

**VIETNAM LEGAL UPDATE**

April 2008

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We encourage feedback from our readers regarding the VLU. Please direct all enquiries, comments and suggestions to Lee Baker in our Ho Chi Minh City office at [lee.baker@aar.com.au](mailto:lee.baker@aar.com.au).

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Allens' Hanoi Team  
(minus 'Bac Bill')

## Part 1 Selected New Legal Instruments

### 1.1 Foreign residential ownership - a reality finally, or just more talk?

**Draft Housing Law of the Ministry of Construction permitting foreigners to purchase and own residential houses in Vietnam, dated 10 April 2008 (*Draft Housing Law*)**

#### **The long wait**

Nearly a year ago, we reported in our May 2007 VLU issue on the Government's draft pilot scheme allowing foreigners to purchase residential houses in Vietnam. After 12 long months of drafting and redrafting, this scheme is finally to be submitted to the National Assembly for approval next month.

#### **Narrower than prior draft**

On 10 April 2008 the Draft Housing Law was discussed at the General Meeting of the National Assembly Economics Committee. The draft settled upon is somewhat narrower than prior drafts under consideration.

The Housing Law Draft indicates that foreigners must fall into one of the seven categories and satisfy two conditions (listed below) to be eligible to purchase residential houses in Vietnam. According to the Draft, eligible foreigners will be allowed to buy apartments (note: not houses, notwithstanding the official title to the draft) in commercial housing development projects. However, the Draft stipulates that each foreign individual will be allowed to purchase only one apartment and he/she may sell the residence only after one year from obtaining the housing ownership certificate.

The maximum duration for owning apartments for foreigners will be 70 years. This duration may be renewed once. The local provincial people's committee will be the only authority entitled to issue housing ownership certificates to the foreigners.

This Draft, unlike the drafts published last year, eliminates from the categories two small groups of expatriates who were initially included in the proposed policy: (i) people whose contribution to Vietnam has been officially recognised by the minister or head of a ministerial equivalent body in the form of a decoration, medal, or certificate of merit; and (ii) employees with high-level skills recognised in their own country.

#### **Lucky seven**

Following are the seven groups of foreigners eligible to purchase apartments under the Draft:

- (i) foreign individuals directly investing in Vietnam according to the investment laws of Vietnam or holding management positions in enterprises (both local and foreign-invested enterprises) in Vietnam;
- (ii) foreign individuals who contribute to the country's development and have received the President's certificates of merit or medals, or have been granted titles as emeritus citizens of Vietnam; former Ambassadors, former heads of Consul Generals and former heads of international recognized organisations such as the United Nations organization in Vietnam;
- (iii) foreign cultural activists and scientists who are working in Vietnam and hold academic titles and/or academic distinctions awarded by Vietnamese organisations or foreign organisations in science-technology, health, sports, culture, or art fields;
- (iv) foreigners who are married to Vietnamese residents;
- (v) persons who are allowed to purchase houses according to special decisions of the Prime Minister;
- (vi) persons who have been living in Vietnam for five years or more and who do not fall into categories (i) to (v) above; and

- (vii) foreign-invested enterprises operating in Vietnam, excluding those operating in the real estate sector, who will be allowed to buy residences for their employees.

### **Two more conditions if you want to buy**

In addition to falling in one of the categories set out above, the following two conditions also met by foreigners wishing to buy residences in Vietnam:

- (i) *foreign businesses* must have an investment license/certificate granted by authorised agencies of Vietnam; and *foreign individuals* (a) who fall into categories (i) to (v) must have been granted a residence permit proving that they have been living or working in Vietnam one or more years, and (b) who fall into category (vi) must be certified by the local authority where they reside to have been living in Vietnam for five years or more; **and**
- (ii) the purchased residence is an apartment in a commercial housing development project and not within a prohibited area or an area in which residence and movement of foreigners is restricted. Again, note that stand-alone houses still appear not to be permitted to be purchased or owned by foreigners under the Draft.

The Draft is planned to be approved during the 3<sup>rd</sup> session of the National Assembly which commences on 6 May 2008. While short of permitting unfettered ownership of residential dwellings by foreigners, the Draft represents a significant shift from prior law, and opens the door that many foreigners have been waiting for.

## **1.2 Foreigners working in a foreign land**

### **Decree 34-2008-ND-CP of the Government on the employment and administration of foreigners working in Vietnam, dated 25 March 2008 (Decree 34)**

On 25 March 2008, the Government issued Decree 34 providing further guidelines under the Labour Code for foreign workers in Vietnam. Of particular import in terms of topics covered by Decree 34 are work permits for foreigners and the lifting of the cap on foreign workers.

