

CAPITAL CONTRIBUTION AND PURCHASE OF SHAREHOLDING BY FOREIGN INVESTORS IN VIETNAMESE ENTERPRISES

On June 18, 2009, the Prime Minister issued Decision No. 88/2009/QĐ-TTg providing Regulations on capital contribution and purchase of shareholding by foreign investors (FI) in Vietnamese enterprises. The Decision allows FIs to contribute capital and purchase shareholding in more forms than in those of capital contribution and purchase of shareholding by FI in Vietnamese enterprises issued together with Decision No. 36/2003/QĐ-TTg in 2003. In addition, the proportion of capital contribution and purchase of shareholding is opened compared with the fix rate of “maximum of 30%” of the charter capital of Vietnamese enterprises in Decision 36, details are as follows:

Forms of capital contribution and purchase of shareholding

FIs may contribute capital in following three forms:

(i) acquiring the capital contribution portion of a member of a limited liability company (LLC); contributing capital to a LLC in order to become a new member of a limited liability company with more than two members; or acquiring the entire charter capital of the owner of a one-member LLC in order to become the new owner of such one-member LLC;

(ii) acquiring the capital contribution portion of a capital contributing member of a partnership; or contributing capital to a partnership in order to become a new capital contributing member; and

(iii) acquiring a part of the capital of the owner of a private enterprise or contributing capital with the owner of a private enterprise in order to convert the private enterprise into a limited liability with more than two members and become a member of such LLC with more than two members.

FIs may also subscribe for share in following four forms:

(i) subscribing for initially issued shares of shareholding companies;

(ii) subscribing for initially issued shares of enterprises with 100% State owned capital conducting equalization;

(iii) subscribing for shares from quantity of shares eligible to be offered for sale, additionally issued shares of shareholding company; and

(iv) acquiring shares from shareholders of shareholding companies.

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CAPITAL CONTRIBUTION AND PURCHASE OF SHAREHOLDING BY FOREIGN INVESTORS IN VIETNAMESE ENTERPRISES (cont)

Level of capital contribution and purchase of shareholding

FI may be permitted to contribute capital and purchase shareholding in Vietnamese enterprises at unrestricted level except for the following cases:

(i) With regard to Vietnamese enterprises which are public companies: at the ratios stipulated in the law on securities and relevant implementing guidelines;

(ii) With regard to Vietnamese enterprises operating in sectors and business lines subject to specialized branch laws: at the ratios stipulated in such specialized branch laws;

(iii) With regard to Vietnamese enterprises conducting business in commercial services: at the ratios in compliance with international treaties of which Vietnam is a member;

(iv) With regard to Vietnamese enterprises with a multi-sector, multi-business line operation; not in excess of the lowest participation ratio of FI stipulated for such trades and/or sector;

(v) With regard to Vietnamese enterprises with 100% State owned capital converting its form of ownership: at the ratios stipulated in the plan approved by the authorized body.

Forms of payment

FI may contribute capital and

purchase shareholding in Vietnamese Dong, freely convertible foreign currencies and other lawful assets in Article 2.1 of Decree No. 108/2006/ND-CP.

If FI contributes capital and purchases shareholding in foreign currency, the FI must: (i) convert into Vietnamese Dong at the purchase exchange rate of a commercial bank licensed to conduct foreign exchange business at the date of capital contribution or share purchase; (ii) obtain consent of authorized representative of the enterprise; and (iii) comply with the current law on foreign exchange control.

If FI contributes capital and purchases shareholding in the form of other lawful assets, the assets must be valued by either methods: (i) valuation by an independent valuation organization as agreed by founding members, shareholders of the enterprise to which capital is being contributed and by the capital contributor; or (ii) the enterprise establishes a council for valuation of assets and reaches an agreement with the capital contributor on the price.

Rights and interests of FI:

(i) To pledge their shares in credit relations and to use their shares as security for the discharge of civil obligations;

(ii) To transfer ownership of their shares and to trade them on the securities market if the shareholding

company is listed;

(iii) To assign their capital contribution portions and to adjust their investment capital during the process of conducting business;

(iv) To convert capital recoveries and profit from their investment activities in Vietnam into foreign currency for remittance overseas;

(v) To participate in management of the enterprise;

(vi) To be entitled to the same rights and interests as domestic investors investing in shareholding companies, limited liability companies and partnerships.

