

### 1-030 The People's Procuracies

The People's Procuracies exercise the right to prosecution and supervision of judicial activities according to the Constitution and laws. The People's Procuracies system consists of the Supreme People's Procuracy, the local People's Procuracies and Military Procuracies.

While the Supreme People's Procuracy exercises the right to prosecution and supervision of judicial activities and contribute to ensuring the strict and uniform observance of law in general, the local People's Procuracies exercises the right to prosecution and supervision of judicial activities in their respective localities. The Military Procuracies exercises the right to prosecution and supervision of judicial activities of the Military tribunals according to the provisions of law.

The People's Procuracies have the responsibility to preserve the socialist principles adopted by the State Government and the laws of Vietnam. The responsibilities include protecting the property of the State and collectives; protecting the lives, health, property, freedom, honour and dignity of citizens; and ensuring that the interests of the State, of collectives, the legitimate rights and interests of citizens are protected according to the laws.

Within its scope of their functions and tasks, the People's Procuracies will perform their functions and tasks through the following activities:

- exercising the right to prosecution and supervision of law observance in the investigation of criminal cases by investigating bodies and other agencies tasked to conduct a number of investigating activities;
- investigating some types of offenses against judicial activities, committed by officials of judicial bodies;
- exercising the right to prosecution and supervision of law observance in adjudication of criminal cases;
- supervising the settlement of civil, marriage and family, administrative, economic and labour cases as well as other matters under the provisions of law;
- supervising the law observance in the execution of judgments and decisions of the People's Courts; and
- supervising the law observance in the custody, detention, management and education of prisoners.

In addition to the above functions and tasks, the People's Procuracies will have the following responsibilities:

- receiving and settling in time complaints under their jurisdiction; controlling the settlement of complaints about judicial activities of judicial bodies under the provisions of law;
- receiving information and report on criminals, which are transferred by agencies, organizations, and people's armed force units and individuals. To this extent, the People's Procuracies will have to compile statistics on

crimes. Within the scope of their functions and tasks, other agencies engaged in legal proceedings will have the responsibility to coordinate with the People's Procuracies in performing their tasks; and

- coordinating with the courts, police offices, inspectorates, justice agencies and other State bodies, the organisation of the Communist Party and its member organisations and the army in preventing and fighting crimes effectively, handling in a timely and just manner crimes and offenses; propagating and educating in law; making laws; training and fostering officials; researching into crimes and offenses.

The People's Procuracies are led by their Chiefs. The chiefs of the subordinate People's Procuracies are subject to the leadership of the chiefs of the superior People's Procuracies; the Chiefs of the local People's Procuracies and the chiefs of the Military Procuracies are subject to the leadership of the chief of the Supreme People's Procuracy.

The superior People's Procuracies have the responsibility to inspect, detect, redress and handle violations committed by the subordinate People's Procuracies. The chiefs of the superior People's Procuracies are entitled to withdraw, suspend or annul decisions of the subordinate People's Procuracies.

At the Supreme People's Procuracy, the provincial/municipal People's Procuracies, the Central Military Procuracy, the Military Procuracies of Military Regions and the equivalent, the Procuracy Committees will be set up to discuss and decide by majority important issues.

The chief of the Supreme People's Procuracy is elected, removed from office and dismissed by the National Assembly at the proposal of the State President. The chief is subject to the National Assembly's supervision, bears responsibility and reports on activities before the National Assembly. In the recess of the National Assembly, the chief of the Supreme People's Procuracy bears responsibility for and reports on activities before the National Assembly Standing Committee and the State President.

Vice-Chief of the Supreme People's Procuracy and its procurators will be appointed, removed from office and dismissed by the State President at the proposal of the Chief of the Supreme People's Procuracy.

The Chiefs, Deputy-Chiefs and procurators of the local People's Procuracies, Deputy-Chiefs of the Central Military Procuracy, Chiefs, Deputy-Chiefs and procurators of the Military Procuracies of Military Regions and the equivalent, the Regional Military Procuracies and investigators of the Supreme People's Procuracy will be appointed, removed from the office and dismissed by the Chief of the Supreme People's Procuracy.

The Chiefs of the local People's Procuracies are subject to the supervision of the Peoples Councils of the same levels; have the responsibility to report on their activities before the People's Councils; and answer questions, petitions and requests of People's Council deputies.

## 2-070 Specific commitments on services

Vietnam has tabled market access for 11 service sectors (110 sub-sectors), including important and sensitive ones such as financial services, telecommunications, and distribution.

### Financial services

From 1 January 2008, wholly foreign owned insurance enterprises will be allowed to engage in the mandatory insurance business, including motor vehicle third party liability, insurance in construction and installation, insurance for oil and gas projects. Five years from the date of accession, non-life branches of foreign insurance enterprises will also be permitted, subject to prudential regulations.

Foreign banks and finance companies are permitted to set up foreign-invested banks, finance companies or financial leasing companies with the same status as a local company in addition to setting up representative offices, branches, and joint-ventures.

The total equity held by foreign institutions and individuals in each Vietnam's joint-stock commercial bank cannot exceed 30% of the bank's chartered capital.

Vietnam allows foreign investors to conduct business in the Vietnam securities market for example in securities settlements and balance settlement services, supply and transfer of financial information.

Foreign securities services suppliers are permitted to establish representatives offices, joint-ventures with Vietnamese partners with a maximum foreign share capital of 49% from the date of accession (at the beginning of 2007) and after five years (2012), foreign investors are allowed to establish foreign-invested enterprises which are wholly owned and/or branches to conduct some types of business.

### Legal services

Foreign law firms can adopt one of following four forms of commercial presence in Vietnam: branch, subsidiary of foreign law firm, wholly foreign law firm and partnership between foreign and Vietnamese law firms.

Qualified foreign lawyers are allowed to advice on Vietnamese law.

### Telecommunication services

In basic telecommunication services (voice telephone services, data transmission services, private leased circuit services), foreign investors may invest through joint ventures with telecommunications service suppliers duly licensed in Vietnam. Foreign share capital must not exceed 49% of share capital of the joint-venture. For value-added services (electronic mail, facsimile, protocol conversion, etc), foreign capital contribution must not exceed 50% of legal capital of the joint venture.

## Construction and related engineering services

After two years of accession, wholly foreign owned enterprises can only provide services to foreign-invested enterprises and foreign-funded projects in Vietnam, provided that the foreign investors are legal entities of a WTO member.

### Educational services

In the educational field, services in respect of technical, natural sciences and technology, business administration and business studies, economics, accounting, international law and language training fields have been included but secondary education services are excluded.

With respect to higher educational services, adult education and other educational services, the educational syllabus must be approved by Vietnam's Ministry of Education and Training. Upon accession, joint-ventures were permitted though majority foreign ownership. As of 1 January 2009, wholly foreign owned educational entities will be permitted.

