



vietnam legal update

October 2009

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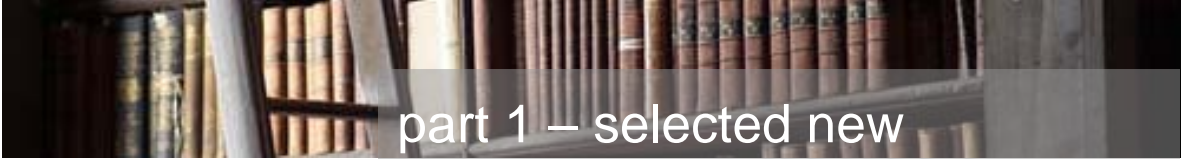
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part 1 – selected new legal instruments

1.1 New state compensation regime

Law 35-2009-QH12 of the National Assembly on the State's Liability to Pay Compensation dated 18 June 2009 (*State Compensation Law*)

The recent State Compensation Law, which will come into effect on 1 January 2010, provides for a new state compensation regime designed to regulate payment of compensation to individuals and organisations who suffer damage resulting from illegal acts of public servants in the performance of their duties.

What acts are covered?

Under the State Compensation Law, an illegal act occurs when:

- a public servant fails to perform their duties or powers or performs those duties contrary to law; and
- that action is determined to be an illegal act by a person authorised to resolve complaints and denunciations under the Law on Complaints and Denunciations.

The State Compensation Law specifically addresses grievances suffered by individuals and organisations arising from illegal acts by public servants in the performance of:

- administrative duties (such as issuing, failing to issue or revoking a business registration certificate, investment certificate or licence; applying customs procedures; allocating, leasing out or recovering land, permitting change of land use purpose, issuing or revoking a certificate of land use right);
- legal proceedings (including criminal proceedings and civil or administrative proceedings); and
- enforcement of judgments.

What losses are covered?

Under the regime, compensable loss and damage include:

- loss or damage to property;
- loss or reduction of actual income;
- mental suffering (calculation of compensation in specific circumstances based on minimum wage for a set number of days);
- costs associated with the death of an aggrieved person; and
- costs associated with harm to the health of an aggrieved person.

The onus is on the aggrieved person to prove the actual loss or damage.

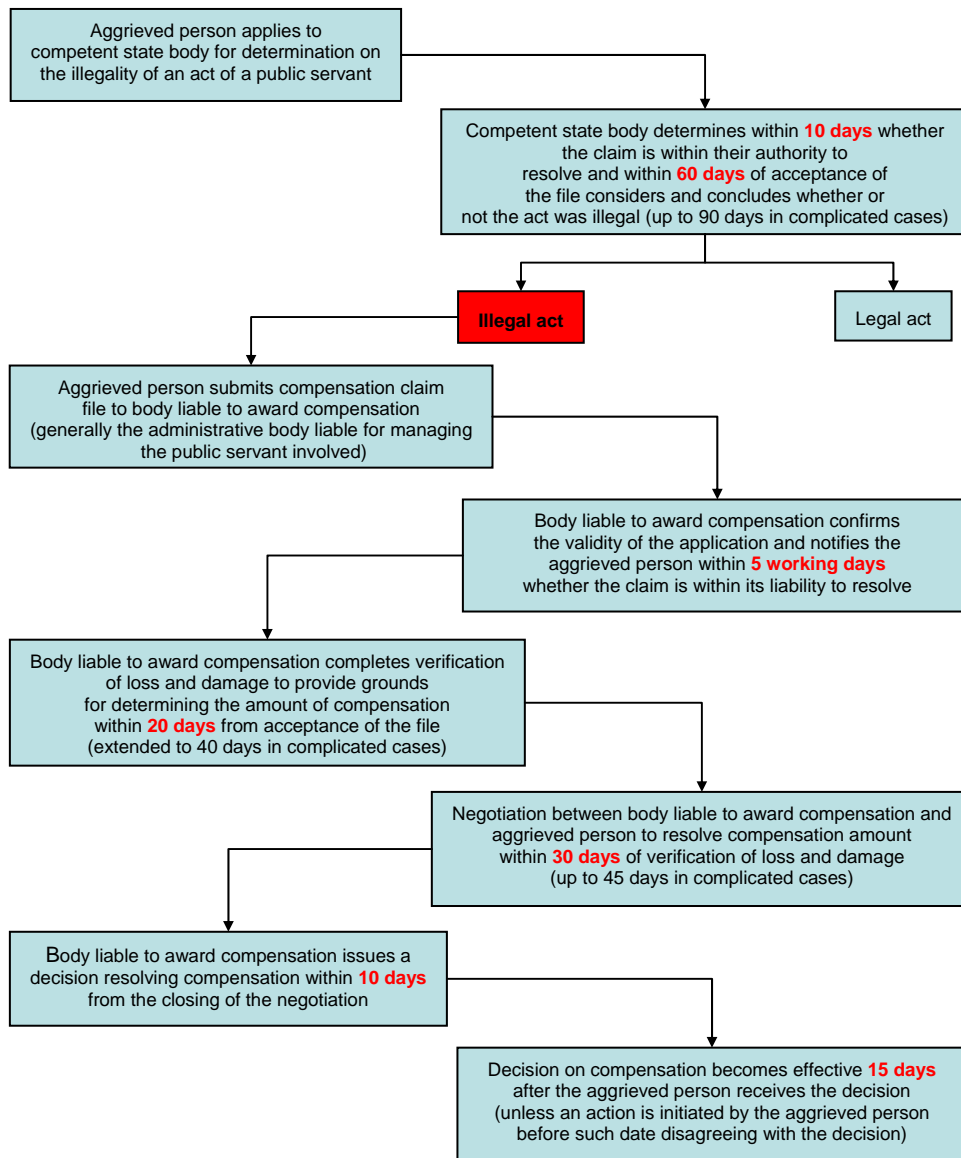
Procedures and time scale of the compensation regime

