



Indochina notes

LEGAL UPDATES ON INVESTMENT, INFRASTRUCTURE AND FINANCE

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Investment

Personal income tax (PIT)

Taxes in Vietnam have been uncertain in scope and constantly changing. Sadly, they have just notched up another rung in their inexorable rise towards certainty. The latest chapter is Decree 100 of the Government (Decree 100) dated 8 September 2008 providing detailed guidance on a number of Articles in the Law on PIT (see *Indochina notes*, February 2008 for a discussion of the Law on PIT).

Expansion of tax residency

Decree 100 broadened the definition of a tax resident. Tax residents are subject to tax on their worldwide income. The definition now covers foreigners who rent a house for 90 days or more even though they may stay in Vietnam for less than 183 days. It would appear as if the hotel lobby was stronger than the real estate developer's lobby.

As before, foreigners who are not Vietnamese tax residents will be subject to PIT on their Vietnam source income, regardless of the location of the payment of such income.

Expansion of forms of taxable income

Four categories of income will now be subject to PIT, a good 200 per cent rise over current law.

Employment income

Income received from employers has always been taxable, though it would appear that a majority of employees

in the local economy are not necessarily aware of the fact. Decree 100 throws nearly all benefits into the pot for good measure. Benefits that generous employers sometimes pay to expatriate employees (eg school tuition fees, leave fares) are now subject to PIT. The one exception seems to encourage a new generation of Stakhanovs by making overtime exempt from PIT.

For the first time ever, deductions against income will be allowed. VND4m (approximately US\$250) for an individual per month will now be deductible. In addition, the princely sum of VND1.6m (approximately US\$100) per month will be deductible for each of the employee's dependants. This should help to maintain a young and dynamic population ever further into the distant future.

Also for the first time, contributions to charitable organisations will be deductible. A laudable goal, though we shall be most interested to see what unintended consequences result from this.

Income from the sale of securities

Again for the first time, income from the sale of securities by individuals will become taxable. Decree 100 provides a number of principles for determining the buying and selling prices of securities of listed companies, public companies and other entities. Certain costs related to the sale are deductible. The tax rate will be 20 per cent, applicable to income for the whole year, but this rate will be applied only when the income earner registers with the tax office in December of the previous year to apply this tax rate. Otherwise a tax rate of 0.1 per cent of the

total sales price on each occasion will apply, regardless of the profit (or, in this day and age, the absence thereof).

Income from the sale of real property

Income arising from the sale of land and buildings is now taxable. The standard tax rate is 25 per cent of the taxable income, but (i) a tax rate of 2 per cent of the sales price will apply in certain cases, and (ii) exemptions exist for transfers between close relatives and transfers of the taxpayer's principal residence. Deductions can be taken for the 'reasonable' costs and fees related to the sale.

Income from inheritance and gifts

Another complication that has just dropped into the equation is an inheritance tax. Assets that a person receives by virtue of inheritance or gift with a value of more than VND10m (approximately US\$625) are subject to PIT at the tax rate of 10 per cent. This may pose further problems in a culture of 'gift' giving, though it is likely to be many years before enforcement catches up with theory.

PIT administration

The administration of the tax collection system is at the same time undergoing an enormous change that is likely to bring it more into line with international norms, and which is likely to result in more employers paying salaries to their employees on a gross basis.

Individuals with taxable income will need to (i) obtain an individual tax code, (ii) declare their deductions together with supporting documents, (iii) pay tax on the dates due, and (iv) lodge a tax return directly with the tax authority at the end of the year.

Employers will have to withhold, declare and pay tax on employment income (based on an employee's declaration of his deductions) on a monthly basis. Payments to individuals without a labour contract are subject to a withholding tax of 10 per cent, increasing to 20 per cent for an individual without a tax code. The tax finalisation is also due at the end of the year.

Minimum wage

Vietnam's inflation rate, though now waning, has been higher than most in 2008. As befits a socialist country, the minimum wage for Vietnamese workers in domestic and foreign-invested enterprises (FIEs), foreign

organisations and international organisations will be increased from 1 January 2009 in accordance with Decrees 110 and 111 of the Government dated 10 October 2008 (Decrees 110 and 111).