### Environmental services

Environmental services include sewage services, refuse disposal services and other services. There are certain restrictions on each kind of services. Joint-ventures with foreign share capital not exceeding 51% are allowed for the first four years after accession. Subsequently, there will be no limitation on the percentage of capital owned by foreign investors.

### Distribution services

From 1 January 2009, the wholesale and retails markets will be opened to foreign companies.

A joint venture with a Vietnamese partner and foreign share capital of a maximum of 49% is required for franchising services. From 1 January 2008, the 49% foreign share capital limit in joint-ventures will be abolished. From 11 January 2009, branches will be allowed.

### Health related and social services

Foreign services suppliers are permitted to provide services through a wholly foreign owned hospital, a joint-venture with Vietnamese partners or through business cooperation contracts.

The minimum investment capital is US\$20 million for a hospital, US\$2 million for a polyclinic unit and US\$200,000 for a specialty unit.

### Tourism and travel related services

For hotels and restaurants, for a period of eight years from the accession date, the services provided must be connected to investments in hotel construction, renovation, restoration or acquisition.

### 3-110 De-centralisation of Licensing Authority

*Decree 108/2006/ND-CP dated 22 September 2006*, which regulates the implementation of the Law on Investment, delegates the authority to issue investment certificates to the local People's Committees for most types of projects regardless of size except for involving "sensitive" projects which require the approval of the Prime Minister such as casino projects and production of cigarettes. However, for "sensitive" projects, if the Prime Minister has already approved the investment policies for investing in these sectors, the local People's Committees are authorised to issue the investment certificate.

This "de-centralisation" of the licensing authority is generally seen as a favourable step, as the local People's Committees are much more familiar with the projects in their localities than the central licensing authority (the Ministry of Planning and Investment). Previously, a project over US\$10 million in Ho Chi Minh City or Hanoi and over US\$5 million in other cities and provinces had to be approved by the Ministry of Planning and Investment.

## Business scope and authority

### 3-150 The significance of a company's business registration certificate or an investment certificate

Private business enterprises in Vietnam must have either a business registration certificate or an investment certificate. Local investors are allowed to obtain a business registration certificate before they obtain an investment certificate. However, not all projects invested by local investors require an investment certificate. Local investors do not need to obtain an investment certificate if the project involves investment capital below VND 300 billion (equivalent to about US\$18,750,000) or one which is not a conditional project. On the contrary, all projects invested by foreign investors require an investment certificate. The investment certificate, when issued to a foreign investor acts as business registration certificate, a document necessary to set up an entity in Vietnam. *Decree 139* provides that if foreign investors hold 49% of the total charter capital in the proposed company, the investment registration process for the project will be treated as a domestic project.

The investment certificate specifies the duration of a project, which is normally 50 years and is subject to renewal. In special circumstances, the Government may grant a longer term, not exceeding 70 years. The operational duration of a legal entity established under an investment certificate will coincide with the duration of project. Upon expiration of the term of an investment project, the investor can either liquidate their business entity or continue to use it to carry out other new projects.

The business registration certificate and investment certificate are usually issued by the local people's committee with jurisdiction over the matter. They state the legal name of the company, the type of the company formed, its

permitted scope, its legal representative, legal address and the amount of registered capital. Without a valid business registration certificate or investment certificate, business enterprises cannot legally conduct business in Vietnam.

### Legal representative of a Vietnamese company

A legal representative is an officer who has the primary responsibility and power to act on behalf of the company in its dealing with the outside world, including the State. Pursuant to the *Law on Enterprises*, either the chairman of the members' council (in case of an LLC), chairman of the board of management (in case of the Joint stock company) or the general director must be designated the legal representative. Legal representatives have the authority to bind the company in contracts, initiate lawsuits, and are personally liable for the commission or omission of certain acts. For a LLC, the legal representative of the company must notify the business registration body in writing of the progress of capital contribution within 15 days from the date undertaken for capital contribution, and must bear personal liability for any damage to the company and to other persons due to delayed notification or inaccurate, untruthful or incomplete notification. The legal representative must reside in Vietnam. If he is absent for more than 30 days, he or she must authorise another person in writing to exercise the rights and perform the duties of a legal representative.

### The business scope of a Vietnamese company

Unlike other countries, the business scope permitted to Vietnamese companies are narrowly defined and mostly codified into a State recognised and published list of business activities called "business lines".

Generally, the permitted business scope is closely tied to what is considered necessary for that particular project. Generally, to obtain an investment certificate, the investors need to specify in detail what they want to do. Broad descriptions of business scopes such as "do any lawful business permitted by law" is thus not permitted.

### Fields and industries entitled to investment incentives

An investor in several business fields and industries is entitled to investment incentives, specifically in the form of tax exemption or reduction.

The *Law on Investment* provides a list of fields and industries that are entitled to investment incentives which apply equally to local and foreign investors:

- Production of new materials or new energy; manufacture of hi-tech products, bio-technology or information technology; mechanical engineering.
- Farming and processing of agriculture, forest or aquatic products, salt making; production of hybrids, new plant varieties and/or animal breeds.

### Disclosure

The *Law on Enterprises* requires the Board of Management members, members of Board of Controllers, General Director/Director or other management personnel to disclose certain transactions within seven business days. This includes details of their ownership interests in other companies, and details of ownership by related persons in companies where the related person holds more than 35% of charter capital.

If they carry out business activities of the company in their own names or in the name of others they must disclose the nature and scope of the transaction to the Board of Management and Board of Controllers. They may only proceed if the majority of the Board of Management approves. All income derived will belong to the joint stock company in the event of any failure to disclose or failure to obtain approval.

The joint stock company must publicise its information including submitting its financial reports which have been approved by its General Shareholders' Meeting to the relevant State authorities in accordance with the laws on accounting. The company also has to summarise its annual financial reports and make them available to all shareholders.

All other individuals and organisations are entitled to view and copy the joint stock company's annual financial reports filed at the relevant business registration authority.

### Restrictions on contribution of ordinary shares of founding shareholders

All founding shareholders must register to purchase at least 20% of the total issued ordinary shares and must pay in full for the registered ordinary shares within 90 days from the date the joint stock company receives its Business Registration Certificate. Founding shareholders may freely assign their registered ordinary shares to each other provided that 20% of ordinary shares be held by them for three years from the date of the Business Registration Certificate. A non-founding shareholder ("transferee") may purchase a number of registered ordinary shares from a founding shareholder ("transferor") within such period if approved by the General Shareholders' Meeting. In this case, the transferor cannot vote in respect of the assignment and the transferee will automatically become a founding shareholder. Three years from the date of receipt of the Business Registration Certificate, restrictions on ordinary shares of founding shareholders will be lifted. During that period, the joint stock company has to disclose the details of its capital contribution to the State registration authority.

