



Vietnam Legal Update

January-February 2006

Hanoi Branch Office
Suite 401, Hanoi Tower
49 Hai Ba Trung
Hanoi
Vietnam
Tel +84 4 936 0990
Fax +84 4 936 0984
bill.magennis@phillipsfox.com

Ho Chi Minh City Branch Office
Suite 605, Saigon Tower
29 Le Duan Boulevard
District 1, Ho Chi Minh City
Vietnam
Tel +84 8 822 1717
Fax +84 8 822 1818
nigel.russell@phillipsfox.com

Melbourne Office
Level 21, 140 William Street
Melbourne
Australia
Tel +61 3 9274 5000
Fax +61 3 9274 5111
maureen.mclaughlin@phillipsfox.com

www.vietnamlaws.com
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City

Part 1 Selected New Legal Instruments

1.1	Land	2
1.2	Foreign currency reforms	4
1.3	Commercial law - trading rights & more	6
1.4	Competition and anti-dumping authorities	8
1.5	Minimum wage levels	10
1.6	New urban zone developments	11
1.7	Mining	11

Part 2 Features

2.1	New enterprise law - top 10 points	12
2.2	Tardy implementation of Commercial Law 2005 and foreign trading rights	13
2.3	National Assembly update	15

Part 3 Did You Know?

3.1	How to register franchises in Vietnam?	17
3.2	Who must employ disabled employees?	17
3.3	Top 10 corporate events in 2005	18
3.4	Unlawful provincial investment incentives	19
3.5	New appointments in our HCMC office	19

Part 4 What's New on www.vietnamlaws.com?

>>>	NEW search function for Vietnam Legal update	
>>>	NEW laws on Vietnam Laws Online Database	20

Visit www.vietnamlaws.com:

- >>> to subscribe to (or take a free tour of) Vietnam Laws Online Database - searchable database of 3,000 of our English translations of Vietnamese laws regulating investment and business
- >>> to access free translations of a selection of Vietnamese laws
- >>> to read Vietnam Legal Update back to 1997 - complete with index of contents and new search function
- >>> to find out more about Phillips Fox's practice in Vietnam

This publication is copyright. Except as permitted under relevant laws, no part of this publication may be reproduced by any process, electronic or otherwise, without the specific written permission of the copyright owner. ©Phillips Fox, Vietnam Laws

The material contained in Vietnam Legal Update is intended to inform you of recent legal developments in Vietnam. It is not intended, and should not be relied upon, as legal advice. Should you wish further information in relation to any legal instrument or matter mentioned in this issue, please do not hesitate to contact one of our offices.

All past issues of Vietnam Legal Update are also available via www.saigontoday.net

Part 1 Selected New Legal Instruments

1.1 Land

Decree 17-2006-ND-CP of the Government dated 27 January 2006 on Amendment of and Addition to Decrees Providing Guidelines for Implementation of Law on Land and Decree 187-2004-ND-CP on Conversion of State Owned Companies into Shareholding Companies

Effective as of 27 February 2006, Decree 17 amends:

- > Decree 181-2004-ND-CP of the Government dated 29 October 2004 on Implementation of Law on Land
- > Decree 182-2004-ND-CP of the Government dated 29 October 2004 on Dealing with Administrative Offences in Land Sector
- > Decree 197-2004-ND-CP of the Government dated 3 December 2004 on Compensation, Financial Assistance and Resettlement Upon Recovery of Land by State
- > Decree 198-2004-ND-CP of the Government dated 3 December 2004 on Land Use Fees
- > Decree 187-2004-ND-CP of the Government dated 16 November 2004 on Conversion of State Owned Companies into Shareholding Companies

The amendment of so many decrees so soon after being issued would be worrying if not for the welcome reform introduced in Decree 181.

Decree 17 amends the following articles of Decree 181:

- Article 30 Grounds for allocation of land, lease of land or conversion of land use purpose
- Article 36 Land recovery and management of recovered land fund
- Article 61 Cases of auction of land use right and cases where auction is not required
- Article 63 Land use rights of State owned enterprises after equitization
- Article 84 Industrial zone land
- Article 101 Conditions for assignment of land use right in implementation of investment project for business of construction of residential housing for sale or lease
- Article 111 Rights and obligations of group of land users having land use right as common asset
- Article 119 Notarization by State notary public or certification by people's committee of ward, commune or township of contract or document when land user exercises rights
- Article 130 Recovery of land
- Article 149 Registration of leasing and sub-leasing out land use rights
- Article 163 Dealing with complaints relating to administrative decisions
- Article 164 Dealing with complaints relating to administrative decisions of Departments

The most notable reform is the relaxation of the restriction on selling vacant land lots under Article 101 above.

Until now, Decree 181 has restricted investors in property development projects from selling land lots without building residential houses on the land lots, as follows: "An economic organization, Vietnamese residing overseas, and foreign organization and foreign individual using land for implementation of an investment project for construction of residential housing for sale or lease shall only be permitted to assign a land use right for the land area on which residential houses pursuant to the approved project have been built, [...] it shall not be permitted to assign land use rights in the form of sale of land lots on which residential houses

have not yet been built". Many investors have complained about this restriction because it denies them a fallback position in the event that their financial position deteriorates and they lack sufficient capital to continue to build the residential houses planned for their property development. Calls for reform have been supported by various authorities, including the HCMC People's Committee (as noted in the December 2005 Issue of Vietnam Legal Update).

Now, Decree 17 provides some relief for property developers (including foreign invested ones), as follows:

> With respect to land in (i) cities, (ii) towns, (iii) new urban areas of cities and towns, and (iv) new urban areas zoned for development into cities and towns:

- Investors may not sell land lots on which residential houses have not been built to family households or individuals;

but

- Investors may sell land lots to other property development companies so that those companies may continue to build the approved residential housing project provided that the infrastructure for the whole project land has already been developed (eg road and drainage systems have been built).

> With respect to land in other regions:

- Same as above

but

- In the case of investment projects for the construction of integrated infrastructure in a residential zone, investors may sell land lots on which residential houses have not been built to individuals, family households and economic organizations (not just property development companies, it appears) provided that the integrated infrastructure for the residential area has been developed.

>>> For English translations of Decree 17 and Vietnamese laws on land, subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on www.vietnamlaws.com.

1.2 Foreign currency reforms

In late 2005 (1 year short of the 50th anniversary of it joining the International Monetary Fund ("IMF") on 21 September 1956), Vietnam accepted the obligations under Article VIII, Sections 2, 3 and 4 of the IMF's Articles of Agreement not to impose restrictions on the making of payments and transfers for current international transactions and not to engage in or permit any of their fiscal bodies to engage in any discriminatory currency arrangement or multiple currency practice, except with IMF approval.

