

GUIDELINES ON PROCEDURES FOR BUSINESS REGISTRATION

On 13 January 2009, the Ministry of Planning and Investment issued Circular No. 01/2009/TT-BKH (“Circular 01”) to amend and supplement Circular No. 03/2006/TT-BKH dated 19 October 2006 of the Ministry of Planning and Investment guiding some contents of the application, order, procedures of business registration as provided in Decree No. 88/2006/ND-CP dated 29 August 2006 of the Government on business registration.

According to this Circular, some notes on the application dossier, order, procedures of business registration are summarized as below:

In respect of business households: This Circular allows the group of individuals to record (i) the capital contribution amount of each individual and (ii) a representative of the business household in the Certificate of Business Registration. This Circular amends and supplements some standard forms of the following documents:

- An application for business registration;
- A list of individuals contributed the

capital to establish the business household;

- A Business Registration Certificate.

In respect of the change of the contents of business registration: a standard form of a Notice for the change of the contents of business registration is amended.

In respect of the conversion of enterprises: the standard forms of the following documents are amended

- An application to convert a limited liability company into a joint stock company;
- An application to convert a limited liability company with two members or more, a joint stock company, a private enterprise into a one member limited liability company;
- An application to convert a limited liability company with one member, a private enterprise into a limited liability company with two members or more.

This Circular shall come into effect after 15 days from the date of publishing on the Official Gazette. However, the business households obtaining their Business Registration Certificates

before the effective date of this Circular are not required to change their Business Registration Certificates into the new standard forms as required.

CORPORATE NEWS BRIEFS

Guidelines on procedures for business registration

Page 1

Procedures for establishment, suspension of operation, merger, division, separation and dissolution of the university

Page 2

TAX – FINANCE - BANKING

Guiding law on value added tax

Page 3

Reduction and extension of corporate income tax (“cit”) quarter iv of 2008 - 2009

Page 4

Deduction of 50% of the value added tax

Page 5

Withholding personal income tax (“pit”) on transfers of securities

Page 6

Guidelines on procedures of guarantee for loans from commercial banks

Page 6

New regulations on insurance premiums for mechanical vehicles

Page 7

SECURITIES

Establishment of hanoi stock exchange

Page 8

DISPUTE SETTLEMENT

Why the first instance judgment of the people's courts of phu tho province being appealed?

Page 9-10

QUESTIONS AND ANSWERS

Pag 11-12

PROCEDURES FOR ESTABLISHMENT, SUSPENSION OF OPERATION, MERGER, DIVISION, SEPARATION AND DISSOLUTION OF THE UNIVERSITY

On 15 January 2009, the Prime Minister of the Government issued Decision No. 07/2009/QĐ-TTg providing conditions and procedures for establishment, suspension of operation, merger, division, separation and dissolution of the university with and without foreign invested capital involvement in Vietnam.

Conditions to establish the university:

- Complying with the planned network of universities approved by the Prime Minister of the Government in Decision No. 121/2007/QĐ-TTg dated 27 July 2007;
- Having an investment project to establish the university in which the targets, contents, programs, professions, size of training, organizational structure, management, planning of land, capital resources to establish the university, investment plan and route of development are defined to ensure to be in compliance with the training needs for human resources with high qualification and to meet the targets for the development of the socio-economic of both the country and localities;
- Obtaining an approval in writing and an Investment Certificate for the investment project to establish the university from the People's Committees of provinces and cities under the central government;
- Having good lecturers and managerial staffs to ensure that the targets of training programs can be implemented to meet the requirements in accordance with current regulations of the Ministry of Education and Training;

- Having a total land area to build the university not less than 5 hectares; The location to build the university must satisfy conditions on educational environment, safety for learners, teaching staff and workers in the university;
- The charter capital is used only for the construction and investment of the university, excluding the land value, must remain a minimum of 50 billion VND contributed from the legitimate capital resources.

Processes and procedures for establishment of the University

The Prime Minister has the authority to determine the establishment of the University through 2 stages:

Stage 1: The Ministry of Education and Training shall evaluate the conditions of the Investment Project on the university establishment and submit it to the Prime Minister to consider and approve the investment policy on the university establishment;

Time line for evaluation: not exceeding 30 working days from the date of receiving the project dossiers.