For grievances suffered in the course of administrative proceedings, the aggrieved person must submit an application for compensation to the body liable to award compensation within two years



of the date on which the competent state body issued the document determining that an act of a public servant was illegal.

The following diagram provides details of the procedures and timeline of the compensation regime:



Appeals process

As the diagram shows, the body actually liable to pay compensation plays a large role in the determination of the compensation amount, raising a potential conflict of interest.

The State Compensation Law does provide some avenue for appeal for an aggrieved person. Specifically, the aggrieved person has the right to lodge a complaint or denunciation against any illegal decision or act of a competent person in resolving compensation. In addition, there is a specific right of the aggrieved person to petition the court to resolve the matter of compensation in the event that the body liable to award compensation fails to issue a decision or where the

aggrieved person disagrees with the decision. Except in unusual circumstances, the petition must be made within 15 days of receiving the decision.

Reimbursement for the State

The legislation also provides a mechanism for the State to seek reimbursement of any compensation amount from the public servant who committed the illegal act. This applies not only to public servants in the performance of administrative duties but also to judges in criminal proceedings.

Transition

As the legislation will not come into effect until 1 January 2010, any applications for compensation that have already been accepted by the competent state body before that date will continue to be resolved under the old guiding regulations.

1.2 Administrative improvements – new government website

Decision 1699/QĐ-TTg of the Prime Minister on establishment of national database for administrative procedures dated 20 October 2009 (Decision 1699)

In furtherance of the 'Project on Simplification of Administrative Procedures in State Management Sectors' the Prime Minister recently issued Decision 1699 in which he approved the establishment of a 'national database of administrative procedures'.

The database, which will set out various administrative procedures and the relevant legal instruments prescribing those procedures, will be made publicly available on the web at <http://www.thutuchanhchinh.vn>.



What will the database contain?

The contents of the national database will include:

- administrative procedures that are in effect (except for procedures that are State secrets);
- administrative procedures that are no longer effective or have been repealed or abolished;
- legal instruments prescribing the administrative procedures; and
- public opinions on the implementation of the procedures.

Visitors to the website will be able to search for an administrative procedure and find details including the responsible State body, steps and timing and any required documents.

Who is responsible for the database?

The content will be sourced from the administrative procedures decisions of the following people:

- Ministers and heads of ministry-level bodies;
- Chairman of the People's Committee of provinces and cities under the central government;
- General Directors of the Bank for Development of Vietnam, Vietnam Bank for Social Policies, Vietnam Social Insurance and heads of other bodies as decided by the Prime Minister.

Under Decision 1699, each of these people is required to issue a decision announcing any new administrative procedure or any amendment or abolition of an existing administrative procedure within 10 days of issuing the legal instrument prescribing that new procedure or amending or abolishing the existing procedure. Within 5 days of the announcement, the relevant persons must update the announcement to the national database.

The Government Office will be in charge of managing the national database and coordinating with the relevant ministries and organisations to administratively maintain the national database.