If a founding shareholder fails to contribute capital in full for the registered shares, the unpaid shares that have not been paid shall be dealt with in the following manner:

- (a) One or more shareholders may make contribution; or
- (b) Capital contribution may be called from third party(ies); or

- (c) Other shareholders who have contributed may make the additional contribution on a pro-rata basis.

In the event that founding shareholders do not subscribe for all of shares on offer, the unpaid shares must be sold off within three years from the date of receipt of the Business Registration Certificate.

### Issuance of new shares

The plan for issuance of new shares must be adopted by the General Shareholders' Meeting and the Board of Management must decide on the time, manner and price for offering new shares. Existing shareholders will be given priority in purchasing newly issued shares pro rated to the number of ordinary shares held by each shareholder in a joint stock company.

New shares must be issued in the following manner:

- (a) A notice of offering new ordinary shares must be sent to all shareholders and must be published in three consecutive newspaper issues within ten working days from the date of notification.
- (b) Shareholders must register to purchase the pro rated new shares within a period described in the notice or a shareholder may transfer his/her priority right to purchase new shares to others.
- (c) Where the new shares intended to be issued are not fully subscribed by shareholders and transferees, the Board of Management has to manage and adjust the distribution of those shares to other shareholders or non-shareholders in an appropriate manner provided that the conditions offered to such persons may not be more favourable than those offered to existing shareholders, except where approved otherwise by the General Shareholders' Meeting or new shares are sold through the stock exchange.

### Share buy back

If a shareholder disagrees with decisions on reorganisation or change of rights and obligations of shareholders as provided for in the charter, he/she can request the joint stock company to buy back his/her interest. The request must be sent to the joint stock company within ten working days from the date the General Shareholders' Meeting approves the decisions. If the joint stock company refuses to buy back, the shareholder is entitled to sell the interest to third party.

The joint stock company has the right to buy back a maximum of 30% of the total ordinary shares sold, one part or all of dividend preference shares subject to the following provisions:

- (a) The Board of Management decides on sale of a maximum of 10% of each type of share sold which was offered for sale every 12 months. In other cases, the decision on buyback of shares must be decided by the General Shareholders' Meeting.

- *Decision No. 09/2008/QD-NHNN dated 10 April 2008 ("Decision 09");*
- *Decision No. 286/2002/QD-NHNN dated 3 April 2003 and its amendment Decision No. 886/2003/QD-NHNN dated 11 August 2003 of the SBV (collectively referred as the "Decision 286"); and*
- *Decision 718/2001/QD-NHNN dated 29 May 2001 ("Decision 718").*

#### *The borrower*

Borrowers may be Vietnamese and foreign organisations and individuals.

#### *Purpose(s) of the loan*

A loan from a credit organisation must be used for a specified, lawful purpose as stated in the borrower's business plan or else in a "plan for serving daily life" submitted by the borrower to the credit organisation. However, a credit organisation may not grant loans for purchase of assets or recovering expenses prohibited by law and for financing transactions prohibited by law.

As a measure to minimise the use of foreign currency in the territory of the country, foreign currency loans have been restricted. A foreign currency loan may be granted only for the following purposes:

- to fund the payment to foreign parties for goods and services imported relating to the production and business activities of the customers;
- to fund the pre-payment of offshore loans, provided that the customers are able to repay the loan in foreign currency; and lending is more cost-effective compared to an offshore loan; and
- to fund offshore investment.

#### *Types of facilities*

*Decision 1627* provides for nine types of loan facilities:

- single term loans;
- credit line facilities;
- project loans;
- syndicated loans;
- hire-purchase loans;
- stand-by credit line facilities;
- credit card facilities;
- overdraft facilities; and
- other facilities not prohibited by laws which are in line with the credit organisation's business conditions and the customer's characteristics.

Under a single term loan or a project loan, a credit organisation lends to a borrower to realise a business plan or development of a project on the basis of a term loan agreement specifying drawdown and repayment schedules.

In a syndicated loan, two or more credit organisations jointly provide a loan to a single borrower to fund the realisation of a project or business plan and one of these credit organisations is appointed as the agent credit organisation to administer the loan. Syndicated loans are subject to the more detailed provisions of *Decision 286*.

A credit line facility, standby credit line facility, credit card facility and overdraft line facility share a common characteristic whereby a credit organisation and a borrower agree on a line of credit line that the borrower may draw upon over a definite term. The difference between a standby credit line facility and a credit line facility is that in the former, the credit organisation commits to disburse the loan and, therefore, is entitled to charge a commitment fee while in the latter the right of the borrower to drawdown depends on the credit organisation's availability of funds. With a credit card facility, the borrower (or the cardholder) is allowed to use a credit card to pay for goods or services or withdraw cash from ATMs within the agreed credit line.

*Decision 1627* does not describe the characteristics of a hire-purchase loan but states that principal and interest are compounded with the aggregate sum being divided into instalments for repayment.

#### *Extension and rescheduling of a loan*

The term of a loan commences from the date of the first drawdown by the borrower and ends upon the full repayment of principal and interest.

Loans are categorised into:

- short-term loans (up to 12 months);
- medium-term loans (between 12 months and 60 months); and
- long-term loans (over 60 months).

Repayment of the principal of a term loan may be extended. Credit institutions make their own decisions on restructuring loan terms based on the financial capability of the credit institution and on the results of assessment of the ability of a client to repay a loan. The outstanding principal of a client having a restructured debt will be classified into the appropriate debt group according to the regulations on classification of debts of the SBV.

Where a borrower cannot repay loan interest within the agreed period, the credit organisation may also allow repayment of loan interest to be rescheduled and extended, subject to the conditions as mentioned above.

#### *Lending rates*

##### Vietnamese Dong loans

Pursuant to existing banking laws, a bank is allowed to set lending rates by reference to basic interest rates periodically set by the SBV for Vietnamese Dong loans. At present, a lending rate must not exceed 150% of the basic rate fixed by SBV periodically.

a 50 year period and they must sell or donate their apartment within 12 months from the expiry date.

Similarly, *Resolution 19* also gives an enterprise established under the *Law on Investment* with foreign-owned capital, the right to purchase residential housing as residences for its employees. These enterprises may own apartments for employees' residences for the period recorded in its Investment Certificate and further extended periods (if any).

### 7-220 Permitted lessees

Those eligible to lease houses in Vietnam include:

- (1) Vietnamese individuals, organisations;
- (2) Overseas Vietnamese; and
- (3) Foreign organisations licensed to operate/have a presence in Vietnam and foreign individuals who enter into Vietnam for a period of three months or more consecutive months.

### 7-230 Rights of foreign investors

Foreign developers constructing houses for lease, may be granted the ownership title (Housing Ownership Certificate) over the houses. Foreign developers constructing houses for sale will not be issued with housing ownership certificates but they will be issued to eligible buyers.