#### **Who can work here?**

Under the Decree, all foreigners who are 18 years of age or older, fit to work, with no criminal record, and who are managers or experts directly managing businesses in Vietnam, may work in Vietnam, provided they obtain and maintain a valid work permit.

#### **Work permits**

In most instances a foreigner must obtain a work permit issued by the relevant local Department of Labour. The application process for the work permit should be commenced by the employer prior to the arrival of the foreigner in Vietnam, whenever this is possible. The period of the work permit should be the same duration as that of the proposed labour contract for the employee, or as set out in the terms of his or her appointment letter.

In special cases where there is no labour contract, the period of the work permit must be the same duration as that of the contract or other document between the Vietnamese party and the foreign party. As an example, if the foreigner is acting as representative of a foreign non-governmental organisation, the period of the work permit is the same as that of the operating certificate for the project.

The total duration of a work permit in any case may not exceed 36 months, after which it must be renewed.

When applying for a work permit, a foreigner must furnish the following documents:

- the labour contract, draft labour contract, or other document confirming the terms of employment as agreed between the parties

- a letter (in standard form) from the employer requesting that a work permit be issued
- a legal record from the foreigner's previous country of residence or from Vietnam if they have resided here for more than six months
- a curriculum vitae (in standard form)
- a health certificate
- any certificates of specialisation or expertise (this is usually the tricky bit requiring consularisation, notarisisation, etc) and recent photos.

### Exemptions

Foreigners who are **not** required to obtain work permits for employment in Vietnam include the following:

- those working for less than three months
- those who are members of a limited liability company with two or more members, or owners of a one-member limited liability company, or members of the board of management of a shareholding company
- foreign lawyers who have been granted a certificate to practise law in Vietnam (pewh!)
- foreign students, spouses of high ranking government or diplomatic officials, and domestic assistants (provided that the employer of such persons provides a report to the relevant local Department of Labour seven days prior to the commencement date of their employment)
- those entering Vietnam to offer services, in certain, yet unspecified, circumstances.

### Abolishment of 3% cap

Of huge significance to foreign companies in Vietnam, Decree 34 has removed the cap which had previously existed with respect to foreigners working for enterprises in Vietnam. Prior regulations - resoundly criticised by the foreign investment community since their very issuance - provided that the number of foreigners employed by any company in Vietnam could not exceed 3% of the total number of employees. As managers of foreign companies in Vietnam are often foreigners with expertise and management expertise, and therefore seen as necessary - at least in the start-up phases of operation for foreign companies - the 3% cap has been viewed as unreasonable and practically unworkable.

Under Decree 34, it appears that the Government has seen the light on this point, and enterprises in Vietnam are now allowed to hire an unlimited number of foreigners. So we have the proverbial 'one step forward' again, after the initial back-step.

### 20% rule for Vietnamese managers

Although Decree 34 is not entirely clear on this point, it seems to also require, in cases where a company routinely transfers managers in and out of Vietnam from abroad (which, in our view, would cover most foreign investors who post expats to Vietnam), that at least 20% of the total number of the managers, executive directors and experts of the enterprise must be Vietnamese citizens. This requirement notwithstanding, Decree 34 specifies that at least three foreign managers, executive directors and experts are guaranteed to be permitted to work to work in a foreign enterprise.

## 1.3 Rising inflation affecting all sectors

**Circular 05/2008/TT-BXD of the Ministry of Construction providing guidelines for the adjustment of contract price and pricing form in construction contracts due to changes in cost of raw materials, fuel and building materials, dated 22 February 2008 (MOC Circular 05)**

In a measure designed to give effect to the Prime Minister's directives in Official Letter 164-TTg-CN (dated 29 January 2008) on adjusting prices and package, MOC Circular 05 was issued by the Ministry of Construction (**MOC**) on 22 February 2008. Its stated purpose is to address the difficulties faced by contractors in meeting budgets under fixed-price contracts. Many of these contracts have been rendered virtually unperformable, due to the recent and unexpected price rises of raw materials used for construction.

#### **Exceptional allowances**

The allowances granted under MOC Circular 05 are unusual and exceptional, even by Vietnam standards. Indeed, some fixed-price contracts can now effectively be re-written to be 'variable-priced' ones. Under MOC Circular 05, parties to construction contracts on State funded projects are permitted to:

- adjust the costs of building materials in the case of tender packages currently under implementation in the forms of package contract prices and contract prices subject to fixed unit prices; and
- convert the pricing formats of construction contracts to adjusted price arrangements replacement of fixed price arrangements.

