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PART I – CONCERNS

How many names does an enterprise need?

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Two names, three names or more?

Presently, according to the Law on Enterprises, an enterprise is allowed to register three names: (i) Name in Vietnamese; (ii) name in foreign language (often called trade name or external trade name) and (iii) abbreviation name. With the regulation stipulating that trade name shall be a corresponding name translated from name in Vietnamese, the enterprise actually has just two names: name in Vietnamese and abbreviation name. The reason is that the trade name is not stable and subject to the language into which the name is translated – in English it is A, in French it is B, in Japanese it is X, etc.

However, an enterprise practically needs more names, such as name in Vietnamese, name in foreign language, trade name in Vietnamese, trade name in foreign language, abbreviation name in Vietnamese, abbreviation name in

foreign language. Some enterprises even use the brand name as a kind of trade name. This is an actual demand that needs to be considered.

A specific case as example: Full name in Vietnamese of “Ngan hang Thuong mai Co phan Cong Thuong Viet Nam” is translated into English as “Vietnam Joint Stock Commercial Bank for Industry and Trade”, the trade name in Vietnamese “Ngan hang Cong Thuong Viet Nam” is translated into English as “Vietnam Bank for Industry and Trade”, and abbreviation name is “Vietinbank”. Furthermore, when refer to this bank, people often call it Ngan hang Cong Thuong. Herein, “Cong thuong” is a distinguishable part of the name of the bank, used as a kind of trade name.

In the aforesaid example, we can see that name of an enterprise is not only encapsulated in the three names allowed by the Law on Enterprises. Note that the specific laws (such as law on credit institutions, law on lawyers, law on notary, etc.) do not bind as tightly as the Law on Enterprises does with regard to the naming; therefore, the enterprises established and operated under the specific laws may have more than three names. This also causes the unfairness, at least in the naming between enterprises under specific laws and ones under the Law on Enterprises. The limitation of three names (which is actually just two) imposed on enterprises by the Law on Enterprises is a tight shirt making the enterprises feel sultry and annoyed.

Enterprise name or trade name?

Apart from names under the Law on Enterprises, enterprises also have another kind of name – trade name, under the Law on Intellectual Property. Trade name is defined by law as the name of the organization or individual used in business to distinguish it from other organizations or individuals in the same business field and area – i.e. the geographical area wherein that organization or individual has got its fellow traders, customers or reputation.

Also according to the law, trade name will be protected if it is distinguishable from names of other organizations or individuals in the same field and business area, such as: (i) contains component parts as proper name (except that proper name is known generally through using); (ii) does not coincide or is not similar to an extent that can cause confusion with a trade name previously used by another one in the same field and business area; (iii) does not coincide or is not similar to an extent that can cause confusion with the brand of another one or with the geographical indication that has been protected in prior to the use of that trade name.

With that regulation, trade name has many features similar to those of enterprise name under the Law on Enterprises. The Law on Enterprises also requires that enterprise name shall have at least two components, i.e. type of enterprise and proper name, as well as the name shall not coincide or cause confusion with a registered enterprise name. In addition, both Law on Enterprises and Law on Intellectual Property do not allow to use names of state agencies, political organizations, socio-political organizations, socio-political-professional

organizations, social organizations, socio-professional organizations or other entities as enterprise name or trade name.



However, the question to be raised out is that whether trade name is enterprise name. Currently, there has not been any document confirming this issue. Enterprise name and trade name, although having similar features in the way of naming, are protected in two different ways: enterprise name is protected by the Law on Enterprises as a component part of the enterprise's legal status, while trade name is protected by the Law on Intellectual Property as an intellectual property object. In addition, the bases for establishing the right to enterprise name and to trade name are different: the right to enterprise name arises when the enterprise is granted with the Business Registration Certificate, while the industrial property rights to the trade name is established on the basis of lawful use without registration with any agency. Therefore, logically speaking, the enterprise name is the trade name, but the trade name is not entirely the enterprise name. The scope of trade name can be wider than enterprise name's.

The next question is that whether an enterprise has more than one or only one trade name. This issue is being left open. As the above analysis,

the Law on Intellectual Property does not prohibit an enterprise from using two or more trade names at the same time. As such, an enterprise has the right to use more than one trade name, provided that the enterprise can prove the lawful use of its trade names in accordance with the Law on Intellectual Property. Regarding enterprise name and trade name, laws of Australia recognize that enterprises have the right to register their own trade names under Business Name Act and an enterprise may register more than one trade names at the same time. This may be a direction to which Vietnamese law-makers may refer while dealing with the relationship between trade name and enterprise name.

