



# vietnam legal update

April 2011 edition

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Should readers wish further information in relation to any legal instrument or matter mentioned in this issue, they are encouraged to contact one of our Vietnam offices (details at the end of this issue).

In brief: Our April edition highlights a flurry of activity from Vietnam's central bank covering Vietnamese dong and foreign currency deposits as well as foreign currency loans. We look in detail at the new Land Use Rights Certificates, the latest on private placements and some potential changes ahead for Vietnam's telecoms industry. Our case commentary considers the validity of a unilateral letter of guarantee and we report on recent receptions held in Hanoi and HCMC to announce our co-operative alliance with Japanese law firm, NO&T.

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## The nitty-gritty of the new Land Use Rights Certificates

Decree 88-2009-ND-CP of the Government on issuance of the Certificate of Land Use Right, House Ownership and Other Assets attached to Land, dated 19 October 2009 (**Decree 88**)

Circular 17-2009-TT-BTNMT of the Ministry of Natural Resources and Environment providing guidelines on the Certificate of Land Use Right, House Ownership and Other Assets attached to Land, dated 21 October 2009 (**Circular 17**)

Circular 20-2010-TT-BTNMT of the Ministry of Natural Resources and Environment providing supplemental guidelines on Certificates of Land Use Right, House Ownership and Other Assets attached to Land, dated 22 October 2010 (**Circular 20**)

In a system overrun with 'red books', 'pink books' and master plans relating to land title, the concept of a single certificate evidencing land rights and ownership of assets had long been proposed. Unfortunately, despite the introduction of a single title certificate in 2009, the reality has not yet met expectations. Various title certificates, each with different ways of recording changes, are still seen across the country. Authorities even continue to use the common term 'title certificates issued through various periods of time' to try and capture the variety of possible title documents.

### The legal landscape

As explained in our July 2009 VLU, a new 'Certificate of Land Use Right, House Ownership and Other Assets attached to Land' (**Title Certificate**) was brought into being by Law 38-2009/QH12 amending a number of article of the laws on land, housing, construction dated 19 June 2009 (**Law 38**). The Title Certificate is now the only certificate to be issued to a property 'owner' who has land use rights or ownership rights over assets on the land.

In this article, we take a look at the more detailed regulations and guidelines issued in relation to Title Certificates.

### Skeleton of a Title Certificate

A standard form Title Certificate has been designed and distributed by the Ministry of Natural Resources and Environment (**MONRE**). It is an A3 document, printed on both sides and divided into four A4 pages. The Title Certificate has four sections across the four pages:

- issuance number of the certificate and details of the owner;
- details of land and assets attached to the land (including purpose and duration of use), issuing date and body and book entry number;
- outline of the land and assets attached to the land; and

- a record of any changes following the Certificate's issuance and bar codes.

Circular 17 stipulates that various changes may be recorded in the fourth section of the Title Certificate including new transactions, changes in land area, floor area, land use purpose, land use duration, land parcel number and land map number, and notation on land use fees owing to the State. Obviously, over time, the number of changes recorded could make it impracticable to include them all on one page. Fortunately Circular 20 has remedied this by allowing a new owner to apply for either a new Title Certificate or an amended Title Certificate with supplemental pages to expand this section to evidence a mortgage of the land use rights or assets attached to land or a lease or sublease of land by a developer of an industrial zone, hi-tech zone or economic zone. The Circular sets out strict requirements (such as inclusion of the key Title Certificate details, page numbers and red seal of the relevant authority) to clearly show that any supplemental pages remain an integral part of the Title Certificate.

Unfortunately, however, the specific regulations on recording changes in the fourth section of the Title Certificate remain unclear. Given this, it may often be cleaner for a new owner to simply apply for a new Title Certificate if possible.

## Authority to issue or amend a Title Certificate

Under Law 38:

- the people's committee at the provincial level has the authority to issue Title Certificates to organisations, religious establishments and foreign individuals, and this authority may be delegated to the director of the provincial Department of Natural Resources and Environment (**DONRE**); and
- the people's committee at the district level may issue Title Certificates to Vietnamese individuals, family households and 'Overseas Vietnamese'.

In a break from the past, the provincial construction departments and the industrial zone authorities are no longer authorised to issue Title Certificates.