Improving transparency

The new database evidences the continuing effort by the Government to reform the current administrative system in Vietnam. If properly managed, the database should be a positive step forward in improving the transparency of administrative procedures in Vietnam.

1.3 Clarity on tender offer rules

Circular 194/2009/TT-BTC of the Ministry of Finance providing guidelines on tender offers dated 2 October 2009 (Circular 194)

In 2006 the Law on Securities introduced a requirement that an investor wishing to acquire more than 25% of the shares in a public company had to make a 'tender offer' (similar to a takeover offer) to all shareholders in accordance with prescribed procedures. The general tender offer requirements were also restated in Circular 18/2007/TT-BTC of the Ministry of Finance (**MoF**) dated 13 March 2007 (**Circular 18**).

Since that time, there have been very few cases where the tender offer process has been applied, although the State Securities Commission (**SSC**) has fined several investors who failed to comply with the rules.

The MoF has now issued Circular 194 which will replace Circular 18 and provides clarity to several aspects of the tender offer process. Circular 194 will take effect on 16 November 2009.

This article summarises the key changes and clarifications in Circular 194.

Offer process

The offer process set out under Circular 194 is not substantially different from the process set out in Circular 18 and Law on Securities. Key requirements include:

- a minimum offer period of 30 days and a maximum offer period of 60 days;
- the SSC must provide an opinion on the tender offer within 7 days from the date a complete registration file is lodged;
- the target company must make a public announcement about the tender offer within 3 days after the registration file is lodged; and
- the board of management of the target public company must issue a recommendation on whether to accept or reject the tender offer. The recommendation must be passed by at least two-thirds of the members of the target's board of management and if a member of the board has an opposing view than that view must also be announced by the target public company.

Pricing restrictions

Circular 194 also sets a restriction on the offer price under a tender offer. If the shares of the target public company are listed, the offer price must not be less than the average listed price of the shares during the last 60 consecutive days prior to the registration of the tender offer with the SSC.

If the shares of the public company are not listed, then the offer price must not be less than:

- the average price for the shares which is published by at least two securities companies for the last 60 consecutive days prior to the registration of the tender offer with the SSC; or
- the most recent public offer price for new shares in the company.

In addition, during the offer period, the investor making the tender offer may only offer a price higher than the offer price in the last seven days before the end of the offer period and that price must be offered equally to all shareholders.

Exemptions

Circular 194 also introduces three general exemptions to the tender offer rule. Despite the acquisition of more than 25% of the shares in a public company, no tender offer is required where:

- an investor subscribes for new shares of a public company issued pursuant to an issuance plan approved by the company's general meeting of shareholders;
- an investor acquires shares by way of transfer from an existing shareholder and the transfer is approved by the general meeting of shareholders; or
- an 'intra-group' transfer is made between companies in a corporate group, for example a transfer of shares from a subsidiary to its parent company.

Despite the exceptions, the acquiring investor must notify still the SSC prior to undertaking any of these transactions and the transaction may be conducted only after a public announcement of the transaction has been made.

Creeping Offers

Circular 194 also provides for another situation where a tender offer will not be required. On their face, both the Law on Securities and Circular 18 require a tender offer to be made when an investor first crosses the 25% ownership barrier and then for each subsequent purchase, no matter how small, so that even a further acquisition of as little as 1% would require the investor to carry out another tender offer.

Circular 194 recognises this impracticality and provides that an investor who holds more than 25% will only need to make a further tender offer if any further acquisition would bring their shareholding to 51%, 65% or 75%. This ability for investors to "creep" up their percentage holdings by making small acquisitions without having to make a tender offer is consistent with exemptions present in other jurisdictions and is also consistent with the control levels set out in the Law on Enterprises.

Given that foreign investors may only acquire a maximum of 49% of a public company, this exception means that foreign investors will only ever need to make a single tender offer when they first acquire more than 25% of a public company.

Applies equally to public closed-end funds

Circular 194 also states that the tender offer rules applying to public companies also apply to the acquisition of interests over 25% in a public closed-end fund. Given that these funds are not specifically provided for under the Law on Securities, there is some doubt as to whether the MoF has the power to extend the tender offer requirements to these funds.

Clarification of tender offers where the offeree is forced to sell their shares

The Law on Securities also states that a tender offer is required where the offeree "is forced to sell the shares it owns". It was not entirely clear what was intended to be covered by this provision but thankfully Circular 194 has now clarified two circumstances where this may occur:

- where a public company buys back its shares to reduce the charter capital pursuant to a plan approved by the general meeting of shareholders; or
- where a court decision requires that a tender offer to be conducted.