Provincial People's Committees are responsible for reviewing and issuing the Investment Certificate in accordance with investment projects to establish private universities in their respective areas after obtaining the written approval on investment policy by the Prime Minister.

Stage 2: The Ministry of Education

and Training shall preside and coordinate with the following ministries: the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Home Affairs and relevant agencies to organize and evaluate the investment project and conditions provided in this Decision then submit it to the Prime Minister for consideration and decision of establishment of the University.

Time line for evaluation: not exceeding 20 working days from the date of receiving the Project dossiers.

Cancel the investment policy: After the 3-year period from the date on which the project is approved by the Prime Minister, if the implementation of the project has not completed yet as planned, the Ministry of Education and Training shall consider to propose the Prime Minister to cancel the investment policy and then the Provincial People's Committee shall decide to revoke the Investment Certificate.

Revoke the Decision on the university establishment: After 2 years since the Prime Minister signed the Decision on the university establishment, if the university has not prepared sufficiently all conditions to get permits from the Ministry of Education and Training to open the training faculties and university enrollments, the Ministry of Education and Training shall consider to submit a request to the Prime Minister of the Government for revoking the Decision on the university establishment.

TAX – FINANCE - BANKING

Merger, division and separation of the Universities

The merger, division and separation of the Universities shall comply with the following principles:

- To be in conformity with the planned network of universities;
- To meet demands for socio-economic development of both the nation and the localities;
- To ensure the legitimate rights and the benefits of officers, lecturers, officials and learners of the university;
- To contribute to the improvement of quality and effectiveness of education

in universities.

Dissolution of the university

The dissolution of the university shall be decided by the Prime Minister if the university falls into one of the following cases:

- The university has committed a serious breach of any regulations on management, organization and operations of the university;
- The Decision to suspend operation of the university is expired, but such university has not recovered from the consequences of the violations led

to the suspension;

- The planned network of universities is required to restructure in order to meet the practical situation and conditions;
- At the requests for dissolution of the organizations and individuals who established the university.

This Decision shall come into effect after 45 days as from 15 January 2009.

GUIDING LAW ON VALUE ADDED TAX

On 26 December 2008, the Ministry of Finance issued Circular No. 129/2008/TT-BTC ("Circular 129") guiding the implementation of a number of articles of the Law on Value Added Tax and guiding the implementation of Decree No. 123/2008/ND-CP issued by the Government dated 08 December 2008 providing detailed provisions and guidelines on the implementation of a number of articles of the Law on Value Added Tax.

Circular 129 provides the non-applicable objects, methods of tax deduction, method of tax calculation, tax declaration, tax payment and tax re-payment. This Circular also has provided clearly the record of bills for selling goods, services.

This Circular governs 26 groups of the non-applicable objects including but not limited to:

- State owned houses which offered for sale to the tenants;
- Transfer of land use right;
- Life insurance, insurance for learners, insurance service for people,

insurance for agriculture and re-insurance;

- Financial services;
- Health services, veterinary services;
- Posts and telecommunications service for public interest or from foreign country (the coming way);
- Teaching, vocational training under the law including money for food collected by teaching establishments from primary-schools to secondary schools;
- Broadcasting through radio, television with the capital from state budget;
- Publishing, importing, issuing newspapers, magazines, specialized newsletters, political books, textbooks, curriculum books, legal documents, scientific-technical books, books in languages of ethnic minorities and pictures, photos, posters of propaganda including in tape or disk recorded sound, image, in electronic data; printing money;
- Transporting passengers by public buses, trams;
- Imported goods that are not produced domestically;
- Weapons, materials used for

national defense and security;

- Imported goods, goods and services sold to other organizations and individuals for humanitarian aid, non-refundable aid;
- Goods transferred through border gates, transited through the territory of Vietnam; goods temporarily imported, re-exported, goods temporarily imported for production, processing goods to export under contract of producing, processing to export that signed with foreign parties;
- Transfer of technology, transfer of intellectual property rights;
- Imported gold in kinds of bar, piece and all kinds of gold are not processed;
- Exported products are natural resources, exploited mineral is not processed; and
- Other goods as stipulated by law.