Although they do not have authority to issue certificates, the registration offices of land use rights under the provincial DONRE or the district peoples committee will act as a central point for the receipt of application documents. In addition, under Circular 17 and Circular 20, the registration offices of land use rights have the authority to record changes in the fourth section of a Title Certificate and use its seal to certify the changes.

Where a new owner applies for a new Title Certificate, the new Certificate will be issued by the provincial people's committee (or its authorised DONRE) or the district people's committee, rather than the registration offices.

## The latest on private placements

Official Letter 350/UBCK-QLPH of the State Securities Commission guiding private share placements, dated 27 January 2011 (**SSC Letter**)

Official Letter 608/BKHDT-PC of the Ministry of Planning and Investment, dated 28 January 2011 (**MPI Letter**)

Over a year has passed since Decree 01/2010/ND-CP of the Government on private placements dated 4 January 2010 (**Decree 01**) was issued. Since then, amendments to the Law on Securities (reported on in our January 2011 edition) have dealt with private placements but Decree 01 will continue to apply to the extent that it is not inconsistent with the National Assembly amendments. However, despite this the Ministry of Finance - the authority assigned by Decree 01 to provide guidelines for implementation - has not yet issued any implementing circular.

Recently, however, both the Ministry of Planning and Investment (**MPI**) and the State Securities Commission (**SSC**) have issued Official Letters concerning private placements, and in particular the application of Decree 01 to an offer (or placement) by a non-public company of shares to its existing shareholders.

### SSC's view

In the SSC Letter, addressed to the HCMC Department of Planning & Investment, the SSC expresses the view that issuing shares to all (but less than 100) existing shareholders in a non-public company is currently subject to the regulations set out in Decree 01. However, it goes on to note that the amendments to the Law on Securities, which will come into effect from 1 July 2011, stipulate that 'private placements of securities of non-public companies shall be conducted in accordance with the Law on Enterprises and other relevant laws'. Accordingly, it provides guidance that, from 1 July 2011, the issue of shares by a non-public company to existing shareholders must follow the guidelines from the relevant provincial department of planning and investment. Without specifically saying that Decree 01 will no longer apply to these circumstances, on and from 1 July 2011, this is certainly the implication of the letter.

### MPI's view

Just a day later (and possibly without the benefit of having seen the SSC Letter), the MPI issued its own letter opining on the application of Decree 01 to the issue of shares by a non-public company to its existing shareholders. In the MPI's view Decree 01 does not apply to such an issue, even prior to 1 July 2011. This interpretation is based on the view that an 'issue of shares to the public' is to be considered separately from an issue of shares to existing shareholders, as these are dealt with in separate articles of the Law on Enterprises, and that Decree 01

does not apply to the latter type of issuance.

While this view is attractive from an enterprise's point of view, in that it minimises the administrative requirements for a placement to existing shareholders, this interpretation is questionable because it does not address the fact that Decree 01, in defining 'private placement', refers only to it being an issue offer of shares or of the right to directly subscribe for shares (without using the mass media) to either institutional investors or less than one hundred non institutional investors . In particular the Decree's definition makes no distinction for, or exclusion of, issuances to existing shareholders and makes no specific reference to particular articles of the Law on Enterprises.

### Where does this leave us?

Relying on two completely different bases, the authorities seem to agree that from 1 July 2011 Decree 01 will not apply to the issue of shares to existing shareholders in a non-public company. Unfortunately, prior to that date, enterprises applying to the relevant authorities for such a placement are likely to face continued confusion regarding the requisite and appropriate processes. In practice, enterprises will likely hope that the authorities apply the view expressed by the MPI.

## And the rates came tumbling down ...

Circular No. 02/2011/TT-NHNN of the State Bank of Vietnam on interest rates applicable to VND deposits, dated 3 March 2011 (*Circular 02*)

Circular No. 04/2011/TT-NHNN of the State Bank of Vietnam on interest rates applicable to early withdrawal of deposits, dated 10 March 2011(*Circular 04*)

Circular No. 09/2011/TT-NHNN of the State Bank of Vietnam on interest rates applicable to USD deposits, dated 9 April 2011 (*Circular 09*)

In a recent spate of activity, prompted particularly by Resolution 11-NQ-CP of the Government dated 24 February 2011 on principal solutions for controlling inflation, and ensuring micro-economic stability and the welfare of society, the State Bank of Vietnam (**SBV**) has issued a series of Circulars concerning interest rates for various types of deposits.