Decision 07-2006-QD-NHNN of the State Bank of Vietnam ("SBV") dated 26 January 2006 on Abolition of Decision 319-1998-QD-NHNN7 of the SBV dated 29 September 1998 on Daily Reports on Receipts and Payments in foreign currencies

Decision 07 implements Vietnam's undertaking to the IMF by repealing Decision 319, which had required authorized banks to submit to the SBV daily reports on receipts and payments in foreign currency the value of which was USD50,000 or more conducted by their customers (including inter-bank transfers of a customer). Now the only reporting obligations on such amounts arise under Vietnam's nascent anti-money laundering regime (see June-August 2005 Issues of Vietnam legal Update for more on anti-money laundering).

Ordinance 28-2005-ND-CP of the Standing Committee of the National Assembly dated 13 December 2005 on Foreign Exchange

Two months after the 'band-aid' of Decree 131 amending Decree 63-1998-ND-CP of the Government dated 17 August 1998 on Foreign Exchange Control (see the October 2005 Issue of Vietnam Legal Update for more on Decree 131), the long-awaited new Ordinance on Foreign Exchange has been issued. The new Ordinance was scheduled to be issued in October 2005 as part of Vietnam's effort to join WTO, but it didn't appear until mid-December 2005.

The main issues of Ordinance 28 (which will repeal Decree 63 in full) include:

- > Ordinance 28 only governs foreign exchange activities of residents and non-residents in the territory of Vietnam, in contrast to Decree 63 which governed foreign exchange activities of organizations and individuals outside the territory of Vietnam.
- > SBV remains the Government body responsible for implementation of State management of foreign exchange.
- > The scope of payments and remittances for international current transactions is wider, reflecting the reforms introduced under Decree 131, and includes:
 - Payments relating to export/import of goods, services, other current transactions;
 - Payments relating short term loans and credit from banks;
 - Payments for net income from direct and indirect investment;
 - Payments for interest and gradual repayments of principal from foreign loans;
 - One-way payments for consumption; and other similar purposes.
- > The principle of freedom of current transactions as stipulated in Article VIII of IMF's Articles of Agreement is enshrined. Residents and non-residents are permitted to buy foreign currency at banks to meet current transactions. The requirement for a permit for purchasing, transferring and remitting foreign currency out of the territory of Vietnam by individuals has been repealed. In its place, a regime of verification of documents at the authorized credit institutions is provided for. Residents and non-residents are permitted to remit foreign currency out of the territory of Vietnam upon presentation of proper documents. The procedures for issuance of permits for a number of specific current transactions have been simplified.
- > With respect to capital transactions, Ordinance 28 now defines indirect foreign investment. The definition is when a non-resident person purchases and sells securities and other valuable papers

and/or contributes capital to or purchases shares in the forms stipulated by Vietnamese law but does not participate in management of the enterprise (the same definition as adopted in the new Law on Investment 2005). As before, foreign currency capital for indirect investment must be exchanged into Vietnamese dong and any profits in Vietnamese dong must be exchanged into foreign currency for remittance abroad; and all this must be conducted through an authorized credit institution.

- > Ordinance 28 provides in principle for the provision of loans to overseas subjects. The only subjects permitted freely to provide loans to overseas are credit institutions. Other economic organizations must obtain approval from the Government in order to provide loans to overseas subjects. Individuals are not permitted to provide loans to overseas subjects, with or without approval. However, Ordinance 28 does allow individuals to borrow foreign loans.
- > It was expected that the maximum limit on foreign currency remittances abroad would be stipulated in Ordinance 28, but it is not mentioned. The cap is currently stipulated in Decision 921-2005-QD-NHNN of the SBV dated 29 June 2005 on Carrying Cash by Individuals Entering into and Existing from Vietnam. It is set at USD7,000 (or equivalent in another foreign currency) and VND15 million - a significant increase from the USD3000 (or equivalent) and VND5 million limits which had applied from October 1998.
- > Ordinance 28 does not liberalize the restrictions on foreign currency transactions within the territory of Vietnam. Transactions in foreign currency must still be conducted only through banking entities authorized to conduct foreign currency exchange – direct foreign currency transactions remain prohibited. All transactions, payments, displaying prices, advertisements of residents and non-residents must be carried out in Vietnamese dong unless carried out through credit institutions.
- > Chapter V of Ordinance 28 relates to foreign currency market, foreign exchange rate and management of import/export of gold. Of note, the inter-credit institution market involves non-banking credit institutions. Subjects participating in Vietnam foreign currency market are allowed to conduct transactions in accordance with international practice provided that all conditions set by the SBV have been satisfied.
- > A new chapter on the Government's management of foreign exchange reserves is included (Chapter VI). The main principles of management of foreign exchange reserves remain unchanged since Decree 86 of 1999.
- > With respect to foreign exchange services of credit institutions and other organizations, Chapter VII provides the basis for the SBV to permit other organizations to conduct foreign exchange activities, such as security companies and insurance companies. The procedures of issuance of licenses for foreign exchange activities have been simplified, as follows:
 - Credit institutions with a license for operation will automatically be permitted to conduct activity of provision of foreign exchange services (a separate license for provision of foreign exchange services is no longer required);
 - Non-banking credit institutions may register with the SBV to conduct the activity of provision foreign exchange service;
 - Other organizations must obtain a license from the SBV to conduct this activity.
- > With respect to State management of foreign exchange activities (Chapter VIII), Ordinance 28 reserves the right for the Government to apply prudential measures in certain necessary circumstances, including restrictions on purchase, carrying, transfer, payments with respect to current and capital transactions; imposition of obligations to sell foreign currency on residents being organizations; other economic, financial and monetary measures.

Ordinance 28 will be effective as of 1 June 2006.

1.3 Commercial law - trading rights

Decree 12-2006-ND-CP of the Government dated 23 January 2006 Making Detailed Provisions on Implementation of Commercial Law With Respect to International Purchases and Sales of Goods and Agency for Purchases and Sales, Processing and Transit of Goods Involving Foreign Business Entities

The first of the Government decrees to be issued for implementation of the Commercial Law 2005 (see [2.2 below](#) for others to come), Decree 12 regulates international purchases and sales of goods, including import, export, temporary import for re-export, temporary export for re-import, and transshipment; and regulates activities of principals and authorized dealers in importing and exporting goods and agents for sale and purchase, processing and transit of goods involving foreign business entities.

Decree 12 liberalizes trading rights in Vietnam, adopting many WTO principles, such as internationally accepted tariffs and automatic import/export rights.

Under Decree 12, Vietnamese businesses with no foreign invested capital have full trading rights, ie the right to import and export goods irrespective of the lines of business for which they have business registration, except goods on the list of prohibited and restricted imports/exports. In contrast, foreign invested businesses, foreign companies and branches of foreign companies in Vietnam still only have limited trading rights (see [2.2 below](#)).

