



# Vietnam Legal Update

## June 2006

Hanoi Branch Office  
Suite 401, Hanoi Tower  
49 Hai Ba Trung  
Hanoi  
Vietnam  
Tel +84 4 936 0990  
Fax +84 4 936 0984  
bill.magennis@phillipsfox.com

Ho Chi Minh City Branch Office  
Suite 605, Saigon Tower  
29 Le Duan Boulevard  
District 1, Ho Chi Minh City  
Vietnam  
Tel +84 8 822 1717  
Fax +84 8 822 1818  
nigel.russell@phillipsfox.com

Melbourne Office  
Level 21, 140 William Street  
Melbourne  
Australia  
Tel +61 3 9274 5000  
Fax +61 3 9274 5111  
maureen.mclaughlin@phillipsfox.com

[www.vietnamlaws.com](http://www.vietnamlaws.com)  
[www.phillipsfox.com](http://www.phillipsfox.com)

Adelaide  
Brisbane  
Canberra  
Melbourne  
Perth  
Sydney  
Auckland  
Wellington  
Hanoi  
Ho Chi Minh City

### Part 1 Selected New Legal Instruments

1.1	<a href="#">Franchising</a>	2
1.2	<a href="#">Electronic commerce</a>	3
1.3	<a href="#">Securities investment fund and fund management companies</a>	4
1.4	<a href="#">Commercial Law update</a>	4
1.5	<a href="#">Residential housing</a>	5
1.6	<a href="#">Registration of sea-going ships</a>	7

### Part 2 Features

2.1	<a href="#">Australian Chamber of Commerce – Vietnam business</a>	8
2.2	<a href="#">New enterprise regime</a>	10

### Part 3 Did You Know?

3.1	<a href="#">National Assembly update</a>	17
3.2	<a href="#">Definition of a "key national project"</a>	17
3.3	<a href="#">Competition Law update</a>	18
3.4	<a href="#">Foreign invested real estate projects in HCMC</a>	19
3.5	<a href="#">Foreign investment in Vietnam</a>	19
3.6	<a href="#">US-Vietnam bilateral market access agreement</a>	19
3.7	<a href="#">Establishment of EVN group</a>	19
3.8	<a href="#">Import of cigarettes and cigars</a>	20
3.9	<a href="#">Duration of foreign invested enterprises</a>	20
3.10	<a href="#">New business laws a tort?</a>	21

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

>>>	<a href="#">NEW laws in Vietnam Laws Online Database</a>	
>>>	<a href="#">NEW search function for Vietnam Legal update</a>	22

Visit [www.vietnamlaws.com](http://www.vietnamlaws.com):

- >>> to subscribe to (or take a free tour of) Vietnam Laws Online Database - searchable database of 3,000 of our English translations of Vietnamese laws regulating investment and business
- >>> to access free translations of a selection of Vietnamese laws
- >>> to read Vietnam Legal Update from 2006 back to 1997 - complete with index of contents and new search function
- >>> to find out more about Phillips Fox's practice in Vietnam

This publication is copyright. Except as permitted under relevant laws, no part of this publication may be reproduced by any process, electronic or otherwise, without the specific written permission of the copyright owner. ©Phillips Fox, Vietnam Laws

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.

## Part 1 Selected New Legal Instruments

### 1.1 Franchising

#### **Circular 09-2006-TT-BTM of the Ministry of Trade dated 25 May 2006 Providing Guidelines on Procedures for Registration of Franchising Activities**

Vietnam's franchising regulatory framework is now almost complete with the issue of Circular 09, implementing Decree 35 (for more information on Decree 35 see the May Issue of Vietnam Legal Update on [www.vietnamlaws.com](http://www.vietnamlaws.com)). A welcome provision contained in Decree 35 is that only the franchising activity of the franchisor must be registered, not each franchising contract. Circular 09 provides information about how a franchisor registers its franchising activity.