General conditions for FI to become an individual or a organization which contributes capital and purchase shareholding in Vietnamese enterprises are: (i) having an investment capital account opened at a commercial bank in Vietnam; (ii) ensuring such provisions stipulated in the charter of the enterprise to which the FI contributes capital and/or purchases shareholding are not contrary to law. In addition, the FI, which is an organization, must have a copy of its business registration certificate or other equivalent document proving its legal status; the FI who is an individual must have a copy of his/her valid passport.

This Decision takes effect from August 15, 2009, replaced Decision No. 36/2003/QD-TTg dated March 11, 2003.

ADMINISTRATIVE PENALTY IN THE FIELD OF STANDARD, MEASURES AND QUALITY OF PRODUCTS, GOODS

On June 05, 2009, the Government issued Decree No. 54/2009/ND-CP providing the administrative penalty in the field of standard, measuring and quality of products and goods. The Decision supplements the group of breaches of standard and technical standard regulations, supplements a number of breaches into the group of breach of measuring, quality of products and good, brand, code and bar code. In addition, the Decree increases the maximum fine up to VND30,000,000 instead of VND20,000,000 as stipulated in Decree No. 126/2005/ND-CP dated October 10, 2005 and Decree No. 95/2007/ND-CP dated June 04, 2007.

Administrative breaches in the field of standard, measuring and quality of products and goods shall be subject to either of two forms: (i) a warning; or (ii) a fine. Moreover, depending on the nature and the seriousness of the breach, the offending individual and organizations may also subject to additional penalties and/or measures for remedying consequences.

The Decree divides breaches into 4 groups: (i) breaches of measuring; (ii) breaches of standard and technical standard regulation; (iii) breaches of brand, code and bar code; and (iv) action obstructing the inspecting and examining.

The level of fine applied to administrative breaches in the field of standard, measuring and quality of products and good ranges from VND200,000 to VND30,000,000, depending on each breach. At the same time, the offending individuals and organizations may also subject to additional penalties and/or measures for remedying consequences.

This Decree takes effect from July 31, 2009 and shall replace Decree No. 126/2005/ND-CP dated October 10, 2005 and Decree No. 95/2007/ND-CP dated June 04, 2007.

IMPORT AND EXPORT OF GOODS VIA AUXILIARY BORDER-GATES AND BORDER ENTRY POINTS OUTSIDE ECONOMIC ZONE BORDER-GATES

On June 03, 2009, the Ministry of Industry and Trade issued Circular No. 13/2009/TT-BCT regulating import and export of goods via auxiliary border gates and border entry points outside economic zone border gates.

Auxiliary border gates and border entry points outside economic zone border gates, which currently have sufficient number of customs officers and border patrol agents and where quarantine and other technical facilities are sufficient to ensure State management, shall be entitled to carry out their procedures for import and export of goods.

Goods which are permitted to be imported via auxiliary border gates and border entry points are raw materials, fuel, and supplies servicing domestic

manufacture including 13 items: wheat flour; minerals; industrial explosive materials; rubber and products made from rubber; wood of all types; plastic raw materials; raw materials and sub-materials for garments, textiles and leather; cassava and maize of all types; raw cashew; soybean; raw materials for processing animal feed; rare and precious materials; metal and metal scrap.

The Heads of provinces where auxiliary border gates and border entry points located shall decide to importation of such goods. However, for tobacco raw materials, industrial chemicals, soft cal and coke, fertilizers, the Heads of provinces auxiliary border gates and border entry points located shall only make decision on importation after obtaining

a written consent of the Ministry of Industry and Trade.

The exportation of goods permitted by the current laws shall also be carried out via such auxiliary border gates and border entry points. The Heads of provinces where auxiliary border gates and border entry points located shall decide the exportation of such goods. However, for goods being natural resources and minerals, the Heads of provinces auxiliary border gates and border entry points located shall only make decision on exportation after obtaining a written consent of the Ministry of Industry and Trade.

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

ENTERPRISES – INVESTMENT – SECURITIES

ADVERTISING IN HO CHI MINH CITY

On June 05, 2009, Vice President of the People's Committee of Ho Chi Minh City signed Decision No. 39/2009/QD-UBND issuing Regulations on advertising activities in Ho Chi Minh City.