The lists of imports/exports which are prohibited, restricted and subject to specialized management are appended to Decree 12:

> Prohibited imports/exports:

Exports which are prohibited include weapons, national relics, toxic chemicals, etc. Imports which are prohibited include weapons, firecrackers, right-hand-drive vehicles, second-hand bicycles and a variety of second-hand consumer goods, etc. Prohibited imports/exports may only be imported or exported in necessary cases pursuant to a decision of the Prime Minister.

> Restricted imports/exports:

Imports/exports which are restricted include imports/exports subject to import permit from Ministry of Trade, imports/exports subject to import/export tariff quota, and imports/exports subject to specialized management.

Where imports/exports are subject to permits from the Ministry of Trade (eg sports weaponry), all traders must obtain the requisite import permit.

Where imports/exports are subject to specialized management (eg medicines), they may or may not require an import permit. If they do require a permit (eg industrial explosives), it must be obtained from the ministry managing the specialized industry. Other imports/exports subject to specialized management may be required to comply with regulations on standards or registration of circulation (eg cosmetics).

If imports/exports are required to comply with regulations on quarantine and/or food hygiene, safety and quality of foodstuffs (eg live animals), compliance with such regulations will be subject to inspection prior to customs clearance.

Where exports are subject to quotas stipulated by foreign countries (eg textiles and garments), the Minister of Trade will reach agreement with the ministries managing the manufacture of such goods and with the relevant industry association(s) with respect to allocation of quotas on the basis of the principles of publicity, transparency and reasonableness.

Where imports are subject to import tariff quotas (eg tobacco), the Ministry of Trade will announce the volume of the tariff quota after consulting the Ministry of Finance and relevant ministries; and the Ministry of Finance will co-ordinate with relevant ministries and bodies managing the manufacture of

such goods as well as the Ministry of Trade to decide and announce the import duties applicable to goods imported within the tariff quota and the import duties applicable to goods imported beyond the tariff quota.

> Imports/exports subject to specific provisions:

- Export of rice and rice goods.
- Import of petrol and fuel.
- Import of all types of second-hand cars.
- Re-export of imported essential commodities for which the State guaranteed foreign currency balancing for import.
- Import of cigarettes and cigars.
- Import and export of goods servicing national defence and security.
- Import of all types of wood from countries with common borders.

>>> This is one of the notable reforms under Decree 12. As of 1 May 2006, all types of second-hand cars (except right-hand-drive cars) may be imported if they are less than 5 years old from the date of manufacture until the year of import. Dampening any celebrations will be the anticipated 135% import duty on used car imports (compared current 90% import duty on new cars).

> Other imports/exports:

Where imports/exports are not prohibited, restricted, subject to specialized management or subject to specific provisions, they will only be subject to customs clearance procedures.

Other reforms under Decree 12 include:

- > A new Decision on Management of Import/Export from 2006 onwards will be issued by the Government, to go forward after Decision 46 of the Government dated 4 April 2001 on Management of Import/Export in 2001-2005. Of note, the new Decision will not be limited to a 5 year period, reportedly so that traders can make long term plans.
- > Businesses in Vietnam may now engage foreign businesses as their sales agents in foreign countries. An agency contract must be entered into. And all revenue received from the agency contract must be remitted to Vietnam in accordance with Vietnamese forex regulations.
- > Transshipment of goods via the territory of Vietnam is provided for. Businesses which have business registration for receipt and delivery of goods and carriage of goods will be permitted to provide transshipment services for foreign goods owners.

Decree 12 will be effective as of 1 May 2006 and replace Decree 57-1998-ND-CP of the Government dated 31 July 1998 Making Detailed Provisions on Implementation of Commercial Law on Import and Export, Processing and Sales Agency Involving Foreign Business Entities and amending Decree 44-2001-ND-CP of the Government dated 2 August 2001.

>>> For English translations of Decree 12 and other legislation implementing the new 2005 Commercial Law, subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on www.vietnamlaws.com.

1.4 Competition and anti-dumping authorities

Decree 06-2006-ND-CP of the Government dated 9 January 2006 on Functions, Duties, Powers and Organizational Structure of Competition Administration Department

Decree 05-2006-ND-CP of the Government dated 9 January 2006 on Functions, Duties, Powers and Organizational Structure of Competition Council

Decree 04-2006-ND-CP of the Government dated 9 January 2006 on Functions, Duties, Powers and Organizational Structure of Council Dealing with Cases of Anti-Dumping, Anti-Subsidy and Self-Protection

6 months after Vietnam's new Competition Law became effective on 1 July 2005, the Government has officially established the competition authorities to investigate and deal with anti-competitive offences and to process exemptions for mergers and acquisitions and anti-competitive agreements.

Even more belatedly (given that Vietnam's self-protection regime became effective as of 1 September 2002, its anti-dumping regime became effective as of 1 October 2004 and its anti-subsidy regime became effective as of 1 January 2005), the Government has also officially established the authority to deal with cases involving dumping of imported goods, importation of subsidized goods and importation of other foreign goods at levels causing serious loss to domestic manufacturing in Vietnam.

> **Vietnam Competition Administration Department ("VCAD")**

Consistent with the Government's administrative reform policy aimed at streamlining Vietnam's bureaucracy, VCAD is the State administrative body for competition as well as the State body for anti-dumping investigations, anti-subsidy investigations and administration of application of self-protective measures. In addition, VCAD is responsible for consumer protection. VCAD has been getting organized to fulfill these roles since it was established under Decree 29-2004-ND-CP of the Government dated 16 January 2004 on Functions, Duties, Powers and Organizational Structure of the Ministry of Trade.

Wearing its competition hat, VCAD is now responsible *inter alia*:

- To accept and conduct investigations of competition cases concerning practices in restraint of competition (eg abuses of dominant market position) in order for the Competition Council to deal with them;
- To conduct investigations into and deal with competition cases concerning unfair competitive practices (eg infringement of business secrets) and other practices in breach of the law on competition (eg failure to co-operate with competition investigations);
- To assess files for request of exemption and forward them to the Minister of Trade for his decision or to submit same to the Prime Minister for his decision;
- To control the process of economic concentration (ie mergers and acquisitions).
- To build and manage a system of information on enterprises in a dominant market position and enterprises in monopoly position, on competition rules of associations, and on cases of exemption from competition law.

Wearing its anti-dumping, anti-subsidy and self-protection hat, VCAD is now responsible *inter alia*:

- To conduct investigations into cases of anti-dumping, anti-subsidy and application of self-protective measures with respect to goods imported into Vietnam;
- To propose to the Minister of Trade to issue a decision on imposition of anti-dumping, anti-subsidy and self-protection measures;
- To report the results of investigations to the Council Dealing with Cases of Anti-Dumping, Anti-Subsidy and Self-Protection for consideration and submission to the Minister of Trade for his

decision whether or not anti-dumping, anti-subsidy or self-protective measures will be applied to goods imported into Vietnam;

- To co-ordinate with enterprises and industry associations in dealing with proceedings initiated by foreign parties for anti-dumping, anti-subsidy and self-protection with respect to exported Vietnamese goods.

