to Article 127 of the 2005 Law on Enterprise (LOE) and Article 28 of the Law on Securities 2006 (LOS), when making and drafting the regulations of their charter, public companies must ensure that such regulations in the Charter must comply with the law and ensure to protect legal rights and interests of shareholders. However, currently, the charter of some public companies does not comply with the laws, especially regarding the regulations regarding right attending GMS of investors.

Clause 1, Article 28 of Law on Securities stipulates: “Public companies must comply with the provisions on corporate management in the Law on Enterprises”. Thus, current regulations in the charters of public companies contrary to law are considered as breach of the LOE and the LOS on corporate management.

Point d, Clause 2, Article 10 of Decree No. 36/2007/ND-CP dated on March 08, 2007 of Government on penalties for administrative offences in securities and securities market sector stipulates: “A fine of from five million to ten million VND shall apply to a public company which fails to comply with the provisions of the LOE regarding corporate management as required by Article 28.1 of the Law on Securities”. Therefore, any public companies delaying in amending, supplementing or refusing to amend, supplement above-mentioned regulation before permitted time limitation (annual GMS year 2009) is considered as breach of LOE and LOS on corporate management. Such breach can be punished in accordance to the law. In addition to that, any public companies committing such breach shall be applied measures of compulsory compliance with law for remedying consequences (to be forced to amend, supplement the charter complying with the law).

(2) Article of LuatViet’s lawyers posted on the Investment Bridge Section – Securities Investment Newspaper 85 (713) dated 17 July 2009.

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