The *Housing Law* allows developers to raise capital of 70% of the value of the houses by way of advance payments from house purchasers or lessees in order to finance their projects on the proviso that such mobilisation may only be collected when the house designs have been approved and the construction of house foundations have been completed.

House owners being foreign investors (those investing in construction of residential houses for lease) may mortgage their constructed houses to credit institutions licensed to operate in Vietnam, sell the houses, offer them as gifts or leave as estate to Vietnamese individual, organisations and overseas Vietnamese.

### 7-240 Requirements on housing development

Foreign investors wishing to do business in housing development projects must secure an Investment Certificate from the relevant State authorities. This procedure is applicable for all types of investment.

Housing development projects are required to be built appraised and approved in accordance with the *Housing Law* and construction laws and must be consistent with the constructions, zoning and housing development programmes of the relevant locality and the requirements on architectural plans applicable for each type of house. Thereafter, any change in content and progress of the projects must be approved by the relevant State authorities.

The construction sector must satisfy certain statutory requirements on the built up area of apartments as set out in the *Housing Law*. In particular, the proportion of apartments exceeding the total built up area varies from 20% to 60%, depending on the types of urban areas as provided in the laws. One further requirement for housing developers is that houses constructed must meet certain mandatory standards in accordance with the construction and housing laws. According to the *Housing Law*, developers must provide warranties for their residential premises from the date the building is accepted for use for at least:

- 60 months for apartment buildings with nine floors or above;
- 36 months in respect of apartments buildings from four to eight floors; and
- 24 months in respect of other types of residential dwellings.

When the Investment Certificate expires, developers must handover unsold houses to the provincial PC where the houses are located if they cannot be disposed the houses, within 12 months from the date of expiration.

### 7-250 Management of apartment buildings

An apartment building must have a management committee ("MC") to protect the rights and interests of owners and users during the lease of the apartment building.

Within 12 months from the date that the apartment building is ready, a meeting of all owners and users of apartments must be organised by the developer to appoint members of the MC which include representatives of the owners, and users. The number of members and term of the MC must be decided by participants at the meeting of all owners. However, the term of the MC must not exceed three years. The MC will decide issues on a simple majority voting basis.

The duties of the MC include:

- monitoring, supervising the maintenance of the building;
- preparing the internal rules to be approved by the meeting of all owners;
- signing contracts with management company and monitoring the implementation of such contract;
- collecting, summarising views of the owners regarding management of the building and provision of services;
- coordinating with local authorities to ensure lifestyle and safety is maintained;
- collecting fees from the owners for the use of the common areas (if any); and
- settling payments the management company in accordance with the contracted fees, paying allowances to members of the MC and settling other payments as provided for in the meeting of the owners.

*Decision 08* provides further details to the management of apartment buildings and MC meeting.

### 9-020 Government Regulation

The Ministry of Finance is responsible for regulating securities and securities market. It has duties and powers to promulgate rules and regulations pertaining to the securities sector and to direct the State Securities Commission ("SSC") to carry out the following functions:

- (a) to issue, extend, withdraw license and certificates relating to securities activities and securities market (e.g., establishment of securities companies, securities investment fund management companies or securities investment companies);
- (b) to approve changes relating to securities activities and securities market;
- (c) to administer and supervise the operation of the Ho Chi Minh City Stock Exchange ("HOSE"), the Hanoi Securities Trading Center ("HASTC"), securities depository centers and related institutions; and
- (d) to conduct checks and inspections, deal with administrative breaches and resolve complaints involving securities and securities market activities.

### 9-030 WTO commitments

Pursuant to the commitments made by Vietnam to the World Trade Organisation ("WTO") on securities sector:

- (a) upon accession in 2007, securities service suppliers would be permitted to establish representative offices and joint ventures with Vietnamese partners in which foreign capital contribution must not exceed 49%;
- (b) after five years from the date of accession, securities service suppliers with 100% foreign-invested capital will be permitted; and
- (c) after five years from the date of accession, branches of foreign securities service suppliers will be permitted.

Current regulations of Vietnam require that, in order to purchase and sell stocks on Vietnam securities market (HOSE or HASTC), foreign organisations and individuals can hold:

- (a) at most 49% of the total number of shares in a listed company;
- (b) at most 49% of the total number of investment fund certificates of a securities investment fund; and
- (c) an unlimited percentage of circulated bonds of an issuing organisation.

Foreign securities-trading organisations<sup>1</sup> may contribute capital to purchase shares from, or contribute joint-venture capital for setting up, securities companies or securities investment fund management companies at the maximum rate of 49% of the charter capital.

<sup>1</sup> Foreign trading-securities organisation is not defined by *Decision 238*. However, pursuant to *Circular No 83/2004/TT-BTC dated 11 September of 2004* of the Ministry of Finance, it refers to securities companies and investment fund management companies established and operated offshore.

### 9-040 Securities

The applicable legislation include the following:

- The *Securities Law*;
- The *Enterprise Law*;
- Decree 14/2007/ND-CP dated 19 January 2007.

#### Types of securities

Under the *Securities Law*, the term "securities" means shares of stock, bonds, investment fund certificates, share purchase rights, warrants, call options, put options, futures, securities baskets and securities indices.

A share of stock is a type of security representing the lawful rights and interest of an owner of a part of the shareholding in a company. It may be either common share or preferred share.

A bond is a long-term loan in the form of a security issued by a corporation, government, or government agency representing claims or interests of a bondholder in respect of an amount (principal) loaned to issuer.

Investment fund certificate is a type of security representing claims or interests of an investor in respect of a capital portion in a public fund.

Derivatives refer to securities taken from direct securities such as a bond or share of stock.

A share purchase right is issued by a shareholding company as part of an additional share placement in order to ensure existing shareholders of their right to purchase new shares under specified conditions.

A warrant, issued with bonds or preferred shares, entitles the holder to purchase a number of common shares at pre-determined prices during a specified period.

A call option entitles a holder to purchase a number of securities at pre-determined prices during a specified period.

A put option, which is the opposite of call option, entitles a holder to sell a number of securities at pre-determined prices during a specified period.

A future is an undertaking to purchase or sell a specified type of securities, securities basket or securities index at pre-determined number, prices and specified future date.

### 9-050 Public companies

A public company is a shareholding company which falls under any of the following three categories:

- (a) a company which has made a public offer of shares; or
- (b) a company which has shares listed on the HOSE or the HASTC; or

Economic rights comprise rights to:

- make derivative works;
- display works to the public;
- reproduce works;
- distribute or import original works or copies thereof;
- communicate works to the public by wire or wireless means, electronic information networks or any other technical means; and
- lease original cinematographic works and computer programmes or copies thereof.

Author(s) who are not also the owners of work will enjoy moral rights and some economic rights.