VCAD is headed by a director, appointed (and subject to removal) by the Prime Minister on the proposal of the Minister of Trade. The present director of VCAD is Dr Dinh Thi My Loan. Two of VCAD's several deputy directors are in charge of competition matters, Mr Bui Xuan Dung and Mr Tran Anh Son.

VCAD's personnel now numbers 25, with 5 new appointments recently. The assignment of personnel to VCAD's various divisions has not yet been finalized. VCAD's various divisions comprise:

- Division for investigating cases of practices in restraint of competition.
- Competition management and supervision division.
- Division for investigating and dealing with unfair competitive practices.
- Consumer protection division.
- Anti-dumping, anti-subsidy and self-protection division.
- International co-operation division.
- Office.

VCAD will also operate:

- Information centre.
- Investigator training centre.

VCAD's head office is in Hanoi and it will open representative offices in HCMC and Da Nang. Decree 06 also provides for representative offices to be opened in other places.

> Vietnam Competition Council ("VCC")

VCC is responsible *inter alia*:

- To organize dealing with competition cases concerning practices in restraint of competition (eg abuses of dominant market position) after investigation by VCAD;
- To establish case-specific competition panels (officially known as 'councils dealing with competition cases') to hold hearings into competition cases;
- To resolve complaints regarding competition cases concerning practices in restraint of competition.

The VCC will consist of 11-15 members, appointed (and subject to removal) by the Prime Minister on the proposal of the Minister of Trade. VCC members must satisfy the following standards prescribed in the Law on Competition, including (a) having good ethics, being honest and objective, and having the spirit of protecting the socialist legal system; (b) having a bachelor degree in law or in economics or in finance; (c) having at least 9 or more years work experience in one of the sectors of law, economics or finance; and (d) having the ability to complete the tasks assigned. VCC members are appointed for 5 year terms (renewable). One member of the VCC will be the Chairman, again appointed by the Prime Minister on the proposal of the Minister of Trade.

The Minister of Trade has submitted to the Prime Minister his list of proposed members of the VCC and his proposal for Chairman. At present, VCAD is waiting for the Prime Minister's approval.

A VCC secretariat will assist the work of the VCC.

- > Council Dealing with Cases of Anti-Dumping, Anti-Subsidy and Self-Protection ("Anti-Dumping Council")

The Anti-Dumping Council is responsible *inter alia*:

- To consider files and conclusions of VCAD regarding investigations into cases of anti-dumping, anti-subsidy and application of self-protective measures;
- To discuss and make majority decisions on whether or not such cases involve breaches of the anti-dumping, anti-subsidy and self-protection regimes;
- To propose to the Minister of Trade to impose anti-dumping, anti-subsidy or self-protection measures.

The Anti-Dumping Council will consist of a (unspecified) number of standing members and a number of ad-hoc members, appointed by the Minister of Trade based on a list approved by the Prime Minister. The Council will be headed by a Chairman and have several Vice Chairmen. A secretariat will assist the Council.

>>> For English translations of all Vietnam's competition and related legislation, subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on www.vietnamlaws.com.

1.5 **Minimum wage levels**

Decree 03-2006-ND-CP of the Government dated 6 January 2006 Providing Minimum Wage Rates of Vietnamese Employees Working in Enterprises with Foreign Owned Capital, Foreign Bodies and Organizations, and International Organizations and for Foreign Individuals in Vietnam

Effective as of 1 February 2006, the minimum wage levels for work by Vietnamese employees doing the most basic work in normal working conditions for foreign invested enterprises have increased as follows:

- > Inner city districts of Hanoi and Ho Chi Minh City: VND870,000 per month (up from VND626,000);
- > Outer city districts of Hanoi and Ho Chi Minh City; inner city districts of Hai Phong; the city of Ha Long, Quang Ninh province; the city of Bien Hoa, Dong Nai province; the city of Vung Tau, Ba Ria Vung Tau province; the township of Thu Dau Mot and the rural districts of Thuan An, Di An, Ben Cat and Tan Uyen, Binh Duong province: VND790,000 per month (up from VND556,000);
- > Other areas: VND710,000 per month (up from VND487,000).

This is the first increase in minimum wages levels for Vietnamese employees of foreign invested enterprises since 1 July 1999. Vietnamese employees of other foreign bodies eg foreign NGOs have not seen an increase in minimum wage levels since 1 July 1996. All this time, their minimum wage levels have stayed at USD45 in Hanoi and HCMC; USD40 in Hai Phong, Vinh, Hue, Da Nang, Bien Hoa, Can Tho, Ha Long, Nha Trang and Vung Tau, etc; USD35 in other provinces and for simple labour intensive enterprises in agriculture, forestry and cultivation of aquatic products; and USD30 in cases approved by the Minister of Labour, War Invalids and Social Affairs. But now, under Decree 03, the minimum wage levels for Vietnamese employees of other foreign bodies have increased to the same levels (and are denominated in the same currency) as applicable to their counterparts at foreign invested enterprises, as set out above.

Another reform introduced by Decree 03 is that a floor has been imposed on the minimum wages that may be paid by foreign employers to Vietnamese employees who have passed vocational training courses (including in-house courses by the employers). Those wages must be at least 7% higher than the minimum wage levels set out above. No surprise, Decree 03 encourages foreign employers to pay higher minimum wages than above.

>>> For more on minimum wages, see the October and July 2005 Issues of Vietnam Legal Update on www.vietnamlaws.com.

1.6 New urban zone developments

Decree 02-2006-ND-CP of the Government dated 5 January 2006 issuing Regulations on New Urban Zones

Decree 02 regulates the organization and implementation of new urban zone development projects, from project inception, through construction, to project completion. Projects may be for development of completely new urban zones or development of existing urban areas, but must cover a land area of 50 hectares or more and involve integrated development of technical infrastructure, social infrastructure, residential areas and other service works. In some cases, a new urban zone project may have less than 50 hectares of land but the minimum area must be 20 hectares. Investors in new urban zone projects must be enterprises with business registration for property business and with capital of at least 20% of the total capital for a project. Projects using 200 hectares or more are subject to appraisal by the provincial people's committee and investment approval by the Prime Minister. Other projects are subject to appraisal and approval by the provincial people's committee. Based on the land planning, the provincial people's committees will allocate or lease land to investors in accordance with land laws.