Under the new minimum wage scheme, minimum wage levels will vary in accordance with the location of an enterprise. Decrees 110 and 111 divide Vietnam into four areas.

- Location 1: Hanoi's urban districts, Ho Chi Minh City's urban districts and Ha Dong City.
 - Minimum wage for FIEs: VND1,200,000 (up from VND1,000,000).
- Location 2: most of Hanoi's other districts, Ho Chi Minh City's rural districts, Hai Phong's urban districts, Da Nang, Can Tho districts, Ha Long City, Bien Hoa City, Long Khanh, Nhon Trach, Long Thanh, Vinh Cuu, Dong Nai's Trang Bom districts, Binh Duong's Thu Dau Mot, Thuan An, Di An, Ben Cat and Tan Uyen districts, Ba Ria-Vung Tau's Vung Tau and Tan Thanh districts).
 - Minimum wage for FIEs: VND1,080,000 (up from approximately VND900,000, though the locations of the new and old regime are different so accurate comparisons are not possible).
- Location 3: all cities under provincial management (excluding those mentioned in location 2), all other districts in Hanoi, Bac Ninh's Bac Ninh City, Tu Son town, Que Vo, Tien Du and Yen Phong districts, Bac Giang city, Viet Yen, Yen Dung districts of Bac Giang province; Hung Yen town, My Hao, Van Lam, and Yen My districts of Hung Yen province; Hai Duong city, Cam Giang, Nam Sach, Chi Long, Kim Thanh, Kinh Mon districts of Ha Duong province; Vinh Yen city, Phuc Yen town of Vinh Phuc province; the remaining districts of Hai Phong city; Mong Cai city, Uong Bi, Cam Pha in Quang Ninh province; Da Lat, Bao Loc; Nha Trang, Cam Ranh; Trang Bang district of Tay Ninh province; the remaining districts of Binh Duong and Dong Nai provinces; Tan An town, Duc Hoa, Ben Luc, Can Duoc districts of Long An province; the remaining districts of Can Tho city; Ba Ria town, Chau Duc, Long Dien, Dat Do, Xuyen Moc districts of Ba Ria – Vung Tau province).
 - Minimum wage for FIEs: VND950,000 (up from approximately VND800,000, though the locations

of the new and old regime are different so accurate comparisons are not possible).

- Location 4: the remainder of the country.
 - Minimum wage for FIEs: VND920,000 (up from approximately VND800,000, though the locations of the new and old regime are different so accurate comparisons are not possible).

Internet

Vietnam's internet boom continues. In a vain attempt to catch-up with internet developments, the Government issued Decree 97 on 28 August 2008 on management, provision and use of the internet and electronic information on the internet (Decree 97). This replaces Decree 55 dated 23 August 2001 (Decree 55). It makes progress in several areas.

- Every enterprise with a permit to operate in the telecommunication sector will now be allowed to provide access to network infrastructure to the public. This will no longer be limited to those enterprises with a state interest as before.
- Internet service providers (ISPs) and private internet networks (PINs) are now allowed to connect directly to the international network, whereas previously Decree 55 required ISPs and PINs to bridge their connections to the international network through internet exchange points (IXPs).
- An enterprise intending to operate a website to provide comprehensive news and information collected from other primary sources will need a licence issued by the Ministry of Information and Telecommunication (MIC). Businesses wishing to provide online social services – which seems to be intended to cover online social networks – will need to register with the MIC. So if businesses operate a website or provide online services, they should ascertain whether their websites/services fall into the above categories and, if they do, they should apply for the licence or register.

Tobacco advertising

The attack on tobacco is continuing. The display of more than one pack or more than one carton (10 packs) of the same tobacco label/trademark within a location selling tobacco is now a violation of the regulations on tobacco

advertising. See Circular 78 of the Ministry of Culture, Sports and Tourism dated 29 August 2008 on tobacco advertising prohibitions.