1.4 Banks trading on UPCoM

Official Letter 7430/NHNN-TTGSNH of the State Bank of Vietnam regarding participation in the unlisted public companies' market for transaction of securities (*Official Letter 7430*)

In our May edition of VLU we discussed the new Unlisted Public Companies Market (or UPCoM), a voluntary market set up for the trading of shares and convertible bonds of registered unlisted public companies.

On 24 September 2009, 3 months after the UPCoM went live, the State Bank of Vietnam issued Official Letter 7430 to the directors and chairmen of shareholding credit institutions. The Official Letter states that it responds to requests from a number of unlisted shareholding credit institutions concerning their participation in UPCoM.



Banks participation in UPCoM is voluntary

The Official Letter confirms that it is up to each unlisted shareholding credit institution to decide for itself whether it wishes to participate in UPCoM, and that no approval is required from the State Bank of Vietnam.

The usual rules still apply

The Letter, however, reminds credit institutions participating in UPCoM that they, and their investors, must continue to comply with the relevant provisions of the Law on Enterprises, the Law on Securities, the Law on Credit Institutions and their implementing regulations.

Specifically, the Official Letter notes that organisations and individuals owning 5% or more of the voting shares of a shareholding credit institution:

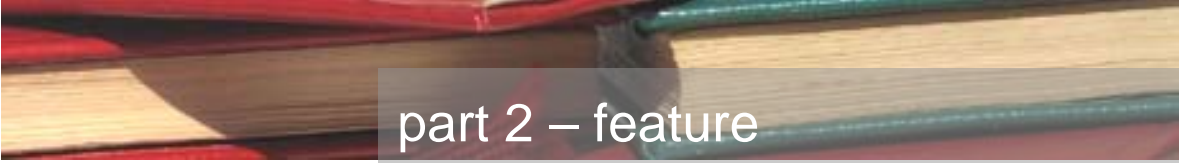
- require written approval from the Governor of the State Bank for any change in ownership ratio, under Decree 59/2009/ND-CP on the organisation and operation of commercial banks dated 16 July 2009 and its guiding instruments;
- must report to the SSC on status of share ownership in accordance with Decision 108/2008/QD-BTD issuing regulations for UPCoM (Decision 108) ; and
- must register with the competent business registration body within 7 days of the change in ownership ratio.

Official Letter 7430 also reminds founding shareholders and members of Boards of Management and Inspection Committees of their obligations in relation to the assignment of shares and the reporting regime under Decision 108.

Procedures for foreign investors

Importantly, Official Letter 7430 makes it clear that the requirements in Decree 69-2007-ND-CP dated 20 April 2007 and Circular 07/2007/TT-NHNN dated 29 November 2007 relating to the purchase by foreign investors of shares in unlisted Vietnamese continue to apply even to banks which participate in UPCoM. To that end, the Official Letter states that foreign investors will require approval from the State Bank before they can purchase any shares of any shareholding credit institution which participates in UPCoM.

Unfortunately for foreign investors, the onerous and time consuming processes involved may result in them missing out on opportunities in those banks that do choose to list on UPCoM, as the foreign investors will not be able to move quickly on any pricing opportunities that arise in the UPCoM trading.



part 2 – feature

court case commentaries

Our case commentary this month covers an appeal before the Court of Appeal against a decision of the People's Court of An Giang Province. While the case was eventually settled by agreement between the parties, the comments of the Court of Appeal are instructive of the attitude Vietnamese courts may take when dealing with issues of non-disclosure by an insured under insurance contracts.

HO THI THANH NGOAN V. VIETNAM PRUDENTIAL LIFE INSURANCE CO. LTD.

Judgment no. 59/2007/KDTM-PT dated 25 June 2007

The Facts

This case concerned an insurance policy entered into between Mr. Ho Van Dang (the insured) and the insurer, Vietnam Prudential Life Insurance Co. Ltd. (**Prudential**). The policy covered accidental death and injury and took effect on 15 November 2003 for a term of up to 15 years.

On 3 separate occasions in 2004 and 2005, Mr. Dang failed to pay the necessary premium. However, all the outstanding premiums were subsequently paid and Prudential agreed to restore the effectiveness of the policy.

Mr. Dang died in August 2006 and his daughter, Ms Ngoan, brought a claim against Prudential for an amount of VND 30 million allegedly payable under the policy.

At first instance, the trial court found in favour of Ms Ngoan awarding her an amount of VND 30 million.