### VND interest rates – the cap is back

As noted in various VLUs, in recent years many changes have been made concerning the permitted rate of interest for Vietnamese Dong (**VND**) loans and deposits. To briefly recap:

- before May 2008, interest rates for VND loans and deposits were determined on the basis of market supply and demand;
- in May 2008, the SBV issued Decision 16-2008-QD-NHNN (*Decision 16*) which capped interest rates at 150% of the basic interest rate published

by the SBV from time to time. The basic interest rate for VND varied regularly going from as low as 8% in April 2010 up to a maximum of 14% per year in June 2008. The current basic interest rate is 9%; and

- in April 2010 Circular 12/2010/TT-NHNN removed the cap at 150% of the basic interest rate and once again allowed credit institutes and borrowers to agree on interest rates for loans provided by the credit institutes to such borrowers.

Following the removal of the caps (and often even when they were in place) many banks were offering depositors extremely high interest rates, correspondingly bringing interest rates on loans as high as 21% to 23% per year. This resulted in significant pressure on the capital costs for enterprises borrowing from banks.

In an attempt to once again control interest rate competition between banks, and to effectively use interest rates and other monetary tools to curb inflation, stabilise the economy and ensure social stability, the SBV issued Circular 02. Circular 02 reintroduces a cap on interest rates for VND deposits - at 14% per year (or 14.5 % for people's credit funds).



In a flurry of recent Circulars, the State Bank of Vietnam has imposed several new rules and caps on interest rates which can be offered by Vietnamese banks.

### Interest for early withdrawal – capped by law but little change in practice

Hot on the heels of Circular 02, the SBV issued Circular 04 which for the first time placed a cap on the interest rate payable to a customer seeking early withdrawal of a fixed-term deposit prior to maturity. From 10 March 2011, the interest rate payable for an early withdrawal must be no higher than the bank's on-demand interest rate as at the date of the early withdrawal.

This measure appears to have been intended to curtail the practice of depositors making early withdrawals in order to chase higher interest rates at other banks, given the volatile interest rate market.

Prior to Circular 04, interest rates applied to on-demand deposits were normally between 3% and 5% per year. However, as the banks could determine their own

rates for pre-maturity withdrawals, normally the applicable rate for an early withdrawal was only slightly lower than the interest rates applicable to the relevant fixed-term deposit. After the issuance of Circular 04, which took effect immediately, many banks have sought to maintain the 'status quo' by simply increasing their on-demand interest rates, so they can continue to offer rates to early-withdrawals which are close to the term-deposit rate. Presumably this is because the banks still want to attract term deposits, even with the risk of early withdrawal. Going forward, in order to suit their capital needs, the banks will need to manipulate the early-withdrawal rate by changing the on-demand rate.

One interesting effect of Circular 04 is that it is no longer possible for credit organisations and depositors to agree upfront on an interest rate which will apply to early withdrawal as they have no way of knowing what the reference rate (the on-demand interest rate as at the time of the withdrawal) will be.

## USD interest rates – on the way down

The final interest rate in the SBV's sights was that applying to USD deposit interest rates.

The existing 1% cap on interest rates for organisations' USD deposits, as established by Circular 03/2010 of SBV dated 10 February 2010, has been retained in Circular 09. In addition, however, the interest rates for individuals' USD deposits, which was previously unregulated, is now also capped, at 3%. In order to avoid banks trying to 'get around' the cap, Circular 09 specifically provides that the cap must include all kinds of promotions and includes any interest payable by instalments which must be calculated so that in total it does not exceed the permitted maximum rate.

The reduction in USD deposit interest was designed to discourage people and organisations from keeping USD, resulting in more free-flow of USD in the market. Given the resulting significant difference between the USD interest rates and VND interest rates, it was also intended to encourage people to transfer their savings from USD to VND in an attempt to reduce the 'dollarisation' in the Vietnamese economy. The success of these endeavours, given general concerns about continued depreciation of VND, remains to be seen particularly given recent newspaper reports that suggest that the new arrangements, and even proposed further caps, are likely to have little impact on the preference for USD.