Real estate registration

Anyone who is interested in the effect of the 2005 Civil Code, the 2003 Land Law, the Housing Law, the Law on Forest Protection and the Law on Aquaculture on real estate registration may wish to study Report 97 dated 2 July 2008 of the Ministry of Justice (MOJ). While not exactly a riveting read, it does detail the uncertainty, redundancy and other problems with the current real estate registration system.

To achieve the objective, both immediate and long-term, of building a concentrated, modern, simple and convenient system of real estate registration, the report proposes a number of solutions including – yet again – issuing a Law on Real Estate Registration and establishing a nationwide real estate registry. But the report does not contain any timeframe for the implementation of these proposals.

Trade union fees

In the 1990s, FIEs with trade unions had to pay 1 per cent of salary costs to the union. This fee was abolished as part of a drive to make Vietnam a more attractive investment destination. The country is now evidently attractive enough – the fee has come back. Under Decision 133 of the Prime Minister dated 1 October 2008 (Decision 133), FIEs in Vietnam that have a trade union will now have to pay a union fee of 1 per cent of the total wages payable to their Vietnamese employees. This new Decision will create additional costs for FIEs operating in Vietnam but it seems that the fee can be used to pay for employee events that the company may anyway have funded, so the actual increase in costs is likely to vary from company to company depending on the generosity of their existing social policies.

Infrastructure

Electricity projects

The current implementation of electricity projects (whether owned by Electricity of Vietnam (EVN) or independent projects) lags behind the schedule

contemplated in Master Plan No. VI. The macro-economic situation has now resulted in EVN claiming insufficient capital to invest in 13 power projects that were assigned to it under the Master Plan.

The Government is a bit peeved by such behaviour (as is the populace), which has noted that EVN seems to have the capital to invest in frivolities such as telecoms companies and financial institutions. In Notice 235 of the Government Office dated 1 September 2008, the Prime Minister:

- instructed EVN to accelerate the development of currently delayed electricity projects;
- instructed EVN to reduce its monopoly position in electricity generation, distribution and trading;
- indicated that the price of electricity would have to be adjusted so as to result in a profit for the producer;
- confirmed that capital for electricity projects would come mainly from the State including EVN, PetroVietnam (PVN), Vinacomin, and other large state-owned corporations, and from other capital sources through competitive bidding;
- instructed the Ministry of Industry and Trade (MOIT) to submit a plan for separation of electricity generation from electricity transmission, distribution and trading such that electricity plants will be combined to form a single electricity generation business;
- decided that no more electricity companies will be equitised in the near future in order to make it easier to carry out the plan to form a competitive electricity market; and
- admitted defeat on Master Plan VI by requiring the MOIT to prepare Master Plan No. VII in early 2009.

After this Notice a meeting took place of the State Steering Committee on the Electricity Master Plan VI on 19 September 2008. The upshot was that Deputy Prime Minister Hoang Trung Hai issued Notice 262 of the Government Office instructing:

- the MOIT to: (i) propose new investors for the 13 power projects that EVN cannot develop and to report on the proposal to the Prime Minister in October 2008 (which the MOIT has since done: the list includes two foreign projects and two joint stock companies with foreign ownership); (ii) to organise the delayed bidding for the Nghi Son 2 Thermal Power Project; (iii) direct PVN in its negotiations of

gas contracts for Block B and to implement existing gas contracts for Block 5.2; and (iv) to report to the Prime Minister on a plan for the development of the coal industry;

- the State Bank of Vietnam (SBV) to arrange commercial banks to provide capital for nine EVN power projects, Huoi Quang, Ban Chat, the extended Uong Bi 2, Lai Chau, Vinh Tan 2, Duyen Hai 1, O Mon 3, O Mon 4 and the extended Uong Bi 1;
- EVN to: (i) finalise the site clearance for the Mong Duong power project by April 2009; (ii) complete procedures to start power projects in accordance with the current schedule including Nghi Son 1 (Q1 of 2009), Mong Duong 1 (Q3 2009), Vinh Tan 2 (Q3 2009) and Duyen Hai 1 (Q3 2009);
- PVN to: (i) provide a stable source of gas for power projects; and (ii) negotiate to develop gas blocks B, 48/95, 52/97 so that gas from these blocks can be exploited in 2011; and
- Vinacomin to: (i) speed up the preparation stage for Mao Khe, Na Duong 2 and the Cam Pha 3 Thermal Power Project; and (ii) prepare the site for Vinh Tan Thermal Power Project and prepare a port to import coal.