The type of franchise determines the relevant body to register the franchising activity with:



The application file for registration consists of:

- > Application. This must follow a prescribed form which is issued with Circular 09. The form varies slightly depending on whether the application is made with the Ministry of Trade or the Department of Trade.
- > Franchise description document (discussed below). If this document is in a foreign language it must be translated into Vietnamese and the translation must be certified by a notary office in Vietnam.
- > Notarized copy of the business registration certificate/investment certificate of the franchisor or equivalent document if the franchisor is an offshore enterprise. If this document is in a foreign language it must be certified by a notary office overseas and consularized by a Vietnamese diplomatic body overseas, before being translated and notarized in Vietnam.
- > Notarized copies of certificates of protection of industrial property rights, if the franchise includes rights to use the industrial property of the franchisor. However note that under Decree 35 the actual licensing of any industrial property rights in a franchise contract must be done separately and additionally in accordance with Vietnamese industrial property laws.  
If these documents are in a foreign language they must be translated into Vietnamese and the translation must be certified by a notary office in Vietnam.
- > Approval from the primary franchisor to the sub-franchise (in the case of a sub-franchise). If this document is in a foreign language it must be translated into Vietnamese and the translation must be certified by a notary office in Vietnam.

Of particular interest to franchisors is Appendix III to Circular 09 which provides the form of the franchise description document. This is a three page form requiring many details, including information about the franchisor, intellectual property rights, initial costs of the franchisee, other financial obligations of the

franchisee, initial investment of the franchisee, obligations of the franchisee to buy or lease equipment, obligations of the franchisor, the market, the franchising contract and the franchising system. The current financial statements of the franchisor must also be provided. Many franchisors have their own form of a franchise description (disclosure) document that they provide to potential franchisees. It is not clear whether, as a matter of practice, the registration authorities will accept these documents (provided that the document contains all the information required by Circular 09), or whether the franchisor will have to amend their internationally applied disclosure document to follow strictly the form and structure of Circular 09.

The franchise description document must be provided to potential franchisees 15 days before signing the franchising contract, unless the franchisor and franchisee otherwise agree. Therefore, franchisors should include an unambiguous statement in the franchise agreement that the franchisee agrees to waive this right, or franchisors must ensure that this timeframe is strictly complied with.

As under Decree 35, although Circular 09 use the language of 'application' for registration, the registration bodies appear to (only) check the completeness and validity of the documents submitted and to not have any discretion with respect to registration. In particular, clause I.3(a) and clause II.6(a) of Circular 09 obligates the registration bodies to register the franchising activities within 5 business day, provided that the application file is complete. If the application file is not complete the registration authorities must notify the applicant within 2 business days of receipt of the file. If there is an error within a document comprising the application file (for example, the disclosure document is not completely filled out) the registration authorities must notify the applicant within 5 business days of receipt of the file.

In Circular 09, the Ministry of Trade is charged with the responsibility of establishing a website which must contain information on the status of registered franchises and provide for on-line registration of franchising activities. This website has not yet been developed, and we understand that it may take some time for the E-commerce department to have this site operational. Franchisors also must wait for the issue of a legal instrument from the Ministry of Finance regulating the fees for registration of franchising activities.

Circular 09 became effective as of 22 June 2006.

>>> For English translations of Circular 09,  
subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on [www.vietnamlaws.com](http://www.vietnamlaws.com)

## 1.2 Electronic commerce

### **Decree 57-2006-ND-CP of the Government dated 9 June 2006 on Electronic Commerce.**

Decree 57 regulates the usage of electronic documents in commercial and related activities of enterprises. Under Decree 57, an "electronic document" is defined as a document in the form of data message, ie information which is created, sent, received or saved by electronic means. Electronic documents include contracts, offers, notices, announcement, invoice or other documents that parties issue in relation to contracts.

Decree 57 does not regulate usage of electronic documents in the form of notes, promissory notes, bill of lading, goods deposit invoices, out-put vouchers or any transferable vouchers permitting holders or beneficiaries to receive goods, services or be paid some amount of money.

According to Decree 57, an electronic document has the same legal validity as an ordinary document if information contained in such electronic document can be accessed for use. An electronic document may be considered as an original if it satisfies the conditions stipulated in the Decree 57. Similar provisions apply to an electronic signature, which may be regarded as a real signature of a person.