TAX – FINANCE - BANKING

Tax rate

A tax rate of 0% is applicable to goods for export (including goods authorized to export, goods for sale into the tax-free area); export services including services providing directly to the organizations, individuals overseas or in the tax-free area and goods, services as stipulated in this Circular.

Goods and services for exports applied a 0% tax rate must satisfy the following conditions:

- Having contracts of selling, processing goods to export; the authorizing contracts for export or for processing goods to export; contracts of providing services to organizations

and individuals overseas or in the tax-free area;

- Having documents on payment of goods and services exported through banks and other documents as stipulated by law;
- Having customs declarations of goods for export.

A tax rate of 5% is applicable to clean water used for production and living, fertilizer, ore to produce fertilizer, feed for animal, poultry; service of digging and embanking, dredging canals; products of cultivation, breeding, aquatic products that are not processed; rubber latex processed primarily, fresh foodstuff, forest products that are not processed in trading phase; sugar and by-products of sugar production; products of jute,

bamboo, rush; machines and specialized equipment for agricultural production, medical equipment, medical tools; teaching tools, cultural activities, exhibitions, film production; toys for children except textbooks; services of technology.

A tax rate of 10% is applicable to the remaining items.

This Circular shall come in effect after 15 days of publishing in the Official Gazette and was applied from 1 January 2009 and replaced Circular No. 32/2007/TT-BTC dated 9 April 2007 and Circular No. 30 2008/TT-BTC on 16 April 2008 of the Ministry of Finance.

REDUCTION AND EXTENSION OF CORPORATE INCOME TAX (“CIT”) QUARTER IV OF 2008 AND 2009

On 13 January 2009, the Ministry of Finance issued Circular No. 03/2009/TT-BTC (“**Circular 03**”) on guidelines for reduction and extension of CIT pursuant to Resolution No. 30/2008/NQ-CP dated 11 December 2008 of the Government on urgent solutions for alleviating the economic downturn by preserving economic growth and ensuring the welfare of the society.

Applicable objects

Circular No. 03 is applicable to the following three (03) groups:

- Small and medium-sized enterprises;
 - Enterprises producing or processing agricultural, forestry or seafood products, textiles and garments, footwear, and electronic components;
- In accordance with Circular No. 03, small and medium-sized enterprises are enterprises satisfying one of the

two criteria as follows:

- The current charter capital as specified in its business registration certificate or investment certificate effective prior to 1 January 2009 does not exceed 10 billion Vietnamese Dong (approximately 600,000 USD). If enterprises were newly established after 1 January 2009, the initial charter capital must not exceed 10 billion Vietnamese Dong; or
- The average number of employees during the fourth quarter of Year 2008, excluding employees with short-term contracts under 3 months, was not more than three hundred (300). In the case of an enterprise newly established on or after 1 October 2008, the number of salaried staff in the initial month generating revenue (a month being a full 30 days) must not exceed 300.

Reduction of thirty per cent (30%) of the CIT for small and medium sized-enterprises

Circular No. 03 provides that small and medium sized-enterprises shall be subject to a reduction of thirty per cent (30%) of the CIT they must pay for the fourth quarter of the Year 2008 and the amount of CIT they must pay for 2009.

For the fourth quarter of the Year 2008, if revenue, expenses and taxable income of the fourth quarter of the Year 2008 are determinable, then the amount of CIT payable for such quarter shall be calculated on the basis of the taxable income for that quarter. Otherwise, the amount of CIT payable for that quarter shall be calculated by the amount of CIT payable for the Year 2008 divided into 4 quarters. Enterprises shall declare the amount of their tax reduction when they declare the amount of CIT for the Year 2008.

TAX – FINANCE - BANKING

For the Year 2009, when enterprises declare the amount of payable CIT quarterly, they shall declare the amount of payable CIT that temporarily reduced equal to 30% of the amount of temporarily payable tax of the quarter, and self-declare the amount of the CIT deduction when they finalize CIT of year 2009.

Enterprises that are currently entitled to CIT incentives shall be also reduced by 30% of the remaining CIT figure after deducting the amount of preferential CIT as stipulated.

