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PART I – CONCERNS

What should we concern when setting up a company?

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Decision to start a business is an important decision for any investor, especially for people doing business at the first time. After that important decision, it will be the time for that investor to proceed with legal procedures to establish the business. Legal procedures for establishing an enterprise are currently simple and the time for issuing business registration certificate is not long, therefore there are a lot of enterprises being established in recent years.

In the period of pre-establishment, investors often have a tendency to concentrate on other commercial matters of the enterprise such as studying the taste of potential customers, choosing business location, seeking capital, human and supplying resources to serve the business project, etc.

The legal procedures of applying business registration certificate are often disregarded and considered as an obliged procedure and are not focused on. However, in reality there are some arising legal matters relating the legal

procedures for applying business registration certificate required to be paid attention to by investors (especially investors doing business at the first time).

1. The need of determination of the scope of business for the enterprise

The determination of the scope of business for the new enterprise is very important, since apart from normal procedures of business registration, for some industries the investors shall apply for business license, or shall have got practicing certificate, or shall meet some specific conditions of those industries, which are required by law, and shall properly implement those conditions throughout the trading activity.

Presently, business law prescribes three main business types requiring the investors to meet some further requirements in business registration, those are: (i) business industries with conditions, (ii) business industries requiring legal capital, and (iii) business industries requiring practicing certificate.

For business industries with conditions as mentioned in (i) above, subject to each business industry the enterprise shall be required to: (i) apply for business license issued by relevant authority for that industry (for example, for film production industry, the enterprise shall have got certificate certifying that it has sufficient business conditions issued by Cinema Department prior to doing the legal procedures of applying for business license); or (ii) meet regulations on standards of environment sanitation, food safety sanitation; regulations on

fire preventing and fighting, social order, traffic safety and regulations on other requirements for business activity at the time of establishment and throughout the operation duration of the enterprise (e.g. the business of dance hall or karaoke).

For business industry requiring legal capital as mention in (ii) above (for example, real estate business is required 6 billion VN Dong of legal capital, the service of debt recovery is required 2 billion VN Dong of legal capital), investors shall prepare the document attesting legal capital issued by relevant authority or organization (namely, the attestation issued by a bank).

For business industries requiring practice certificate as mentioned in (iii) above, such as legal service business, audit, accounting, subject to each business type, the owner or the manager of the enterprise shall have got practicing certificate.

Therefore, the determination of business industry is very important for the investors. The investors shall be sure that he/she can meet legal conditions in order to obtain business registration certificate first, instead of concentrating in other works requiring expenses (such as depositing in house rent, hiring staff) and at last recognizing that he/he has not got sufficient business conditions in compliance with legal regulations, and maybe it is late then.

2. The need of determination of charter capital

Investors need to discuss in order to determine the type of property used to contribute to establish the enterprises (such as VN Dong, foreign currency, gold, share certificates, real estate, movables, etc.) For contributed properties other than Vietnam currency, freely

converted foreign currency or gold, they need to be assessed by members, founding shareholders or professional assessment organizations, to form the basis for capital contribution and entering into accounts and tax of the enterprise. The investors need to discuss in order to agree on the assessment mode and assessment organization prior to establishment of enterprise, or even self-assess through agreement – and this issue can be put into contract/agreement of enterprise establishment (see Item 6 below). This work will avoid the situation that after the enterprise is established, the parties cannot agree on the assessment mode or assessment organization or value of the property contributed, causing delay of business operation of the enterprise.



3. The need of determination of capital contributing member number and enterprise type

The number of capital contributing member also has effect on the type and organization structure of the enterprise in the future. In case there is only one investor, the enterprise may be a private one with management structure as the owner will manage the enterprise, or may be a one member limited liability company in case

the investor is an organization with the management structure as either board of members (if there are two or more authorized representatives) or company president (if there is only one authorized representative), or company president if the investor is an individual. In case there are two or more investors, the investors will choose between limited liability company with two or more members (with board of members) or joint stock company (with board of directors and general meeting of shareholders).