As analyzed above, the owners currently have few options in naming their enterprises under the Law on Enterprises in order to meet reasonable demands of the reality. Furthermore, provisions on name of enterprise is prescribed in both Law on Enterprises and Law on Intellectual Property, and since these two law systems are quite separated, contradiction in the naming and using enterprise name and trade name will obviously arise. Therefore, there should be documents linking and uniting the provisions on enterprise name and trade name in order to help enterprises avoiding complications in using their types of names.



PART II – REMARKABLE REGULATIONS

1. Cooperation with and investment by foreign investors in scientific and technological sectors

On July 14, 2010, the Government issued Decree No. 80/2010/ND-CP providing for the cooperation with and investment by foreign investors in scientific and technological sectors.

According to this Decree, the sectors being encouraged for cooperation with and investment by foreign investors include: (i) fundamental research in natural science; (ii) research, application and development of technologies of information, biology, new material, automatics and mechatronics, atomic energy and new energy sources, universe, mechanics and machine building, preservation and processing of agriculture and foods products, waste treatment; (iii) training and development of high-technology human resources; (iv) development of high technology enterprises in Vietnam; (v) transfer of technology and scientific and technological services; and (vi) establishment or contribution for setting up the scientific and technological development fund in Vietnam.

Regarding the investment form, foreign investors are permitted to establish scientific and technological organization and enterprises with wholly foreign owned capital or in the form of joint venture between Vietnamese organizations, individuals and foreign organizations and individuals. The establishment of 100% foreign invested scientific and technological organizations and enterprises shall be determined by the Prime Minister, other forms shall be determined by the Ministry of Science and Technology.

Foreign investors making investment in scientific and technological sectors must carry out investment procedures in accordance with the investment provisions.

This Decree shall take effect from September 01, 2010.

Investment projects of establishment of foreign owned capital scientific and technological organizations which were issued with the Investment Certificate prior to effective date of this Decree must apply for the Certificate of establishment of scientific and technological organizations according to this Decree.

Representatives, branches which were established prior to the effective date of this Decree shall be permitted to continue their operations in accordance with the content of the issued License and must conduct the procedures for re-issuance of the License for establishment of the representative offices, branches according to this Decree within 06 (six) months from its effective date.



2. Enlargement of scope of exchanging and providing information between tax authorities and credit institutions



On July 14, 2010, Ministry of Finance and the State Bank of Vietnam jointly issued Inter-Circular No.102/2010/TTLT-BTC-NHNN providing guidelines for exchanging and providing information between tax authorities and credit institutions. Accordingly, information to be exchanged and provided between tax authorities and credit institutions including (i) information for determining tax obligations in customs and taxation sector by the tax authorities; and (ii) information in relation to taxpayers in order for serving monetary, credit, banking business activities of credit institutions.

Specifically, information to be provided by credit institutions to tax authorities including:

- (i) Information of taxpayer: name, address, tax code, business lines, business sectors;
- (ii) Information of the taxpayer's operation status (taxpayer is duly operating and is issued with certificate of tax registration, taxpayer is duly operating but not qualified/not carried out procedures for issuance of certificate of tax registration yet, taxpayer moves to other provinces,

taxpayer ceases its business and close its tax code, taxpayer temporarily cease its business for a defined period); and

- (iii) List of taxpayers breaching tax regulations in the case of:
 - Taxpayers who commit tax evasion, tax fraud, illegal purchase of invoices; breach tax regulations then escape from the business's office; collude with others to evade tax, not to pay tax timely after being imposed penalties, enforcement for collecting outstanding debt of tax and other requirements by tax authorities in accordance with current legal provisions;
 - Taxpayers who have acts breaching tax regulations that impact to right and obligation of tax payment of other organizations, individuals.