A notice in the form of electronic document proposing to enter into a contract and indicate the specific recipient and the sender's responsibility will be treated as a valid offer for a contract. The Decree also recognizes the legal validity of a contract concluded by interaction between an automatic information system and an individual (such as online orders), or among automatic information systems, even where there is no human intervention.

### 1.3 Securities investment fund and fund management companies

#### **Decision 30-2006-QD-BTC of the Ministry of Finance dated 12 May 2006 supplementing the regulation on organization and operation of securities investment fund and fund management companies issued with Decision 73 dated 3 September 2004**

Decision 30 provides additional conditions for a public fund ("Fund") to raise capital, which include:

- > The charter of the Fund must contain a provision on increasing capital of the Fund;
- > The business operation of the Fund for the two years immediately preceding the year of the application to increase capital must have been profitable;
- > The fund management company has not been subject to any administrative penalty for a breach of law nor did not commit any criminal offence for a period of two years;
- > Fund certificates were issued to existing investors of the Fund via issuance of rights to purchase certificates, and at a price decided by the General Meeting of Investors on the basis of the net asset value (NAV) of the Fund;
- > The plan on the issuance of additional Fund certificates must ensure fairness and transparency, protect the interests of investors, comply with law and have been passed by the General Meeting of Investors.

The application file for permission to increase the capital of a fund comprises:

- > Application to increase the capital of the Fund;
- > Draft prospectus setting out the plan on the issuance of additional Fund certificates and utilization of the capital raised from the additional issuing tranche;
- > Resolution of the General Meeting of Investors approving the increase in capital and passing the plan on issuance of additional Fund certificates;
- > Underwriting contract (if any);
- > Annual financial statements for the last two years prior to the date of the application, audited by an independent auditing organization. If the application is submitted to the State Securities Commission more than ninety (90) days after the last day of the last financial year, then financial statements for the most recent quarter must also be submitted;
- > Certificate from the custodian bank confirming that the Fund has complied with current regulations.

In addition to the reporting requirement to the SSC on the result of the issuance as stipulated in Decision 73, the fund management company should make a public announcement on the mass media of the total number of Fund units sold, the total number of investors holding Fund units, and the total additional capital raised.

>>> For English translations of Decision 30 and Decision 73,  
subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on [www.vietnamlaws.com](http://www.vietnamlaws.com)

### 1.4 List of goods and services in which business is prohibited, restricted, or subject to conditions

#### **Decree 59-2006-ND-CP of the Government dated 12 June 2006 Making Detailed Provisions for Implementation of the Commercial Law with respect to Goods and Services in which Business is Prohibited, Restricted, and Subject to Conditions**

Under the Commercial Law 2005, the Government must issue a list of goods and services in which business is prohibited, restricted, or subject to conditions based on socio-economic conditions from time to time and international treaties to which Vietnam is a member.

Accordingly, on 12 June 2006 the Government issued Decree 59 providing the following lists:

- > List of goods and services in which business is prohibited, eg weapons, narcotics;
- > List of goods and services in which business is restricted, eg cigarettes and cigars, wines (see [3.8 below](#)); and
- > List of goods and services in which business is subject to conditions, eg petrol, medicines, postal services, insurance services.

A welcome provision is that the above lists stipulate not only the relevant goods and services, but also the relevant laws and authorized bodies for each item of goods and services, allowing businesses to have a clearer picture of the legal restrictions and conditions for business in such goods or services.

The list of goods and services in which business is prohibited sets out the goods and services in respect of which businesses are prohibited from trading activities.

Decree 59 provides that goods and services in which business is restricted or subject to conditions may only be purchased and sold after those goods and services and the purchaser and seller have fully satisfied the conditions set out by this Decree. Compliance with these conditions by enterprises will be checked by the competent authorities in the form of regular or irregular checks.