Electricity business licence

New processes for obtaining an electricity generation licence are likely to put even more burdens on project developers and further delay the development of many already long-delayed power projects in Vietnam. Before 1 August 2008, under Decision 32 of the MOIT dated 6 September 2006, the developer of a power generating project was not required to have an electricity licence before starting the construction of the project. The electricity licence could be obtained after the project was completed.

This has been amended by Decision 15 of the MOIT dated 1 July 2008 (Decision 15). A project owner will now have to obtain a separate electricity generating licence for each power project that it develops. The electricity licence will be granted in two stages: (i) for construction of each unit of the project; and (ii) for full commercial operation of the project.

Certified emission reductions

On 4 July 2008, the MOF and the Ministry of Natural Resources and Environment (MONRE) issued Circular

58 on the determination of the fees applicable to the sale of certified emission reductions (CER) by Vietnamese companies to foreign buyers (Circular 58). The fee will be the percentage applicable to a particular project multiplied by the number of CERs and further multiplied by the CER sales price (in Dong). The percentages are listed in the table below.

No	Type of project	Fee rate (per cent)
1	Energy efficiency, conservation and saving	1.2
2	Application of renewable energy sources	1.2
3	Forestation, reforestation and forest protection	1.2
4	Fuel conversion	1.5
5	Methane (CH ₄) recovery and utilisation from waste disposal sites and coal mining	1.5
6	Reduction of methane (CH ₄) emissions from cultivation and husbandry activities	1.5
7	Associated gas recovery and utilisation in oil production activities	2
8	Other domains that bring about greenhouse gas emissions reductions (which would include hydro projects)	2

Coal business

As power demand grows, so does demand on the local coal industry. Yet the industry has been exporting greater and greater quantities of coal, partly because it makes economic sense in the context of high-grade coal and partly because world prices have been higher than local, controlled prices. On 7 July 2008, the Prime Minister issued Decision 89 approving the development strategy for the Vietnamese coal business until 2015, with a vision to 2025 (Decision 89). A main theme is the focus on the domestic market and the reduction of exports.

Vietnam's domestic production will be diversified by creating favourable conditions for foreign investment in coal projects located in the Red River Delta and Quang Ninh. The refined coal production from these areas is expected to reach 50m tons in 2010, rising to 80m tons by 2025. Interestingly, given the relatively basic coal extraction processes that exist at home, Decision 89 provides for increased investment in overseas coal

ventures, especially in the territory of preferred partners such as Laos, Cambodia and a number of African countries.

To achieve its targets, Decision 89 identified a number of measures, including the acceleration of the equitisation of coal producing businesses to establish a coal market with diversified ownership. It also encouraged domestic coal enterprises to mobilise capital through the capital markets (including international bonds) and through commercial loans. A pity that the planners are probably not aware that both are currently essentially unobtainable.

Minerals for cement production

It may not come as a surprise to some that Vietnam has 351 limestone mines, 260 clay stone/shale mines and 152 additive mines that contain mineral resources for cement production throughout Vietnam. If it does, then the master plan for exploration, exploitation and usage of minerals for cement production in Vietnam to 2020, which was approved in Decision 105 of the Government dated 21 July 2008, contains all the gory details.

State management over mining activities

There are a number of state authorities responsible for mining activities (eg the MONRE, the MOIT, the Ministry of Construction (MOC) and provincial people's committees). In recognition of the need for improvement, the Prime Minister issued Directive 26 on 1 September 2008 (Directive 26). Put simply, there are many things to be done from now until the end of this year.