Investors in new urban zone projects may sell or lease land lots with developed infrastructure in new urban zones to secondary corporate investors. However, Decree 02 prohibits the sale of 'off-the-plan' housing by investors in new urban zones. Generally speaking, 'off-the-plan' sales are a way for investors to mobilize capital - the purchasers of 'off-the-plan' housing pay investors in property development projects certain monies in advance (one year, two years, or even longer in advance) and the investors apply those funds to building the housing and related infrastructure. Most, if not all, investors in property development projects in Vietnam raise capital in this manner. It is also common in many other jurisdictions, and may give rise to stamp duty and other savings in other jurisdictions. Under Decree 02, 'off-the-plan' sales are not an option for investors in new urban zone projects in Vietnam. For non-'new urban zone' projects, it remains an available option.

Decree 02 became effective as of 20 January 2006.

1.7 Mining

Decree 160-2005-ND-CP of the Government dated 27 December 2005 on Making Detailed Provisions for Implementation of Mineral Law and Law on Amendment of and Addition to a Number of Articles of Mineral Law

and

Circular 01-2006-TT-BTNMT of the Ministry of Natural Resources and Environment dated 23 January 2006 Providing Guidelines for Implementation of a Number of Articles of Decree 160

Following on from Law 46-2005-QH11 on Amendment of and Addition to a Number of Articles of the Mineral Law which was passed by the National Assembly on 14 June 2005 and which became effective as of 1 October 2005, Decree 160 and Circular 01 replace the old legislation implementing the 1996 Mineral Law (Decree 76 of 2000, Circular 10 of 1997, Decision 06 of 2003 and Decision 23 of 2004) with updated provisions to reflect the minor reforms introduced by Law 46. As Law 46 did not amend the 1996 Mineral Law significantly, there are few substantive changes introduced in Decree 160 and Circular 01. Unfortunately, the flaws in the current regulatory framework for mining projects in Vietnam (such as lack of automatic right to mine minerals discovered within an exploration area) have survived. A complete review of the 1996 Mineral Law has been deferred until the next National Assembly Legislature XII (2008-2013).

Decree 160 became effective as of 1 January 2006 and Circular 01 as of 18 February 2006.

>>> For a review of Law 46, see August 2005 Issue of Vietnam Legal Update on www.vietnamlaws.com.

>>> For English translations of Vietnam's mining legislation, subscribe to Vietnam Laws Online Database on www.vietnamlaws.com.

Part 2 Features

2.1 Vietnam's new enterprise law - top 10 points on management rules

On 29 November 2005, the National Assembly passed Law 60-2005-QH11 on Enterprises ("LoE 2005"). The LoE will become effective on 1 July 2006 and will replace the current Law on Enterprises 1999, the Law on State Owned Enterprises 2003 and (together with the new Law 59-2005-QH11 on Investment) the Law on Foreign Investment 1996 (as amended 2000) ("LFI").

The LoE 2005 unifies Vietnam's 'company law' for domestic and foreign invested enterprises for the first time. The LoE 2005 is the twin of the new Law on Investment - together, they revolutionize Vietnam's business environment, introducing significant changes to the management rules applicable to Vietnamese enterprises including foreign invested enterprises.

Here's our top 10 points on management under the LoE 2005:

1. The LoE 2005 regulates the establishment, organization of management, and operations of (i) limited liability companies ("LLCs"), (ii) shareholding companies ("SCs"), (iii) partnerships and (iv) private enterprises in Vietnam. Both foreign and domestic invested enterprises (ie enterprises established in forms (i)-(iv) above) will be uniformly regulated by the LoE 2005.
2. It is mandatory for State owned enterprises which were established before the effective date of the LoE 2005 (ie 1 July 2006) to be converted into LLCs or SCs. The conversion must be completed within 4 years from the effective date of the LoE 2005 (ie by 1 July 2010).
3. Foreign invested enterprises (ie joint venture enterprises ("JVEs") and 100% foreign owned enterprises) which were licensed before the effective date of the LoE 2005 have the option to re-register their business and investment in accordance with the LoE 2005, ie most likely as either LLCs or SCs (depending on the number of investors and their objectives). The re-registration must be completed within 2 years from the effective date of the LoE 2005 (ie by 1 July 2008). It is expected that the Government will issue before 1 July 2006 a decree on re-registration requirements and procedures.

According to advice from officials of the Ministry of Planning and Investment, if foreign invested enterprises choose *not* to re-register their business and investment in accordance with the LoE 2005, the management of such enterprises must follow their existing charter (as opposed to the new management rules under the LoE 2005).

4. Under the LFI, all matters could be decided by the Board of Management of a JVE by simple majority (ie 51% vote) except for appointment/dismissal of the General Director and Deputy General Director and amendment of the JVE's charter, which required unanimous approval. Under the LoE 2005, a 65% majority will be required for all matters (in respect of LLCs) and for many matters (in respect of SCs), except certain matters that will require a 75% majority. This means that a foreign investor will generally need to hold at least 65% interest/shares in an LCC or SC if it requires substantial management control.
5. There will be no minimum requirement for contribution by foreign investors under the LoE 2005. In contrast, under the LFI, foreign investors are required to contribute at least 30% of the legal capital (ie equity) of a JVE.
6. There will be no "thin capitalization" rule under the LoE 2005. In contrast, under the LFI, foreign invested enterprises have to maintain a ratio of maximum 70% loans/minimum 30% equity.
7. Reductions of equity will be permitted under the LoE 2005. Under the LFI, the equity of a foreign invested enterprise cannot be "reduced", although it may sometimes be "restructured".

8. Unlike the LFI, the LoE 2005 lists matters that must be decided by the relevant management body of an LLC (ie Members' Council) and of a SC (ie Shareholders' Meeting and Board of Management).
9. Under the LoE 2005, the legal representative of an LLC and SC must be resident in Vietnam. If he/she is absent from Vietnam for more than 30 days, he/she must authorize in writing another person to carry out the powers and obligations of the legal representative. The LFI does not require the General Director of a foreign invested enterprise to be resident in Vietnam.
10. Under the LoE 2005, the legal representative of an LLC or SC may be held personally liable for his/her actions in the course of his/her employment in certain stipulated cases.

>>> For more on the new Law on Enterprises 2005 and the new Law on Investment 2005, see December 2005 Issue of Vietnam Legal Update on www.vietnamlaws.com.

>>> For English translations of Vietnam's new Law on Enterprises 2005 and other new laws passed by the National Assembly in 2005, subscribe to Vietnam Laws Online Database on www.vietnamlaws.com.

2.2 **Tardy implementation of new Commercial Law 2005 and foreign trading rights**

The new Commercial Law 2005 became effective as of 1 January 2006, introducing new provisions on foreign trading and distribution rights as well as commodity exchange and franchising. Unfortunately, but not uncommonly in Vietnam, many (in this case, most) of the various decrees to implement the new reforms are yet to be issued by the Government.