The following advertising activities are banned in HCMC:

(i) Advertising activities leads to state secret disclosure, harms the national independence, national sovereignty, national defense, security, social security and international relationship;

(ii) Using national flag, Party's flag, coat of arms, national anthem or melody of the national anthem, picture of leader, Vietnamese's Party and Government leader, image of Vietnamese monetary currency;

(iii) Advertising products and goods which are not yet permitted to be circulated, services which are not yet permitted to be carried out at the time of advertising;

(iv) Dispersing folded leaflet, leaflet for advertising on the streets, at the public places where are not the place

for selling, showing, and introducing of products or at the planned site...

The Decision sets out the position, place, area which not permitted to carry out the advertising such as:

(i) Places for locating of statue, memorial stele, museum, historical monument, communal house, temple, pagoda, church, oratory, military area, cemetery, road siren;

(ii) Commercial advertising board located in the school, hospital;

(iii) Outdoor-pano advertising and other forms of advertisement covering tightly the roof of market, house, multi-storey building, other construction works; or located at the traffic circles, crossroads, bridgehead, or located in front of or above, hiring the previous locating advertisement;

(iv) Means of advertisement hung or suspended across the traffic road, traffic security frame, non co-level crossroads; on the separate ribbon and hide the sight of the traffic-joining people; or at the position hiding the sign board, traffic

light; or on the boundary duke; within the scale of electricity securities, fire prevention and fighting security, other social securities;

(v) Advertising on the outside of traffic and transportation vehicles.

Time limit for advertising by means of board, sign, pano may not exceed three (03) years. Time limit for advertising by means of ribbon, luminesced thing on an activity, which is defined on the time (including within the time carrying out the activity and days prior to the commencement of the activity) may not exceed five (05) working days. Time limit for the advertisement on time-indefinite activity, the time limit for advertising may not exceed fifteen (15) working days.

Time limit for granting of a license for advertising for long-term advertisement may not exceed ten (10) working days from the date of receipt of the valid file. Time limit for short-term advertisement may not exceed five (05) working days.

The Decision takes effect from June 15, 2009, replaced Decision No. 108/2002/QD-UBND dated September 25, 2002.

CORRECTING SOME MISTAKES OF ACTIVITIES OF SECURITIES COMPANY

On June 19, 2009, the State Securities Committee of Vietnam (SSC) issued Reminder Letter No. 1204/UBCK-QLKD instructing on compliance by securities companies (SC).

SSC requests SC to strictly implement the following requirements:

(i) SCs are only permitted to carry out their professional business lines

licensed by SSC; Before carrying out other financial products and services, SSC requests SCs to report the plan, schedule of implementation, risk managing measures and to comply with current laws and regulations;

(ii) No individual and organization are permitted to organize securities trading market except for Stock Exchange and Securities

Trading Centre;

(iii) SCs must strictly follow the regulations on the suspension of the new signing of time-limited trading contracts as required in Official Letter No. 990/UBCK-QLKD dated May 27, 2008;

SSC shall examine the above activities of SCs and strictly punish any breaches.

TAX – FINANCE – BANKING

ISSUANCE OF INTERNATIONAL BONDS

On June 04, 2009, the Government issued Decree No. 53/2009/ND-CP on issuance of international bonds.

The Decree regulates borrowing and repayment of foreign loans via the form of issuance of bonds on the international financial market by the Government and by Vietnamese enterprises. The Government may only issue international bonds to raise investment capital for important national projects, projects with effective investment and ability to repay debts. Enterprises directly issues international bonds must comply with the principles of self-borrowing, self-repayment and self-responsibility for effective utilization of capital raised from the issue.

International bonds shall only be permitted to be issued if meeting all

the following conditions:

(i) Having a bonds issuing proposal appraised and approved by the competent authorities;

(ii) The value of an international bonds issue is within the overall limit on foreign commercial borrowing of Vietnam which is annually approved by the Prime Minister;

(iii) The programs and projects must have been appraised by the competent authorities as nationally important or as highly effective investment projects, for which all investment procedures stipulated in applicable regulations must have been completed;

(iv) Complying with current regulations regarding an issue do convertible bonds or bonds secured by various

means;

(v) Satisfying the international market requirements on credit rating in order to conduct the issue (in cases where the issue requires a credit rating);

(vi) The issuer must have completed the entire application file for the issue correctly in accordance with foreign law applicable to each issue, for each type of issue and in accordance with applicable laws of Vietnam.