## New rules for state-ownership levels

Decision 14-2011-QD-TTg of the Prime Minister on criteria for classification of state owned enterprises and the list of state owned enterprises, dated 4 March 2011 (**Decision 14**)

In March, the Prime Minister issued Decision 14 setting out the latest criteria for classification of State owned enterprises (**SOEs**). The decision took effect on 20 April 2011 and replaced Decision 38-2007-QD-TTg of the Prime Minister dated 20 March 2007 (**Decision 38**).

In the same format as its predecessor, Decision 14 contains two lists – one list of the sectors in which SOEs must be wholly owned by the State (**List 1**) and the other, a list of sectors in which more than 50% of the total shares must be owned by the State (**List 2**). By implication, for any enterprise involved in a business line not included in either List, but in which the State has commenced an equitisation program, the level of state ownership may be lowered to 50% or below.

By and large, the Lists remain similar to those in Decision 38.

### Where 100% SOE control required

In terms of those sectors where SOEs must retain complete control, the list has been broadened to include and qualify:

- manufacture and repair of cipher (secret code) products and specialised equipment used for ciphers;
- large scale multi-objective electricity distribution associated with national defence and security;
- management and operation of infrastructure systems for national and urban railways, airports and Level 1 seaports, including specific reference to 'important seaports on a large scale and servicing socio-economic development of the country or allied areas'; and
- member enterprises with a key role in production and business, developmental strategies, holding business secrets or technology which is necessary for State Groups or Corporations to hold 100% of in order to implement the main duties and business lines assigned.

### Where more than 50% control will do

List 2, setting out the sectors in which the State must control more than 50% has suffered one deletion – the production of beer above 100 million litres per year. The thresholds for certain electricity and iron and steel businesses requiring more than 50% control have also been raised.

At the same time, however, enterprises participating in the manufacture and supply of public utility products and services for environmental hygiene have been added to the list, and the existing reference to enterprises with a role in assuring major economic balancing and stable market operations in the currency trading sector has been broadened to cover those assuring economic balance and stable markets across the entire finance, credit and insurance industries.

## Big changes ahead for Vietnam's telecoms industry

Decree 25-2011-ND-CP of the Government Providing Detailed Regulations and Guidelines for Implementation of the Law on Telecommunications dated 6 April 2011  
(*Decree 25*)

Vietnam's Law on Telecommunications, issued on 23 November 2009, came into effect on 1 July 2010. Following over a year in the drafting stages, on 6 April 2011 the Government issued Decree 25 providing implementing regulations for many of the key aspects of the new Telecommunications Law. Decree 25 will take effect from 1 June 2011. In this article we look at some of the key regulations recently introduced and how they may affect the telecommunications landscape in Vietnam.

### Scope of application

Decree 25 regulates each of the following activities:

- investment and business in telecom goods and services;
- establishment of telecom networks and provision of telecom services;
- provision of public telecom services and conduct of public telecom tasks;
- management of the issue of telecoms licences, of telecom interconnection, tariffs, fees and charges, resources, standards and technical specifications and quality of telecom networks and services; and
- master planning, design and construction of telecom infrastructure.

Decree 25 applies equally to both Vietnamese and foreign organisations and individuals investing in this sector.



**New ownership limits threaten major changes in Vietnam's tightly held telecommunications industry**

### New ownership limits

Decree 25 stipulates that any organisation or individual already owning more than

20% of the charter capital or shareholding of a telecom enterprise may not hold more than 20% of the charter capital or shareholding in another telecom enterprise which conducts business in the same 'telecom services market'. These markets are set out in a list prescribed by the Minister of Information and Telecommunication (**MOIC**).

Importantly, as has been picked up extensively in the Vietnamese media, these new ownership limits will directly affect Vietnam Post and Telecommunication Group (**VNPT**), which currently owns the entire capital of two of Vietnam's mobile phone giants: VinaPhone and MobiFone. In accordance with the new rules, VNPT looks like it will be forced to sell one of the two networks, possibly by way of the long-promised equitisation of MobiFone or alternatively merge the two into one.