Each type of enterprise and management structure has different advantages (such as, joint stock company does not have to change business registration certificate in changing shareholders holding less than 5% of total shares, joint stock company can issue bonds, limited liability company needs only one investor in order to be established) and difficulties (such as, for joint stock company the founding shareholders shall not transfer their shares in the first three years after its establishment, joint stock company shall have at least three founding shareholders, for private company the remuneration paid to the owner shall not be deemed as reasonable and valid expenses). Therefore, investors need to know in

advance in order to choose the suitable type and management structure of the enterprise. Wrong selection may cause stagnancy and obstruction to development and even cause the enterprise to go bankrupt.

4. The need of choosing name for the enterprise

Naming an enterprise like naming one's spiritual child. The name is trade name of the enterprise that can bring success or failure to the enterprise. Presently, law allows the name of enterprise as either in Vietnamese or in foreign language (if any), or in initial form. However, the work of giving name to an enterprise shall meet some regulations and the name given shall not coincide with enterprise in the same industry previously registered in the whole country.

5. The need of determination of business location of the enterprise

Business location of the enterprise comprises the location of head office and also the location of business stations of the enterprise (if any). Although regulations on business registration are commonly applied according to the Law on Enterprises 2005 and document of instruction on implementation, but in reality due to particular features each locality may have its own restrictions or fixed conditions with which the enterprise has to comply.

For example, recently the Traffic and Transportation Department of Ho Chi Minh City collected opinions from some relevant departments in prior to submission to the City People's Committee for official issuance of a list of streets or sections of streets, or even a whole area to which business registration certificate is temporarily ceased of issuance for types of services and trading gathering a lot of

people such as supermarket, restaurant, wedding party center, trading center, training center, etc.

Therefore, the examination of proposed business location to see whether it is approved by local license authority in prior to negotiation of house renting is very important and to which the investor needs to pay attention before the submission of business registration document.

6. The need of contract/agreement of enterprise establishment

Contract/agreement of enterprise establishment is very important and necessary in case the enterprise participated by a lot of investors. However, presently, only the type of joint venture between local investors and foreign investors requires joint venture contract in business registration document.

However, even in case business registration document does not require it, the investors should prepare contract or agreement relating to enterprise establishment in order to determine rights and obligations of each investor, avoiding

unnecessary future dispute. This contract or agreement will comprise rights and obligations of each party in the period of preparing for the establishment of the enterprise until the proceeding of business registration and in the period when the enterprise is freshly established, deal with the case in which the enterprise cannot be established, etc. and the matters that sample charter of license authority does not cover (such as agreement of capital transfer among capital contributed members or founding share holders in the future; the issue of information confidentiality among investors, separate undertakings on investment cooperation among parties in the future, etc.).

In brief, subject to particular case of the investor, the legal issues (as above mentioned) have to be prepared in prior of business registration. The careful study and preparation of the investor in this period will strongly facilitate the business registration later, avoid refusal or requirement of supplement or amendment of document from the business registration authority, save time, labour and money so that the enterprise can soon enter the production or business operation.



PART II – REMARKABLE REGULATIONS

1. To allow the establishment of the foreign arbitration organization in Vietnam



This is one of the new points of the Law on Commercial Arbitration passed the National Assembly on 17th June, 2010. Accordingly, a foreign arbitration organization which was duly established and lawfully operating in foreign countries, strictly complies with the Constitution and the laws of the Socialist Republic of Vietnam shall be allowed to operate in Vietnam. The foreign arbitration organization shall be allowed to operate in Vietnam under the forms of:

- (i) The branch of the Foreign Arbitration Organization;
- (ii) The representative office of the Foreign Arbitration Organization.

Amongst its rights and obligations, the branch of the Foreign Arbitration Organization is allowed to:

- Appoint the Arbitrators to establish the Arbitration Council under the authorization of the foreign arbitration organization;
- Provide the services of arbitration, conciliation, and other method for resolution of commercial disputes in accordance with the laws;

- Provide the administrative and clerical services and other services for dispute resolution of the Foreign Arbitration Council;
- Collect the arbitration fees and other lawful receivables;
- Remit the profits of the Branch abroad in accordance with the laws.

As for the Representative Office of the Foreign Arbitration Organization, it shall not be allowed to conduct the arbitration activities in Vietnam, but to conduct the promotion and broadcasting of the arbitration activities according to the laws of Vietnam.

