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REGULATION ON BANKRUPTCY PROCEEDINGS FOR ENTERPRISES IN THE INSURANCE, SECURITIES AND SOME OTHER FINANCE SECTORS

On 03 November 2008, the Government issued Decree No. 114/2008/ND-CP providing detailed provisions for implementation of the Law on Bankruptcy applicable to enterprises in the insurance, securities and some other finance sectors.

Scope of the Decree

Enterprises in the insurance sector are insurance enterprises established and operating in Vietnam pursuant to the Law on Insurance Business, except for insurance brokering companies.

Enterprises in the securities sector are securities companies, securities investment fund management companies and securities investment companies established and operating in Vietnam pursuant to the Law on Securities.

Enterprises in other finance sectors are lotteries companies conducting lotteries business pursuant to Decree No. 30/2007/ND-CP of the Government dated 01 March 2007 on lotteries business.

A team of experts for managing and liquidating assets

According to the Decree, a team of experts in managing and liquidating assets is comprised of the following members: (i) a law enforcement officer of a law enforcement agency at the same level as a court that has jurisdiction over a file for bankruptcy – a team leader; (ii) an officer of a people's court that has jurisdiction over a file for bankruptcy – a team member; (iii) a representative of all creditors being an organization or an individual with the largest number of debts amongst all creditors – a team member; (iv) a legal representative of an enterprise against which bankruptcy has been filed – a team member; (v) a representative of the Ministry of Finance in case an insurance company or other finance company for which the Ministry of Finance issued the License/Decision on Establishment and Operation is to be filed for bankruptcy,

or of an enterprise owner in case some other finance enterprises for which the Ministry of Finance does not has jurisdiction to issue the License/Decision on Establishment and Operation are to be filed for bankruptcy – a team member. (vi) a trade union representative or a representative of employees (if the enterprise does not establish a trade union) in case an enterprise which owes wages to, or has other debts owing to its employees is to be filed for bankruptcy – a team member.

The intervention and control of the Ministry of Finance and the State Securities Commission (SSC)

The Decree allows the Ministry of Finance to perform the following rights in respect of an insurance company that is in danger of becoming insolvent: to require such enterprise to take the following measures to recover solvency: (i) to supplement the sources of equity; (ii) to cede reinsurance; to narrow the contents, scope and geographical location of its operation; to suspend a part of or its entire operation; (iii) to strengthen the organization of the management apparatus and to replace managerial and executive personnel of the enterprise; (iv) to request assignment of insurance contracts; (v) and any other measures as provided by law. In a case where an insurance company fails to recover solvency as requested by the Ministry of Finance, such insurer shall be placed under solvency control, and the Ministry of Finance shall issue a decision establishing a Solvency Control Committee in order to apply the measures as stipulated by law.

The Decree also allows SSC to perform the following rights in respect of a securities enterprise that is in danger of insolvency: (i) to require the securities enterprise to handover to a replacement enterprise approved or appointed by SSC all rights and obligations regarding funds, entrusting investors and investors who have opened securities trading accounts with the former enterprise; (ii) to require the securities enterprise to temporarily seal up a part or all of the monetary accounts and securities accounts of clients and the self-trading account of the enterprise, in order to apply measures to recover solvency; (iii) to issue a warning to the securities company in accordance with Article 74 of the Law on Securities and relevant guidelines; (iv) and any other measures as provided by law.

In additions, the Decree also provides bankruptcy proceedings, assets obligations and measures for preservation of assets, meeting of creditors, procedures for liquidation of assets.

This Decree shall be of full force and effect after 15 days from the date of its publication in the Official Gazette.

ORGANIZATION AND MANAGEMENT OF TRADING UNLISTED PUBLIC COMPANY SECURITIES ON HANOI SECURITIES TRADING CENTRE

On 20 November 2008, the Ministry of Finance issued Decision No. 108/2008/QĐ-BTC issuing the Regulations on Organization and Management of trading unlisted public company securities on Hanoi Securities Trading Centre. The intervention and control of the Ministry of Finance and the State Securities Commission (SSC)

Governing scope

This Decision is applicable to trading of unlisted public company securities comprising shares and convertible bonds on the Hanoi Securities Trading Centre (HASTC) and public company securities de-listed on the Ho Chi Minh City Stock Exchange (HOSE).