For credit institutions, they should provide following information to the tax authorities:

- (i) File, information of transactions of the taxpayers through the bank account (organizations individuals being suspected of breaching provisions of customs sector or being inspected by tax authorities); information of the guaranteed sum by credit institutions to the taxpayers;
- (ii) File, vouchers, bank account number, copy of detailed accounting books on the payment account, copy of the international payment voucher, copy of the set of

documents on domestic payment, cross-border trading payment voucher through the banks by taxpayers;

(iii) Others information serving for the collection and processing information, tax verification and inspection activities of tax authorities:

- Information of the loan file of the taxpayer;
- Information on payment for import and export of the tax payers;
- Information on payment for foreign services and technology transfer of the tax payers;

- Information on the debt status;
- Information of the taxpayers who breach contract, agreement signed with credit institutions.

Tax authorities and credit institutions are entitled to require the each other to provide information as stated in this Inter-Circular and not to provide information beyond the above stipulated scope.

This Circular shall take effect from August 28, 2010.

3. Conducting business in smuggled alcohol, smuggled cigarettes and smuggled tobacco raw materials may be prosecuted for the criminal liability.



This is one of the new regulations of the Decree No. 76/2010/ND-CP issued by the Government on 12 July, 2010 amending and supplementing the Article 11 of Decree No. 06/2009/ND-CP dated 22 January, 2009 of Government on penalties for administrative breaches in sectors of alcohol and tobacco manufacturing and business.

Accordingly, with regard to (i) conducting business in smuggled alcohol where the value of the goods is 100 million VND or more; or (ii) conducting business in smuggled tobacco where the quantity of smuggled tobacco is 1,500 packets or more; or (iii) conducting business in smuggled tobacco raw materials where the weight of the smuggled tobacco raw materials is 2,000 kg or more, the agency discovering the breach or accepting jurisdiction over it shall transfer the file to the competent criminal proceedings agency to prosecute the offender. If such agency decides not to prosecute the offender but sends the file back to impose administrative penalty, a fine of 100 million VND shall be applied.

However, in case of (i) conducting business in smuggled alcohol where the value of the goods is below 100 million VND; or (ii) conducting business in smuggled tobacco where the

quantity of smuggled tobacco is below 1,500 packets; or (iii) conducting business in smuggled tobacco raw materials where the weight of the smuggled tobacco raw materials is below 2,000 kg and an offender who was penalized for an administrative offence while the time period of one year has not expired commits another breach, or an offender was convinced of this time and while such crime has not been removed from the criminal record then commits another breach, or there are indications

that the offender has committed another breach, then the file shall be transferred to the competent criminal proceedings agency to prosecute the offender. If such agency decides not to prosecute the offender but sends the file back to impose administrative penalty, a fine of 100 million VND shall be applied.

This Decree shall take effect from 01 September, 2010.

4. Enterprises exporting goods without payment vouchers via bank transfer shall be provisionally refunded up to 90% of the input Value Added Tax (VAT)



According to the Circular No. 94/2010/TT-BTC dated 30 June, 2010 of the Ministry of Finance guiding the implementation of VAT refund for exported goods, entities being entitled to a provisional refund of VAT pursuant to this Circular shall be organizations producing and conducting business in exported goods have goods actually exported for which the foreign party has not yet made payment via a bank in accordance with the export contract, except

some cases for which a prior check must be made before a refund is granted as follows:

- VAT refund pursuant to any international treaty of which the Socialist Republic of Vietnam is a member, and which provides that there must be a prior check before a tax refund is granted;
- Taxpayers requesting their first tax refund; except for taxpayers producing or processing export goods which have a production establishment in a locality which provides provisional VAT refunds and such taxpayers have received provisional VAT refunds;
- Taxpayers are guilty of tax evasion or tax fraud in the 02 year period prior to the date of their request for a tax refund. The amount or level of the tax evasion or tax fraud is stipulated in article 14 of Decree 98-2007-ND-CP of the Government dated 7 June, 2007 on dealing with breaches of the legal provisions on tax and coercion of

enforcement of administrative decision on tax;

- Taxpayers which have an amount of input VAT not yet fully credited or an excess amount of VAT already paid when conducting tax finalization on merger, consolidation, de-merger, dissolution, bankruptcy, change of form of ownership or termination of operation; or on conducting tax finalization on assignment, sale or leasing out of a State enterprise;
- Taxpayers which, at the expiry of the time stipulated in a tax notice, failed to explain or supplement their application file for a tax refund pursuant to the request of the tax office, or failed to prove that the amount claimed for refund is correct.

The Circular also stipulated the time-limit for providing tax refunds in case of application file for the VAT refund of exported goods for which there are not payment vouchers via a bank (90%) ensuring full, proper and legal procedures, the time-limit for providing tax refunds shall not exceed 07 working days from the date of receipt of a complete application file for the VAT refund of taxpayers.

