



VIETNAM LEGAL UPDATE

July 2007

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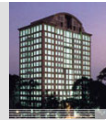
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The material contained in Vietnam Legal Update is intended to inform you of recent legal developments in Vietnam. It is not intended, and should not be relied upon, as legal advice. Should you wish further information in relation to any legal instrument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

As noted in prior issues, on 11 January 2007, the Phillips Fox Vietnam practice officially joined Allens Arthur Robinson (**AAR**), Australia's oldest and largest law firm. This merger linked the Phillips Fox Vietnam team with an already strong regional network of AAR offices, and expands AAR's on-the-ground presence in Asia through the addition of offices in Hanoi and Ho Chi Minh City.

AAR now has offices in Bangkok, Beijing, Brisbane, Hanoi, Ho Chi Minh City, Hong Kong, Jakarta, Melbourne, Perth, Phnom Penh, Port Moresby, Shanghai, Singapore and Sydney.

The AAR Vietnam practice continues to be led by resident partners Bill Magennis and Nigel Russell, who have a combined 29 years' residency and experience in Vietnam. The team in Vietnam includes 18 other lawyers from Australia, the United States, South Korea and Vietnam.

We are pleased to continue publication of the Vietnam Legal Update under our new AAR name, and encourage feedback from our readers, as always, regarding the VLU. Lee Baker, in our Ho Chi Minh City office, has assumed responsibility for the VLU, so please direct all enquiries, comments and suggestions to her at lee.baker@aar.com.au.

For English translations of Vietnam's legislation on representative offices & branches and more, subscribe to Vietnam Laws Online Database on www.vietnamlaws.com

Part 1 Selected New Legal Instruments

1.1 Labour dispute resolution - new guidelines

Amendments of the Labour Code passed by the 10th National Assembly of the Socialist Republic of Vietnam on 29 November 2006, made effective 1 July 2007 (*Amendments*)

On 1 July 2007, the Amendments to the Labour Code took effect. Among many other matters addressed and revamped, the Amendments stipulate new forms of resolution of labour disputes.

Stable, but not always peaceful workforce

The labour situation in Vietnam has fortunately remained relatively stable as foreign investment inflows have grown; indeed this is often touted as a positive for Vietnam over some of its neighboring countries. This noted, in recent years, there have been several noteworthy periods of strikes and even some violence. The new dispute resolution provisions are intended to add clarity and transparency for both employers and employees regarding the available recourse and remedies in varying labor dispute scenarios.

New categories of disputes and a “how to handle” for each

Under the Amendments, labour disputes are classified under three categories:

- "individual labour dispute" which means a dispute between an individual employee and his/her employer;
- "collective labour dispute about employees' rights" which means a dispute between more than one employee and their employer in relation to the implementation of labour laws, collective labour agreement and internal labour rules which have been registered with the relevant authorities; and
- "collective labour dispute about employees' interests" which means a dispute between more than one employee and their employer in relation to the employees' request the employer give them new, better labour conditions relating to salary, bonus, working time, and other benefits.

According to the Amendments, individual labour disputes, generally speaking, must first be resolved by the company's mediation council or a labour mediator. If such resolution fails, the relevant court will resolve the disputes. However, certain individual labour disputes, eg dismissal, unilaterally termination of labour contract, and payment of allowances in case of termination, may be resolved by the relevant court without resolution of the company's mediation council or a labour mediator.

Collective labour disputes about employees' rights may be resolved by:

- The company's mediation council or a labour mediator;
- Chairman of the people's committee at district level; and/or
- The relevant court.

Resolution of collective labour disputes about employees' rights *must* be carried out in the above order, ie aggrieved employees must exhaust remedies at one level before proceeding to the next. Also, of particular note, if resolution by the chairman of the people's committee at district level fails, the employees have the right to either refer the dispute to the relevant court for resolution or go on strike.

Collective labour disputes regarding employees' interests may be resolved by:

- The company's mediation council or a labour mediator; and/or
- A council of labour arbitrators established by the people's committee at provincial level.

Resolution of collective labour disputes about employees' interests must also be carried out in accordance with the above priority. In case resolution by a council of labour arbitrators fails, the employees have the right to go on strike.

1.2 Property development JVs: a spanner in the works?

Joint Circular No. 04-2006-TTLT-BTP-BTNMT of the Ministry of Justice and Ministry of Natural Resources and Environment dated 13 June 2006 guiding the notarization and authentication of contracts and documents on exercise of land users' rights.