- Provincial people's committees should: (i) review mining licences and other decisions relating to mining activities that they have issued; (ii) withdraw licences and decisions relating to mining that were issued without authority; and (iii) complete the zoning for mining activities in local areas and issue plans for production, processing, use and exportation of minerals that are within the provincial people's committees' authority.
- The MONRE should: (i) review mining licences and decisions allocating mining areas and other mining registrations issued before the Law on Minerals and revoke or reissue such licences, decisions and registrations as were issued contrary to the law;

and (ii) review and appraise the effectiveness of the decentralisation of power to issue certain mining licences (no prizes for guessing the conclusion of such a review).

- The MOIT should: (i) strengthen supervision of enterprises exporting and consuming minerals; and (ii) prepare a master plan for exploration, exploitation, processing and use of various types of minerals.

Banking and capital markets

As the global financial crisis plumbed new depths, the approach of the State Bank of Vietnam (SBV) through the second and third quarters of 2008 remained cautious. In general, the liberalisations that have marked the past few years in Vietnam have not been seen in 2008. The year has instead been marked by efforts to reassert control over a domestic banking sector that is considered by some commentators to have grown too large.

Prime Minister's instructions

The Prime Minister set the tone in Notice 288 of 3 October 2008, which included the following.

- The SBV was asked to keep a watch on the commercial banks, to instruct them to check on their deposits abroad and to withdraw their deposits or pay back loans; it was also told to keep a particularly watchful eye on real estate and securities loans.
- The SBV and the Ministry of Finance (MOF) were instructed to put together a list of foreign investment banks in Vietnam so that their status back home can be checked regularly.
- The MOF was asked to direct the State Securities Commission to monitor the flows of foreign capital in and out of the country and to resolve procedural difficulties so that the securities markets can continue to develop.
- The MOIT was directed to instruct exporters to raise the quality and volume of production and to look into new markets such as Russia, the Middle East, Latin America and Africa, which may be less negatively affected by the financial crisis.
- The Ministry of Planning and Investment and the SBV were instructed to examine the status of both domestic and foreign-invested projects so that

any capital problems can be resolved (though how this feat will be performed across the board is left unstated).

- The National Finance Supervisory Committee was instructed to act as an independent information channel to the Government and to collect information from the ministries.

Interest rates

As reported in our last edition of *Indochina notes*, Decision 16 of the SBV dated 16 May 2008 (Decision 16) limited the interest rate that Vietnamese banks could charge on Vietnamese Dong loans to clients (as well as the interest rate that Vietnamese banks can offer to Vietnamese Dong depositors) to 150 per cent of the basic interest rate, which is published by the SBV on a monthly basis. On 19 August 2008, the SBV followed this up with Official Correspondence 7585 (OC7585), which clarified that the cap on interest rates imposed by Decision 16 also applies to Vietnamese Dong loans in the inter-bank market. Following the release of Decision 16, Vietnamese banks had tried to circumvent the cap by charging various loan-related fees, until the SBV moved to stop this practice.

Limitations on the establishment and ownership of commercial banks

The rush of applications during the past few years by foreign banks to set up branches or 100 per cent-owned subsidiaries in Vietnam was matched by domestic Vietnamese investors applying to set up new joint-stock banks. Concerned at the rapid expansion of this sector, the SBV has taken measures to limit growth.

On 4 July 2008, the SBV passed Decision 20 amending Decision 1122 on shareholders, shares, share certificates and charter capital of state and people's commercial shareholding banks (Decision 20). The effect of Decision 20 was to introduce stringent new criteria for a joint-stock commercial bank wishing to change its charter capital. While a change in charter capital had already been subject to SBV approval, the changes made by Decision 20 require a much more detailed application file, including the financial statements of non-credit institution shareholders who hold or are expected to hold more than 5 per cent of the charter capital of the bank (this requirement extends to foreign shareholders).

When assessing the application, the SBV is now required to check the financial capacity of shareholders purchasing additional shares in the bank against certain criteria (which differ for credit institutions and non-credit institutions).