Conditions and Procedures for Registration of Trading

Securities may be registered for trading on HASTC when they satisfy all the following conditions: (i) they are securities of a public company and are unlisted on HASTC or have been delisted on HOSE; (ii) they are securities which have been registered for depository at a Securities Depository Centre (SDC); and (iii) they are securities for which one member undertakes to provide assistance.

Any company which already registered with SSC as a public company prior to the date on which these Regulations take effect, must conduct necessary procedures to register depository of its securities with SDC within six (6) months after the date on which these Regulations take effect.

Any company which registers with SSC as a public company after the date on which these Regulations take effect, must register depository of its securities with SDC within six (6) months after the date on which it registered with the SSC as a public company.

Trading Times

HASTC shall hold trading on its registered trading system from Monday to Friday inclusive each week, except on days which are holidays as defined in the Labour Code.

Trading Methods

HASTC shall apply the trading method of reaching agreement on a transaction of securities traded on the registered trading system, which trading method shall take two forms: (i) electronic agreement; and (ii) conventional agreement. HASTC may, in necessary cases, make a decision to change or supplement the trading methods applicable to each class of securities after receipt of approval from SSC.

Trading of Securities by Investors

Each investor shall be permitted to open only one securities trading account with only one securities company. If an investor who has already opened a listed securities trading account, he/she may immediately use such account to trade [unlisted] securities which have been registered for trading.

An investor shall not be permitted to purchase and then sell the same class of shares on the same trading day.

If an investor opens a securities depository account and a monetary account with a depository member being a commercial bank which SSC has licensed for depository activities, then the investor must place securities trading orders via a member of the registered trading system and must make payment for transactions via the depository member with whom the investor has its securities account.

Amendment or Rescission of Orders during Trading Hours

Investors may be permitted to amend or rescind orders offering to purchase or sell by the electronic agreement method. Trading representatives shall implement the amendment or rescission of electronic agreement orders of clients in accordance with the rules of HASTC on amending or rescinding agreed transaction orders.

An agreed transaction already implemented in the system shall not be permitted to be rescinded.

If during trading hours, a trading representative incorrectly places [into the system] an agreed transaction for an investor, the trading representative shall be permitted to amend the agreed transaction but must present the original order of the investor, and both the other party to the transaction and HASTC must agree to the amendment. Amendment of agreed transactions by members must comply with the rules issued by HASTC on amendment of agreed transactions.

In addition, the Decision also provides suspension of trading activities, suspension of trading securities registered for trading, confirmation and rescission of transactions, deposits for transactions, and rectification of mistakes after transactions, payment of compensation for loss arising from transaction mistakes, disclosure of information of the parties relating to the transaction.

This Decision shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette.

GUIDELINES ON TOBACCO MANUFACTURING AND BUSINESS

On 25 November 2008, the Ministry of Industry and Trade issued Circular No. 14/2008/TT-BCT providing guidelines on Decree No. 119/2007/ND-CP of the Government dated 18 July 2007 on tobacco manufacturing and business.

This Circular provides guidelines in details on: conditions for trading and processing tobacco raw materials; conditions for manufacturing tobacco products; conditions for importing specialized tobacco industry machinery and equipment, tobacco raw materials and cigarette paper; management of investment in and use of specialized tobacco industry machinery and equipment, and permissible tobacco products manufacturing capacity and manufacturing output; conditions for trading tobacco products; authority, procedures and order for issuance of all types of Certificates of satisfaction of business conditions, and tobacco products manufacturing and trading licenses.

Applicable entities

This Circular applies to both domestic and foreign organizations and individuals participating in activities being tobacco products' manufacturing, trading and other related activities within the territory of Vietnam.

This Circular does not apply to import of tobacco products and business in such products at duty free shops.

Foreign investment in manufacture of tobacco products

Foreign companies are only permitted to invest in the manufacture of tobacco products provided however that these foreign companies shall only enter into a joint venture company or enter into a business co-operation contract with a local company which has already obtained a license to manufacture tobacco products; investment must not exceed the manufacturing capacity stipulated in the license, and must ensure to be in compliance with conditions on the State holding the controlling ratio of the charter capital of the enterprise.

Foreign investment for manufacture of tobacco products shall be in the form of a joint venture company or of a processing contract, manufacturing co-operation, or receipt of assignment of industrial property ownership.