Prices of building materials will be calculated and adjusted for any construction works carried out since 2007, in any instances where the overall price of the construction has increased 'primarily' due to a rise in the cost of building materials which could not have anticipated by the either investor or the contractor.

#### **Many parties affected**

While MOC Circular 05 is a much-needed relief initiative from the MOC, the general language and open-endedness of this provision leave many issues open to negotiation between suppliers and contractors. Given the current construction boom in Vietnam, many parties will no doubt seek to take advantage of MOC Circular 05's allowances.

### **1.4 Trading and distribution ... again**

**Circular 05-2008-TT-BCT of The Ministry of Industry & Trade dated 14 April 2008 amending and adding to Circular 09-2007-TT-BTM of the Ministry of Trade dated 17 July 2007 (Circular 09) with implementing guidelines on Decree 23-2007-ND-CP of the Government dated 12 February 2007 implementing the Commercial Law regarding trading and distribution activities by enterprises with foreign-owned capital in Vietnam (MOIT Circular 05)**

In our March 2008 VLU, we reported on the workshop held by the Ministry of Industry and Trade (**MOIT**) in Hanoi on 20 March 2008 (**MOIT Workshop**). That workshop was held in response to a number of complaints by foreign investors regarding Vietnam's alleged failure to fully implement its WTO trading and distribution commitments in accordance with its agreement. Specifically, among other things, foreign investors balked at the limit set out in Circular 09 restricting them to choosing only one distributor for each class of imported goods and the requirement to register such distributor with the relevant authority.

#### **Come one, come all – restrictions now lifted**

MOIT Circular 05 now addresses this specific issue and amends Circular 09 by removing the restriction on the number of permitted distributors as well as the associated registration requirement. Section I, Article 3.1 (dd) now provides that "an enterprise with foreign-owned capital in Vietnam which has been licensed to exercise import rights shall be permitted to sell imported goods to business entities with the right to distribute such goods."

This is welcome news for foreign investors in this sector who have been adversely affected by Circular 09's restrictive provision. But it has taken nearly a year to correct the problem and this

resolution has only a short life span before it becomes outdated: full distribution rights will be available 1 January 2009.

**Additional changes not significant**

Other revisions to Circular 09 in MOIT Circular 05 are mostly innocuous, ie changing the list of import rights to specifically include that goods subject to specialized industry management are subject to the regulations on such goods, minor changes to the application requirements for amending/adding to a license to set up a retail sales outlet, etc.

One additional change does, however, pose additional administrative obligations on the foreign investor in the near term (ie before full distribution rights are available on 1 January 2009): foreign-invested enterprises which have been licensed to exercise import rights but which do not yet have distribution rights must prepare and submit a report to the relevant authority each quarter (using standard Form BC1 issued with MOIT Circular 05) regarding its import activities for the preceding quarter. This does not seem necessary, and it is difficult to ascertain why this reporting obligation has been imposed.