One challenge for property development projects in Vietnam is the increasing cost of land. This creates both commercial and structuring problems for investors.

Traditional structuring of equity contributions

Foreign investment in many of the most attractive projects in Vietnam is often possible only by way of an incorporated joint venture (**JV**) with a Vietnamese company that owns¹ the site, and often, the Vietnamese company is a state owned enterprise. The Vietnamese company contributes the land (technically, 'the value of the right to use the land') to the JV while the foreign investor contributes cash.

Historically the conventional practice, in strict conformity with the law at the time, was for the Vietnamese party to contribute the full value of the land to the JV as equity. The full value was as agreed between the Vietnamese and foreign investors and was often referred to as the **agreed land cost**. However, as property prices soared, this structure created problems for both prospective foreign and Vietnamese JV partners.

Foreign investors often wanted to reduce the amount of the Vietnamese partner's equity contribution, in order for the foreign investor to achieve control of the JV. Control generally follows the parties' respective equity positions, and foreign investors did not want to contribute more cash equity to the JV than was necessary in order to fund the required equity portion of the project development costs.

Vietnamese investors in possession of a prime real estate site often were not really interested in directly participating in the site's development; instead, they wanted to hand over the development and management of the site to an experienced foreign property developer.

Emergence of a new structure

In 2003 a new structure emerged under which the Vietnamese investor's contribution to the JV was part only of the agreed land cost of the site. The balance of the agreed land cost was paid by the JV to the Vietnamese party as an expense of the JV, funded by:

- the foreign investor's cash contributions or loans to the JV; and
- possibly, the revenues of the JV, including pre-sales.

This structure allowed the foreign investor to obtain control of the JV while minimising its equity cash contribution and also allowed the Vietnamese party to obtain a faster return on its site.

Several property JVs have been licensed and are being implemented using this structure.

¹ In Vietnam, no one is permitted to own land in the sense of having indefeasible title. All land in Vietnam is collectively the property of the entire people and is subject to unified administration by the State. Therefore, reference to 'ownership' in this context is a reference to a person (including legal persons) having legal rights to use land in Vietnam, otherwise known as "land users".

The paperwork

Prior to 1 July 2004, the effective date of the current Land Law, a Vietnamese investor that wished to contribute land to a JV was required to sign a 'land contribution declaration' and submit it to the relevant land authorities in order to arrange for the land use right certificate² (**LURC**) to be issued to the JV. This procedure was regulated under Decree 17-1999-ND-CP of the Government dated 29 March 1999 (**Decree 17**). Decree 17 was repealed in October 2004 by a new decree implementing the Land Law.

From 1 July 2004, the Land Law requires a Vietnamese investor contributing land to a JV to sign and submit a 'land contribution contract'. The Land Law also requires this contract to be notarised by the notary public. To our knowledge, however, no such contracts have ever been signed or notarised since 1 July 2004. Instead, the authorities have simply required the old form under the now repealed Decree 17 declaration to be signed. The stated reason for the authorities not requiring a land contribution contract has been because 'there is no official form of the contract'.

However, the official standard form of the land contribution contract was issued by the Ministry of Natural Resources and Environmental and the Ministry of Justice under Joint Circular 04/2006/TTLT-BTP-BTNMT of the Ministry of Justice and the Ministry of Natural Resources and Environment dated 13 June 2007 providing guidelines on notarization and certification of contracts and documents for performing rights of the land users.

A blow for more JVs?

So what is the problem? As anyone who has spent any time at 97 Pasteur Street, District 1 HCMC can attest, notarisation of documents in Vietnam, particularly contracts, can be a painful process. The notary public sees itself as more than just a stamper of documents; it actually reviews the terms of them to ensure conformity with its view of Vietnamese law.

And here is the rub: the new structure referred to above is not specifically addressed in or contemplated by Vietnamese law. Therefore, there is some concern that the notary public will refuse to notarise land contribution contracts that do not reflect the Vietnamese party contributing to the JV what the notary public considers to be the full value of the land.

This would effectively prevent JVs using the new structure described above, that is, with the land value being split between an equity contribution and a JV expense.

If so, this may kill many new property development JVs, unless another creative solution can be found to the problem of high land value versus investor objectives.

1.3 Redemption, resales, issuances and.....confusion!

Circular 18-2007-TT-BTC of the Ministry of Finance dated 13 March 2007 on Redemption or Resale of Shares and Additional Issuance of Shares by Public Companies (Circular 18).