In the case of intensive investment, an enterprise must report to the Ministry of Industry and Trade on the results of dealing with specialized machinery and equipment which is no longer used or which has been liquidated, and the enterprise shall be fully liable for how it deals with or liquidates such machinery and equipment.

Manufacturing output of tobacco products

An enterprise must not manufacture tobacco products in excess of the manufacturing capacity stipulated in its license for manufacturing tobacco products

Any enterprise manufacturing tobacco products bearing foreign marks must not manufacture in excess of the licensed or permitted output. In the case of any foreign mark for which the permissible manufacturing volume has not yet been fixed, an enterprise must forward a complete file to the Ministry of Industry and Trade for its consideration and for the Ministry to fix the scale and manufacturing output.

This Circular shall be of full force and effect 15 days after the date of its publication in the Official Gazette. The following Circulars are hereby repealed: Circular No. 30/1999/TT-BTM of the Ministry of Trade dated 09 September 1999 providing guidelines on trading domestically produced cigarettes; and Circular No. 01/2007/TT-BCT of the Ministry of Industry and Trade dated 29 August 2007 implementing Decree No. 119/2007/ND-CP dated 18 July 2007 on tobacco manufacturing and business.

FEES FOR REGISTRATION OF FRANCHISING ACTIVITIES

On 17 November, 2008, the Ministry of Finance issued Decision No. 106/2008/QĐ-BTC on the amount of fees, collection, management and use fee for registration of franchising activities.

Fee-payers

Fee-payers shall be Vietnamese and foreign traders/business entities/individuals to whom the competent authorities (the Ministry of Industry and Trade and its subsidiary entities) issue notices of satisfaction of conditions for conducting franchising activities in accordance with law.

Amount of fee

For a foreign business entity granting a franchise in Vietnam: (i) issuance of a new notice: VND 16,500,000/Notice; (ii) amendment of or addition to a notice: VND 6,000,000/Notice; and (iii) re-issuance of a notice: VND 500,000/notice.

Amount of fee for a Vietnamese trader/business entity granting a franchise overseas equals amount of fee for a business entity granting a franchise within Vietnam: (i) issuance of a new notice: VND 4,000,000/Notice; (ii) amendment of and addition to or re-issuance of a notice: VND 500,000/notice.

Management and use of the fee

Pursuant to the Decision, the authority collecting the fees shall retain all (100%) of such fees collected from foreign trader/business entity granting a franchise in Vietnam and for a Vietnamese trader/business entity granting a franchise overseas in order to cover the costs of issuing notices and collection of fees in accordance with the stipulated regime.

The authority collecting the fees shall pay all (100%) of such fees collected from a trader/business entity granting a franchise within Vietnam into the State Budget in accordance with the current regime.

This Decision shall be of full force and effect 15 days after the date of its publication in the Official Gazette.

REDUCTION OF CORPORATE INCOME TAX FOR ORGANIZATIONS LISTING SECURITIES FOR THE FIRST TIME

On 13 November 2008, the Government Office issued Notice No. 318/TB-VPCP of conclusion of the Prime Minister of the Government on reduction of corporate income tax for organizations listing securities for the first time.

Reduction of corporate income tax for organizations listing securities for the first time

After hearing the report from (i) the Ministry of Finance, (ii) the Government Office, (iii) the Ministry of Justice and the opinions of the Deputy Prime Ministers at the meeting in the Government Office on 02 November 2008, Prime Minister Nguyen Tan Dung has agreed with the measures submitted by the Ministry of Finance to reduce by 50% corporate income tax for organizations listing securities for the first time for a period of 2 years, as from the time of initial listing of securities on the securities market in the period of 2004 - 2006.

November 2008

CONSTRUCTION

PAYMENT BY EXPORT PROCESSING ENTERPRISES IN FOREIGN CURRENCY

On 07 November 2008, the State Bank of Vietnam issued Official Letter No. 9895/NHNN-QLNH on payment by export processing enterprises in foreign currency.

Payment by export processing enterprises in foreign currency

Payment for purchase and sale of goods and services or other related commercial activities between any export processing enterprise and another enterprise operating within an export processing zone, and as between an export processing enterprise and an enterprise outside the zone, may be made by either (i) a freely convertible foreign currency or (ii) in Vietnamese Dong via accounts opened at credit institutions.

The provision of this Official Letter shall apply until the State Bank of Vietnam issues a Circular providing guideline on the related issues.

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