The Appeal

Prudential appealed on the grounds that Mr Dang had breached his disclosure obligation to Prudential by failing to provide truthful information relating to his health.

In April 2005, when Mr Dang requested that Prudential restore the effectiveness of the policy, he was required to declare that he was in good health and had taken no medical examination or consultation since the original signing date of the policy. Mr Dang made this declaration, however a medical file dated 18 March 2006 stated that Mr Dang's 'signs of illness had been manifest for 1 year... including cirrhosis of the liver, kidney failure and stroke'. This fact was not contested.

Prudential argued that Mr Dang's breach of his disclosure obligation released Prudential from the



obligation to make payment under the policy from the time of Mr Dang's breach.

Ms. Ngoan argued that the policy remained effective because Prudential had agreed to restore the effectiveness of the policy in 2005 and had taken no action to cancel it.

The Settlement

Ultimately the parties settled the matter and Prudential made a payment of VND 15 million to Ms. Ngoan. The Court of Appeal issued a consent order recognising the parties' settlement.

Comments of the Court

Despite the settlement, the Court of Appeal also noted their view that the trial court had erred in awarding the amount sought by Ms. Ngoan, given Mr Dang's breach of his disclosure obligation.

The Court indicated a strict view that the non-disclosure itself rendered the policy unenforceable, without requiring Prudential to take any formal action to cancel the policy. This view is consistent with the traditional view taken in many other jurisdictions where non-disclosure by the insured can have very serious consequences including invalidity of the policy.

The court's strict approach is particularly notable in this case, where the non-disclosure would have had little or no impact on any claim under the policy, since the policy covered accidental death and injuries and the non-disclosure related to a medical condition.



part 3 – did you know?

3.1 Use it or lose it

Recent reports in the local media have indicated an increasing tendency for licensing authorities to revoke the investment certificates of stalled projects. The rationale is that land should not be unnecessarily tied up for a delayed project, if it could be used more productively by other investors.

By way of example, local news outlets have reported that the investment certificates for six projects in Ba Ria-Vung Tau, covering a total of hundreds of hectares have been revoked. Similarly, the Vietnam News Agency reported in late September that 13 delayed infrastructure and housing projects in Ca Mau province had suffered the same fate while the Kien Giang People's Committee revoked the investment certificates of 12 tourism projects on Phu Quoc island in mid-2009 because of delays. Failure to conduct or finalise land clearance and compensation was cited as the cause of delay in many of these cases.

Whilst most of the reported cases involve local investors (including local state authorities), foreign invested projects are not immune – as evidenced by the Danang People's Committee decision earlier this year to revoke the investment certificate of the Korean invested Ba Na Golf Course project.

Legal basis for licence revocations

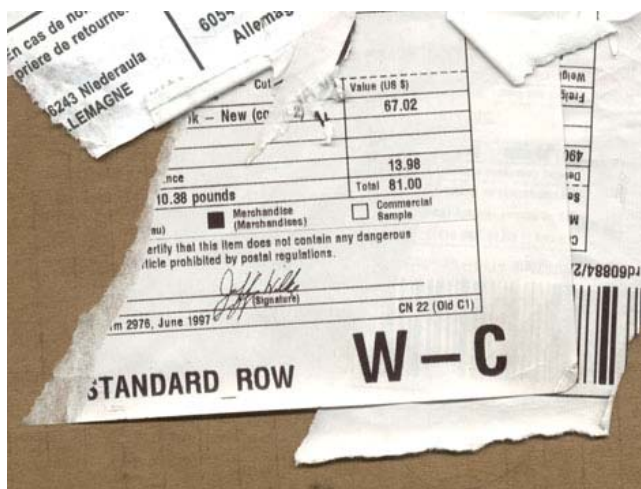
When an investor lodges application documents for a project, the law requires that details of the project implementation schedule be included in the application. In turn, Decree 108-2006-ND-CP dated 22 September 2006 (**Decree 108**), provides that an investment certificate must set out certain minimum information, including the schedule for implementation of the investment project.

Moreover, the Law on Investment requires investors to carry out investment activities in accordance with the provisions of the investment certificate.

Under both the Law on Investment and Decree 108, if an investor fails to implement a project in accordance with the schedule undertaken in the application documents (and, presumably mirrored in the investment certificate) for more than 12 months without legitimate reason, the investment certificate will be revoked.