Approximately one month later, on 8 August 2008, the SBV shattered the dreams of those domestic investors still hoping to cash in on the continuing – though slightly implausible – Vietnamese bank gold rush. Official Correspondence 7171 (OC7171) announced the temporary suspension (until further notice) of the consideration of applications for licensing of new joint-stock commercial banks. OC7171 does not appear to apply to 100 per cent foreign-owned banks and foreign bank branches.

The licensing of 100 per cent foreign-owned banks by the SBV is therefore proceeding. Three banks (HSBC, Standard Chartered and ANZ) have so far received a licence to set up a subsidiary. The implementation of these licences is now proving to be less than straightforward. Furthermore, on 19 August 2008 the SBV felt compelled to post a notice on its website denying rumours that the permitted level of shareholding by foreign investors in joint-stock commercial banks was about to be increased. The SBV reiterated that the ownership limits imposed by Decree 69 of the Government dated 20 April 2007 on the purchase by foreign investors of shares in Vietnamese commercial banks would remain for the foreseeable future.

Continuing the theme of dampening the growth of the banking sector, the SBV is working on draft legislation to replace Decision 49 of the Government on the organisation and operation of commercial banks. Unsurprisingly, public announcements by the SBV regarding this draft have indicated that the proposed legislation will increase corporate governance requirements for commercial banks and hike charter capital requirements.

This is consistent with the Government's Resolution 20 dated 29 August 2008 on measures to contain inflation, stabilise the macro-economy and ensure social security and sustainable growth in the last months of 2008. The resolution mentions that new regulations on the criteria and conditions for establishment of banks will be issued with stricter requirements for capital, management competence and technology; pending such regulations

no new banks will be licensed. It also points the way to the future by encouraging small-size banks to improve their operating quality or merge with other banks to form larger banks.

Directive 279 of the Prime Minister dated 29 September 2008 confirms that the SBV will only licence the establishment of new joint stock commercial banks after issuance of the new regulations.

Issuance of valuable papers by Vietnamese credit institutions

Decision 07 of the SBV on the issuance of valuable papers within Vietnam by credit institutions (Decision 07) came out on 24 March 2008, but already seems rather irrelevant in these credit-crunched times. Anticipating a market eager for the issue of bonds by Vietnamese credit institutions, Decision 07 sought to remove uncertainties about the purchase by foreign investors of such bonds. This area was previously regulated by Decision 02 of the SBV dated 4 January 2005 (Decision 02). Decision 02 had provided that bonds issued by Vietnamese credit institutions could be purchased by 'Vietnamese organisations and individuals' and 'foreign organisations and individuals earning their living and legally operating in Vietnam'. There was some uncertainty as to what was meant by 'legally operating in Vietnam', although those of a liberal bent were known to express the view that holding a bank account in Vietnam was enough.

Decision 07 now provides that permitted purchasers of Vietnamese credit institution paper include 'foreign organisations and individuals conducting investments in accordance with the law of Vietnam, including those operating in Vietnam and those not operating in Vietnam'. However the ownership of bonds by investors 'not operating in Vietnam' is to be subject to certain limits. It is however still not clear what is meant by 'operating in Vietnam', nor what will be the permitted ratio of ownership by investors 'not operating in Vietnam' (the SBV has not yet issued regulations on this point). Given the current worldwide pariah status of commercial bank debt, it may be some time before the SBV is pressed to provide answers to these questions.

Those foreign investors taking a long view on Vietnamese bank debt may however be interested to know that Decision 07 now allows for the issue of convertible bonds and bonds with options, although such bonds will still be

subject to foreign ownership limits at the time of exercise (it is not entirely clear what this means, but presumably foreign bondholders would simply not be able to exercise their conversion right or option if it would lead to a breach of foreign ownership limits).