Another important point of the Law on Commercial Arbitration is about the jurisdictional extension for the Arbitrator's dispute resolution from being only resolved the disputes arising from the commercial activities as agreed by the parties according to the Ordinance on Commercial Arbitration to:

- (i) The disputes between the parties arising from the commercial activities;
- (ii) The disputes arising from the parties of which there is at least one party conducting the commercial activities;
- (iii) Other disputes between the parties, which shall, according to the laws, be resolved by the Arbitration.

This Law shall take effect from the 1st January, 2011.

2. Narrowing the ownership ratio of the investor in the shareholding credit institution



According to the Law on Credit Institutions passed by the National Assembly on 16th June, 2010, a shareholder being individual shall not own in excess of 5% and a shareholder being organization shall not own in excess of 15% of the charter capital of a credit institution except for some special cases (according to the current regulations, a shareholder being individual is entitled to own up to maximum 10% and shareholder being organization is entitled to own up to maximum 20% of the charter capital of a shareholding commercial bank).

Also according to this law, a shareholder and his/her related people shall not be allowed to own in excess of 20% of the charter capital of a credit institution.

Within the period of 5 years, from the issuance date of license, the founding shareholders must hold the minimum number of shares, equivalent to 50% of the charter capital of such credit institution; the founding shareholders being the legal entities must own the minimum number of shares, equivalent to 50% of the total shares held by the founding shareholders.

With respect to the the capital contribution and share purchase, commercial banks and financial companies shall be allowed to use only the charter

capital and reserve fund to contribute capital and purchase shares in accordance with legal provisions.

The rate of the capital contribution, and/or share purchase by a commercial bank and its subsidiary companies and associated companies in an enterprise operating in the sectors: insurance, securities, overseas national currency exchange, trading foreign exchange, gold, factoring, issuing credit cards, consumer credit, intermediate payment service, credit information and other sectors shall not exceed 11% of the charter capital of the enterprise receiving contributed capital.

The total rate of capital contribution and share purchase by a commercial bank in enterprises, including subsidiary companies, associated companies of such commercial bank shall not exceed 40% of its charter capital and reserve fund.

The rate of capital contribution and /or share purchase of by a financial company and its subsidiary companies, associated companies in an enterprise, investment fund shall not exceed 11% of the charter capital of the enterprise receiving contributed capital.

The total rate of capital contribution and share purchase by a financial company in enterprises, including subsidiary companies, associated companies of such financial company shall not exceed 60% of its charter capital and reserve fund.

A credit institution shall not be allowed to make capital contribution in and/or share purchase from other enterprises or credit institutions which are shareholders, equity members of that credit institution.

Another remarkable point of this Law is that the limit of extension of credit by a non-banking credit institutions increased considerably. Accordingly, the total rate debit balance of credit extension to a single client shall not exceed 25% of the equity of a non-banking credit institution; the total rate of debit balance

of credit extension to a client and his/her related people shall not exceed 50% of the equity of a non-banking credit institution (this rate, according to the current regulation, is 15%).

This Law shall take effect from 1st January, 2011.

3. New guidelines on procedures on value-added tax (VAT) deferral and refund with respect to equipment, machinery, specialized means of transportation which form part of a technological line and construction materials which are not yet able to be produced domestically and are required to be imported to form the fixed assets of enterprises

According to Circular No.92/2010/TT-BTC dated 17 June, 2010 of Ministry of Finance, newly established business entities from investment projects have not operated yet; currently operating business entities having investment project (for construction of a new production line, for expansion of scale, for renovation of technology, for improving the ecological environment or for increasing its manufacturing capacity) that imported equipment, machinery, specialized means of transportation which form part of a technological line and construction materials which are not yet able to be produced domestically and are required to be imported to form the fixed assets are entitled to choose the application of VAT deferral at importing stage and VAT refund if those below conditions are fully satisfied:

- Business entities registered tax credit method for paying VAT, are issued with the Business Registration Certificates or Investment Certificates, Investment Licenses (“Operating Permit”); having proper stamp as stipulated by law, keeping accounting bookings and financial vouchers in accordance with the applicable laws, having deposit bank

account in compliance with the business tax code of such business entities;

- Total value of equipment, machinery, specialized means of transportation which form part of a technological line and construction materials which are not yet able to be produced domestically and are required to be imported to form the fixed assets are of 200 millions VND or more.
- The investment project of manufacturing or trading goods or services which are subject to VAT or investment project of manufacturing or trading goods or services which are partly subject to VAT and the remains are not subject to VAT.