Extension for payment of CIT in 2009

The extension for payment of the provisional amount of CIT for each quarter of the Year 2009 shall be reduced for:

- Small and medium sized enterprises;

- Enterprises producing or processing agricultural, forestry or seafood products, textiles and garments, footwear, and electronic components.

If an enterprise is unable to determine the amount of provisional CIT on any of the above-named activities as distinct from the amount of provisional CIT payable on other activities, then the amount of provisional CIT from operations of manufacturing and processing for which payment deferred shall be calculated as a percentage being total turnover from the former activities over total turnover of the enterprise in Year 2008. Payment shall be deferred for nine (9) months as from the last day of the period for payment pursuant to the Law on Management of Tax.

However, in respect of turnover from the following activities, the CIT must be paid in 2009 may be deferred to

pay within 09 (nine) months regardless of the size of the enterprise:

- Manufacture of mechanical engineering products being means of production;
- Manufacture of construction materials comprising bricks and tiles; and lime and paint; constructing service and installment service;
- Tourism services;
- Business in food;
- Business in fertilizer.

In addition, the Prime Minister directed not to collect the import duties for timber for export made of imported timber for the customs declarations registered at the Customs Offices before 01 December 12 2008.

This Circular 03 came into effect from the date of 27 January 2009.

DEDUCTION OF 50% OF THE VALUE ADDED TAX

On 21 January 2009, the Prime Minister issued Decision No. 16/2009/QD-TTg issuing solutions for implementing the policy on stimulating investment and sale in order to alleviate the economic downturn, relieve hardships for enterprises.

A reduction of a 50% of the VAT tax rate is applied from 01 February 2009 to the end of 31 December 2009 for 07 (seven) types of goods and services as follows:

- Coal;
- Basic chemicals; all kinds of automobile, automobile components comprising engines, gearbox, and clutch and parts of this goods; explosive materials, industrial concrete prod-

ucts;

- Products rolled or cut from ferrous, non-ferrous or precious metal, but excluding imported gold;
- Automatic data processing machines and their parts and accessories;
- Cargo handling; dredging of channels, canals, river ports and sea ports; transportation of passengers, luggage and cargo, and tourist transportation but excluding international transportation;
- Hotels business; tourism services in the forms package holiday travel;
- Printing, except printing of money.

This Decision came into effect as of 21 January 2009. The Decision No. 104/2008/QD-TTg dated 21 July

2008, Decision No. 119/2008/QD-TTg dated 29 August 2008, and Decision No. 129/2008/QD-TTg dated 19 September 2008 were revoked.

WITHHOLDING PERSONAL INCOME TAX (“PIT”) ON TRANSFERS OF SECURITIES

On 2 January 2009, the Ministry of Finance promulgated Official Letter No. 42/BTC-TCT on the tax deduction of personal income for securities transfer.

This Official Letter applies to listed shares; unlisted shares which are registered for trading on the Hanoi Securities Trading Centre; listed shares not yet registered for trading; investment fund certificates; and both listed and unlisted bonds.

In respect of listed shares, based on the securities price implemented at the Stock Exchange or Securities Trading Centre and the number of shares successfully traded by the

investor, the securities company shall calculate the amount of PIT which must be withheld at the tax rate of 0.1% on the total value of the securities on each occasion of a transfer by a seller, and shall notify the seller of the amount of tax payable. The securities company (the “SC”) must notify the amount of PIT withheld to be paid into the State Budget at the same time as it notifies the successful transaction.

In respect of unlisted shares but registered at Hanoi Securities Trading Center, SC shall perform the same regulations for the listed shares. For the unregistered shares at Hanoi Securities Trading Center but the

issuer authorized the security company to manage the shareholder's register, the SC shall be responsible for the tax deduction and tax payment. If the transfer contract does not record a price, or records a price lower than that recorded in the books of account of the issuing company at the time of the transfer or at the most recent time to the transfer, then the SC must rely on the price recorded in the books of account of the issuing company in order to withhold PIT.

This Official Letter shall apply to all successful securities transfer transactions as from 2 January 2009.