The authors who translate, adapt, compile, rewrite or transform work will be entitled to the copyright in the same way as the original authors provided that they obtain permission from the author or the owners of the original work and pay remuneration to the author or owner of the original work. If the authors of adapted, compiled, rewritten or transformed works want to alter the contents of the original work, they must obtain permission from the original author and acknowledge the name of the author and the title of the original work.

In respect of cinematographic works, videos, sound broadcasts, television broadcasts, theatrical works and other forms of artistic performance, the directors, scriptwriters, cameramen, film editors, music composers and painters are entitled to the rights in the same way as the authors who are not the owners of works. Producers of such works are entitled to enjoy the same "moral rights" and economic rights as the original author.

Moral rights are required to be independent of the usual economic rights and remain with the author even after he has transferred his economic rights.

#### Related rights

Copyright laws in Vietnam also provide for "related rights" to protect the interests of performers, producers of phonograms and broadcasting organisations in relation to their activities in connection with the public use of authors' works. For example, the right of performers to prevent fixation and direct broadcasting or communication to the public of their performance without their consent or the right of producers of phonograms to authorise or prohibit reproduction of their broadcasts.

#### Limits on copyright protection

Some limits on the rights of authors and owners of copyrights are stipulated in the *Law on Intellectual Property*. These include the freedom to use works without authorisation and compensation such as duplication of works by authors for scientific research or teaching purpose; reprographic reproduction of only one copy of work by libraries for archival and research purpose; audiovisual recording of performances for purpose of reporting current events or for teach

purpose. These exceptions do not apply to architectural works, plastic works and computer works where authorisation and payment of remuneration for the authors and/or owners is required.

A broadcasting organisation is not required to seek permission from the copyright holder when using a published work to make a sponsored broadcast which contains an advertisement. However, it must pay royalties or remuneration to the copyright holders in such a case. However, the use of works in that case does not apply to cinematographic works.

#### Duration of copyright

Moral rights of the author(s) mentioned above will be protected indefinitely (except for moral rights of the authors for cinematographic works, photographic works, dramatic works, work applied art and anonymous works which will have the term of protection of 50 years as from of the first publication), whereas others and the economic rights will be protected for the life of the author (or co-authors) and for a minimum of 50 years after his death.

Where the authorship is uncertain, or anonymous, the copyright belongs to the State.

For works that are protected under the Bilateral Trade Agreement and the Vietnam-USA Copyright Treaty, where the term of protection is calculated on a basis other than the author's life, the term must be a minimum of 75 years from the end of the calendar year of the first authorised publication of the work or, failing such authorised publication within 25 years from the creation of the work, a minimum of 100 years from the end of the calendar year of the creation of the work.

#### Registration for protection of copyrights

Authors (co-authors) or owners of the works are entitled to file an application to the Copyright Department for registration of copyright. The applicants must present relevant documents and papers to prove that they are authors (co-authors) or owners of such works or may authorise another individual or legal entity to carry out registration procedures. Foreign individuals or organisations may directly authorise a Copyright Service Organisation to file an application to the Copyright Department or local Department of Culture and Information under central cities and provinces.

Within ten days from the date of receiving the proper documents, the Copyright Department will issue a decision on whether or not to grant a Certificate of Copyright.

#### Copyright licensing

An author (co-authors) or owner may transfer his/her work to another under a licensing contract in writing. Depending on the type of works, certain mandatory contents are required to be included in such a licensing contract.

### Enforcement of intellectual property rights

The following legislation govern the enforcement of intellectual property rights

- The 1999 *Criminal Code*;
- The 2004 *Civil Proceeding Law*;
- The 2005 *Civil Code*;
- The 2005 *Law on Intellectual Property*;
- *Decree 105/2006/ND-CP dated 22 September 2006*;
- *Decree 106/2006/ND-CP dated 22 September 2006*.

### Administrative procedures and remedies

Pursuant to Art 200.1 of the 2005 *Intellectual Property Law* and *Decree 106/2006/ND-CP dated 22 September 2006*, the bodies competent to take administrative action in relation to infringement of intellectual property rights are the market control agencies of the trade administration (Market Control Department and Market Control Branch Offices), customs agencies (Customs Department, Customs branch offices, anti-smuggling inspection office), specialized inspection authorities such as the Culture and Information Inspectorates at the national and provincial levels and the Science and Technology Inspectorates at the national and provincial levels, the People's Committees at the district and provincial levels, and public security agencies (District Police, Provincial Police, and the Economic Police).

Administrative sanctions for the intellectual property right infringement will be imposed on the following acts:

- (a) Infringement of Intellectual Property rights which cause damage to consumers or society;
- (b) Failing to terminate an act of infringement of Intellectual Property rights though the holder has issued a written notice requesting the termination of the act; and
- (c) Producing, importing, transporting or trading IP counterfeit goods or a mark or a geographical indication that is identical or confusingly similar to a protected mark or geographical similar to a protected mark or geographical indication.

Usually the administrative measures are warnings and monetary fines amounting to one to five times the value of the discovered infringing goods. Additional measures include suspension of business activities for a definite term, and in the case of counterfeit and piracy goods, and materials and implements used for manufacturing or trading such goods, confiscation, destruction, distribution, and use for non-commercial purposes, or compulsory delivery of transiting goods out of the territory of Vietnam or re-exportation, after infringing elements had been removed.

### Special border control measures

The holder of the intellectual property right may file a request for inspection and supervision in order to detect imports or exports of goods showing signs of infringing intellectual property rights or file a request for temporary cessation of custom clearance for imports or exports suspected of infringing intellectual property rights. This must be accompanied by evidence to substantiate lawful ownership right or the right to use the object, and evidence proving the infringement.

The holder is also required to deposit 20% of the value of the goods or at least VND 20 million where the value could not be determined, or provide a guarantee ensuring compensation in the case of a wrongful request. Decisions to suspend the release of goods from customs may be issued by the Chief of the Customs Bureau, and the parties concerned must be notified accordingly.

Goods could be suspended from release for ten days from the date the decision is issued, and an additional ten days in certain circumstances. Evidence of infringement must be produced during this period. The owner of the temporary seized goods will also be given an opportunity to provide evidence or justification relating to the intellectual property right of the temporary seized goods.

Upon the expiration of the above duration, the goods will be released if the holder does not initiate a civil law suit and the customs office decides not to handle administrative violations of the exporters or importers according to administrative procedures. The customs office may ask the holder to compensate the exporters or importers for damage caused to the goods due to unreasonable requests for suspension of customs procedures.

### Civil judicial procedures and remedies

The People's Courts (Civil Court), at district and provincial level, have jurisdiction over disputes of infringement relating to intellectual property rights. The People's Court may adjudicate cases with respect to claims of infringing industrial property rights, disputes concerning royalty or remuneration, claims on registration right and the right of authorship, and disputes relating to assignment contracts of ownership right or licensing contract for the right to use objects of industrial property.