It should note that goods and commodities which are not yet able to be produced domestically are exclusive of equipment, machinery, specialized means of transportation which form part of a technological line and construction materials to form the fixed assets for production of weaponry and military equipment in service of defense and security; construction materials for constructing head office and specialized means for credit activities or credit institutions, reinsurances and life insurance companies and securities companies, hospitals, schools; civil aircrafts, yachts that are not used for transport of goods and customers, tourism and hotel business.

In addition, business entities are entitled VAT deferral at the import stage with regard to equipment, machinery, specialized means of transportation which form part of a technological line and construction materials

4. New passenger cars of less than 16 seats are permitted to import via 05 Vietnam international seaports only

In accordance with guidelines of Inter-Circular No.25/2010/TTLT-BCT-BGTVT-BTC jointly issued by the Ministry of Industry and Trade, Ministry of Transport and Communications and Ministry of Finance on 14 June, 2010 on the import of passenger cars of less than 16 seats, brand-new (not used ones), passenger cars are only permitted to import into Vietnam via following international seaports: Cai Lan-Quang Ninh, Hai Phong, Da Nang, Ho Chi Minh City, Ba Ria-Vung Tau. Customs procedures shall be conducted at the imported port.

Customs authorities shall only complete clearance procedures for imported cars if those are issued by Vietnam Register with Certificate of quality, technical safety and environmental protection for imported vehicles or Notification

which are not yet able to be produced domestically and are required to be imported to form the fixed assets for 60 days as from the last day of the taxable term. The taxation deferral shall be applicable to the first imported consignment which its value may be less than 200 millions VND. Imported goods shall be completed custom clearance as soon as the customs finish their practical verification. Taxation deferral and customs clearance shall not subject to the debt of customs duties at the import stage and not required guarantee letter of credit institution.

This Circular shall be of full force and effect as from the signing date and shall replace the Circular No.205/2009/TT-BTC dated October 23, 2009 of Ministry of Finance.

on exemption from inspection of quality, technical safety and environmental protection for imported vehicles.

The time-limit for issuance of Certificate of technical safety quality and environmental protection for imported vehicles or Notification on exemption from inspection of technical safety quality and environmental protection for imported cars is 10 working days, from the date finishing the verification of imported vehicles at the location registered in the Registration form for verification of quality, technical safety and environmental protection of imported vehicles.

The Circular shall be of full force and effect as from 29 July, 2010.

PART III – NEW PROMULGATIONS OF THE MONTH

NATIONAL ASSEMBLY

1. Law on the State Bank of Vietnam No. 46/2010/QH12 passed on 29 June 2010
2. Law on Credit Institutions No. 47/2010/QH12 passed on 29 June 2010
3. Law on Non-Agricultural Land Use Tax No. 48/2010/QH12 passed on 28 June 2010
4. Law on Post No. 49/2010/QH12 passed on 28 June 2010
5. Law on Safe and Efficient Use of Energy No. 50/2010/QH12 passed on 28 June 2010
6. Law on Raising Adoptive Children No. 52/2010/QH12 passed on 28 June 2010
7. Law on Penal Sentence Enforcement No. 53/2010/QH12 passed on 29 June 2010
8. Law on Commercial Arbitration No. 54/2010/QH12 passed on 29 June 2010
9. Law on Foodstuff Safety No. 55/2010/QH12 passed on 28 June 2010

GOVERNMENT

1. Decree No. 71/2010/ND-CP dated 23 June 2010 detailing and guiding the implementation of the Law on Housing.
2. Decree No. 68/2010/ND-CP dated 15 June 2010 providing on penalties for offences in electricity sector.
3. Decree No. 66/2010/ND-CP dated 14 June 2010 issuing the Regulations on coordination in State administration with respect to operations of Maritime Police Force and the coordination of operations between forces in territorial waters and continental shelf of the Socialist Republic of Vietnam.
4. Decree No. 64/2010/ND-CP dated 11 June 2010 on management of urban green trees.
5. Decree No. 63/2010/ND-CP dated 08 June 2010 on controlling administrative procedures.
6. Decree No. 62/2010/ND-CP dated 04 June 2010 amending, supplementing a number of articles of Decree No. 53/2007/ND-CP dated 04 April 2007 of the Government providing for penalties for administrative offense in planning and investment sector.
7. Decree No. 60/2010/ND-CP dated 03 June 2010 on penalties for administrative offense in civil aviation sector.