GUIDELINES ON PROCEDURES OF GUARANTEE FOR LOANS FROM COMMERCIAL BANKS

On 21 January 2009, the Prime Minister issued Decision No. 14/2009/QĐ-TTg providing the Regulations on guarantees for enterprises borrowing loans from commercial banks and entrusting Vietnam Bank for Development to offer guarantees for getting the loans.

Objects of a loan guarantee are enterprises of all economic sectors (including co-operatives) having the maximum charter capital of 20 billion VND and employing the maximum 500 workers.

Scope of a guarantee: enterprises operating legally in Vietnam to carry out investment projects to develop business and production (borrowing

loans for creating fixed assets), plan of business (borrowing loans for creating floating capital) in accordance with the laws.

The Guarantee offered by Vietnam Bank for Development as stipulated in this Decision does not apply to enterprises operating in the fields of consulting, real estate business, securities and services (except services of goods transportation, education and health), borrowing loans to pay off debts of the other credit contracts.

Enterprises belonging the objects and scope of guarantees to be guaranteed for loans must meet the following conditions:

- Having investment projects to develop production and business, effective plans of business and production, the minimum size of the project capital is 100 million VND;
- Not owing overdue debts to credit institutions and economic organizations;
- Not having debts of taxation;
- Having the contributed capital in the investment project of business and production, in plan of business and production of a minimum of 10%;
- Using 100% of the value of assets created by the borrowed capital (maximum 90%) and the owned capital (a minimum of 10%) to apply for a mortgage of the guaranteed assets.

TAX – FINANCE - BANKING

The amount of money guaranteed is limited to a maximum of 100% of original debts and its interests. The term of guarantee for capital must be in conformity with those of the loan and

does not exceed the term of capital recovery. The maximum fee of a guarantee is 0.5% year/amount of guaranteed money. The currency for a guarantee shall be performed in a Vietnam

dong or a foreign freely convertible currency.

This Decision came into effect from 21 January 2009.

NEW REGULATIONS ON INSURANCE PREMIUMS FOR MECHANICAL VEHICLES

On 22 December 2008, the Ministry of Finance issued Circular No. 126/2008/TT-BTC providing rules, provisions, premium tariff and level of mandatory insurance of civil liability of mechanical vehicle owners.

- In respect of all kinds of mechanical vehicles: a level of an annual insurance premium shall be increased as follows:

- For motorcycles under 50 cc: it has increased from 45,000 VND to 50,000 VND

- For motorcycles over 50 cc: it has increased from 55,000 VND to 60,000 VND.

- For motorcycle with three wheels, motorcycles and similar mechanical vehicles: it has increased from 210,000 VND to 265,000 VND.

- In respect of non-transport business automobiles having from 6 seats to 24 seats: annual insurance premium from 345,000 VND to 1,587 million VND, in which:

- Automobiles having under 6 seats: it has increased from 300,000 VND to 345,000 VND;

- Automobiles having from 6 to 11 seats: it has increased from 600,000 VND to 690,000 VND;

- Automobiles having from 12 to 24 seats: it has increased from 690,000 VND to 1,104,000 VND; and

- Automobiles having over 24 seats: it has increased from 1,380,000

VND to 1,587,000 VND.

- In respect of cars for passengers transport business: annual insurance premium varies from 630,000 VND to 3,209,000 VND, according to the number of seats.

- In respect of all kinds of trucks with tonnage from 3 to 15 tons, the new level of annual insurance premium varies from 656,000 VND to 2,243,000 VND.

- In respect of trailers, the premium is same as of an automobile with tonnage of 15 tons.

- Insurance premium of buses is the same as the non-transport business automobile with the same number of seats.

- An insurance premium for taxi cars is 1.5 times as long as those of the transport business cars with the same number of seats.

In addition, the Ministry of Finance also provides that the maximum level of insurance responsibility of insurance enterprise for human damage caused by mechanical vehicles is 50 million VND/person/accident; the level of insurance responsibility on property caused by motorcycle with two wheels, motorcycle with three wheels, motorcycles and similar mechanical vehicles (including mechanical

vehicles for the disabled) is 30 million VND/accident; the level responsibility on property caused by cars, motorcycles and tractors, and some kinds of special mechanical vehicles is 50 million VND/accident.