The new decree also requires any organisation or individual owning more than 20% of a company included on the MOIC's list to inform the MOIC when there is any change in ownership above the 20% threshold.

## Foreign investment

Decree 25 also makes specific provision for foreign investment in the telecoms sector. The relevant restrictions and conditions on such investment depend on the type of investment and the nature of services conducted by the invested entity.

Where a foreign investor invests directly in an entity which provides telecom services without network infrastructure, the investment may be either in the form of a joint venture or business co-operation contract with a Vietnamese partner. Where a foreign investor wishes to invest in the provision of telecom services with network infrastructure, again either a joint venture business co-operation contract must be established, and in addition the partner must be a telecom enterprise already licensed to establish a telecom network in Vietnam.

Any foreign investment project in the telecom services business must, in addition to satisfying the conditions stipulated by the law on investment, also be consistent with

- the master plan on the development of national telecommunications;
- the master plan on telecom resources; and
- the master plan on passive telecom technical infrastructure in the geographical area of the investment,

as well as satisfying the specified requirements for legal capital and the level of investment commitment discussed further below.

Interestingly Decree 25 makes no reference to a specific cap on foreign investment in the telco sector. Earlier drafts of the decree had made reference to a 30% limit, which was widely criticised given the limit expressed in Vietnam's WTO Commitments is 49%. In the absence of any specific mention in Decree 25, existing instruments expressing limits, such as those in the Commitments, will

continue to apply.

## Requisite legal capital and level of investment commitment

As set out in Decree 25, the requisite minimum legal capital and level of investment differ depending on the type of telecom business.

Type of telecom business and coverage		Minimum legal capital (VND)	Minimum level of committed capital (VND)
Landline fixed telecom without using a radio frequency band	network in 1 province or city under central authority	5 billion	15 billion in the first 3 years
	network in 2 to 30 provinces or cities under central authority	30 billion	100 billion in the first 3 years
	a nationwide network in more than 30 provinces or cities under central authority	100 billion	300 billion in the first 3 years
Landline fixed telecom network using a radio frequency band and telecom subscriber numbers	a regional network between 15 and 30 provinces or cities under central authority	100 billion	300 billion in the first 3 years
	a nationwide network in over 30 provinces or cities under central authority	300 billion	1000 billion in the first 3 years and 3000 billion within the first 15 years
Landline mobile telecom network	using a radio frequency channel	20 billion	60 billion in the first 3 years
	without using a radio frequency band (a virtual mobile telecom network)	300 billion	1000 billion in the first 3 years and at least 3000 billion in the first 15 years
	using a radio frequency band	500 billion	2500 billion in the first 3 years and 7500 billion in the first 15 years
Satellite fixed telecom network or a satellite mobile telecom network		30 billion	100 billion in the first 3 years

In addition, Decree 25 stipulates that certain fees must be placed in an escrow account with MOIC to ensure implementation of telecom licences. The fee must be equivalent to 5% of the level of committed investment in the first 3 years and must not be less than 3 billion VND.

## Case commentary: will a unilateral letter of guarantee be binding?

Judgment No. 09/2006/KDTM-PTz

This was a complex case involving the bankruptcy of Danang Agricultural Product and Processed Food Export-Import Company (**DAPC**).

In this commentary we focus on one aspect of the litigation concerning the legal effect of a letter of guarantee from Vietnam National Vegetable, Fruit and Agricultural Product Corporation (**Vegetexco**).

### The Facts

In 2000, the Bank of Investment and Development of Vietnam (**BIDV**) entered into an agreement to lend DAPC over USD1.4 million. DAPC mortgaged a production line worth over USD 2.7 million as security for the loan.

Separately, a few months before the loan was made, Vegetexco had issued an Official Letter stating that it would guarantee DAPC.

In late 2005, DAPC failed to repay a major portion of the loan when due to BIDV. BIDV brought an action against DAPC to recover this amount. Having failed to recover the entire amount from the sale of the mortgaged property, BIDV then claimed against Vegetexco as guarantor for DAPC's debt.

Vegetexco sought to resist the claim on the basis that the debt had been secured by DAPC's own property. In addition, Vegetexco argued that the Official Letter was no more than a non-binding political statement and did not form a contract with either DAPC or BIDV.