In the June VLU, we reported on the issuance of Circular 18 by the Ministry of Finance (**MOF**) regarding redemptions and resales of shares by public companies. While clearly a 'baby step' into a complicated subject matter, and uncharted territory in Vietnam's nascent securities, the hope was for this Circular to lay the foundations for more developed and detailed procedures later.

The word in Hanoi, however, is that the State Securities Commission (**SSC**) is already drafting a circular amending the newly-issued Circular 18, as there have been so many complaints regarding the difficulties in applying the provisions of this Circular. Reportedly, the SSC will seek opinions from public for input into its draft, which it proposes to submit to the MOF in late 2007.

² The LURC evidences title to land.

1.4 What the Government Giveth, the MOT Taketh Away: Circular 9 on Trading & Distribution

Many hailed the issuance of Decree 23-2007-ND-CP of the Government dated 12 February 2007 providing regulations on the purchase and sale of goods and activities related to the purchase and sale of goods [distribution] by enterprises with foreign owned capital in Vietnam (**Decree 23**) as the advent of Vietnam's endeavor to implement its WTO commitments in respect of foreign investment in trading and distribution. Decree 23 set the stage for the Ministry of Trade (**MOT**) to respond with its implementing legislation.

On 21 May 2007, the MOT issued Decision 10-2007-QD-BTM announcing the schedule for implementation of trading and distribution activities (**Decision 10**). This was the "road map" that investors had sought and clearly set out the lists of products that were prohibited from export/import and distribution and the relevant time frames for products and distribution rights to be phased-in over a period of time.

Nevertheless, authorities were still not ready to issue the necessary business license for foreign investment in this sector until the MOT issued its implementing circular with all the required forms and step-by-step instructions.

On 17 July 2007, the MOT finally issued such circular, Circular 09-2007-TT-BTM guiding implementation of Decree 23 (**Circular 9**). The response from the legal and investment communities has not been welcoming. It would appear that the MOT has pared down the rights of foreign investors that were stipulated in Decree 23.

Export rights

Under Decree 23, the right to export means "*the right to purchase goods in Vietnam for export*". While it did not include the right to establish a "network of purchasing in separate parcels throughout Vietnam for export", it was not further restricted (except by the types of products permitted for export). Circular 9 now adds the following qualification to an enterprise with foreign owned capital's (**EFOC**) right to export, specifying that it means to "*directly purchase goods from business entities which have business registration for the purchase and sale of, or which have the right to distribute, such goods in order to export them.*" Whether this qualification has any significant practical impact will depend on the requirements of the various EFOCs seeking to export products from Vietnam.

Import rights

Under Decree 23, the right to import means "*the right to import goods in to Vietnam for sale to business entities which have the right to distribute such goods in Vietnam*". As with export rights the right to import "*does not include the right to organize or participate in a goods distribution system in Vietnam*" (unless otherwise permitted to do so under the law). Under Circular 9, this right to import has been sharply curtailed by adding the qualification that such EFOC's right to import means that it must "*sell each group of imported goods to one business entity with business registration to trade or with the right to distribute such group of goods. An enterprise with foreign owned capital shall have the right to make its own selection of this business entity and to register it with the competent licence-issuing body. Each group of goods comprises the lines of goods in one chapter of the Import Tariff List.*"

According to comments from the MOT, the decision to limit an EFOC's available customers to only one entity for each group of goods (there are approximately 97 groups of goods on the Import Tariff List) is to avoid the inadvertent creation of a distribution system outside the framework of the law. While the goal of the MOT may be reasonable, the re-interpretation of the rights afforded to EFOCs under Decree 23 to achieve such goal seems unfairly prejudicial.

Retail Sales Outlets

Decision 10 listed only a few criteria that needed to be satisfied before an EFOC with the right to distribute would be permitted to open an additional retail outlet (beyond the first retail outlet).

Decision 10 stipulated that the establishment of such additional retail outlets would be considered on the basis of “*an inspection of the economic requirements (the current number of service providers within a geographical area, market stability and the size of the geographical area.*” Now the MOT, via Circular 9, imposes additional criteria and will also consider “*the number of retail outlets*” and the “*consistency of the investment project with the master plan of such city or province.*” Furthermore, Circular 9 appears to re-interpret the criterion “*size of the geographical area*” (Decision 10) to mean “*population density in the city or province where the retail outlet is to be located*”.

On the positive side, at least Circular 9 will end five months of stagnation in this sector in which no licenses to EFOCs have been issued while awaiting this circular. Circular 9 does contain all the requisite forms required for complying with local licensing authorities.