Thus, in comparison with current regulations, the new regulations do not distinguish between the civil responsibilities of the motorcycle owners and those of the automobile owners.

Specific compensation for each type of injury, human loss is determined in accordance with instructions in this Circular, varies from 2 million to 45 million VND for the partial injury and 50 million VND applicable for the cases such as victims died, lost all abilities of labour and work, mental disorders that is impossible to recover.

This Circular shall come into effect after 15 days from the date of publishing on the Official Gazette and replaced Decision No. 23/2007/QD-BTC on 09 April 2007.

SECURITIES

ESTABLISHMENT OF HANOI STOCK EXCHANGE

On 02 January 2009, the Prime Minister of the Government issued Decision No. 01/2009/QD-TTg on establishment of the Hanoi Stock Exchange.

The Hanoi Stock Exchange is established on the basis of converting and restructuring the Hanoi Securities Trading Center (which was established pursuant to Decision No. 127/1998/QD-TTg dated 11 July 1998), a public service unit with a revenue generating system to operate under the form of the state owned one member limited liability company. The Hanoi Stock Exchange shall succeed

all rights and obligations of the Hanoi Securities Trading Center and implement the rights and obligations stipulated in the Law on Securities, the Law on Enterprises, the Charter on Organization and Operation of the Hanoi Stock Exchange, and other related legal provisions.

The Hanoi Stock Exchange (the international trading name: the Hanoi Stock Exchange, the abbreviated name: HNX) has a legal entity status, has its own seal, is allowed to open Vietnam dong and foreign currency accounts with the State Treasury and

with domestic and foreign commercial banks. The Hanoi Stock Exchange, an independently accounting entity with financial autonomy, shall implement the regimes on finance, statistical reporting, accounting and auditing as stipulated by law and shall have other financial obligations as stipulated by law.

WHY THE FIRST INSTANCE JUDGMENT OF THE PEOPLE'S COURTS OF PHU THO PROVINCE BEING APPEALED?

On 18 September 2008, the Chief of the Supreme People's Procuracy of Vietnam ("SPP") issued a decision to appeal the first instance judgment No. 46/2008/HSST ("FI") on 21 August 2008 of the People's Court of Phu Tho province (the "PC") because it appears the hints revealed that the determination of crime as well as the status of the participants in the proceedings was not correct and still missed some offenders. Hereafter are some reasons caused the first instance be appealed.¹

Main points of the case are summarized as follows:

According to the Accusation No. 30/KSDT-PT on 28 May 2008 the People's Procuracy of Phu Tho province, on 02 April 2007, after receiving the information revealed from the people, the polices of Phu Tho province checked and retained a car with its registered number of 33H 0864 drove by Nguyen Xuan Thao who was born in 1960 and having residence in Dan Ha commune, Ky Son district, Hoa Binh province and discovered that there were 17 vessels contained caustic soda liquid without any legal supporting documents (type 200 liters) in the car. At the Investigation Authority, Nguyen Xuan Thao declared that the 17 caustic soda liquid vessels were resold to him from Pham Hoang Hiep and Trinh Tuan Anh, drivers of the Viet Tri Chemical Joint Stock Company ("Viet Tri Chemical") on his delivery. At the Investigation Authority, Thao also declared that

from the year of 2004 to the year of 2007, Thao purchased caustic soda liquid without legal papers from Le Thi Hue, Nguyen Thi Minh Thu; and from Pham Hoang Hiep, Trinh Anh Tuan, Ngo Van Tuyen who are drivers transporting caustic soda liquid of Viet Tri Chemical.

After conducting the investigation, the police of Phu Tho province identified that from July 2004 to April 2007 during transportation of caustic soda liquid, Hiep, Tuan Anh and Tuyen stole 311.5 vessels of caustic soda liquid that Viet Tri Chemical sold to Yen Son Hapaco, the Yen Bai Agriculture Forest Food Joint Stock Company ("Yen Bai AFF"), and the Hoa Binh Pulp Joint Stock Company ("Hoa Binh Pulp"). Therefore, the PPP decided to prosecute the accused persons: Pham Hoang Hiep, Trinh Anh Tuan, Ngo Van Tuyen, Le Thi Hue, Nguyen Thi Minh Thu, Le Van Giang on the crime of "stealing property" under Article 138 of the Criminal Code 1999 ("Criminal Code"); prosecute the accused person, Nguyen Xuan Thao on "Consuming property acquired through the commission of crime by other persons" under Article 250 of the Criminal Code.