THE PRIME MINISTER

1. Decision No. 909/QD-TTg dated 17 June 2010 on approving the Plan on control exhaust fume of motorbikes, motorcycles in circulation in provinces and cities.

2. Decision No. 906/QD-TTg dated 17 June 2010 on approving the Master Planning Orientation for development of nuclear power in Vietnam for the period to year 2030.
3. Decision No. 45/2010/QD-TTg dated 14 June 2010 issuing the Regulation on Controlling nuclear.

MINISTRY OF PLANNING AND INVESTMENT

1. Circular No. 14/2010/TT-BKH dated 04 June 2010 guiding a number of contents on dossier, order, procedures for registration of enterprises in accordance with Decree No. 43/2010/ND-CP dated 15 April 2010 of the Government on Registration of Enterprises.
2. Circular No. 13/2010/TT-BKH dated 02 June 2010 providing for forms of supervision report, investment assessment.
3. Circular No. 11/2010/TT-BKH dated 27/5/2010 making detailed provisions on the competitive offer.

MINISTRY OF FINANCE

1. Circular No. 92/2010/TT-BTC dated 17 June 2010 guiding procedures on value-added tax (VAT) deferral and refund with respect to equipment, machinery, specialized means of transportation which form part of a technological line and construction materials which are not yet able to be produced domestically and are required to be imported to form the fixed assets of enterprises.
2. Circular No. 90/2010/TT-BTC dated 16 June 2010 guiding the formulation of the State budget estimation for the year 2011
3. Circular No. 88/2010/TT-BTC dated 15 June 2010 guiding the implementation of a number of articles of Decree No. 96/2009/ND-CP dated 30/10/2009 of the Government on the disposal of buried and sunk property which is discovered or found in the mainland, on islands and in the sea of Vietnam.
4. Circular No. 80/2010/TT-BTC dated 28/5/2010 detailing code and amending the preferential import duty rate of certain items under heading 1104 in Circular No. 216/2009/TT-BTC dated 12 November 2009.

MINISTRY OF LABOUR, INVALIDS AND SOCIAL AFFAIRS

1. Circular No. 18/2010/TT-BLDTBXH dated 10 June 2010 providing wages for domestic consultant carrying out consulting tender package and applying the mode of time-based contract under the State funded projects.
2. Circular No. 16/2010/TT-BLDTBXH dated 01 June 2010 guiding Decision No. 613/QD-TTg dated 06 May 2010 of the Prime Minister on monthly allowance to people having from

sufficient 15 to 20 working years in fact out of the time limit for enjoying working force loss allowance.

MINISTRY OF INDUSTRY AND TRADE

1. Circular No. 26/2010/TT-BCT dated 14 June 2010 providing for the registration of plan on production, import of materials, and sale of petrol products.

STATE BANK OF VIETNAM

1. Circular No. 15/2010/TT-NHNN dated 16 June 2010 providing for classification of debts, establishment and use of reserve fund for dealing with risks of lending in operations of small size financial institutions.
2. Circular No. 14/2010/TT-NHNN dated 14 June 2010 guiding detailed provisions for implementation of Decree No. 41/2010/ND-CP dated 12 April 2010 of the Government on credit policy in service of agricultural, rural development.

MINISTRY OF SCIENCE AND TECHNOLOGY

1. Circular No. 04/2010/TT-BKHCN guiding the implementation of a number of articles of Decree No. 49/2009/ND-CP dated 21 May 2009 of the Government stipulating penalties for administrative offenses in relation to technology transfer.

INTER-MINISTRIES

1. Joint-Circular No 25/2010/TTLT-BCT-BGTVT-BTC of the Ministry of Industry and Trade, Ministry of Transport and Communications, Ministry of Finance dated 14 June 2010 providing for the import of passenger car of less than 16 seats, brand new (not used).



with us ...

... you stay safe

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