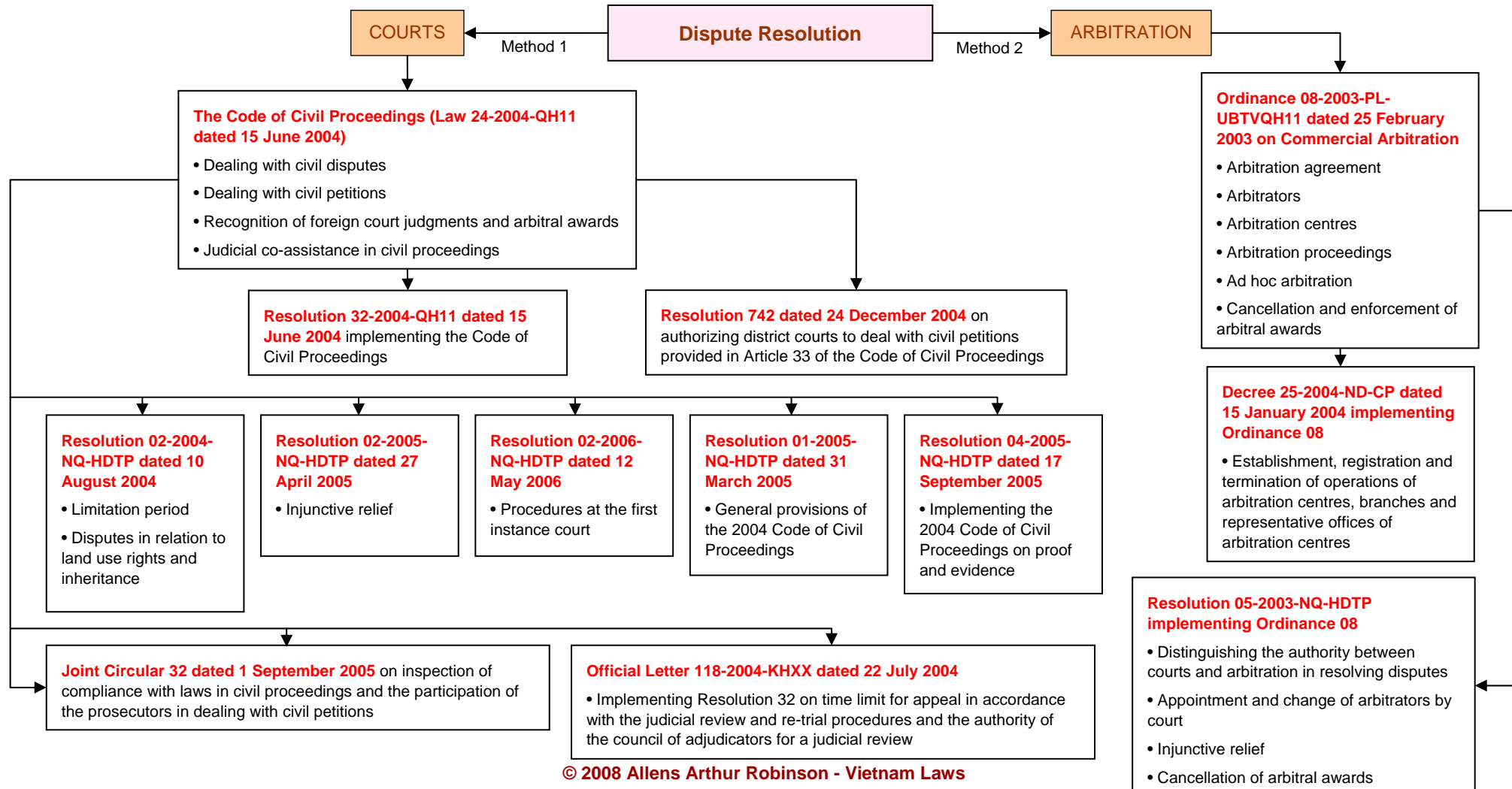
Other issues raised at the MOIT Workshop, such as elimination of the economic needs test and clarification regarding foreign involvement in distribution vs. establishing a distribution network, were not addressed in MOIT Circular 05. Please see our March VLU for more background on these issues; we will continue to update our readers on this ever-changing and important investment sector.

**Part 2 Feature**

Last month's VLU introduced our Labour Dispute Resolution Law Map. This month's Law Map goes broader in covering civil and economic dispute resolution generally, through both the court system and arbitration mechanism in Vietnam.

**DISPUTE RESOLUTION LAW MAP**

29 APRIL 2008



## Part 3 Did You Know?

### 3.1 Navigating the murky LOI and LOE waters again

If one of the purposes of the Law on Investment (2005) (**LOI**) and the Law on Enterprises (2005) (**LOE**) was to provide foreign investors with more direct access to investment opportunities in Vietnam, the practice at the implementation stage is falling far short of the laws' intent.

Many facets of the LOI and the LOE remain sources of confusion for investors and also for the governmental bodies who implement them, particularly concerning the ambit of foreign investment in Vietnamese companies. This confusion has created delays and expense for foreign investors as they attempt to wade through the LOI and LOE 'mud.'

Article 15(2) of Decree 139 issued under the LOE is an example of what we mean:

#### **A way to avoid registration of new shareholders?**

Under this article, the procedures for registration as a new member of a limited liability company (**LLC**), and as a new shareholder of a non-public shareholding company (**SC**) which is *less than* three years old, require, in both cases, that:

- (i) foreign investors apply for registration; and
- (ii) the Business Registration Certificate of the company the foreign investors are buying into be altered to record the name of the new member or shareholder,

before title in the interest or shares passes to the new owner. These are cumbersome requirements. So are there ways around them? Maybe so...

If a foreign investor purchases shares in an SC established more than three years ago, the investor need only have his or her name entered onto the register of the SC they are buying into, in order for title to pass.