Finance companies

On 29 July 2008 the Government issued Decree 81 amending and supplementing Decree 79 of the Government dated 04 October 2002 (Decree 79). Decree 79 is the primary decree implementing the Law on Credit Institutions in relation to finance companies. The significant amendments to Decree 79 include:

- Decree 81 distinguishes between ‘consolidated finance companies’ and ‘specialised finance companies’. Consolidated finance companies are permitted to raise capital from demand deposits with terms of one year or more, while specialised finance companies are not permitted to mobilise capital from demand deposits. The relevant regulations do not indicate how an applicant for a finance company licence would indicate a desire to obtain, or receive, a designation as either a consolidated or specialised finance company. However, the implication is that finance companies primarily offering consumer finance services would be characterised as specialised finance companies;
- finance companies no longer have the option of raising capital through the issuance of bills and (apparently) short-term certificates of deposit or other short-term valuable papers;
- the transfer of the ownership in a finance company must be conducted in accordance with (yet to be issued) regulations of the SBV. Consequently, the rights investors possessed under Article 5.2 of Circular 06 of the SBV dated 23 December 2002 to transfer all or part of their ownership interests to a third party appear to be repealed; and
- the opening and termination of branches and representative offices of finance companies must be approved in writing by the SBV. Consequently, this provision effectively repeals (theoretical) rights finance companies possessed to open branches and representative offices in accordance with registration and notification obligations.

Decree 81 changes a requirement that many foreign investors have found difficult to satisfy. The previous requirement for foreign investors to obtain the specific

permission from a competent body in their home jurisdiction to establish and carry out banking activities in the form of a finance company in Vietnam has been adjusted and the new Article 8.2 requires foreign investors to obtain such permission ‘as stipulated by the law of the home country’. This amendment would seem to create greater flexibility where no body in the home jurisdiction of the foreign investor is competent to grant specific permission.

Oddly, Decree 81 introduces a provision requiring a finance company’s board of management to use the company seal in performing its official duties. Under Vietnamese law, the company seal must remain in Vietnam and members of the board of management are not permitted to delegate their duties to persons who are not members of that board. Therefore, this provision would either require: (i) a board member to travel to Vietnam to seal each board resolution after every board action; or (ii) the general director to be a board member.

Finance leasing companies

Foreign-owned finance leasing companies have never had an easy time in Vietnam. The latest tinkering to their legal basis follows principles agreed in Vietnam’s accession to the World Trade Organization but will not make life any easier. This tinkering came on 25 August 2008, when the Government issued Decree 95 (Decree 95) amending and supplementing some Articles in Decree 16 of the Government dated 2 May 2001 on the organisation and operation of finance leasing companies (FLCs).

Henceforth, in addition to other requirements, in order for joint-venture FLCs or 100 per cent foreign-owned FLCs to operate legally in Vietnam, the foreign parties must: (i) be allowed by the competent authority in their home country to engage in finance leasing activities in Vietnam; and (ii) have total assets of more than US\$10bn as at the end of the year before the time of lodging the application, except where a bilateral investment treaty between Vietnam and the country of origin provides otherwise.

Equitisation of Vietnam Bank for Industry and Trade (Vietinbank)

The equitisation of Vietcombank has generally been regarded as a failure. Yet the next one is now limping

towards the starting gate. Under Decision 1354 dated 23 September 2008 (Decision 1354), the Prime Minister approved the equitisation of Vietinbank (formerly known as Incombank).

- The equitisation will take the form of an issuance of new shares. The state-owned capital must remain at least 51 per cent of the total chartered capital.
- The additional issued shares will account for 20 per cent of the charter capital. Of this: (i) shares sold during the public auction and to strategic domestic investors will account for 5 per cent; (ii) shares for sale to employees will account for 2.5 per cent; (iii) shares for sale to the labour union will account for 2.5 per cent; and (iv) shares for sale to strategic foreign investors will account for 10 per cent.
- Strategic foreign investors must be financial organisations of a large-scale and strong financial capacity (if there are any left), with a good investment record in the region, and with no conflicts of interest with Vietinbank in terms of development strategy.
- Vietinbank will have no more than two strategic foreign investors, and the total shares sold to strategic foreign investors will not exceed 20 per cent.
- The strategic investors must commit not to sell their shares in VietinBank for five years from the date Vietinbank receives its business registration certificate as a new joint stock commercial bank.

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