>>> For English translation of Decree 59,  
subscribe to [Vietnam Laws Online Database on www.vietnamlaws.com](http://www.vietnamlaws.com)

## 1.5 Residential housing

### Law 56-2005-QH11 of the National Assembly dated 29 November 2005 on Residential Housing

>>> *The Law on Residential Housing is coming into effect on 1 July 2006. A decree on implementation of this Law is in the process of drafting and public discussion. Below we set out our translation of an article from Youth On-line (Tuoi Tre Online) published on Thursday 15 June 2006 on the draft decree.*

The issuing of certificates of ownership of residential houses (COs) has levelled off because many local authorities have said they are waiting for 1 July, when the *Law on Residential Housing* takes effect. Will the issuing of COs under the *Law on Residential Housing* resolve the unsatisfactory situation regarding the former certificates? How many land and housing documents will there be now?

#### **Confusion over documentation:**

After a long period in which there was a debate about whether there should be only one certificate or two certificates for land and housing, the 2005 *Law on Residential Housing* stipulates that only one certificate shall be issued, certifying both land use right and home ownership. The citizens were in agreement with this because it reduces the procedures necessary when applying for issuance of a CO.

To date only about 61.8% of COs have been issued, so there are still a large number of residential houses which don't have any papers.

According to the latest draft of the Decree on implementation of the *Law on Residential Housing*, the certificate of ownership of a residential house will be similar to the former "pink certificate" under Decree 60 [dated 5 July 1994]. However there will be two new "pink certificates", and the second pink certificate will be in the same form as the first except with this single difference that the second will not contain certification of land use right where the home owner is not also the owner of the residential land use right.

So it can be seen that when these two additional "pink certificates" appear, the land and housing documentation will be more "abundant". First of all, there will be four types of "pink certificates": the two new "pink certificates" under the *Law on Residential Housing*, one for housing and land, and one which only certifies home ownership; the old "pink certificate" under Decree 60; and a pink certificate certifying home ownership [and/or] ownership of construction works (under Decree 95). There will also be two types of red certificate: a CO certifying land use right issued pursuant to the 1993 *Land Law*, and a CO certifying

residential land use right which also acknowledges the housing [and/or] construction works on the land issued pursuant to the 2003 *Land Law*.

**In addition to the above, there are many other types of documentation:**

Although the *Law on Residential Housing* provides, and its implementing Decree [will] provide, that all valid documentation will continue to remain effective for the conduct of transactions, the problem is that the 2003 *Land Law* stipulates that such valid documentation will no longer be permitted to be circulated and used beyond 31 December 2006. As from 1 January 2007, residential land can only be traded if it has been issued with a legal land use right certificate; and this provision is confusing many owners of different types of residential land who have valid papers, because they don't know which Law they should comply with.

**The new procedures are still not simple:**

The *Law on Residential Housing* provides that in order to be issued with a CO, an applicant must have one of the following documents: certificate of land use right or one of the valid documents on land use right as stipulated by the law on land, a residential house construction permit, a contract for purchase and sale of a State owned house, a document on allocation of a charitable house, a document on purchase and sale or donation of a house...

If a residential house already has a "red certificate", a "pink certificate" or another type of valid document as stipulated by law, then a citizen shall still be permitted to trade without exchanging such papers for a new certificate. It is only when a purchaser, donee or heir conducts registration procedures that a new certificate will be issued; although if any citizen does wish to exchange his or her papers for the new certificate, then such application should be resolved with fairly simple procedures.

Authority to receive application files for issuance of residential housing ownership certificates is stipulated as follows: organizations should submit files to the provincial administrative body, and individuals should submit files to the district administrative body. With respect to rural areas, individuals may submit files to the commune people's committee. The time-limit for issuing a pink certificate is 30 days from the date of receipt of a valid and complete application file.

The new point in the latest draft Decree on implementation of the *Law on Residential Housing* is that any applicant may either itself/himself draw the survey plan of the house and land for inclusion in the application file, or engage an organization with legal entity status to do so. Many citizens say the right to draw the survey plan themselves will save them considerable expense in the application for issuance of a CO. However the draft Decree also permits the body authorized to issue COs to itself draw survey plans (currently, bodies authorized to issue COs and construction permits are prohibited from carrying out this function because it could easily lead to corruption<sup>1</sup>, difficulties for the citizens, or lead to citizens being forced to draw up their survey plans at the office of the body which issues the CO).