In the FI, the PC judged that the accused persons: Hiep, Tuan Anh, Tuyen, Hue, Thu, Giang to be accused of "Cheating Customers" under Article 162 of the Criminal Code 1999, the accused person Thao to be accused of "Consuming property acquired through the commission of

crime by other persons" under Article 250 of the Criminal Code.

Causes to appeal:

On 18 September 2008, the Chief of SPP decided to appeal the FI for the following reasons:

Firstly, the determination of name of crimes to the accused persons, Tuan Anh, Tuyen, Hue, Thu, and Giang was not correct.

The FI declared some of the accused persons committed the crime of "Cheating Customers" is not correct in accordance with the law since the offenders do not meet the conditions of the subjects of this crime. Specifically, these accused persons are not one of the parties to the contract on sale and purchase of caustic soda liquid between Viet Tri Chemical and its partners. Therefore, in nature, the acts of these accused persons are not the acts of cheating customers. On the other hand, in fact, these accused persons imposed the carelessness of the owner (Viet Tri Chemical) to stealthy and secretly steal a part of its property. These are the typical signals to identify these accused persons committed the crime of "Stealing property". For the other accused persons, they knew clearly the criminal acts of the others but still actively and positively participated in the stealing, thus they should be considered as the accessories of "Stealing property" co-offenders.

¹ From the article published in the Court section – The Legal Newspaper issue No. 285 dated 27 November 2008.

DISPUTE SETTLEMENT

Secondly, the investigation, prosecution and hearing at the first instance level missed acts of criminal offense.

According to the testimonies of the accused persons, Hiep, Tuan Anh, Tuyen, they had stolen caustic soda liquid of Viet Tri Chemical from 2003 to 02 April 2007. The declaration is completely suitable with the Recording Report on caustic soda liquid of Viet Tri Chemical from 01 January 2003 to 02 April 2007. At the hearing, the lawyer representing for Hapaco Yen Son argued that the accused persons committed the crime at the beginning of 2003. However, the PC only determined the accused persons committed the crime from December 2004 and defined that these accused persons appropriated 1785 vessels of caustic soda liquid that were reduced 1426.5 vessels compared with the conclusion of the Accusation. The conclusion of the PC still missed the acts of criminal offenses of the accused persons.

Thirdly, the investigation, prosecution at the first instance hearing revealed the hints of missing crime.

To consume the amount of caustic soda liquid appropriated, the accused person Thao asked some persons to issue the VAT invoices with a view to "legalizing" the illegal goods. The acts of these persons contained the criminal hints of "Circulating other counterfeit valuable" according to Article 181 of the Criminal Code. However, it

seems not appropriate for the investigation authority to only apply an administrative punishment on such acts, and thus both the prosecution office and the court did not keep eyes on such acts of these concerned persons.

Fourthly, the FI determined the legal status of participants in the proceedings incorrectly.

According to the Contract between Viet Tri Chemical (the selling party) with the purchasers of caustic soda liquid, after selling, Viet Tri Chemical is responsible for transporting the goods to the customers. The customers shall check and receive the goods at their stores. The ownership to the goods shall be officially transferred from Viet Tri Chemical to its customers since this time. The accused persons, Hiep, Tuan Anh, Tuyen appropriated a part of the goods during transportation from the Viet Tri Chemical to its customers and at this time, the goods has not delivered to customers yet, in other words, it was still under the ownership of Viet Tri Chemical. Therefore, the civil plaintiff in this case is Viet Tri Chemical, instead of its customers.

Therefore, it is not correct for the FI to determine that the civil plaintiffs in this case are the customers of Viet Tri Chemical (Yen Son Hapaco, Yen Bai AFF, Hoa Binh Pulp) whereas Viet Tri Chemical is the person bearing related interest and obligations.