This does not mean that any slight deviation from the approved schedule for project implementation is prohibited. In

fact, the Law on Investment specifically contemplates temporary postponement of projects, in such cases requiring the investor to report the delay and reasons for the delay to the licensing authority for consideration of reduction or exemption of land rent during the delay period. Further, Decree



108 provides that if a company wishes to suspend or extend the implementation of its project, the investor must notify the licensing authority at least 15 working days prior to any suspension or extension. If the licensing authority does not agree with the temporary suspension or extension, it must notify the investor within 15 working days of receipt of the notification.

When should we worry?

It is highly unlikely that an investment certificate would be revoked without any prior warning. However, it is important that investors who are experiencing legitimate reasons for delay communicate this to the licensing authority and obtain approval or recognition of the delay.

3.2 Commercial bribery – the ground rules

The Dilemma

A common concern for those investing in an emerging market is the vulnerability of foreign businesses to become tempted to engage in activities that are ethically unsound. Business managers may find themselves justifying their actions by saying "this is how business is done here" as the standards that exist in their home jurisdiction take a back seat while payment of kick-backs and sweeteners to get a deal or an advantage over competitors becomes an attractive proposition.

The temptation to engage in this kind of behaviour often arises because the laws in many developing countries in relation to commercial bribery either do not exist or are so ill-defined that the conduct is seemingly 'excusable'. Of course, an ill-defined regulatory regime can be a double-edged sword, potentially giving local authorities and courts grounds scope to interpret the law in a wide, or even arbitrary, manner.

Bearing that in mind, and given that some business conduct may be acceptable in one jurisdiction and illegal in another, it is incumbent on any foreign investor to understand the relevant local rules on commercial bribery and ensure proper compliance. It is also good practice for investors to develop appropriate internal rules that address the issue of commercial bribery and ensure that all employees and manager, as well as any distributors or agents, know the risks and are aware of the consequences of engaging in such activity.

In this article we take a brief overview look at the relevant sources of law governing the area of commercial bribery in Vietnam.

The Criminal Code

At the most severe end of the spectrum, Vietnam's Criminal Code imposes fines and prison terms for the direct or indirect offering and receiving of bribes. While certain provisions of the Criminal Code relate solely to bribery and corruption involving State officials, the general rules concern the abuse of a person's 'position or power' to perform (or not perform) a particular task as requested by a person offering a bribe. On their face, these provisions apply equally to a case of commercial bribery as to bribery of State officials, provided all the requisite elements are present.

Potential prison terms range from six months to life imprisonment and even capital punishment in very serious circumstances. Generally, the seriousness of the penalty will depend on the monetary value of the bribes and any relevant aggravating factors, such as whether the offence was organised or premeditated, whether it was a repeat offence and the seriousness of the consequences arising from the offence.

The Commercial Code

Investors should also be aware that certain marketing and promotional practices, such as providing free overseas trips to distributors, agents, clients or potential clients or providing them with rebates, discounting or payments of business expenses, may be prohibited under Vietnamese law.

The Commercial Code prohibits promotional activities at schools, hospitals, State authority offices, political and social-political organisations and the armed forces. There is also a prohibition on

promotional activities aimed at engaging in unfair competition, which we discuss in more detail below.

The Commercial Code also requires that any promotional activity carried out by a business must be transparent and public – which involves making public announcements. The implementing regulations of the Commercial Law also contains a requirement to register the promotional activity with the local department of commerce. In addition, the maximum value of the incentives given to a client must not exceed 50% of the value of product. A penalty of up to VND30 million for each offence may be imposed for a breach of the Commercial Code.

The Competition Law

The Competition Law is another source of law to be considered in the context of commercial bribery – not surprising given that the primary aim of commercial bribery activities is often to seek an (unfair) advantage over competitors.

The Law on Competition prohibits a range of agreements that have the purpose of restraining competition. Such agreements may include arrangements that exclude other enterprises from entering a market or developing their business, or agreements to collude to win a tender. Depending on the seriousness of the offence, a penalty of up to 10% of the offender's total revenue in the previous year may be imposed.



The Competition Law also protects business secrets, prohibiting:

The Competition Law also protects business secrets, prohibiting:

- the disclosure or use of business secrets;
- breach of a confidentiality contract; or
- abuse of the confidence of a person with an obligation to maintain confidentiality, aimed at accessing or using a business secret.

Relevantly, a business secret is defined as information that is:

- not common knowledge;
- would, in the business context, create an advantage over others who do not have such information; and
- protected by the owner so that the information will be difficult to access.

In addition the law also restricts conduct that directly or indirectly disrupts the business activities of another enterprise.

A breach of these unfair market competition provisions may result in a fine of up to VND20 million depending on the seriousness of the offence.