In the past, the provisions of law on issuance of pink and red certificates have always said that if an applicant for a CO does not pay tax within the time-limit stipulated in a tax notice, the tax payable by such applicant shall be re-calculated in accordance with the date of the late payment. However this latest draft Decree says that if an applicant for a CO fails to pay tax within 60 days of receipt of the tax notice, the application file for issuance of the CO shall be deemed invalid and thereafter the applicant must prepare a new application file. This provision could cause a great deal of loss to citizens.

>>> For English translations of the Law on Residential Housing,  
subscribe to [Vietnam Laws Online Database](http://www.vietnamlaws.com) on [www.vietnamlaws.com](http://www.vietnamlaws.com)

<sup>1</sup> The literal translation is "negative conduct".

## 1.6 Registration of sea-going ships

### **Decree 49-2006-ND-CP of the Government dated 18 May 2006 on Registration, and Purchase and Sale of Sea-Going Ships**

Ship registration in Vietnam is governed by the 2005 Maritime Code of Vietnam and the newly promulgated Decree 49.

#### **Shipowner Eligibility**

To register a vessel in Vietnam, a shipowner must be a Vietnamese organization or individual, a foreign organization or individuals that satisfies a number of conditions for use and management of sea-going vessels as stipulated by the Maritime Code or a foreign organization or individuals that charters the ship to a Vietnamese organization/individual under a bareboat charter or finance lease contract.

#### **Registration**

There are two types of registration in Vietnam, provisional and normal registration.

Provisional registration is applicable when:

- > registration fees have not yet been paid;
- > the seller of a second-hand ship does not deliver the certificate of deregistration of the ship until within 30 days from the date of signing minutes of delivery of the ship;
- > a trial run is required for newly built vessels or where a vessel is received and transported to the location of official registration on the basis of shipbuilding contracts;
- > exceptional cases as decided by the Minister of Transport and Communications.

Provisional registration is valid for a maximum of 180 days.

The other types of registration that are available are:

- > Unlimited duration.
- > Limited duration. This applies to (a) foreign owned ship hired by a Vietnamese organization/individual under a bareboat charter or finance lease contract; (b) foreign owned ships registered for a limited time in Vietnam.
- > Re-registration: where a previous registration was suspended.
- > Substitute registration: where there is a change in the name of the ship or ship owner or a change in the applicable shipping register due to a change in the ship's capacity or class.

Articles 10 to 13 specify the documents required for the different types of applications for registration.

#### **Ship Age**

Passenger ships over ten years of age and other ships over fifteen year of age are not permitted to register in Vietnam. Limited exceptions apply.

#### **Mortgages**

The 2005 Maritime Code provides that security over ships can be offered in the form of a non-possessory mortgage. Decree 49 provides that the ship mortgage must be registered at the shipping registry where the ship is registered. The documents required for registering and deregistering the mortgage are also set out in Decree 49.

#### **Importation of ships**

Decree 49 also lists the conditions that must be satisfied to import a ship to Vietnam for use and for scrapping.

---

## Part 2 Features

---

### 2.1 Australian Chamber of Commerce – Vietnam business

>>> *We are pleased to present below the oral submission of Joshua Magennis at the Vietnam Business Forum on 5 June 2006. Joshua is an Australian lawyer in the Hanoi office of Phillips Fox, and the President of the Australian Chamber of Commerce in Vietnam.*

#### Introduction

The Australian Chamber of Commerce welcomes the opportunity once again to contribute to the ongoing dialogue between business and the authorities in Vietnam.

As previously, this oral submission represents a summary of the major issues that we have set out in our written submission which has been submitted to this forum.

The Australian Chamber views the next few years as being very important in Vietnam's development, particularly its policy, and more importantly its implementation of that policy. Now is the time to crystallize the policy and implementation of that policy. Vietnam must send a message to the world that it is committed to transparency, predictability, stability and equality of treatment.

#### Corruption – an ongoing challenge, but recent focus on the issue is welcome

We welcome acknowledgement of the cancerous role that corruption plays in Vietnam. The focus on the PMU 18 corruption scandal has brought corruption to the fore as the primary issue for Vietnamese authorities to deal with in the short term. The accession of Vietnam to the WTO will bring increased scrutiny on the practices within Vietnam. Our membership hopes that this will not mean that those seeking to aggressively combat corruption will shy away from the publicity, but rather use the publicity to press anti corruption measures.