Part 2 Features

Our Feature in this month's issue of the VLU is the topic of secured transactions in Vietnam, including the concept of security interests generally, and the procedures available for obtaining, registering and enforcing security interests in various types of property and assets used to secure financing. Clearly, Vietnam's laws and systems differ from those in developed countries in this area, but it is encouraging to note that there are recent developments which move Vietnam closer to its fellow WTO members in terms of security and collateral registration and enforcement. Lenders and borrowers both should take note.

Continuing with our Law Map concept, we have included as part of this coverage (at part 2.2) a map noting the key laws currently regulating secured transactions in Vietnam.

2.1 Secured transactions in Vietnam – not quite like it works at home

Security and how to obtain it are areas of continued, and enhanced, interest and concern to foreign investors and developers seeking to finance projects in Vietnam. The days of unsecured loans and no-asset financing are becoming a thing of the past. So banks and borrowers alike need to know what can be secured, and with what, and how to go about the process.

While still relatively underdeveloped and lacking in transparency, there has been movement in recent years to formulate new and better laws in this area. This article provides an overview of secured transactions in Vietnam addressing the types of secured transactions, obtaining priority interest and enforcement of secured assets.

Relevant law

The following main legal instruments govern secured assets:

- a) Law 33-2005-QH11 of the National Assembly on the Civil Code of Vietnam passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 7th Session on 14 June 2005 (**Civil Code**).
- b) Decree 163-2006-ND-CP of the Government on Security Transactions dated 29 December 2006 (**Decree 163**).

Table of key issues

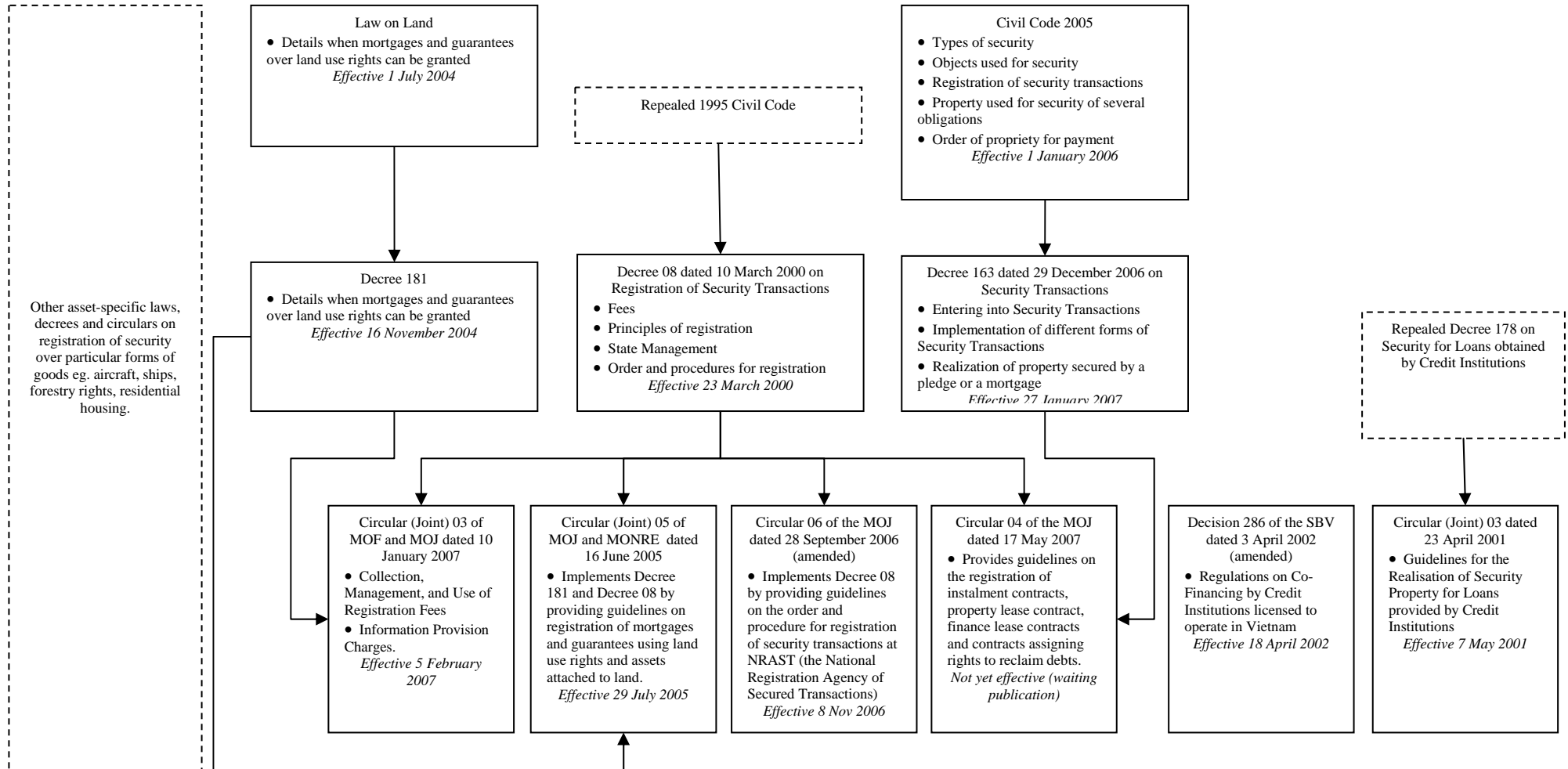
Issue	Summary of legal provisions
Types of secured transaction	The Vietnamese Civil Code provide for the following secured transactions: pledge of property, mortgage of property, performance bond, security deposit, escrow deposit, guarantee and fidelity guarantees.
Definition of mortgage	Mortgage of property means when a party (hereinafter referred to as the mortgagor) uses the property that it owns to secure a civil obligation to the other party (hereinafter referred to as the Mortgagee) <u>without transferring such property to the mortgagee</u> . (Art. 342 of the Civil Code). Therefore, a mortgage is an arrangement where the mortgagor uses its assets as security without handing over possession of such assets.
Definition of pledge	Pledge of property means when a party (hereinafter referred to as the pledgee) <u>delivers</u> the property that it owns to the other party (hereinafter referred to as the pledgor) to secure a civil obligation (Art. 326 of the Civil Code). Therefore, a pledge is an arrangement where the pledgor uses its assets as security by handing over possession of such assets.