3.3 Arbitration seminar

On 21 October 2009, the Vietnam International Chamber of Commerce (**VCCI**) held a seminar on the topic of setting aside, recognition and enforcement of arbitral awards in Vietnam. There were two main speakers.

- Dr Vo Van Dai – a lecturer at the Law University in Ho Chi Minh City; and
- Associate Professor, Dr Nguyen Trung Tin, from The Institute of State and Laws.

Grounds for setting aside of arbitral awards

Dr Vo Van Dai focussed on the issue of setting aside of Vietnamese arbitral awards and also made recommendations on the draft Law on Arbitration.

Dr Vo Van Dai noted that the Ordinance on Commercial Arbitration (**OCA**) prescribes 6 grounds on which an arbitral award may be set aside:

- there was no arbitration agreement;
- the arbitration agreement was invalid pursuant to Article 10 of the OCA
- the composition of the arbitration tribunal was, or the arbitration proceedings were, inconsistent with the agreement of the parties;
- the dispute was outside the jurisdiction of the arbitration tribunal;
- the applicant proves that during the dispute resolution an arbitrator breached the obligations of an arbitrator as stipulated in Article 13.2 of the OCA; or
- the arbitral award is contrary to the public interest of Vietnam.

Given that Articles 10 and 13 both contain a number of additional grounds for setting aside arbitral awards, the end result is that Vietnam's legislation provides a considerable number of grounds for awards to be set aside.

In fact, it was reported at the seminar that since 2003 there have been 15 requests to set aside arbitral awards issued by the VCCI, resulting in 4 awards being set aside by the court. In light of these relatively high numbers, Dr Vo Van Dai recommended that the number of grounds be reduced, to be more in line with other jurisdictions where the grounds for setting aside of arbitral awards are very limited.

Dr Vo Van Dai also discussed several case examples where each of the grounds had been considered by the Vietnamese courts, noting the following points:

- in the absence of a formal arbitration agreement, the court may find that there was no arbitration agreement and therefore set aside an arbitral award, even where the parties have responded to requests from the relevant arbitral body and agreed to the appointment of specific arbitrators;
- Vietnamese courts may find arbitration agreements to be invalid on the basis of a lack of authorisation of the person executing the agreement. Readers will recall that our case commentary in August 2009 concerned an example of this view; and
- an arbitral award may be set aside if the arbitration panel holds an arbitration in the absence of the defendant, where the defendant had a valid reason for their absence.

Recognition and enforcement of foreign arbitral awards in Vietnam

Dr Nguyen Trung Tin then spoke on recognition and enforcement of foreign arbitral awards in Vietnam, focussing on the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1959, the so-called New York Convention. For a more detailed look at Vietnam's accession to the New York Convention, please see our special feature in the August 2008 edition of the VLU.

At the seminar Dr Nguyen Trung Tin discussed several cases in which the Vietnamese courts have considered these issues, again emphasising the importance that Vietnamese courts will place on whether the person signing the arbitration agreement is properly authorised. Dr Nguyen Trung Tin gave several examples where a foreign arbitral award was not enforced because the party in

whose favour the award was issued was unable to prove that the person who signed the arbitration agreement was duly authorised.

What constitutes a 'foreign' arbitral award?

Another issue discussed at the seminar was the precise meaning of a 'foreign arbitral award'. Questions raised included whether an arbitral award is foreign if it is issued overseas but Vietnamese law was applied, or if the award is issued in Vietnam but foreign arbitration rules are applied, or even if the award is issued in Vietnam but one or all of the arbitrators are not Vietnamese.



The relevant provision of the New York Convention provides that it will apply, among other cases, to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought. Unfortunately, because current Vietnamese law does not define 'domestic awards' this remains an area of uncertainty.

Thoughts for the future

Finally, the seminar considered matters relating to the current draft law on arbitration. As reported in the October 2008 edition of VLU, it is currently proposed to enact a new Arbitration Law to take effect in late 2010.

One outstanding issue concerns the scope of application of the new law on arbitration. Currently, the draft law contains two scope options:

- coverage of both commercial and civil disputes; or
- coverage of disputes arising out of contractual or non-contractual obligations, except for disputes related to personal rights, marriage and family, inheritance, bankruptcy, real estate, government to government disputes or disputes which fall under the jurisdiction of other bodies.