If a foreign investor purchases more than 5% of the SC's shares, he or she also needs to register with the relevant registration body and - while this is admittedly proving difficult to accomplish - as a technical, and legal, matter, title to the shares passes at the time his or her name is entered onto the SC's company register (suggest to amendment of the BRC, if buying from a founding shareholder within 3 years from establishment).

As such, it is much easier for a foreign investor to acquire shares in a SC that is older than three years than in one younger than three years, and/or an interest in an LLC (regardless of how old it is).

#### **Conversion under Article 15(2) – a way to side-step registration?**

Article 15(2) of Decree 139 states in relevant part as follows:

“A shareholding company which was converted from a 100% State-owned enterprise or limited liability company which was divided or demerged from, or consolidated and merged into another shareholding company need not necessarily have founding shareholder/s.”

Does this mean that if a foreign investor wishes to invest in a three-year old LLC and avoid the complications of applying to be a new member and to alter the business registration certificate, he or she could attempt to convert the LLC to an SC and then purchase its shares?

Apparently not, according to the Ministry of Planning and Investment (**MPI**), which has said that Article 15(2) of Decree 139 should not be interpreted to this effect. It thus appears that application for registration as a new member of an LLC or founding shareholder of SC is the only means of securing title in these instances. A creative attempt at interpretation by some

investors, but this loophole is apparently 'now closed.'

### 3.2 Liability – limited or not?

Intentional or otherwise, Article 84.3 of the Law on Enterprises (LOE) undermines the principle of limited liability companies. Investors in limited liability companies in other countries are usually guaranteed that their liability in respect of their investment is limited up to the amount of capital they have committed to invest in the company.

#### **Failure to contribute tantamount to forfeiture of limited liability?**

Article 84.3, which applies to founding shareholders of shareholdings companies, states that where the number of shares registered to be contributed by a founding shareholder has not been contributed in full by the due date (and the options to make up that contribution as set out in the first part of the Article have not been taken up), then "the (presumably, other) founding shareholders" are jointly liable for debts and other 'property obligations' of the company, up to the value of the shares not contributed in full by the defaulting founding shareholder.

#### **The intended consequence?**

In effect then, in such a case, the other founding shareholders take on the liability of the defaulting founding shareholder in addition to their own capital contribution responsibilities. Another quirk of the LOE.

### 3.3 Newly published and of interest

The Ministry of Planning and Investment (**MPI**) has recently launched a new website on foreign investment <http://fia.mpi.gov.vn/>. The site, which is very professionally presented and easy to navigate, contains quite a bit of useful information on the MPI and foreign investment in Vietnam generally. VLU readers should check it out.

Readers should also have a look at the Special Report contained in *The Economist* magazines '30 April Tribute to Vietnam' (contained in the 26 April 2008 issue). Lots of good facts and figures on Vietnam here, as well.

### 3.4 'Thin capitalisation' requirements – still with us?

Government approval is required for all significant foreign investment projects in Vietnam and, in the case of new projects, this takes the form of an Investment Certificate usually issued by the People's Committee of the province in which the project is located.

#### **Investment Certificates**

Investment Certificates follow an official form and include required contents such as stipulated investment capital and charter capital amounts.

Investment capital refers to the total investment permitted to be invested in the project. It is a permissive amount, that is, an amount the investor is permitted to invest. Charter capital, on the other hand, refers to the equity that the investor commits to invest in the project. It is an obligatory amount, meaning an amount the investor is obliged to commit. Loan capital - yet another concept - comprises the difference between charter capital and investment capital for any particular investment, and is the maximum amount the project company is permitted to borrow on a medium/long term basis.

Any increase or reduction in the investment capital or charter capital must be approved by way of approval for amendment to the Investment Certificate. Reduction in the Capital Charter is only granted in limited circumstances.

The Investment Certificate will also include a Capital Contribution Schedule and a Project Implementation Schedule which will specify the dates by which capital contributions are required to be made and by which project implementation milestones are to be achieved.

#### **'Thin capitalisation' rule**

Prior to the current Law on Investment (effective 1 July 2006), a 'thin capitalisation' rule applied to all projects. Under this rule, charter capital was required to comprise at least 30% of the investment capital, exclusive of any revenue funding. While this rule is no longer enshrined in current law, it continues to influence the discretion of licensing authorities.

#### **What's a safe bet?**

Generally, 30% charter capital remains a 'safe' amount for ensuring approval. There have been some recent examples, however, of projects with charter capital of only 20% being approved, but these may be special cases. While 10% charter capital is possible, in theory, for any project, approval is only likely in relation to Build-Operate-Transfer projects where a 10% charter capital is specifically contemplated by the law. However, even this is not guaranteed, and a recent example of a Build-Transfer project, wherein charter capital of approximately 20% was required for the project to be approved, suggests that licensing authorities may not be prepared to go below this amount.