Issue	Summary of legal provisions
Who can take security?	<p>a) A secured party means a party with rights in a civil relationship, the exercise of which rights is secured by one or more security transactions and includes a pledgee, mortgagee, recipient of a performance bond or security deposit, beneficiary of a guarantee or a credit institution in the case of a fidelity guarantee; and the party with the right to be paid by a bank and/or to receive compensation for loss in the case of an escrow deposit (Art 3(2) of Decree 163).</p> <p>b) Therefore, on the face of this law there are no restrictions on who can take security.</p> <p>c) However, specific laws may contain restrictions. For example, the Law on Land expressly prohibits the grant of a mortgage of land to a foreign (offshore) lender.</p>
What property can be the subject of security?	<p>The test here is that the assets must be owned by the obligor. Assets may be future or current assets. Trading assets must be those that are permitted to be traded. (Art. 4 of Decree 163).</p> <p>Assets that may be secured include:</p> <p>a) Money and valuable papers.</p> <p>b) Fixed and floating assets.</p> <p>c) Copyright and industrial property and rights in crop seeds.</p> <p>d) Capital contribution or shares in a Vietnamese company. However, the amount that is realised upon enforcement by a foreign lender must not exceed the foreign ownership cap.</p> <p>e) Land use rights (LUR) including assets attached to the land such as buildings and fixtures, this is subject to the Law on Land.</p> <p>f) Rights to exploit natural resources, this is subject to the Law on Natural Resources.</p> <p>g) Leased property such as lease of chattels and buildings including income derived from the lease.</p> <p>h) Insurance proceeds.</p> <p>i) All other rights arising from contracts e.g. receivables or rights of enforcing assets.</p>
What are the types of security a foreign lender can take?	<p>Foreign lenders are entitled to take security in any of the above assets, except for LUR. Foreign lenders may take security over assets attached to the LUR such as buildings and factories. However, the law is not clear on how secured assets attached to land can be realised separately from the associated LURs (one option may be for lenders to seek assurances from the relevant People's Committees in relation to the LURs in support of their mortgages over fixed assets).</p>
Effectiveness of security transactions	<p>A security transaction is effective from the time it is lawfully entered into, except:</p> <p>a) A pledge of assets, which becomes effective from the time of delivery of the property to the pledge.</p> <p>b) A mortgage of LUR, which is effective from the time of registration.</p>