The views of the seminar attendees were divided. Some supported the proposed expansion of the scope to cover civil disputes on the basis that this would be consistent with international practice and respect the freedom of disputing parties to select a forum for dispute resolution. On the other hand, others considered that the scope of the law should not be expanded at a time when so many issues remained with arbitration of commercial disputes. It remains to be seen which camp will be happy with the final law.

part 4 –

what's new online?

Subject categories in Vietnam Laws Online database

Vietnam Laws online database on www.vietnamlaws.com is an online searchable database of English translations of more than 3,400 Vietnamese laws relating to foreign investment and far beyond. Subscribers can search for legislation by subject category, keyword, date, issuing body, official number, legislation type, or advanced option. Translations can be viewed online, and also printed and downloaded (subject to terms and conditions). For English translations of Vietnam's legislation, past and current, subscribe to Vietnam Laws online database on www.vietnamlaws.com

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- Circular 20 stipulating periods for preserving files and documents in the banking industry, 7 September 2009
- Extract from Decision 100 on management of enterprises with foreign owned capital in Hanoi, 11 September 2009
- Letter 3929 on PIT payable on real property transfers, 24 September 2009
- Letter 7430 on participation in UpCoM (unlisted public companies market), 24 September 2009
- Draft 4 Law on Royalties as discussed by the National Assembly's Finance and Budget Committee, 28 September 2009
- Decision 119 on PIT and other exemptions for foreign experts carrying out ODA projects, 1 October 2009
- Decision 2476 on third issuing tranche for Year 2009 of Government bonds denominated in USD, 8 October 2009
- Circular 134 on foreign contractor tax as supplemented to reinstate the hybrid method by Circular 197 dated 9 October 2009
- Circular 05 dated 7 April on the State's 4% interest rate subsidy on bank loans for new investment, as amended by Circular 21, 9 October 2009
- Decree 12 dated 12 February 2009 on management of investment projects for construction works as amended by Decree 83, 15 October 2009

The list above is merely a recent snapshot of the wide range of new legislation now uploaded and available on Vietnam Laws online through October 2009. To view all laws uploaded, please visit www.vietnamlaws.com

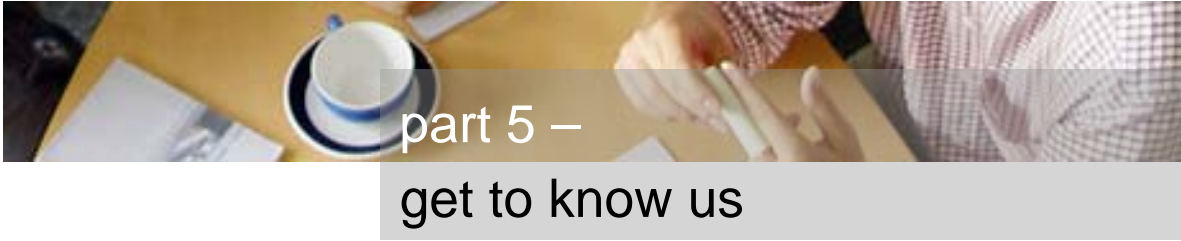
Client Updates

Several Client Updates are also available on the Vietnam Laws website. The most recent update covers the long-awaited Decree 53/2009/ND-CP on Issuance of International Bonds, which will, for the first time, allow Vietnamese companies to issue foreign currency denominated bonds in the international market. To read more, go to the Client Update at www.vietnamlaws.com

Search function for Vietnam Legal Update

All back issues of the Vietnam Legal Update from 1997 to the present are now available on www.vietnamlaws.com. There are two pages to the website's section on the VLU:

- Monthly VLU (for issues from April 2007); and
- Monthly VLU Archive (for issues prior to April 2007, back to September 1997).



part 5 – get to know us

In this section of the VLU, we shine the spotlight each month on a different lawyer from our Vietnam practice, to give readers a glimpse of who we are beyond the office. This month, our featured lawyer is Mai Dao, a paralegal in our Hanoi office.



Mai is a paralegal who has recently joined our Hanoi office having completed her studies at the Diplomatic Academy of Vietnam.

Although she had considered a future as a lawyer in her school days, Mai commenced her studies intending to become a diplomat.

In 2009, Mai participated as captain of the Vietnam team in the Willem C.Vis International Commercial Arbitration Moot. The gruelling moot program, which involved almost a full year of preparation, including two written memoranda as well as oral rounds in Hong Kong, revived Mai's interest in the law and convinced her to follow a legal career path.

When Mai is not assisting our team in the Allens office and learning the ropes of legal practice, she enjoys listening to music and reading, as well as shopping and hanging out with friends.