If an enterprise which has an urgent need for capital to implement an investment project for the State but does not yet satisfy all the conditions to itself issue bonds may issue Government guaranteed enterprise bonds on the international capital market.

The Decree takes effect from the date of July 30, 2009.

CONDITIONS APPLICABLE FOR 0% VAT RATE FOR INTERNATIONAL TRANSPORTATION AND AVIATION AND SHIPPING BUSINESS SERVICES

On June 02, 2009, Ministry of Finance issued Circular No. 112/ 2009/TT-BTC providing guidelines on conditions applicable for 0% vat rate for international transportation and aviation and shipping business services.

In order to enjoy the 0% VAT rate, international transportation and aviation and shipping business services must satisfy the following conditions:

(i) Having a contract for carriage, a contract for provision of services with a foreign organization;

(ii) Having a receipt for payment for the services via a bank or for another form of payment deemed to constitute payment via a bank. In the case of carriage of passengers being

individuals, there must be receipts for direct payment.

The 0% VAT rate shall apply to the following shipping business services: tugboat assistance services, maritime pilot age services, maritime salvage services, wharfs, buoys, loading and offloading services, mooring and unmooring services, opening and closing cargo hold hatches, cargo hold cleaning services, verification, receipt and delivery of cargo.

The 0% VAT rate shall not apply to the following aviation services: provision of aircraft meals, aircraft take off and landing services; aircraft parking services, aircraft security and protection services; security of screening of passengers, luggage and cargo; luggage conveyor services within airport terminals; ground

technical and commercial services; aircraft protection services; aircraft taxi services; aircraft piloting services; services of leasing facilities for passengers to embark and disembark aircraft; inward and outward flight control services; services of transporting flight crews, stewards and passengers to and from aircraft parking areas; passengers service charges for international flights from Vietnamese airports.

The Circular shall take effect after forty-five days from the date of signing and shall apply as from the effectiveness date of Decree No. 123/2008/ND-CP dated December 08, 2008 of the Government detailing and providing guidelines on a number of Articles of the Law on Value Added Tax.

TAXATION – FINANCE - BANKING**REDUCTION IN IMPORT DUTY RATES APPLICABLE TO FUEL OILS**

On June 10, 2009, the Ministry of Finance issued Circular No. 119/2009/TT-BTC guiding preferential import duty rate applicable to certain goods belonging to group 2710 goods as specified in the preferential import duty tariff.

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

of Finance from 5% to 25%.

A current tax rate of 20% still remains for motor spirits, aviation spirit, high-speed diesel fuel and other diesel fuels.

An import duty rate of 25% is applicable for aviation turbine fuel (jet fuel) having a flash point of not less than 23°C; aviation turbine fuel

(jet fuel) having a flash point of less than 23°C.

Such tax rates shall apply to import goods customs declarations registered with the customs office as from June 12, 2009.

The Circular takes effect from the date of signing and replaced Circular No. 108/2009/TT-BTC dated May 29, 2009.

EXPORT DUTY ADJUSTMENT ON APATITE

On June 17, 2009, the Ministry of Finance issued Circular No. 121/2009/TT-BTC adjusting the export tariff on apatite being Category 2510 of the preferential export tariff list and the preferential import tariff list.

The Ministry of Finance has decreased, the export tariff on apatite being Category 2510 of the amended preferential export tariff list issued with Decision No. 123/2008/QD-BTC dated December 26, 2008,

from 10% to 7%.

The Circular takes effect and shall apply to export's goods customs declarations registered with the customs office after 45 days from the date of signing.

LIST OF MINIMUM PRICE FOR CALCULATION OF REGISTRATION FEE APPLICABLE TO A NUMBER OF CARS IN HANOI

On June 11, 2009, Hanoi Tax Department issued Decision No. 9713/QD-CT-THNVDT issuing the List of minimum price for calculation of registration fee applicable to a number of assets such as ships and boats, cars, motors, shotgun, sport gun.

Hanoi Tax Department supplements the price for calculation of registration fee applicable to a number of cars made in the United States, Canada such as: CADILLAC

ESCALADE HYBRID made in the year of 2007 - 2008, type 2WD 6.0, 08 seats: 2,749 million Vietnamese Dong; type 4WD 6.0, 08 seats: 2,820 million Vietnamese Dong.