Corruption remains, and our membership has expressed concerns that in some sectors it is worse than ever before. We ask the Government, as we have previously, to empower the judiciary and media to robustly investigate cases of corruption, at all levels. The key role of the media in exposing the most recent scandal is to be applauded. Experience across the world has shown that an unshackled press and an empowered and independent judicial system are the best weapons to combat corruption. With respect to the latter, if wisdom dictates the establishment of further investigative agencies they must be independent and free of political intervention. We suggest that a model based on the Hong Kong Independent Commission Against Corruption be considered.

#### Legal reform – wider consultation is important

We applaud Vietnam for its ability to seek input from foreign parties, both government and private enterprise in relation to the reform of its legal regime and review of market practices. This must not stop.

Problems remain with the content, consultation processes and promulgation of new laws. The process of creating new law should, we submit be reviewed to ensure consistency with other laws. Draft legal instruments could be published on widely known websites and routinely circulated to all major foreign and domestic business chambers to ensure open and free consultation.

Our membership is particularly concerned with the decrees implementing the Investment Law and the Enterprise Law. We cannot overemphasise the importance of these laws, which together with the Commercial Law and the Intellectual Property Laws; represent the cornerstone of the legal regime that will govern Vietnam's economy. These implementing decrees must be of the best quality possible and be clear and unambiguous. Some areas of concern with respect to draft decrees that are currently on the table include:

**Draft Decree on re-registration**

- > A lack of clarity as to the treatment of enterprises that do not reregister following the abolition of the Law on Foreign Investment
- > No compulsion to re-register, yet a two year limit to do so
- > Ambiguity as to whether foreign invested enterprises that re-register are successors in interest to their Law on Foreign Investment predecessors - for example may they automatically carry forward tax losses and do they retain their investment incentives

**Draft Decree on Investment**

Considerable and unnecessary overlap with other laws governing particular aspects, such as tax, land and environment

- > Confusion over the suggestion that Vietnam's treaty obligations will be the maximum Vietnam can commit to any particular field
- > No detail with respect to the conditions to be applied to the list of conditional sectors
- > The mergers and acquisitions section appears to apply a higher standard to foreign companies than local ones

We intend to provide to the Ministry of Planning and Investment and Central Institute of Economic Management a more detailed analysis of the major issues of concern with respect to these decrees and we welcome discussion.

**Infrastructure – the key to future success; needs more regulatory certainty to boost private sector involvement**

In our last submission we suggested that there was a view among foreign interests, that despite stated policy, there is little commitment to allowing foreign stake holding in infrastructure. We have not seen movement since our last submission, but, that said, these projects take time.

It is unarguable that Vietnam needs massive amounts spent on infrastructure. Transportation, particularly ports and water transport, power, roads, communications and waste management all need attention. Our members echo the sentiment expressed in the recent World Bank report: private investment including foreign investment offers a virtually limitless source of financing and could go far towards meeting the infrastructure agenda

Now is the time to for Vietnam to show to the world in a clear and unambiguous way that it is prepared to accept foreign stakeholders in infrastructure and clearly set out the limits sought to be imposed to that participation.

We have highlighted three issues in this presentation. Some more are set out in our written submission. The Australian Chamber of Commerce on behalf of its members implores the Government to keep at the forefront of their minds that transparency, predictability, stability and equality of treatment should be the guide for policy and implementation. Thank you

## 2.2 New enterprise regime

>>> The new Law 59-2005-QH11 on Investment ("LOI") and Law 60-2005-QH11 on Enterprises ("LOE"), are coming into effective on 1 July 2006. The LOI and LOE will provide foreign investors with a wide variety of corporate forms to structure its investment in Vietnam. Below we look at the newly introduced corporate structure options.