With regard to the application file for the remaining VAT refund of exported goods for which there are not yet payment vouchers via a bank (10%), the time-limit for providing tax refunds shall not exceed 04 working days from the date of receipt of a complete application file for the VAT refund of taxpayers. In case taxpayers controlled by the Tax Branch, Tax Office shall guide the taxpayers to submit the application file for 10% of the remaining tax

refund to the Tax Department (not submitting to the Tax Branch). If the application file is complete with the payment vouchers via a bank as required by law, the Tax Department shall resolve to intermediately refund 10% of the remaining tax to the taxpayers in the time-limit as mentioned above; in case it is necessary to confirm the payment vouchers via a bank, the Tax Department shall notice to the Tax Branch to confirm.

This Circular shall take effect from 14 August, 2010 and replace Circular No. 04/2009/TT-BTC of the Ministry of Finance dated 13 January, 2009 guiding the implementation on VAT refund pursuant to Resolution No. 30/2008/NQ-CP of the Government dated 11 December 2008. The contents which are not guided in this Circular shall be implemented in accordance with Circular No. 129/2008/TT-BTC of the Ministry of Finance dated 26 December, 2008 guiding the implementation of Decree No. 123/2008/ND-CP of the Government dated 08 December 2008 detailing and guiding the implementation of some articles of the Law on VAT if they are not different from the guidance in this Circular.

With regard to the application files for VAT refunds of the exported goods without the payment vouchers via a bank, the taxpayers have submitted to the tax office prior to the effective date of this Circular, if the consideration for VAT refund by the tax office will be made after the effective date of this Circular, so the provisions of Circular shall be applied.

5. Enterprises are entitled to extract to establish a Reserve for Retrenchment Payouts

According to the Official Letter No. 2288/TCT-CS dated 29 June, 2010 on the extraction for establishment of a Reserve for Retrenchment Payouts, the General Department of Taxation guides that: Annually, enterprises are entitled to extract to establish a Reserve for Retrenchment Payouts (the Reserve) with the extraction level of from 1% to 3% of the salary fund as a basis for social insurance payment, such extraction amount for establishing this Reserve for Retrenchment Payouts shall be included in the expenditure and deducted upon determining income liable for Corporate Income Tax in the period of enterprise; the accumulated balance of the Reserve shall not be limited; the payment of the Reserve for Retrenchment Payouts for the jobless employees shall be made in accordance with the regulations of the Labor Code and the implementing and guiding documents.

The guided cases, which are different from the guiding contents of this Official Letter, shall be applied under this Official Letter.



PART III – NEW PROMULGATIONS OF THE MONTH

GOVERNMENT

1. Decree No. 83/2010/ND-CP dated 23 July 2010 on the registration of secured transactions.
2. Decree No. 81/2010/ND-CP dated 14 July 2010 on the security of civil aviation.
3. Decree No. 80/2010/ND-CP dated 14 July 2010 providing for cooperation with and investment by foreign investors in scientific and technological sectors.
4. Decree No. 79/2010/ND-CP dated 14 July 2010 on the professional practice of public debt management.
5. Decree No. 78/2010/ND-CP dated 14 July 2010 on re-lending of the Government's foreign loans.
6. Decree No. 76/2010/ND-CP dated 12 July 2010 on amendment of and supplement to Article 11 of Decree No.06/2009/ND-CP of the Government dated 22 January 2009 on penalties for administrative breaches in sectors of alcohol and tobacco manufacturing and business.
7. Decree No. 75/2010/ND-CP dated 12 July 2010 on penalties for administrative breaches in cultural activities.
8. Decree No. 73/2010/ND-CP dated 12 July 2010 on penalties for administrative breaches in the sectors of security and order, social safety.
9. Decree No. 72/2010/ND-CP dated 8 July 2010 providing on prevention and struggle against criminal crimes and others breaches in relation to environment.

THE PRIME MINISTER

1. Decision No. 49/2010/QD-TTg dated 19 July 2010 on approval of the List of high technologies being prioritized for investment and development and the List of high-tech products being encouraged for development.
2. Decision No. 1065/QD-TTg dated 9 July 2010 on approval of the amendment of and supplement to the Plan for exploring, exploiting and utilizing minerals for cement production in Vietnam till 2020.