In addition, Tax Department of Hanoi supplements the price for calculation of registration fee applicable to a number of cars made in the year of 2009 such as: cars made in Japan: MAZDA MAZDA 3 2.0, 05 seats: 683 million Vietnamese Dong; cars made in Korea: KIA SPORTAGE TLX 2.0

2WD, 05 seats: 788 million Vietnamese Dong; GENESIS BH380 3.8, 05 seats: 1,654 million Dong; cars made in Vietnam MECEDES-BENZ GLK 4MATIC: 1,395 million Vietnamese Dong, HONDA CIVIC of 1.8L 5AT FD1, 1.8L 5MT FD1, 2.0L 5AT FD2 (05 seat): 1,605 million Vietnamese Dong, 544 million Dong and 685 million Vietnamese Dong.

This Decision takes effect from the date of signing.

LOAN WITH BANK GUARANTEE OF VIETNAM DEVELOPMENT BANK

On May 28, 2009, the State Bank of Vietnam issued Circular No. 12/2009/TT-NHNN providing guidelines on a number of loans with bank guarantee of Vietnam Development Bank (VDB) in accordance with Regulation on guarantee for enterprises to borrow capital from commercial bank (CB) issued together with Decision No. 14 /2009/QD-TTg and Decision No. 60 /2009/QD-TTg of the Prime Minister.

CBs, upon the current regime of interest rate management, status of capital source, financial ability, level of loan interest rate on the market from time to time, may consider and decide the reasonable loan interest rate. Then the interest rate must ensure the preference

of actual loan interest rate for enterprises guaranteed by VDB in accordance with applicable regulations in order to support such enterprises to reduce cost and foster its business and production. If the loan being interest rate supported, CB must comply with the regulations stipulated in Decisions of the Prime Minister of the Government and guidelines of the Governor of the State Bank.

Time limit for consideration and signing of Credit Contract with enterprise no later than seven (07) working days from the date of receipt of the valid application file for loan of the enterprise and of the written consent of VDB on loan guarantee. CB only disburses the loan capital to the

enterprise after receiving the Loan guarantee contract (original version) entered into between the enterprise and VDB and Certificate of Guarantee issued by VDB.

If the client fails to repay the loan after one (01) working day from the date of payable term or payable time limit, CB sends VDB a request on the implementation of guarantee obligation. If VDB refuses to implement the obligation of guarantee, CB must send VDB a request on the implementation of delivery pledged/guaranteed assets for settlement and recovery of loan by VDB.

The Circular takes effect from July 11, 2009.

CONSTRUCTION – REAL ESTATE

PILOT SCHEME PERMITTING FOREIGN ORGANIZATIONS AND INDIVIDUALS TO PURCHASE AND OWN HOUSING IN VIETNAM

On June 03, 2009, the Government issued Decree No. 51/2009/ND-CP providing guidelines on implementation a number of Articles of Resolution No. 19/2008/QH12 dated June 03, 2008 of the National Assembly on pilot scheme permitting foreign organizations and individuals to purchase and own housing in Vietnam.

To be entitled to purchase, inherit, or receive a donation of and own housing in Vietnam, foreign individuals, foreign invested enterprises must have documents proving eligibility to purchase, inherit, or receive a donation of and own housing in Vietnam.

Anyone currently owning one apartment in Vietnam shall not be permitted to own any other

housing in Vietnam.

The applicant for the issuance of a housing ownership and residential land use right certificate shall lodge one valid set of of application file with the Department of Construction in the place where the apartment exists.

This Decree takes effect from August 01, 2009.

ISSUANCE OF CERTIFICATE OF PRACTICING FOR CONSTRUCTION ENGINEER

On June 03, 2009, the Ministry of Construction issued Official Letter No. 95/BXD-HDXD providing guidelines on issuance of Certificate of Practicing for construction engineer.

The issuance of certificate of practicing construction execution supervising shall be carried out in accordance with Regulations on issuance of certificate of practicing construction supervising issued with Decision No. 12/2005/QD-BXD dated April 18, 2005 and Letter No. 2646/BXD-XL dated December 23, 2005 of the Ministry of Construction.