The LOE stipulates the following forms of corporate structure:

1. Limited Liability Company, which is divided into the two following forms, depending on the number of investors:
  - (i) One – member limited liability company, applicable to previous 100% foreign owned enterprise under the old Law on Foreign Investment; and
  - (ii) Limited liability company with two or more members, under which joint venture enterprises existed under the LIF.
2. Shareholding Company
3. Partnership
4. Private Enterprise

Below we set out the general overview of the most commonly used corporate structures for foreign investment: one – member limited liability company ("1M LLC"), limited liability company with two or more members ("LLC") and shareholding company ("SC").

**Table 1. General overview of a 1M LLC**

Issue	Overview
1 <i>Legal nature</i>	A one member LLC is an enterprise, in which: <ol style="list-style-type: none"> <li>(a) The sole investor ("Investor") may be an organization or individual;</li> <li>(b) The Investor is liable for the debts and other property obligations of the 1M LLC within the amount of capital that it has undertaken to contribute to the 1M LLC; and</li> <li>(c) The share of capital contribution of the Investor can be assigned only in cases stipulated by law and/or subject to conditions stipulated by law.</li> </ol>
2 <i>Legal entity status</i>	An 1M LLC will have legal entity status from the date of issuance of the business registration certificate
3 <i>Issuance of shares</i>	An 1M LLC cannot issue shares
4 <i>Name of the 1M LLC</i>	There are 3 types of name for an 1M LLC: <ol style="list-style-type: none"> <li>(a) Name in Vietnamese, which consists of two elements: type of enterprise (1M LLC) and proper name;</li> <li>(b) Name in foreign language, which must be a correct translation of the name in Vietnamese. When translated into a foreign language, the proper name of the 1M LLC may be retained in Vietnamese or translated into such foreign language;</li> <li>(c) Abbreviated name, which may be an abbreviation of the Vietnamese name or the name in a foreign language.</li> </ol>
5 <i>Charter capital</i>	An 1M LLC has "charter capital", which is: <ol style="list-style-type: none"> <li>(a) the capital that the Investor contribute or undertake to contribute in a certain period of time; and</li> <li>(b) stated in the Charter of the 1M LLC</li> </ol>

Issue	Overview
6 <i>Investor's capital contribution into the charter capital of the 1M LLC</i>	<p>Capital contribution can be made in the form of Vietnamese currency, freely convertible foreign currency, gold, value of land use rights, value of intellectual property rights, technology, technical know how, or other assets recorded in the charter of the company as being contributed by the Investor to form the capital of the company;</p> <p>Capital contribution is made in accordance with the schedule submitted to the state body for business registration.</p>
7 <i>General rights of the Investor</i>	<p>To make decisions on strategies for development and annual business plans of the company;</p> <p>To make decisions on the organizational and management structure of the company, to appoint, remove or dismiss managerial positions of the company;</p> <p>To make decisions on increases in the charter capital of the company; on assignment of all or part of the charter capital of the company to other organizations or individuals;</p> <p>To make decisions on establishment of subsidiary companies or on capital contribution to other companies;</p> <p>To organize supervision and assessment of the business operation of the company;</p> <p>To make decisions on the use of profits after discharge of tax obligations and other financial obligations of the company;</p> <p>To make decisions on re-organization or dissolution and request for bankruptcy of the company.</p>
8 <i>General obligations of the Investor</i>	<p>To contribute capital in full and on time as undertaken; in the case of failure to contribute capital in full and on time as undertaken, to be responsible for debts and other property obligations of the company.</p> <p>To comply with the charter of the company.</p> <p>To identify and separate assets of the Investor from assets of the company.</p>
9 <i>Organizational structure of the 1M LLC</i>	<p>The Investor appoints one or several persons as authorized representatives for a term not exceeding 5 years.</p> <p>Where at least two persons are appointed as authorized representatives, the organizational and management structure of the company comprises the members' council, the general director and controllers; in this case, the members' council comprises all authorized representatives.</p> <p>Where one person is appointed as the authorized representative, such person is the chairman of the company; in this case, the organizational and management structure of the company comprises the chairman of the company, the general director and controllers.</p> <p>The charter of the company must provide for the chairman of the members' council or chairman of the company or director or general director to be the legal representative of the company. The legal representative of a company must have permanent residence in Vietnam; must authorize in writing another person to be the legal representative of the company on the principles stipulated in the charter of the company in the case of his or her absence from Vietnam for 30 days or more.</p>
10 <i>Members' Council of the 1M LLC</i>	<p>The members' council shall have the rights and obligations of the company in the name of the company; shall be responsible before the law and to the Investor for the implementation of delegated rights and obligations.</p>