### The Decision

Both the Da Nang trial court and the appeal court found in favour of BIDV, ordering that Vegetexco fulfil its obligation as guarantor by paying the remainder of DAPC's debt. Both courts held that Vegetexco's unilateral letter amounted to a legally binding guarantee of DAPC's debt, notwithstanding that:

- it was not stated to be a contract;
- it was not signed by the bank or DAPC; and
- the debt had already been secured by other property.

### Commentary

This case is significant given its affirmation that a contract of guarantee can be in the form of a unilateral letter and need not be a bilaterally executed document. The decisions also confirm that a loan may be secured by more than one form of security as the fact that the loan was already secured by a mortgage did not

necessarily exclude the presence of a guarantee for it. Finally, it is noteworthy that the courts did not consider it an impediment to the validity of the guarantee that the letter was issued prior to the conclusion of the loan contract and the creation of the liability on behalf of DAPC.

## New limits on lending in foreign currencies

Circular 07-2011-TT-NHNN of the State Bank of Vietnam regulating lending in foreign currency by credit institutions to borrowers being residents, dated 24 March 2011 (*Circular 07*)

In addition to the Circulars on interest rates, pursuant to the Government's Resolution 11-NQ-CP, the SBV also issued Circular 07 governing foreign-currency loans from credit institutions and foreign bank branches to Vietnamese resident borrowers. The new Circular repeals Decision 09-2008-QD-NHNN dated 10 April 2008 (as previously amended) (*Decision 09*) and will come into force on 9 May 2011.

Circular 07 has both reduced and tightened the circumstances in which a credit institution or foreign bank branch may lend foreign currency to a Vietnamese-resident borrower.

### Foreign currency loans no longer permitted for early repayment of loans or direct offshore investment

Previously, under Decision 09, there were 5 general circumstances where such a loan was permitted. Two of those circumstances no longer appear in Circular 07:

- loans borrowed in order to make early repayment of certain foreign debts; and
- loans borrowed to make permitted direct offshore investments,

The 'catch-all' provision, stating that any foreign currency loan may be made with the written permission of the SBV Governor remains, however it seems unlikely that it would be used to cover circumstances specifically omitted in Circular 07.

### Tighter controls on permitted foreign currency loans

The two remaining substantive circumstances in which a foreign currency loan will be permitted have also been narrowed significantly by the introduction of qualifying conditions. While loans will still be possible where a borrower will:

- make payment to overseas parties for the import of goods and services; or
- implement production plans and business in exporting goods through Vietnamese ports,

new requirements concerning the sufficiency of foreign currency to repay the loans have been added in Circular 07.

Specifically, in the case of loans for imports, borrowers must have sufficient foreign currency to repay the loan either from production or business revenue or which is purchased from a credit institution (whether the lender or another) pursuant to a written agreement. In the case of export, loans are limited to short-term loans and may be provided only where the borrower has 'sufficient foreign currency to repay the loan from export revenue'. These new requirements for 'sufficient' foreign currency raise significant issues for lenders.

### Determining the sufficiency of a borrower's future foreign currency holdings from revenue

In both import and export cases, the new regulations require that the borrower have sufficient foreign currency to repay loans. In the case of an import business, this may be either foreign currency obtained through production or business revenue or purchased from a credit institution pursuant to a written agreement. For exports, Circular 07 refers only to the foreign currency being available from 'export revenue'.



Attempts to reduce the 'dollarisation' of Vietnam's economy and improve the flow of foreign currency in Vietnam have been enacted through caps on foreign currency deposits and tighter limits on foreign currency loans

Depending on the proposed source of the repayment funds, several concerns arise for lenders.

Where a borrower wishes to rely on foreign currency from their projected production or business revenue or export revenue, a question arises as to what would happen if, when it comes time for repayment, there is insufficient revenue. Arguably, the very fact of the insufficiency of funds would mean that the loan was not permitted in the first place, as the borrower did not fulfil the requirement to have sufficient funds to repay. The effect on the loan may be that it would be considered invalid from the outset raising difficult questions as to the lender's status (potentially as an unsecured creditor), particularly in any debt collection or insolvency proceedings. Obviously this would be a significant concern for the lender, however beyond examining the borrower's business plan to assess the likelihood of repayment (an assessment that would be impossible to do with 100% accuracy) there is no clear way that a lender can be assured that any loan will in

fact meet the 'sufficiency' requirement.