To lodge a claim or bring a suit before the court, the plaintiff or his/her lawful representative must provide:

- (a) evidence of his/her intellectual property right such as a copy of copyright certificate or title of protection of an industrial property object or for unregistered rights, necessary evidence to prove the basis for establishment of copyright or related rights in case of an absence of a copyright registration certificate, related right registration certificate; necessary evidence proving rights to business secrets, trade names or well-known marks; or copies of licence contract for intellectual property objects; and

Within 15 days from the deadline for submission by a creditor of its claims, the AALT must complete a list of creditors and post the same for a period of ten days. Any claim that is submitted after the lapse of this ten-day period is disallowed, except in the event of a *force majeure*. The law provides that a creditor may request the court to consider issues regarding the list of creditors within a three-day period from the date of receipt of the request, but such creditor is not entitled to appeal a disallowance by the Chief Justice of the relevant court or the higher court if this time period has lapsed.

## 12-060 Creditors' meeting

### Convening meeting of creditors

In the case where the conduct of the inventory of assets of the enterprise is completed prior to finalisation of the list of creditors, the judge must convene a meeting of creditors within 30 days from the date of finalisation. In the case where the conduct of the inventory of assets of the enterprise is completed after finalisation of the list of creditors, this time-limit will be calculated from the date of completion of the inventory.

The judge may convene subsequent meetings of creditors on any working day during the process of conducting bankruptcy procedures, on the proposal of AALT or of creditors representing at least two thirds of the total value of unsecured debts.

Notice of the meeting of creditors must be sent to all parties with the right or obligation to participate in the meeting, no later than 15 days prior to the commencement of the meeting. Copies of the plan and agenda for the meeting together must be attached to the notice.

The judge responsible for the conduct of the bankruptcy procedures will preside over the meeting of creditors.

### Right to participate in the creditors' meeting

The following parties will have the right to participate in the meeting of creditors:

- Creditors named on the list of creditors;
- A representative of employees, a union representative who has been authorised by employees (these persons have the same rights and obligations as a creditor); and
- A guarantor, after it has paid a debt on behalf of the enterprise (the guarantor becomes an unsecured creditor).

### Obligation to participate in creditors' meeting

The petitioner requesting commencement of bankruptcy procedures is obliged to participate in the meeting of creditors. If the petitioner is unable to participate, it must appoint in writing a proxy to participate in the meeting on its behalf.

Where there is no representative of the insolvent enterprise to participate in the meeting of creditors, the judge responsible for the conduct of bankruptcy procedures will appoint a representative of the enterprise.

### Agenda of initial creditors' meeting

The first creditors' meeting of must include the following:

- The head of AALT must report on the business status and the financial position of the enterprise; the results of the inventory of assets, list of creditors, list of debtors and other items he/she considers necessary.
- The owner or the legal representative of enterprise must present his or her opinion on the items on which the AALT has reported and will propose a plan and solution for restructuring business operations and for the ability and time-frame for payment of debts.
- The creditors' meeting must debate the items on which AALT has reported and the opinions presented by the owner or the legal representative of the enterprise.
- The meeting of creditors must pass a resolution. The resolution must be recorded in writing and must be approved by more than half of the number of unsecured creditors representing at least two thirds in value of the unsecured debts being present at the meeting of creditors. The resolution of the meeting of creditors will be binding on all creditors.
- If the meeting of creditors considers that the representative of creditors on AALT should be replaced, the meeting must elect a replacement.
- The meeting may propose the judge to appoint a person as manager and operator of the business operations of the enterprise.

### Conditions for validity of meeting of creditors

A meeting of creditors will only be valid when all of the following conditions are satisfied:

- More than half of the number of unsecured creditors representing at least two thirds in value of the unsecured debts are present; and
- The parties which are obliged to participate in the meeting of creditors are present.

### Adjournment of meeting of creditors

A meeting of creditors may be adjourned once in one of the following circumstances:

- There is less than half of the number of unsecured creditors representing at least two thirds in value of unsecured debts present at the meeting;
- More than half of the number of unsecured creditors present at the meeting vote in favour of the adjournment; and
- Parties which are obliged to participate in the meeting of creditors are absent for a legitimate reason.

## (iv) Acknowledgment of parties' agreement

If the parties reach an agreement on resolution of the dispute and such agreement is voluntary and is not contrary to the law or social morality, a decision will be issued to acknowledge their agreement on the resolution of the dispute.

## (v) First instance judgment and pronouncement of judgment

At the end of a hearing, the council of adjudicators will issue a judgment recording the contents of the dispute and the decision of the court.

**Appeal proceedings**

Any appeal against a judgment or order of the District People's Court must be made to the Provincial People's Court and any appeal against a judgment or order of the Provincial People's Court must be made to the Supreme People's Court. The parties have an automatic right to appeal a first instance judgment. The time limit for lodging an appeal notice is 15 days from the day of the judgment of the court of first instance.

Besides, the chief of the People's procuracy of the same or immediately higher jurisdiction has the right to protest against a judgment pronounced by the court of first instance. The time limit for lodging a protest of the inspectorate of the same jurisdiction and of an immediately higher jurisdiction against a judgment pronounced by the Court of first instance will be 15 and 30 days respectively, as from the date of pronouncement of the judgment.

The time limit for an appeal runs from the date of judgment. If the appellant was absent from the hearing, the time limit runs from the date the appellant receives a copy of the judgment or the date when the judgment was posted on the notice board of the People's Committee of the location where the appellant's head office or residence is located. An appeal generally operates as an automatic stay of execution of enforcement of the first instance judgment.

## (a) Preparation for appeal hearing

Time limit of the preparation for appeal hearing is two months from the date the court receives the case. With respect to cases with a complex nature, the chief justice of the appellate court may decide to extend the time limit of preparation for appeal hearing, but the extension must not exceed one month.

## (b) Appeal hearing

## — Composition of a council of adjudicators

A appeal hearing is chaired by a judgment board which comprises three judges. The procurator who protests against a first instance judgment or participated in the first instance hearing must be present at an appeal hearing.

## — Other persons

The parties, interested parties, persons protecting the rights and interests of the parties, witnesses; experts; interpreters must be present at the hearing as summonses issued by the court. Depending on each specific case, if one of such parties/persons is absent from the hearing, the court may decide to adjourn the hearing.

## — Acknowledgment of parties' agreement

If the parties reach an agreement on resolution of the dispute and such agreement is voluntary and is not contrary to the law or social morality, the council of adjudicators will issue a judgment of the appeal hearing to vary the first instance judgment and acknowledge the agreement of the parties.

## — Appeal judgment

At the end of an appeal hearing, the council of adjudicators will issue a judgment recording the contents of the dispute, the contents of the appeal or protest, decision of the first instance court, and the remarks and decision of the appeal court.