Issue	Summary of legal provisions
	<p>c) Where the law stipulates that a security transaction requires notarisation or certification, then the date of notarisation or certification is the effective date of the secured transaction.</p>
Mandatory registration	<p>Decree 163 indicates that registration of the following secured transactions is mandatory:</p> <ul style="list-style-type: none"> a) Mortgage of LUR, forest land use rights and ownership of planted forest land for production. b) Mortgages of aircraft and ships. c) Mortgages of a single item of property as security for performance of several obligations. d) Other cases as stipulated by law. <p>In other cases, registration of secured transactions is at the discretion of the parties.</p>
Effect of registration	<p>If a secured transaction is registered, then the transaction becomes legally binding against a third party from the time of registration (Art 11 of Decree 163). Most assets are to be registered with the National Agency for Secured Transactions under the Ministry of Justice. Mortgages of LUR are to be registered with the local department of natural resources and environment.</p>
Order of priority for payment	<p>Registration gives the obligee priority of payment over obligees who do not their security. Priority of payment is given on a "first to register" basis. As between unregistered security, the order of priority is the order in which the securities were executed.</p>
Assignment of security by lender	<p>The Civil Code and Decree 163 do not stipulate that an obligee needs to provide notice or obtain approval from the obligor before the obligor assigns the security interest. However, there is an obligation on the obligor to provide notice to the obligee when there is a change in control or ownership of the obligor.</p>
Mortgages of land use rights	<p>Vietnamese individuals and domestic businesses (which includes foreign invested enterprises licensed under the Law on Enterprises and Law on Investment) may mortgage their LURs to credit institutions licensed in Vietnam in the following cases:</p> <ul style="list-style-type: none"> ▪ Where the Vietnamese individual (or household) has been allocated land (with or without land use fees) or has received an assignment of land. ▪ Where the domestic business has been allocated land with land use fees or has received an assignment of land. <p>The mortgaged value of the LURs includes the land rent paid in advance (less the land rent for any used lease period) and any expenses for compensation and site clearance. The lender is not free to determine for itself the value of the mortgaged LURs.</p> <p>Mortgages must be certified by a Notary Public and registered at the local Department of Natural Resources and the Environment. Mortgage contracts are valid as from the date of such registration.</p> <p>LUR cannot be mortgaged to offshore lenders, however, the practice of some foreign lenders, which the law does not prohibit, is for a Vietnamese licensed credit institution to take up security over the LUR as principal and provide a</p>

Issue	Summary of legal provisions
	<p>guarantee to the foreign lender. A local credit institution may also act as security agent on behalf of the foreign lender to enforce the secured assets.</p>
Enforcement mechanisms	<p>Enforcement is achieved through realisation of the secured property. Realisation of secured property may be done when the obligor fails to perform, or performs incorrectly, its obligations when they fall due or in other circumstances as agreed by the parties (Art 56 of Decree 163).</p> <p>The obligee or its authorised representative may realise the assets after proper notice is given to the obligor (Art 61 of Decree 163).</p> <p>The methods of realisation include (a) selling the secured property directly or by auction, (b) taking possession of the secured property, or (c) receiving money or property from a third party. The parties may agree on the timeframe for the realisation of property. However, if there is no such agreement then realisation can be done 7 days after the date of the notice of realisation for moveable property. This is 15 days for immoveable property (Art 62 of Decree 163).</p> <p>Decree 163 stipulates basic principles for the realisation of secured property. Parties may agree on the method of realisation. However, if there is no mention of the method then it must be done by public auction. When the obligee realises the secured property, the obligee must do this objectively, publicly and transparently and must ensure the lawful rights and interests of the parties to the securities transaction and of related individuals and organisations.</p> <p>If, during the course of realisation under a pledge or mortgage, the person holding the secured assets resists or hinders seizure of property, the realisor may petition the local People's Committee or local police office to direct the asset holder to cooperate (Art 63(5) of Decree 163). As a further step, the obligee may also institute court proceedings if the obligor continue to resist the seizure of the property. Once judgement is made in favour of the obligee, the judgement enforcement agency may be called upon to recover the secured property.</p>

2.2 Law Map: Secured Transactions



Part 3 Did You Know?

3.1 Time line too long for property development JVs

Much ado about nothing?

With soaring property prices and foreign investor interest in development projects reaching fever pitch, some foreign visitors are asking, "So where are all the cranes?". Where is the substance to all the stories about Vietnam's "booming property market"?