#### **Why so rigid?**

There are probably two reasons why Vietnam continues to rigidly regulate the capitalisation of foreign invested companies:

Firstly, the Government has historically sought to control most aspects of investment in Vietnam, including the feasibility of any project. Secondly, a significant contribution of equity is considered an effective way of ensuring that the investor is sufficiently committed to fully implementing the project. The Capital Contribution Schedule and the Project Implementation Schedule provide further assurance that the investors will adhere to their commitment to implement each stage of the project or risk losing their Investment Certificate.

This being said, many would argue that investors should be entitled to some protection as well, particularly as a significant amount of the implementation of any project is often contingent upon timely cooperation from government bodies in issuing licences and permits. Investors, especially in very large projects, may be able to negotiate the Capital Contribution Schedule and Project Implementation Schedule with the licensing authority before it issues the Investment Certificate, thereby gaining a higher 'comfort factor' for their projects before they proceed.

How far the licensing authorities will veer from the prior thin capitalisation rules remains to be seen however, as Vietnam's investment regime continues to liberalise.

### **3.5 How not to get diluted**

When investing in a Vietnamese company, shareholders of a shareholding company (**SC**) or members of a multiple-member limited liability company (**MLLC**), ie the owners, want to know that the level of their ownership in that Vietnamese company will not get diluted every time new owners come on board. How are their positions protected? The answer lies in a limited protection in the form of pre-emption rights provided by Vietnamese law.

#### **Pre-emption rights under the LOE**

In the case of an SC, there are three types of protection against dilution provided for under the Law on Enterprises (**LOE**).

Firstly, within the first three years of the date of the business registration of the company, a founding shareholder is allowed to transfer its shares only to other founding shareholders,

unless the General Meeting of Shareholders approves the transfer to other persons (Article 84(5)). Secondly, voting preference shares may not be transferred (Article 81(3)). Thirdly, where the company issues new shares, those shares must first be offered to the existing shareholders pro-rata to their shareholding (Article 79(1)(c)).

With an MLLC, similarly, the existing owners have the priority right to contribute additional capital where the charter capital of the company has been increased (Article 41(1)(e)); and where an owner wishes to sell its interest in the MLLC, it must first offer that interest to the other owners pro-rata to their ownership.

### **Anti-dilution provisions in agreements**

Vietnamese law does not provide for sophisticated anti-dilution formulas that are in place in some other countries to preserve the ownership stake of existing owners. Therefore, and also because the pre-emption rights that the Vietnamese law does provide offer only limited protection, strategic investors in Vietnamese companies sometimes include an anti-dilution provision in the share purchase or shareholders' agreements. Such provisions grant the investor special status by means of warrants, stock options or preference shares.

Are there any issues with such arrangements? Yes, there are.

### **Issues**

Firstly, such anti-dilution provision agreed upon in an agreement may contradict the pre-emptive rights of other shareholders or MLLC members, as stipulated in Articles 79.1 and 41(1)(e), respectively, as explained above.

Secondly, if the anti-dilution provision requires the company to issue shares to an investor at a nominal price every time the company offers additional shares, this is likely to contradict Article 87 of the LOE, which requires that shares must not be offered at a lower-than-market price. There are limited exceptions to this Article 87 rule. One such occasion where shares may be offered at a lower-than-market price is where they are offered to all the shareholders pro-rata. Another instance is where/if the Charter of the company allows it and specifies the rate of discount.

### **The future?**

The LOE is generally geared toward the protection of minority shareholders. The trend to bring in strategic investors to grow and develop Vietnamese companies is only a few years old, and the laws have not caught up with the needs of this important group of investors.

For the time being, the safest route for strategic investors may be include such anti-dilution provisions not only in their purchase agreements, but to also draft provisions into the company Charter that reflect the agreed anti-dilution mechanisms and give clear details of any discount rates to be applied in future share issues.

## Part 4 What's new on [www.vietnamlaws.com](http://www.vietnamlaws.com)?

### NEW subject categories in Vietnam Laws Online Database

Vietnam Laws Online Database on [www.vietnamlaws.com](http://www.vietnamlaws.com) is an online searchable database of English translations of more than 3,500 Vietnamese laws relating to foreign investment and far beyond. Subscribers can search for legislation by subject category, keyword, date, issuing body, official number, legislation type, or advanced option. Translations can be viewed online, and also printed and downloaded (subject to terms and conditions).