To date, only 3 implementing decrees have been issued:

- > Decree 12-2006-ND-CP of the Government dated 23 January 2006 Making Detailed Provisions on Implementation of Commercial Law With Respect to International Purchases and Sales of Goods and Agency for Purchases and Sales, Processing and Transit of Goods Involving Foreign Business Entities (see [1.2 above](#))
- > Decree 19-2006-ND-CP of the Government dated 20 February 2006 on Certificate of Origin
- > Decree 20-2006-ND-CP of the Government dated 20 February 2006 on Inspection Services

Implementing decrees which have been drafted and submitted to the Government for issuance (possibly as soon as March 2006):

- > Decree on franchising (implementing articles 284-291 of the Commercial Law 2005) (see [3.1 below](#))
- > Decree on foreign invested commercial enterprises specializing in purchase and sale of goods and activities directly related to the purchase and sale of goods in Vietnam (implementing article 22.3 of the Commercial Law 2005)
 - >>> Interested investors are eagerly awaiting this decree, which will implement Vietnam's commitment in the new Commercial Law 2005 to grant trading and distribution rights to foreign companies. The latest draft of the decree (draft 5) allows foreign companies to establish foreign invested commercial enterprises (in the form of joint venture enterprises or 100% foreign owned enterprises only) to undertake solely commercial activities (ie import, export and distribution of goods), independently of any associated manufacturing activities. However, as expected, the draft decree provides for this reform to be introduced only as scheduled in the various treaties and trade agreements Vietnam has entered into. So, for investors from countries with which Vietnam has entered into trade agreements with commitments with respect to foreign trading and distribution rights, ie currently, investors from the US, EU and Japan, the establishment of foreign invested commercial enterprises will be licensed in accordance with the terms and timetable in the respective trade agreements. In fact, for US investors, the sector is already supposed to be open, even without any implementing legislation! For investors from other WTO member countries, foreign invested commercial enterprises will be licensed in accordance with Vietnam's

WTO commitments, which is understood to include providing full trading rights to foreign companies and individuals only after 1 January 2007. But there may be room to negotiate, as the draft decree provides for 'special cases' where businesses from countries with which Vietnam does not have any undertaking with respect to foreign trading and distribution rights may be permitted by the Minister of Trade to establish foreign invested commercial enterprises if so approved by the Prime Minister.

Foreign invested commercial enterprises will be licensed by the Minister of Trade. Once established, if the enterprise wishes to also conduct manufacturing, it must comply with the new investment regime under the new Law on Investment 2005.

Foreign invested commercial enterprises may establish representative offices and branches in Vietnam and overseas (subject to approval of the Ministry of Trade in the case of establishing branches in Vietnam). Only 1 retail sales outlet may be established initially in Vietnam, with additional outlets only permitted to be opened in accordance with Vietnam's commitments in its various treaties and trade agreements and subject to approval of the Ministry of Trade.

- > Decree on representative offices and branches of foreign business entities in Vietnam (implementing articles 16-23 of the Commercial Law 2005)

- >>> Representative offices and branches of foreign business entities in Vietnam are now dealt with in a separate draft decree (previously they were dealt with together with foreign invested commercial enterprises in a single draft decree). Little substantive reform is expected with respect to representative offices. As is the case with foreign invested commercial enterprises above, foreign business entities will only be permitted to establish branches in Vietnam in accordance with Vietnam's undertakings (both with respect to timing and industry sectors) in the various treaties and trade agreements it has entered into.

- > Decree on commercial enhancement activities

Implementing decrees which have been drafted but not yet submitted to the Government:

- > Decree on sale and purchase of goods via the commodity exchange (up to draft 3)
- > Decree on e-commerce
- > Decree on administrative offences in trade

>>> For more on the opening of the trading and distribution sector to foreign investors, see August 2005 Issue of Vietnam Legal Update on www.vietnamlaws.com

>>> For English translations of Vietnam's new Commercial Law 2005 and implementing decrees, subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on www.vietnamlaws.com.

2.3 National Assembly update

2006 is a big year in Vietnamese legislative history. Significant new laws have or will come into effect in 2006. And more significant laws are scheduled to be passed.

Laws passed by the National Assembly in 2005 which have or will come into effect in 2006 include:

- > Effective as of 1 January 2006:
 - Law 33-2005-QH11 Civil Code
 - Law 36-2005-QH11 Commercial Law
 - Law 38-2005-QH11 on Education
 - Law 40-2005-QH11 Maritime Code
 - Law 41-2005-QH11 on Conclusion of, Accession to and Implementation of International Treaties
 - Law 42-2005-QH11 Amending 2001 Customs Law
 - Law 44-2005-QH11 on Tourism
 - Law 45-2005-QH11 on Export and Import Duties
 - Law 57-2005-QH11 on Amendment of the Law on VAT and Law on Special Sales Tax
- > Effective as of 1 March 2006:
 - Law 51-2005-QH11 on Electronic Transactions
- > Effective as of 1 April 2006:
 - Law 61-2005-QH11 on Tendering
- > Effective as of 1 July 2006:
 - Law 48-2005-QH11 on Practising Thrift to Reduce Expenditure
 - Law 49-2005-QH11 on Negotiable Instruments
 - Law 50-2005-QH11 on Intellectual Property
 - Law 52-2005-QH11 on Protection of the Environment
 - Law 53-2005-QH11 on Youth
 - Law 54-2005-QH11 on People's Police
 - Law 55-2005-QH11 on Anti-Corruption
 - Law 56-2005-QH11 on Residential Housing
 - Law 58-2005-QH11 Amending Law on Complaints and Denunciations
 - Law 59-2005-QH11 on Investment
 - Law 60-2005-QH11 on Enterprises

>>> For highlights of above laws, see December 2005 Issue of Vietnam Legal Update on www.vietnamlaws.com.

>>> For English translations of new laws passed by the National Assembly in 2005, subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on www.vietnamlaws.com.

At the conclusion of the National Assembly's October-November 2005 Session, the National Assembly passed Resolution 49-2005-QH11 on Program for Formulation of Laws and Ordinances in 2006 which provides as follows:

- > 11 Laws and 1 Resolution to be passed at the next Session, proposed to be held in May 2006:
 - Law on Cinematography
 - Law on Real Estate Business
 - Law on Social Insurance
 - Law on Lawyers

- Law on Civil Aviation of Vietnam (Revised)
- Law on Information Technology
- Law on HIV/AIDS Prevention and Fighting
- Law on Standardization
- Law on Juridical Support
- Law on Securities
- Law Amending Law on the Organization of the National Assembly
- Resolution on criteria of important national projects for submission to the National Assembly for consideration and decision on guidelines on investment

The Standing Committee of the National Assembly has just concluded a 2 week session to consider and approve the submission of drafts of the above 11 laws to the full National Assembly.