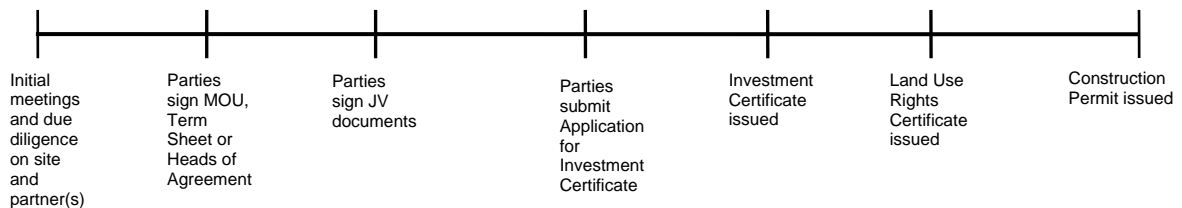
Loong lead time

In our view, at least part of the explanation lies in the long lead time for property development projects in Vietnam, especially foreign invested ones. The timeline below indicates some of the main milestones for such a project, from initial conception to commencement of construction.

Depending on the site (for instance, whether it has been cleared), the complexity of the deal (for instance, is it a joint venture where the Vietnamese party requires funding in order to clear the site?), and the experience of the investors (for instance, a foreign investor with little/no experience of investing in Vietnam and a Vietnamese partner with little/no experience of developing a project), the process may take several years.

For now, drawing room only; skyscrapers later

At present, many projects are still in their very early stages. The lawyers are busy and the meetings around conference tables many, but it may take another year or so before we see the number of cranes on the skyline that many are expecting.



3.2 First credit report on Vietnam companies

As reported in Vietnam News on 23rd July, the new Credit Information Centre (**CIC**), a branch of the State Bank of Vietnam, has just completed its first official credit worthiness report covering 7,791 companies nationwide over a one-year period.

The CIC credit levels were based on accounting documents, business operations and corporate legal work, as well as consultation with global financial institutions such as the World Bank, Asian Development Bank and Moody's rating services.

The CIC is currently the only authorized institution in Vietnam providing credit information. Its establishment marks a step forward in helping financial institutions in making investment or loan decisions. The CIC recently released specific results on 72 listed companies, though data on the other firms are available only to financial institutes and investors.

Of the listed companies, 67 received good credit-worthiness grades between "BBB" to "AAA", while the remaining five ranked "BB" to "CCC". The report graded companies on a scale from "AAA" on the high end to "CCC" on the low.

Foreign listed companies were the most profitable in the report, followed by limited and joint stock companies.

Companies in services, energy and food processing did well in the CIC report, while construction and transportation firms ranked lower due primarily to lacklustre profitability and defaults and late payments on loans. The centre plans to rank more companies in the near future.

3.3 Vietnam residency required for offices of foreign banks

With numerous offshore financial companies setting up operations in Vietnam, a frequent question pops up these days as to the residency requirement of Board of Management (**BOM**) members and officers of such companies. Must they live in Vietnam, or can they make trips in and out?

It depends on who you are

The Law on Credit Institutions makes clear that the General Director and Deputy General Director of a financial institution *must* reside in Vietnam during their term of office. While it is not apparent that this is intentional, there is no similar requirement in the law for BOM members to live in Vietnam.

The State Bank, however, may reserve the right to require BOM members to be full-time residents as a condition of approving the appointment of the same. As such, this is a subject to broach with the State Bank before establishing who will be BOM members.

3.4 MOF approval required only “sometimes” for insurance policy terms

Decree 45 issued in March and implementing the Law on Insurance, provides that the Ministry of Finance (**MOF**) will issue the insurance regulations, clauses, premium scales and minimum sums insured applicable to *compulsory* insurance products. However, the policy terms and wording for *non-compulsory* insurance products does not always have to be approved by the MOF.

Compulsory or non-compulsory?

Specifically, with respect to life insurance products and personal accident and health care insurance subsidiary to life insurance products: the insurance regulations, clauses and premium scales must be approved by the MOF. With respect to non-life insurance products: non-life insurers themselves can formulate and implement their own insurance regulations, clauses and premium scales, ie. approval by the MOF is not required.

This said, regulations, clauses and premium scales formulated by the insurer must ensure the following under Decree 45:

- a) compliance with law, ethical standards and practice, and the fine customs of Vietnam;
- b) that the language used in insurance regulations and clauses is accurate, easily understandable, or clearly defined, where technical;
- c) that there is a clear and transparent explanation of the insurable interests; entities or objects; the insured scope and insured risks; the rights and obligations of the insurance purchaser and of the insured person; responsibilities of the insurer; conditions leading to exemption of liability; method of paying insured sums or insurance proceeds; and provisions on dispute resolution;
- d) that premium scales are formulated on the basis of statistical data, and ensure the solvency of the insurer, and correspond to the insurance conditions and insurance liability;
- e) that any ambiguous provisions in the policy wording are to be interpreted in favour of the purchaser of insurance.