MINISTRY OF PLANNING AND INVESTMENT

1. Circular No. 17/2010/TT-BKH dated 22 July 2010 providing detailed provisions on the pilot conducting tendering via the internet.

MINISTRY OF FINANCE

1. Circular No. 106/2010/TT-BTC dated 26 July 2010 guiding fees for issuing certificate of land use right, ownership of houses and others assets attached to the land.
2. Circular No. 104/2010/TT-BTC dated 22 July 2010 providing the preferential import duty rate of materials, components imported for production of lifting devices under the List of key mechanical products issued together with Decision No. 10/2009/QD-TTg.
3. Circular No. 101/2010/TT-BTC dated 14 July 2010 guiding the exemption from import duties as stipulated in Decree No. 04/2009/ND-CP dated 14 January 2009 of the Government on preference and support for environmental protection activities.
4. Circular No. 100/2010/TT-BTC dated 9 July 2010 providing for the customs procedures for exported and imported goods sent by express international aviation way.
5. Circular No. 99/2010/TT-BTC dated 9 July 2010 providing for the customs procedure for postal mailer, postal parcel, exported and imported goods transferred by postal services.
6. Circular No. 96/2010/TT-BTC dated 5 July 2010 guiding the recovery, processing of accounting documents being lost or destroyed by objective causes.
7. Circular No. 95/2010/TT-BTC dated 30 June 2010 on amendment of and supplement to the Regulations on Organization and Management of securities transactions of public companies which have not listed yet at Hanoi Securities Trading Center issued together with Decision No. 108/2008/QD-BTC dated 20 November 2008 of the Finance Minister.
8. Circular No. 94/2010/TT-BTC dated 30 June 2010 guiding the implementation of value added tax refund for export goods.
9. Circular No. 93/2010/TT-BTC dated 28 June 2010 guiding the determination of acts of administrative breaches in financial sectors which are smuggling, fraudulent trade and fake products.

MINISTRY OF INDUSTRY AND TRADE

1. Circular No. 32/2010/TT-BCT dated 30 July 2010 providing for the electric system for distribution.
2. Circular No. 31/2010/TT-BCT dated 27 July 2010 supplementing a number of items subject to automatic import license as stipulated in Circular No. 22/2010/TT-BCT dated 20 May 2010 of Minister of Industry and Trade on the application of automatic import license to a number of steel products.
3. Circular No. 29/2010/TT-BCT dated 19 July 2010 regarding the importation of unused cars of which vehicle identification numbers are not changed yet.

4. Circular No. 29/2010/TT-BCT dated 19 July 2010 on import of unused car being carved and changed chassis number, engine number

STATE BANK OF VIETNAM

1. Circular No. 17/2010/TT-NHNN dated 29 June 2010 amending clauses 2 and 3, Article 2 of Circular No. 01/2010/TT-NHNN dated 6 January 2010 on abolishing Decision No. 03/2006/QD-NHNN dated 18 January 2006 on trading gold on overseas account and Decision No. 11/2007/QD-NHNN dated 15 March 2007 amending and supplementing Decision No. 03/2006/QD-NHNN.

MINISTRY OF INFORMATION AND COMMUNICATION

1. Circular No. 15/2010/TT-BTTTT dated 1 July 2010 providing for conditions, procedures for direct broadcast on the local television program channel by satellite.
2. Circular No. 14/2010/TT-BTTTT dated 29 June 2010 making detailed a number of articles of Decree No. 97/2008/ND-CP dated 28 August 2008 of the Government on management, supply, use of Internet services and electronic information on Internet with respect to the management activities of electronic information website and online social networking services.

INTER-MINISTRIES

1. Inter-Circular No. 107/2010/TTLT-BTC-BTNMT dated 26 July 2010 jointly issued by the Ministry of Finance and the Ministry of Natural Resources and Environment on amendment of, supplement to Inter-Circular No. 125/2003/TTLT-BTC-BTNMT dated 18 December 2003 and Inter-Circular No. 106/2007/TTLT-BTC-BTNMT dated 6 September 2007 guiding the fees for environmental protection with respect to waste water;
2. Inter-Circular No. 102/2010/TTLT-BTC-NHNN jointly issued by the Ministry of Finance and the State Bank of Vietnam dated 14 July 2010 guiding the exchange, and supply of information between tax management bodies and credit institutions.



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