- > 13 Laws to be considered at the next Session, proposed to be held in May 2006, and passed at the second Session for 2006, proposed to be held in October 2006:
 - Law on Sending Employees to Work Abroad
 - Law on Tax Management
 - Law on Occupational Training
 - Law on Equality of the Sexes
 - Law on Registration of Real Estate
 - Law on Dykes
 - Law on Physical Education and Sports
 - Law on Donation of Human Organs
 - Law on Associations
 - Law Amending Labour Code (in relation to strikes and resolution of strikes)
 - Law on Residence
 - Law on Technology Transfer
 - Law on Notarization
- > 1 Law to be considered and passed at the second Session for 2006, proposed to be held in October 2006:
 - Code on Enforcement of Judgments
- > 12 Laws to be considered at the second Session for 2006, proposed to be held in October 2006:
 - Law on Personal Income Tax
 - Law on Territorial Waters of Vietnam
 - Law Amending Law on the Organization of the Government
 - Law on Quality
 - Law on Prevention of Violence in Families
 - Law on Health Insurance
 - Law on Referendums
 - Law on Prevention of Infectious Diseases
 - Law on Complaints and Resolution of Complaints
 - Law on Denunciations and Resolution of Denunciations
 - Law on Public Service
 - Law on Juridical Support

Part 3 Did You Know?

3.1 How to register franchising in Vietnam?

If you've followed the March, October and November 2005 Issues of Vietnam Legal Update, you'll know that Vietnam now has a regulatory framework for franchising activities in Vietnam. The enabling law is the new Commercial Law 2005, which came into effect on 1 January this year. An implementing decree is still in the legislative pipeline, but our sources tell us that the Government is close to issuing it (maybe as soon as March). All franchising activities in Vietnam will need to be registered with the Ministry of Trade in accordance with the decree. Registration will cover all individual franchising arrangements (each franchising contract will not need to be registered separately). The latest draft of the decree available to us (draft 6) includes an outline of the required contents for the "Franchise Description Document" that must be included in the application for registration. The outline runs for over 4 pages, and requires the franchisor to disclose to the Ministry many details about its franchising activities, including fees payable, obligations of the parties and information regarding the franchisor's franchising system. Of note, the proposed franchise contract does not itself need to be included, but certain details of the contract need to be stated in the Franchise Description Document. After registration, a franchisor must give the Franchise Description Document to prospective franchisees at least 15 business days before the individual franchise contract comes into effect. If registration does not occur and/or the Franchise Description Document is not given to the prospective franchisees as required by the decree, the franchise contract may be invalid.

3.2 Who's subject to compulsory employment of disabled employees?

Article 125.3 of the Labour Code provides for the Government to determine the proportion of disabled employees which enterprises must recruit in certain trades and occupations. Where enterprises in those prescribed trades and occupations do not employ the requisite proportion of disabled employees, they must pay a levy as stipulated by the Government into an employment fund in order to assist in the employment of disabled persons. Employers which recruit more disabled employees than the prescribed proportion may be eligible for State grants or low interest loans to enable the creation of suitable working conditions for disabled employees in cases where they face operational difficulties or undertake business expansion.

Implementing the Labour Code, Decree 81 of the Government dated 23 November 1995 (as amended 24 April 2004) and Circular 19 dated 19 May 2005 provide the following detailed guidelines:

- > Enterprises in all economic sectors (including foreign invested enterprises) which are engaged in the business of production of electricity, metallurgy, production of chemicals, geology, map surveying, petroleum, mining, basic construction, and/or transportation must employ disabled employees at the rate of 2% of their total employees. Any enterprise engaged in one of the above businesses but employing less than 50 employees is not subject to the compulsory obligation to employ disabled employees.
- > Enterprises in all economic sectors (including foreign invested enterprises) engaged in business sectors other than those listed above must employ disabled employees at the rate of 3% of their total employees. Any enterprise engaged in any such business but employing less than 33 employees is not subject to the compulsory obligation to employ disabled employees.

Enterprises which are subject to the compulsory obligation to employ disabled employees but which do not meet the above requirements must pay monthly an amount of money to the provincial employment fund for disabled employees. This fund is administered by the provincial department of labour, war invalids and social affairs. The monthly amount to be paid is equal to the statutory minimum wage level multiplied by (x) the number of disabled employees which should have been employed by the enterprises. The statutory minimum wage levels applicable to foreign employers have just increased (see [1.5 above](#)). The statutory minimum wage levels applicable to Vietnamese employers increased in October 2005 (see the October 2005 Issue of Vietnam Legal Update on www.vietnamlaws.com).

3.3 Top 10 corporate events in 2005

According to an article posted on Youth Online on 2 January 2006, the top 10 corporate events in Vietnam for 2005 were as follows (our translation of actual text):

1. Acquisition of another company via the securities market:

For the first time in Vietnam, a domestic company (Kinh Do Shareholding Co.) acquired another company (Tribeco) by purchasing shares on the securities market. After many months of secret preparations, Kinh Do officially announced that as from November 2005 it held more than 50% shareholding in Tribeco.

2. End of calendar publishing monopoly:

After a period of wrangling, the HCMC National University Publishing House itself published its own calendar and this event terminated the calendar publishing monopoly which has existed for such a long time in Vietnam.

3. Trouble over a label claiming contents "more natural than MSG":

The competent State administrative body forced Unilever Best Foods & Elida P/S to change a misleading label on one of its food products which claimed that a component of the product was "more natural than MSG". In practice, many manufacturers in Vietnam fail to provide clear information about the ingredients and quality of foodstuffs. This is information to which consumers are entitled and which can lead to mistakes by consumers when they make decisions to purchase products. So this event was a big win for consumers.

4. First bank to be listed on the trading floor:

The State Bank of Vietnam gave approval for the first bank (Sacombank) to be listed on the stock exchange. It is forecast that listing will officially take place in year 2006.

5. Many enterprises are taking a second look at financial assistance for soccer:

Negative activities on the part of umpires and coaches, contributing to incorrect results in soccer matches in the National League during 2005, have resulted in some enterprises deciding to withhold their financial support of soccer clubs. For example, the East Asia Bank has withdrawn its financial support because it fears that its reputation could be adversely affected. Another factor which has influenced enterprises has been negative activity on the part of some of the players in Vietnam's under-23 soccer team. Unfortunately this lack of financial support will delay the professionalization of soccer in Vietnam.

6. For the first time a Vietnamese court resolved a dispute about software copyright:

For the first time in Vietnam, a court resolved a claim for breach of software copyright and ordered the offender to pay damages. Litigation via the courts is a better resolution method than the more usual administrative route.

7. Restructuring of Pacific Airlines:

Pacific Airlines was placed under the direct control of the Ministry of Finance in the middle of 2004 due to very heavy losses. With State assistance, the business operations of the company gradually developed in 2005 and it is currently on the way to overcoming the crisis. Pacific Airlines has cut its huge expenses which reached 130 billion dong per year, including savings of 10 billion dong per year from renegotiating aircraft lease contracts and technical services contracts. Currently the Ministry of Finance is negotiating the transfer to the Temasek Holding Group of Singapore of a 30% shareholding in Pacific Airlines. If these negotiations are successful, Pacific Airlines will be stronger in its plan to conquer the domestic and regional aviation markets in the future.