**Cassation and revision procedures**

An appeal can also be lodged either for cassation or revision of a judgment which has already come into effect under the following circumstances:

- the conclusion of the judgment does not correspond with the objective circumstances of the case;
- serious procedural errors;
- serious errors in the application of the laws;
- there is an important and fresh evidence which was previously unknown to the parties;
- there are grounds that the assessment of an inspector or the translation of a translator is incorrect or evidence has been falsified; and
- the Judge, People's Juror, or Procurator has intentionally falsified the files or intentionally reached a conclusion which does not properly comply with the laws.

**13-070 Recognition and enforcement of foreign civil judgments****The Principles**

- (i) The courts may consider the recognition and enforcement of foreign civil judgment in the following cases:
  - Civil judgment of a country which is a signatory of international treaty of which Vietnam is a participant; and

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural person			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	be taken not only of knowledge specific to the commercial presence, but also of whether the person has a high level of skills or qualification referring to a type of work or trade requiring specific technical knowledge. Specialists may include, but are not limited to, members of licensed professions.		
	<p>(b) <u>Other personnel</u> Managers, executives and specialists, as defined in (a) above, who cannot be substituted by Vietnamese and who are employed outside Viet Nam's territory by a foreign enterprise which has established a commercial presence in the territory of Viet Nam with a view to participating in the foreign enterprise's activities in Viet Nam, shall be granted entry and a stay permit in conformity with the term of the concerned employment contract or for an initial period of three years whichever is shorter, which may be extended subject to the employment contract between them and the commercial presence.</p> <p>(c) <u>Service sales persons</u> Persons not based in the territory of Viet Nam and receiving no remuneration from a source located within Viet Nam, and who are</p>		

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural person			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	engaged in activities related to representing a service provider for the purpose of negotiating for the sale of the services of that provider where: (i) such sales are not directly made to the general public; and (ii) the salesperson is not directly engaged in supplying the service. The stay of these salespersons is limited to a 90-day period.		
	<p>(d) <u>Persons responsible for setting up a commercial presence</u> Managers and executives (as defined in (a) above) within a juridical person, who are responsible for the setting up, in Viet Nam, of a commercial presence of a service provider of a Member when (i) these people are not engaged in making direct sales or supplying services; and (ii) the service provider has its principal place of business in the territory of a WTO Member other than Viet Nam and has no other commercial presence in Viet Nam. The stay of these persons is limited to a 90-day period.</p> <p>(e) <u>Contractual service suppliers (CSS)</u> Natural persons who are employees of a foreign enterprise having no commercial presence in Viet Nam may enter and stay in Viet Nam for a</p>		

- (e) To sign contracts in the name of the Company, except for those within the authority of the Chairman of the Company;
- (g) To make recommendations on the organisational structure of the Company;
- (h) To submit the final annual financial statements to the Chairman of the Company;
- (i) To recommend the plan for use of profits or for dealing with losses in business;
- (k) To recruit employees;
- (l) Other rights and duties as stipulated in the Charter of the Company, labour contract which the Director or General Director enters into with the Chairman of the Company.

#### Article 14. Controllers

1. The owner of the Company shall appoint one to three controllers for a term not exceeding three years. A controller shall be responsible before the law and to the owner of the Company for the implementation of his or her rights and duties.
2. Controllers have the following duties:
  - (a) To check the lawfulness, honesty and prudence of the Director or General Director in organising the implementation of ownership rights and in managing the business of the Company;
  - (b) To evaluate financial statements, reports on business situations, reports on assessment of management and other reports prior to submission to the owner of the Company or relevant State bodies; to submit evaluation reports to the owner of the Company;
  - (c) To make recommendations to the owner of the Company on solutions for amendments of and additions to the organisation and management structure and the administration of the business of the Company;
  - (d) Other duties as requested or decided by the owner of the Company.
3. A controller has the right to sight any document or paper of the Company at the head office or a branch or representative office of the Company. Director or General Director and other managers have the obligation to provide in full and on time any information on the implementation of ownership rights and on management, administration and the business of the Company at the request of a controller.

#### Article 15. Obligations of Director or General Director and Controllers

1. Director or General Director and Controllers of the Company have the following obligations:

- (a) To comply with law, the Charter of the Company, decisions of the owner of the Company in performance of the delegated rights and duties;
- (b) To perform the delegated rights and duties in an honest and prudent manner and to his or her best ability for optimum protection of the legitimate interests of the Company and the owner of the Company;
- (c) To be loyal to the interests of the Company and the owner of the Company; not to use information, know-how or business opportunities of the Company; not to abuse its, his or her position and power or to use assets of the Company for the personal benefit of itself, himself or herself, or other organisations or individuals;
- (d) To notify the Company in a timely, complete and accurate manner of the enterprises of which it, he or she and any related person is the owner or holds controlling shares or controlling capital contribution. This notice shall be displayed at the head office and branches of the Company;
- (dd) To perform other obligations as stipulated by the Law on Enterprises.

#### Article 16. Remuneration, Salary and Other Benefits of Managers of the Company and Controllers

1. Managers of the Company and controllers shall be entitled to remuneration or salary and other benefits in accordance with the business results and efficiency of the Company.
2. The owner of the Company shall decide on the rate of remuneration, salary and other benefits of controllers. Remuneration, salary and other benefits of managers of the Company and controllers shall be included in business expenses in accordance with the laws on corporate income tax and other relevant laws, and be recorded as a separate item in annual financial statements of the Company.

### CHAPTER IV ACCOUNTING AND FINANCE

#### Article 17. Fiscal Year

1. The fiscal year of the Company shall begin from the 1st of January and ends on the full 31st of December of a calendar year.
2. The first fiscal year of the Company shall begin from the date the business registration authority issues the Business Registration Certificate to the 31st of December of that year.