Any individual who has been

practicing or supervising “work equipment installment” and supervising “technology equipment installment” in the special business line (such as electricity, mechanic, ventilation heat supply, air-conditioning, communication information, fire prevention and fighting...) if the individual took part in designing, executing or execution supervising the assignments of such special business line for more than five years shall be permitted to practice supervising “work equipment installment” or supervising “technology equipment installment”. If the individual has sufficient time and experience in accordance with regulations applicable to the two

types of supervising, he/she shall be permitted to practice such two types of supervising.

Any individual who has been working in the company with his tertiary or post tertiary education shall be considered to be granted the red certificate of practicing construction execution supervising, individual who has been working in the company with his college education shall be considered to be granted the pink certificate of practicing construction execution supervising, provided that such individual must satisfies all conditions in accordance with laws.

NEW REGULATION ON LABOR CONTRACT

On May 26, 2009, the Ministry of Labor, Invalid and Social Affairs issued Circular No. 17/2009/TT-BLDTBXH amending and supplementing a number of regulations of Decree No. 44/2003/ND-CP dated May 09, 2003 of the Government on Labor contract (LC).

Labor contracts entered into with person enjoying monthly retirement pension or for jobs which has duration of less than three months, in addition to the monthly salary, the employee shall subject to payments calculated in accordance with the salary stipulated in the LC, including:

- (i) Annual leave payment of 4%;
- (ii) Health insurance of 2%;
- (iii) Transportation fee when enjoying annual leave as

agreed by the two parties in LC;

(iv) Social insurance of 15% from July 10, 2009 to December 2009, of 16% from January 2010 to December 2011, of 17% from January 2012 to December 2013, and of 18% January 2014. The previous Circular 21/2003/TT-BLDTBXH such percentage portion is 15%.

This Circular provides detail guidelines on the calculation and payment of severance allowance in specific circumstance. In case where an employee has performed several labor contracts in one enterprise but he/she has not yet been paid any severance allowance upon expiry of each contract, the enterprise shall add up the durations of employment under such labor contracts in order to calculate the severance allowance

for the employee. In case where the employee illegally terminates the LC, the employee shall not receive a severance allowance for the duration working under such LC. In case where an employee works for a State owned enterprise on the permanent payroll on for a period and under a LC for another period, such two periods shall be aggregated in order to calculate the severance allowance... The method for calculating severance allowance stipulated in the Circular was applied from January 01, 2009.

This Circular takes effect after 45 days from the date of signing and replaced Clause 2, Item II and Clause 3 Item III of Circular No. 21/2003/TT-BLDTBXH dated September 22 2003 Ministry of Labor, Invalid and Social Affairs.

Q & A SECTION**Question 1:**

I am the Head of Inspection Committee of A Joint Stock Company. Due to some subjective and objective reasons and full performance of responsibility and role of a Head of Inspection Committee to ensure the maximum interest of shareholders, I would like to authorize another person to be the Head of Inspection Committee for a fixed period of time. Is this permitted by the law? How is procedure?¹

Answer:

According to Clause 2 Article 121 of the 2005 Law on Enterprises (LOE), *“Rights and obligations of the Head of the Inspection Committee shall be defined in the company’s charter”*. In addition, LOE does not permit nor prohibit the Head of Inspection Committee to authorize another person to assume his position.

Therefore, the authorization of Head of Inspection Committee of A Joint Stock Company to another to assume his position shall in accordance with one of the following options:

Firstly, the Head of Inspection Committee shall not have the right to authorize to another to undertake his position if the charter of A Joint Stock Company regulates that: the Head of Inspection Committee is not entitled to authorize to another to undertake his position.

Secondly, the Head of Inspection Committee shall have the right to authorize to another to undertake his position if the charter of A Joint Stock Company: (i) regulates in detail that the Head of Inspection Committee is entitled to authorize to another to undertake his position, or (ii) has no regulation on such authorization. In case where the charter of the Company has specific regulations on authorization of the Head of Inspection Committee to another, such authorization must comply with the regulations. In case where the charter of the Company does not regulates on authorization of the Head of Inspection Committee to another, in principle, the Head of Inspection Committee is able to authorize to another undertake his position in accordance with the regulations of the 2005 Civil Code on authorization.