Yen Son Hapaco, Yen Bai AFF, Hoa Binh Pulp in this case should be determined as the person bearing related interest and obligations. These organizations did not discover the theft of the accused person, not discover loss of the caustic soda liquid, and still paid fully for Viet Tri Chemical. Therefore, these organizations have the right to request Viet Tri Chemical to be responsible to compensate for the damages.

Due to some legal grounds as mentioned above, the FI No. 46/2008/HSST on 21 August 2008 of the PC was appealed by the Chief of SPP under appellate procedures, to revoke the whole FI for re-investigation. We will keep the readers posted in the next issues.

QUESTIONS AND ANSWERS**Question:**

I have 8000 shares of Company A with the market price of approximately 100,000,000 VND (One hundred million Vietnamese Dong). Due to my negligence, I lost my shareholder's book. Can I have the right to request for re-issuance of the shareholder's book or not and what are the procedures to re-issue it? ²

Answer:

The shareholder's book or the Certificate of shareholder's book is one of the forms of the share certificate issued by a joint stock company to certify the ownership for one or a number of shares of such shareholders contributed capital to the company. In case shareholder's book/share certificate is lost, in accordance with Item 3 Article 85 of the Law on Enterprises 2005, the shareholder shall be re-issued it based on the request of such shareholder. This re-issuance shall be also applied to the cases that the shareholder's book/ share certificate is torn, burnt or otherwise destroyed.

The Law on Enterprises 2005 provides the re-issuance of share certificate as follows:

1. The shareholder must have an application to request for re-issuance of share certificate and to undertake about the following contents: (a) the share certificate has actually been lost, torn, burnt or otherwise destroyed; in the case of loss, in addition, it must be undertaken that all efforts have been exercised to look for the share certificate and if found, such share certificate shall be returned to the company for destruction; (b) shall be responsible for any disputes arising from the re-issuance of a new share certificate.
2. Specially, with regard to the share certificate which has a par value of over 10 million Vietnamese Dong, prior to acceptance of a request for issue of a new share certificate, the legal representative of the company may request the owner of the share certificate to post a notice of the fact that the share certificate has been lost, torn, burnt or otherwise destroyed and make a request to the company to issue a new share certificate within fifteen (15) days from the date of posting the notice.

However, the Law on Enterprises 2005 does not specify the term for the Company to re-issue shareholder's book/the share certificate to such shareholder from the requesting date of for re-issuance. This means that the Company has full rights to decide the term.

² Advice by LuatViet's lawyers posted on the Investment Bridge – Vietnam Investment Review Issue No. 146 dated 15 December 2008.

QUESTIONS AND ANSWERS*Question:*

What happen if a securities company (the “SC”) or a fund management company (the “FMC”) fails to satisfy conditions on the charter capital in accordance with Decree No. 14/2007/ND-CP (“Decree 14”) providing detailed guidelines for implementing some articles of the Law on Securities? Which sanctions can be applied to such failure? ³

Answer:

If a SC or a FMC does not comply with the regulations on the increase of the legal capital in accordance with the timing schedule as required by Decree 14, such company shall be applied sanctions stipulated by the securities law, the details are as below:

Article 70.1.a of the Law on Securities provides that the operation of a SC or a FMC shall be suspended in case it fails to maintain the conditions for the issuance of a license for establishment and operation provided in Article 62 of this Law. In addition to that, in accordance with Article 62.1.b of this law, one of conditions shall be applied to the issuance of the license for establishment and operation of a SC or FMC is that it must “have enough legal capital in accordance with the regulations of the Government”.

Therefore, if after a SC and the FMC is issued the license for establishment and operation by the State Securities Committee, it fails to comply with requirement on the legal capital stipulated in the Decree 14 (or has not performed procedure for increasing the capital within two years after the effective date of the Decree 14), it shall be suspended by the State Securities Committee.

The license for establishment and operation of a SC or FMC might be revoked by the State Securities Committee if after its operation suspended, such SC or FMC still fails to remedy a breach on the legal capital in accordance with Article 70.2.c of the Law on Securities.

³ Advice by LuatViet’s lawyers posted on the Investment Bridge – Vietnam Investment Review Issue No. 150 dated 15 December 2008.

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