## Borrowers purchasing foreign currency to repay loans

The alternative basis for providing a loan - that the borrower be able to purchase foreign currency to repay the loan - is equally problematic. Firstly, it is not clear whether for export loans, Circular 07 would include foreign currency sourced by purchase from a credit institution using Vietnamese-dong denominated export revenue. Secondly, even if this were permitted, it is unclear whether a written agreement to sell the currency would be required at the time of loan (as, it seems, is the case for import loans).

A further, overarching, issue concerns the ability of a borrower to purchase foreign currency for the purpose of repaying loans at all. Currently, Vietnam's currency laws on foreign currency control severely restrict the circumstances in which a Vietnamese resident may purchase foreign currency from a credit institution. These circumstances are generally limited to cross-border transactions, such as borrowing in order to pay foreign contractors or to study outside Vietnam. Borrowing in order to pay foreign currency loans made by a Vietnamese credit institution or foreign bank branch does not currently appear to be permitted, although the fact that this is explicitly contemplated by Circular 07 in relation to import businesses may indicate a willingness to permit such purchases in the future.

This issue appears to be contemplated in part in the Government Office's recent Notice 84-TB-VPCP, dated 13 April 2011, which provides, among other directions, that the SBV should 'in June 2011' issue a Circular guiding foreign exchange control applicable to foreign loans made by credit institutions and repayment of such loans. We will watch with keen interest to see how these rules are amended and whether they will make real the possibility of a credit institution lending foreign currency on the basis of a borrower's ability to repay by purchasing foreign currency down-the-track.

## Allens celebrates Co-operative Alliance with Nagashima Ohno & Tsunematsu

This month Allens hosted receptions in Ho Chi Minh City and Hanoi to announce the Co-operative Alliance between Allens and Nagashima Ohno & Tsunematsu (**NO&T**), which was established on 1 October 2010.

As explained in our press-release when the innovative Co-operative Alliance was established:

Two of the region's leading international law firms have entered into an innovative Co-operative Alliance focusing on meeting Japanese client needs in Australia and across Asia.

The Co-operative Alliance cleverly responds to the growing internationalisation of legal services in the region and provides a unique platform for delivery of these

services to clients.

'There is significant Japanese in-bound investment into Australia, Indonesia, Vietnam and other South-East Asia countries (not to mention into North Asia). Given Allens' extensive presence and experience in the region and NO&T's superb client base in Japan, we see significant advantages in working together to offer more to Japanese clients.' said Allens Chief Executive Partner Michael Rose.

Celebrations were held in Ho Chi Minh City

(L-R) Keigo Sawayama (Associate, NO&T), Shintao Takai (Partner, NO&T), Hisashi Hara (Chairman, NO&T), Michael Rose (Chief Executive Partner, Allens)



Allens' Hanoi Managing Partner, Bill Magennis, speaks to the crowd celebrating in Hanoi

## Legal instruments recently uploaded on to the Vietnam Laws online database

Vietnam Laws online database (available at [www.vietnamlaws.com](http://www.vietnamlaws.com)) is an online searchable database containing English translations of more than 3,500 Vietnamese laws. Legislation recently uploaded includes:

- Circular 242 guiding the Regulations on financial management of State companies and State capital invested in other enterprises, 30 December 2009

- Law 67 on Independent Auditing, 29 March 2011
- Decision 692 raising the State Bank's refinancing interest rate and reverse repo interest rate to 13%, 31 March 2011
- Decree 108 dated 27 November 2009 on BOT Contracts as amended by Decree 24, 5 April 2011
- Circular 09 lowering ceiling interest rates for raising USD deposits to 1% from organizations and 3% from individuals, 9 April 2011
- Decision 750 raising compulsory reserve ratios of banks on foreign currency deposits, 9 April 2011
- Notice 84 on further measures for foreign exchange control, 13 April 2011
- Decree 28 with the list of enterprises where strikes are not permitted, 14 April 2011

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