### Laws recently uploaded on the Vietnam Laws Online Database include the following:

- ➔ Draft Resolution on foreigners purchasing and owning residential housing in Vietnam, 18 April
- ➔ Circular 03 on provision of foreign exchange services by banks, 11 April
- ➔ Law 67 on information technology, 29 June 2006
- ➔ Circular 05 on trading and distribution rights of enterprises with foreign owned capital, 14 April
- ➔ Decision 09 on lending in foreign currency to resident borrowers, 10 April
- ➔ Circular 05 on adjusting building contract prices due to materials and fuel cost increases, 22 February
- ➔ Decree 95 on conversion of State enterprises to one member limited liability companies, 8 September 2006
- ➔ Decree 93 on decentralization of management to Ho Chi Minh City authorities, 12 December 2001
- ➔ Decision 15 on securities [business] practice and securities practising certificates, 27 March
- ➔ Draft Law on Amendments to the Civil Code (regarding default interest rates), 27 March
- ➔ List of projects for which an environmental impact assessment report must be prepared (pending a full translation of Decree 21), 28 February
- ➔ Letter 1909 on measures for stabilizing the securities market, 25 March
- ➔ Decree 29 on industrial zones, export processing zones and economic zones, 14 March
- ➔ Notice 63 advocating that foreign ownership of unlisted public company shares should be restricted to 40% subject to specific sector exceptions, 11 March
- ➔ Decree 146 on financial regime applicable to credit institutions, 23 November 2005

**The list above is merely a recent snapshot of the wide range of new legislation now uploaded and available on Vietnam Laws Online through April 2008.**

### NEW search function for Vietnam Legal Update

As regular VLU readers know, all issues of our Vietnam Legal Update from 1997 have previously been available on [www.vietnamlaws.com](http://www.vietnamlaws.com).

We are in the final stages of merging our prior Phillips Fox system into the new Allens one, and hope to provide access to back issues of our VLUs for readers very soon.

## Part 5 Get to Know Us

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In this issue of the Vietnam Legal Update, we continue our feature spotlighting lawyers from Allens' Hanoi and Ho Chi Minh City offices.

Our Vietnam legal team hails from Vietnam, Australia, the United States, Finland and South Korea, with our total number of lawyers based in Vietnam now standing at 25, and rising.

The third lawyer to be featured in this 'Get to Know Us' section of the VLU is Chung Le, a lawyer in our Hanoi office.



Chung Le joined the Hanoi Office of Allens Arthur Robinson six months ago. Before joining Allens, Chung worked for a U.S. law firm in Hanoi, and he has nearly six years of experience of legal practice. His areas of expertise include construction, M&A transactions and dispute resolution.

When he is not in the office, Chung enjoys reading, watching television and travelling.

Quote from the source: "I have happily witnessed a miraculous development of this nation each day during the last 10 years, and now I wish actively to be a part of that development for the next 20!"

**VLU EXTRA: Allens Tops the List in BRW Client Choice Awards**

**FOCUS**

**The extra mile**

Establishing and maintaining a relationship based on understanding a client's needs keeps Allens law firm at the head of the professional services pack. Report: Kate Burgess

● In the race to outdo each other on client service, Allens Arthur Robinson managing partner Michael Rose fears that law firms may be forgetting to nurture what clients crave most – technical excellence.

In response to earlier feedback suggesting that clients were after more than just "the answer" to a legal problem, law firms have been striving to improve the client experience, and have initiated programs to instill into practice staff values such as empathy, listening and responsiveness.

But Rose says clients appreciate technical excellence from their lawyers like never before. "There's a bit of a feeling around that technical excellence is a given but I'm not so sure it is. Clients with complex problems don't see it as such," Rose says.

Allens, for the third time in four years, has come away with top honours in the 2008 BRW Client Choice Awards as Best Professional Services Firm (with revenue over \$200 million).

Clients say the firm has engendered a culture of technical excellence while still going to lengths to measure and improve service. Rose says the increasing sophistication of his firm's client base has necessitated this focus on excellence.

"You've got in-house counsel who know the profession well, and understand the strengths and weaknesses of different firms and use this to select firms for particular jobs," Rose says. "Our clients in particular know what they are looking for."

Too often, firms focus on completing the task at hand and lose sight of the big picture – the role of that task in the context of how it fits

within the relationship between client and adviser in the long term, Rose adds. "A lot of people would think about there being a service that we provide and they think about how we provide this service in the context of a relationship. [They see] that service and relationship as two different things," he says.