#### Article 18. Books of Account – Financial Statements

1. Books of account of the Company shall be properly opened and kept in accordance with the current regulations of law.

**Article 27. Board of Management**

1. The Board of Management is the body managing the Company and shall have full authority to make decisions in the name of the Company and to exercise the rights and discharge the obligations of the Company which do not fall within the authority of the General Meeting of Shareholders.
2. The Board of Management shall have the following rights and duties:
  - (a) To make decisions on the medium term development strategies and plans, and on the annual business plans of the Company;
  - (b) To recommend the classes of shares and the total number of shares of each class to be offered;
  - (c) To make decisions on offering new shares within the number of shares of each class which may be offered; to make decisions on raising additional fund in other forms;
  - (d) To make decisions on the prices for offering shares and bonds of the Company;
  - (e) To make decisions on redemption of shares in accordance with the provisions in Clause 1, Article 21 of this Charter;
  - (f) To make decisions on investment plans and investment projects within the authority and limits stipulated in the Law on Enterprises or this Charter;
  - (g) To make decisions on solutions for market expansion, marketing and technology; to approve contracts for purchase, sale, borrowing, lending and other contracts valued at 50% or more (*or a smaller percentage*) of the total value of assets recorded in the latest financial statements of the Company, except for contracts and transactions stipulated in Clauses 1 and 3 of Article 40 of this Charter;
  - (h) To appoint, dismiss or remove, and to sign or to terminate contracts with the Director (or General Director) and other key managers; to make decisions on salaries and other benefits of such managers; to appoint an authorized representative to implement ownership rights of shares or of capital contributed to other companies, and to make decisions on the level of remuneration and other benefits of such persons;
  - (i) To supervise and direct the Director (or General Director) and other management personnel in their work of conducting the daily business of the Company;
  - (j) To make decisions on the organizational structure and internal management rules of the Company, to make decisions on the establishment of subsidiary companies, the establishment of branches and representative offices and the capital contribution to or purchase of shares from other enterprises;

- (k) To approve the program and contents of data serving the General Meeting of Shareholders; to convene the General Meeting of Shareholders or obtain opinions in order for the General Meeting of Shareholders to pass decisions;
- (l) To submit annual final financial reports to the General Meeting of Shareholders;
- (m) To recommend the dividend rates to be paid, to make decisions on the time-limit and procedures for payment of dividends or for dealing with losses incurred in the business operation;
- (n) To recommend re-organization or dissolution of the Company, or to request bankruptcy of the Company;
- (o) Other rights and duties (*if any*): .....
3. The Board of Management shall pass resolutions by way of voting at meetings or by obtaining written opinions. Each member of the Board of Management shall have one vote.
4. When implementing its functions and performing its duties, the Board of Management shall comply properly with the provisions of law, this Charter and the decisions of the General Meeting of Shareholders. If the Board of Management passes a decision which is contrary to law or contrary to provisions of this Charter causing loss to the Company, the members who agreed to pass such decision shall be jointly liable as individuals for that decision and they must compensate the Company for loss; any member who opposed the passing of the decision shall be exempt from liability. In such a case, a shareholder owning shares in the Company for a minimum consecutive period of at least one year shall have the right to request the Board of Management to suspend the implementation of a decision mentioned above.

**Article 28. Chairman of the Board of Management**

1. The General Meeting of Shareholders (or the Board of Management) shall elect the Chairman of the Board of Management. In the case where the Board of Management elects the Chairman of the Board of Management, then the Chairman shall be elected from the members of the Board of Management. The Chairman of the Board of Management may act concurrently as the Director (or General Director) of the Company.
2. The Chairman of the Board of Management shall have the following rights and duties:
  - (a) To prepare the working plans and programs of the Board of Management;
  - (b) To prepare, or organize the preparation of programs, agenda and documents for meetings of the Board of Management; to convene and preside over meetings of the Board of Management;
  - (c) To organize for the resolutions of the Board of Management to be passed;

**APPLICATION FILE FOR A LICENCE TO ESTABLISH  
AND OPERATE A JOINT VENTURE BANK OR BANK  
WITH 100% FOREIGN OWNED CAPITAL**

- (a) Request for a licence to establish and operate a joint venture bank in Vietnam, signed by both authorized representatives of the joint venture parties; Request for a licence to establish and operate a bank with 100% foreign owned capital in Vietnam, signed by the authorized representative of the parent bank;
- (b) A feasibility business plan (passed by the joint venture parties, or parent bank and capital contributing members) which includes the following main contents:
- The necessity for establishing the bank, client needs, the ability to satisfy banking service requirements, the ability to manage all types of risks, and the ability to apply modern technology during management of the banking operation and risk management;
  - The proposed geographical area of the operation and the proposed human resources;
  - The organisational structure of the management and executive apparatus and of the internal auditing section; the internal control system and a reasonably organized regime for preventing money laundering consistent with the law of Vietnam and international practice;
  - Operational contents and business operational methods;
  - A list of overall assets, a report on revenue and expenses, a cash flow report, major financial indicators, proposed prudential ratios and an explanation and evidence regarding economic benefits and economic efficiency during the first three (03) years of operation of the joint venture bank or bank with 100% foreign owned capital;
- (c) Curriculum vitae certified by the competent body (being the organisation where the individual works; the body administering and monitoring the individual personal history, or so forth) and academic degrees and certificates proving the ability and expertise of the members of the Board of Management, members of the Board of Controllers and General Director (Director) of the joint venture bank or bank with 100% foreign owned capital;
- (d) List of capital contributing members with the amount they will contribute to charter capital and their specific plans for making such contribution, signed by the members and specifying the value of their contributions in foreign currency, in Vietnamese Dong or in assets (and in the latter case with proof of ownership and a valid asset valuation);
- (e) Audited annual financial statements for the three (03) most recent years of the capital contributing members;

- (g) Joint venture contract with the main contents required by law for a joint venture bank; or contracts and agreements between the capital contributing members and the bank with 100% foreign owned capital;
- (h) Copy licences for establishment and operation of the capital contributing members;
- (i) Written document from the authorized body of the home country consenting to the foreign bank contributing capital to the establishment of a joint venture bank, or consenting to the parent bank and other foreign capital contributing members participating in the establishment of a bank with 100% foreign owned capital in Vietnam; and in the case where the law of the home country does not have this requirement, then written evidence that such permission is not a requirement of the home country;
- (k) Written document from the authorized body of the home country providing information and certifying that the foreign bank and other foreign capital contributing members comply with the law and certifying the financial status of the foreign bank and other foreign capital contributing members during the three (03) consecutive years prior to the year of application for the licence, and proving satisfaction of the conditions;
- (l) Written document from the competent regulatory and inspecting body of the home country undertaking and guaranteeing that it has the ability to supervise the entire operation of the foreign bank (including the operation of the joint venture bank or bank with 100% foreign owned capital in Vietnam) on an overall basis in accordance with international practice;
- (m) Document or data from an international credit rating organisation (Moody's, Standard & Poor, Fitch or so forth) giving a credit rating for the foreign bank;
- (n) Charters on organisation and operation of the capital contributing members;
- (o) Draft charter of the joint venture bank or bank with 100% foreign owned capital;
- (p) Undertakings from the capital contributing members regarding:
- Readiness to provide assistance on finance, technology, management and executive operation to the joint venture bank or bank with 100% foreign owned capital in Vietnam;
  - Ensuring that they will maintain the actual value of the charter capital of the joint venture bank or bank with 100% foreign owned capital at not less than the amount of legal capital, and will fully comply with all provisions on operational safety in regulations of the State Bank;
- (q) Summarised reports on the history of the establishment, development and operation of the capital contributing members up until the date of such report, including their future developmental direction.