8. Viettel lodges a complaint against VNPT about linking to the network:

The Prime Minister recently sent a directive forcing Vietnam Posts and Telecoms Corporation to provide Viettel with more capacity for network linking. VNPT is the enterprise holding administrative power over

the national telecommunications backbone network, and it had failed to supply Viettel with sufficient capacity for network linking. However this particular event is still continuing.

9. Successful sales of shares and bonds:

Vietcombank bonds were sold out within three minutes of the commencement of their issuance, because the bonds are convertible into shares when Vietcombank equitizes at the end of 2006. Vietcombank sold a total of 1,370 billion dong worth of bonds at the interest rate of six per cent per annum. Also in the year 2005, options of shares in companies such as Vinamilk meant valuations of shares in enterprises is getting closer to market prices. The fact that shares are being sold at prices two or three times higher than the initial share valuation made by the State helps to reduce the adverse effect of those low valuations made during the equitization process.

10. PJICO Non-Life Insurance collusion scandal:

During 2005, a number of staff in PJICO Insurance Company colluded with clients to pay out 3.8 billion dong for an event involving export of goods to Germany (the clients conducted procedures to purchase insurance after the event causing the loss). This not only adversely affected the reputation of PJICO, but has also adversely affected the insurance industry overall. Unless this matter is satisfactorily resolved, Vietnamese insurers will have to pay higher re-insurance premiums than other countries in the region.

3.4 Unlawful provincial investment incentives repealed

The Prime Minister has repealed 46 decisions which include unlawful regulations on investment incentives and promotion issued by the people's committees of 31 provinces and cities under central authority as of 1 January 2006. The 46 decisions are listed in an appendix to Decision 1387-2005-QD-TTg of the Prime Minister dated 29 December 2005 on Dealing With Unlawful Provisions on Investment Incentives and Promotion Issued by People's Committees of Provinces and Cities Under Central Authority. The repealed decisions encompass unlawful regulations on foreign investment incentives as well as domestic investment incentives. All people's committee of provinces and cities under central authority must check for, repeal, and cease to implement any other unlawful regulations on investment incentives and promotion not listed in the appendix to Decision 1387. People's committees must also prepare a list of unlawful investment incentives and promotion granted to investors and send the list to the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Justice and the Office of Government for the Prime Minister's consideration before 1 March 2006. Beneficiaries of incentives from provincial authorities might like to check the basis for their entitlement to those incentives is not unlawful and already/about to be repealed...

3.5 HCMC office of Phillips Fox - new appointments



Edward Han is the first and only Korean lawyer working in Vietnam. His practice focuses on advising Korean investors and on intellectual property matters in Vietnam. He obtained a Master of Laws in IP (Hons) at Korea University after graduating in law from Bond University in Australia. Before joining Phillips Fox, Edward was the general in-house counsel and a director of a large Korean manufacturer with investments in several countries, including Vietnam. In this capacity, he advised on a wide range of foreign investment, corporate, commercial and litigation matters for over 4 years. He has previously worked in Melbourne and HCMC at another major law firm.



Bui Khanh Linh is originally from Hanoi. She graduated in law from Moscow State University and worked for some time with a local Vietnamese law firm before joining Phillips Fox. Linh assists with advice on representative offices, employment and distribution matters. Most recently, she has been working on a Clean Development Mechanism project (or CDM project, under the Kyoto Protocol) in Vietnam, involving the sale to our client of carbon emission reduction credits.

Part 4 What's new on www.vietnamlaws.com?

>>> NEW search function for Vietnam Legal Update

All issues of Vietnam Legal Update from 1997 to date are available on www.vietnamlaws.com. For your convenience, there's an index of contents of all issues of Vietnam Legal Update. Now you can search for keywords in our index. This will make it easier for you to find articles in Vietnam Legal Update on topics of interest to you.

>>> Vietnam Laws Online Database - latest update

Vietnam Laws Online Database on www.vietnamlaws.com is an online searchable database of English translations of close to 3,000 Vietnamese laws relating to foreign investment and far beyond - it's the most extensive online Vietnamese law library in the world. Our new keyword search option allows subscribers to search for keywords in our descriptions of legislation - as well as searching by subject category, date, issuing body, official number, legislation type, or an advanced search, combining two or more of these search options. Translations can be viewed online, printed and downloaded (subject to terms & conditions).

Vietnam Laws Online Database was last updated on 27 February 2006 and now includes, amongst others:

- > Draft decree on foreign trading and distribution rights ([2.2 above](#))
- > Decree 12 implementing Commercial Law ([1.3 above](#))
- > Decree 17 amending 2004 land decrees
- > Decrees 06, 05 & 04 on competition & anti-dumping authorities ([1.4 above](#))
- > Decree 03 on minimum wages & related official letters ([1.5 above](#))
- > Law 61 on Tendering (passed in Nov 2005, effective 1 April 2006)
- > Law 60 on Enterprises (passed in Nov 2005, effective 1 July 2006)
- > Law 59 on Investment (passed in Nov 2005, effective 1 July 2006)
- > Law 57 on Special Sales Tax and VAT & implementing Decree 156 and Circular 115 (passed in Nov 2005, effective 1 Jan 2006)
- > Law 56 on Residential Housing (passed in Nov 2005, effective 1 July 2006)
- > New Civil Code, Commercial Law, Maritime Code & more (effective 1 Jan 2006)

Above is just a snapshot of the wide range of legislation available.

We welcome **feedback** at any time. So we can continue to improve Vietnam Laws Online Database, we would appreciate if subscribers could spend a few minutes completing the feedback form available on the Vietnam Laws Online Database Welcome Page.



Phillips Fox was proud to accept the **Business Innovation Award** at the Australian Business Awards in Vietnam 2004, in recognition of our innovative work in developing www.vietnamlaws.com and our **Vietnam Laws Online Database**.

Hanoi Branch Office
Suite 401, Hanoi Tower
49 Hai Ba Trung
Hanoi
Vietnam
Tel +84 4 936 0990
Fax +84 4 936 0984
bill.magennis@phillipsfox.com

Ho Chi Minh City Branch Office
Suite 605, Saigon Tower
29 Le Duan Boulevard
District 1, Ho Chi Minh City
Vietnam
Tel +84 8 822 1717
Fax +84 8 822 1818
nigel.russell@phillipsfox.com

Melbourne Office
Level 21, 140 William Street
Melbourne
Australia
Tel +61 3 9274 5000
Fax +61 3 9274 5111
maureen.mcLaughlin@phillipsfox.com