3.5 Vietnam – the next India?

Shoulder-to-shoulder with giants

Those in-the-know in the booming world of global outsourcing are touting Vietnam as a potentially more popular outsourcing destination than both China and India within the next five years. Honda, Intel and several others are already outsourcing here.

It's the workforce

So what makes Vietnam a good choice? Mainly, its supply of talented, low cost labour.

The current Vietnamese labour pool also has about 80,000 IT graduates, a figure that is increasing by 9,000 per year. More than half of Vietnam's 84 million person population is under 25 years old, and 83 percent of all graduates are science-based. As such, the talent in terms of human resources is obviously here.

Shoulder-shoulder with giants

Recruitment company Harvey Nash, which recently acquired Ho Chi Minh city-based IT and recruitment business Silk Road claims that Vietnam is now the third-largest offshore-services destination in Southeast Asia. This may be true, but with China and India each graduating about 2.5 million students a year, Vietnam is a far cry from its two giant neighbours.

Whether in fact poised to outpace India or China in outsourcing growth, with the demand for services growing at a staggering pace, the pie is growing bigger and there is more opportunity for all to participate. According to Harvey Nash, Vietnam is a natural, and has all the ingredients to make it a leading market choice in the next several years.

3.6 Banks plan to expand retail networks in Vietnam

According to an article in the Vietnam Business Review published on 20 July 2007, three foreign banks -- HSBC, ANZ Bank, and Standard Chartered -- plan to set up wholly owned operations in Vietnam, a move that could make it easier for them to develop retail branch networks.

Under Vietnam's commitment to the WTO, Vietnam is required to open its banking sector to foreign competition by 2011 and remove the cap on foreign ownership, according to central bank officials. Up until now, banks have been forced to operate only as branches in Vietnam. With limited branch status has come obstacles, including restraints on building up the retail side of the banking business for foreign banks.

What's New on www.vietnamlaws.com?

NEW subject categories in Vietnam Laws Online Database

Vietnam Laws Online Database on www.vietnamlaws.com is an online searchable database of English translations of more than 3000 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, printed and downloaded (subject to terms and conditions).

As a reminder to readers, with the introduction of Vietnam's investment-enterprise regime in July 2006, we've adjusted various existing subject categories and added some new ones. In particular, we have:

- ➔ merged investment and corporate legislation into *Investment-Corporate*. All new investment-enterprise laws can be found in *Investment-Enterprise Regime (Post-July 2006)*. For convenience, we've included several sub-categories, such as *Principal Laws* relating to investment and enterprises. All old laws on investment and enterprises can be found in *Investment-Enterprise Regime (Pre-July 2006)*. Some forms of investment (eg BOT), some special forms of enterprise (eg State owned enterprises), and now some completely new forms of enterprise (eg foreign commercial enterprises) have their own sub-categories within *Investment-Corporate*.
- ➔ added other new categories covering legislation relating to *WTO & other Treaties, Anti-Dumping & Other Safeguards, Anti-Corruption, Franchising, Mergers & Acquisitions, and more*.

Laws uploaded on the Vietnam Laws Online Database for July include the following:

- ➔ Circular 06 on registration of security transactions, 28 September 2006 (as amended by Circular 03 dated 17 May 2007)
- ➔ Circular 04 on registration of instalment contracts, property lease contracts and finance lease contracts,
- ➔ Joint Circular 05 on registration of residential housing mortgages, 21 May 2 July 2007:
- ➔ Decree 115 on conditions for sea shipment services business, 5 July
- ➔ Decree 109 on conversion of enterprises with 100% State capital into shareholding companies, 26 June
- ➔ Decision 12 on corporate governance applicable to listed companies, 13 March

The list above is merely a snapshot of the wide range of new legislation now uploaded and available on Vietnam Laws Online through July 2007.

NEW search function for Vietnam Legal Update

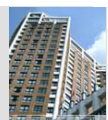
As regular VLU readers know, all issues of our Vietnam Legal Update from 1997 have previously been available on www.vietnamlaws.com. We are still in the process of merging our prior Phillips Fox system into the new AAR one, and hope to soon restore the ability to access back issues of our VLUs.

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