Culture of excellence:  
Allens Arthur Robinson  
managing partner  
Michael Rose

"But we think the service is the relationship. The value is in the professional relationship. [Clients] know we know them, there is a common context. Clients know that we have a long-term perspective. It's not sale and purchase; it's an ongoing intellectual engagement."

Comments made by Allens' clients – which aren't attributed to any specific company – during the Client Choice research process indicate that they do value technical excellence, accuracy and attention to detail in the context of a long-term relationship. Moreover, they are finding these strengths and more when they engage Allens.

"Close long-standing professional relationship, excellent outcomes, lawyers and partners that go the extra mile," one client notes. "Advice was prompt, sensible, considered and appropriate," another says.

Clients clearly appreciate that the value of service is a function of effective long-term relationship management, and add that good relations help lawyers build an understanding of their business, and so can provide commercially sound advice that is relevant to their business.

"[Allens] treated us like a true customer. They asked questions, communicated very well, followed up a large body of work with a 'client lunch' which was appreciated as it gave us the opportunity to develop a closer relationship and increase the understanding of each other's business," a client says.

It's easy for firms to pay lip service to the concept of quality, but how do firms such as Allens ensure consistency and continuity, from the initial scoping discussion through to the delivery of advice?

Rose says the depth of the relationship is

**Allens Arthur Robinson**

<b>Expertise</b>	Full-service legal firm
<b>Locations</b>	Sydney, Melbourne, Brisbane, Perth, Beijing, Hanoi, Ho Chi Minh City, Hong Kong, Jakarta, Phnom Penh, Port Moresby, Shanghai, Singapore
<b>Awards</b>	Best Professional Services firm (revenue over \$200m), Best Law Firm (revenue over \$100m)
<b>Client Choice awards</b>	Three
<b>Ownership structure</b>	Partnership
<b>Staff</b>	835 + 191 partners and 644 lawyers

**Client comment:**  
"An ability to demystify the law so that I can make informed decisions. Allens provided options and viable alternatives which were well articulated and costed out."

Peter Bax

the key. "We do it at different levels, both formally and informally.

"First, our relationship partners are talking to clients all of the time. I also go and see them. In the first three months as managing partner, I went to see the senior counsel at each of our top 20 clients. We then have a formal feedback process, in which our clients are interviewed once a year by a client services person."

Sending younger lawyers out to clients is an intrinsic part of this, Rose says. "We are putting people into relationships as early as we can. Clients really like this. They like working with a relationship partner for an extended period, but they also want to see younger partners engaging with people – they will provide continuity."

The firm has recently initiated annual "reverse seminar" client briefings, where rather than the firm instructing the client, the client reports on what they expect to happen in their business and broader industry over the next 12 months.

Allens' expansion into Asia has brought new meaning to the relationship concept.

"The cross-cultural dimension is not just on the surface," he says. "The fact is that many of our clients have no relationship with Asia – they could be Spanish or Canadian companies doing business there."

## Frequent flyers

Since the BRW Client Choice Awards began in 2005, some businesses have won more than once.

### Allens Arthur Robinson

- Best Professional Services Firm (revenue over \$200 million): 2005, 2006, 2008
- Best Large Law Firm (revenue over \$100 million): 2005, 2006, 2008
- Best Queensland Firm: 2006

### PricewaterhouseCoopers

- Best Accounting Firm (revenue over \$500 million): 2006, 2007, 2008
- Market Leader: 2006, 2007, 2008
- Best ACT firm: 2006

### Goldier Associates

- Best Professional Services Firm (revenue \$20-\$100 million): 2006, 2007
- Best Consulting Engineering Firm (revenue \$50-\$200 million): 2006, 2007, 2008
- Best NSW Firm: 2008
- Best West Australian Firm: 2007
- Best Victorian Firm: 2007

### Vincent's Chartered Accountants

- Best Professional Services Firm (revenue under \$20 million): 2007, 2008
- Best Accounting Firm (revenue under \$50 million): 2007, 2008
- Best Queensland Firm: 2007, 2008
- Outstanding Client Care: 2007, 2008

### Boston Consulting Group

- Best Consulting Firm (revenue over \$20 million): 2006
- Most Innovative: 2007, 2008

### Ferrier Hodgson

- Best accounting firm (revenue \$50-\$500 million): 2007, 2008

### Coffey International

- Best Consulting Engineering Firm (revenue over \$200 million): 2007, 2008

Note: Some of the award categories have changed in scope since these firms won their awards.