If the Head of Inspection Committee is entitled to authorize to another to undertake his position, in order to ensure maximum legitimate interest of the company and its shareholders, the charter of Company (if any) should have regulation on requesting the assignee to satisfy abilities meeting requirements of the Head of Inspection Committee or at least satisfy the criteria and conditions of a members of Inspection Committee as provided in Article 112 of the LOE: *“Being at least of twenty one (21) years of age, with a full capacity of civil acts and not falling within the scope of subjects not permitted to establish and manage companies in accordance with the Law on Enterprises. Not being wife or husband, father, adoptive father, mother, adoptive mother, children, adopted children, siblings of any member of the Board of Management, the Director or General Director and other managers”*. The authorization should be in writing. Of which, the assignee shall only execute the rights and duties within authorized scope and term and responsible before the Head of Inspection Committee. The Head of Inspection Committee shall be ultimately and directly responsible before the General Meeting of Shareholders on executing the assigned mission.

(1) Article of LuatViet’s lawyers posted on the Investment Bridge Section – Securities Investment Newspaper 68 (696) dated 08 June 2009

Q & A SECTION

Question 2:

I am a member of Board of Management (BoM) of a Joint Stock Company that was equitised since 2007 and has less than 100 investors and less than VND10 billion of the charter capital. Since there, my company has transferred shares 03 times leading to 03 replacement of the Chairman of BoM. However, for each time of replacement I was not officially informed in writing.

Do the laws have any obligatory regulations on asking members' opinion when replacing the Chairman of BoM?

What is the procedure if the Chairman or members of BoM transfer their shares when they are in office or the time limit of three years for restriction of share transfer is not due?²

Answer:

Electing the Chairman of BoM

Clause 1, Article 111 of the Law on Enterprises stipulates that:

"The General Meeting of Shareholders (GMS) or the BoM shall elect the Chairman of the BoM in accordance with the provisions stipulated in the charter of the company". Therefore, the electing the Chairman of BoM shall be executed in compliance with the regulations stipulated in the charter of each company. There are 2 following options:

If the charter of your company regulates that: the electing of the Chairman of BoM belongs to the competence of GMS, GMS shall proceed to elect the Chairman of BoM without asking opinion of members of BoM.

In case where the charter of your company stipulates that BoM shall elects the Chairman of BoM, the Chairman of BoM shall be elected within the members of BoM. Therefore, the electing the Chairman of BoM must be compulsorily informed to the members of the BoM. The members of BoM shall elect the Chairman of BoM by voting at the meeting in accordance with the majority principle, asking opinion in writing or any other forms regulated at the charter of the company. Each member of BoM shall have a vote. In such case, the electing of the Chairman of BoM without asking opinion of the members of BoM is contrary to the regulations stipulated in the charter of your company and does not comply with the Law on Enterprises.

The Chairman and members of BoM transfer their shares prior to the expiry of their terms and within the first three years from the date of issuance of the Business Registration Certificate to the Company

Clause 5 Article 84 of the 2005 Law on Enterprises stipulates that:

"Within a period of three years from the date of issuance of the Business Registration Certificate to the company, ordinary shares of founding shareholders may be freely assigned to other founding shareholders, but may only be assigned to persons not being founding shareholders if approved by the GMS. In this case, shareholders intending to assign shares may not vote on the assignment of such shares and the assignee shall automatically become a founding shareholder of the company.

After three years from the date of issuance of the Business Registration Certificate to the company, all restrictions on ordinary shares of founding shareholders shall be lifted".

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

Therefore, the permission or restriction on transfer of share of the Chairman and members of BoM depend on whether they are founding shareholders of the Company or not. In details:

If the Chairman and members of BoM are not founding shareholders of the Company, the 2005 Law on Enterprises has no regulations prohibiting or restricting the transfer of the share owning by them at anytime, whether the are in office or not.

If the Chairman and members of BoM are founding shareholders of the Company, they shall be restricted to transfer their ordinary shares in accordance with the above Clause 5 Article 84 of the 2005 Law on Enterprises. Therefore, within a period of three years from the date of issuance of the Business Registration Certificate to the company, ordinary shares of founding shareholders may be freely assigned to other founding shareholders, but may only be assigned to persons not being founding shareholders if approved by the GMS.

(2) Article of LuatViet's lawyers posted on the Investment Bridge Section – Securities Investment Newspaper 71 (699) dated 15 June 2009.

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