Issue	Overview
11 <i>Chairman of the 1M LLC</i>	The chairman shall have the rights and obligations of the company in the name of the company; shall be responsible before the law and to the Investor for the implementation of delegated rights and obligations.
12 <i>General Director of the 1M LLC</i>	The members' council or the chairman of the company appoints or employs a general director for a term not exceeding 5 years to manage the day-to-day business operation of the company. The general director is responsible before the law and to the members' council or to the chairman of the company for the implementation of his or her rights and duties.
13 <i>Controllers of the 1M LLC</i>	The Investor appoints one to three controllers for a term not exceeding 3 years. Controllers shall be responsible before the law and to the Investor for the implementation of its rights and duties.

> **Table 2. General overview of an LLC**

Issue	Overview
1 <i>Legal nature</i>	An LLC is an enterprise, in which: (a) Members may be organizations or individuals; (b) Members are liable for the debts and other property obligations of the LLC within the amount of capital that they have undertaken to contribute to the LLC; and (c) The share of capital contribution of each member can be assigned only in cases stipulated by law and/or subject to conditions stipulated by law.
2 <i>Legal entity status</i>	An LLC will have legal entity status from the date of issuance of the business registration certificate
3 <i>Issuance of shares</i>	An LLC cannot issue shares
4 <i>Name of the LLC</i>	There are 3 types of name for an LLC: (a) Name in Vietnamese, which consists of two elements: type of enterprise (LLC) and proper name; (b) Name in foreign language, which must be a correct translation of the name in Vietnamese. When translated into a foreign language, the proper name of the LLC may be retained in Vietnamese or translated into such foreign language; (c) Abbreviated name, which may be an abbreviation of the Vietnamese name or the name in a foreign language.
5 <i>Charter capital</i>	An LLC has "charter capital", which is: (a) the capital that the members contribute or undertake to contribute in a certain period of time; and (b) stated in the Charter of the LLC
6 <i>Members' capital contribution into the charter capital of the LLC</i>	Capital contribution can be made in the form of Vietnamese currency, freely convertible foreign currency, gold, value of land use rights, value of intellectual property rights, technology, technical know how, or other assets recorded in the charter of the company as being contributed by the members to form the capital of the company;  Capital contribution is made in accordance with the schedule agreed by the members of the LLC and stipulated in the List of Members (submitted to the state body for business registration).

Issue	Overview
	<p>Upon full payment of its capital contribution, a member must be issued a capital contribution certificate by the LLC.</p> <p>If a member fails to contribute in full and on time as undertaken, the unpaid amount will be considered as a debt owed by that member to the LLC. Such member is liable for compensation for any damage arising from its failure to contribute capital in full and on time as undertaken.</p> <p>Where any member fails to contribute in full the amount of capital as undertaken after the "final time-limit" as undertaken, the unpaid amount is dealt with in one of the following ways:</p> <ul style="list-style-type: none"> <li>(a) One or more members agree to contribute the unpaid amount in full;</li> <li>(b) Capital is raised from other persons to be contributed to the LLC;</li> <li>(c) The remaining members contribute the unpaid amount in full in proportion to their share of capital contribution in the charter capital of the LLC.</li> </ul>
7 <i>Redemption of shares of capital contribution</i>	<p>A member is entitled demand the LLC to redeem its share of capital contribution if such member votes against a decision of the Members' Council on (a) amendment of or addition to the provisions of the Charter of the LLC relating to the rights and obligations of members and of the Members' Council, (b) re-organization of the LLC, or (c) other cases stipulated in the Charter of the LLC.</p> <p>If the LLC does not redeem the share of capital contribution, the member may assign its share of capital contribution to another member or a non-member.</p>
8 <i>Capital assignment</i>	<p>A member wishing to assign a part or all of its share of capital contribution must firstly offer to sell such share of capital contribution to all other members in proportion to their shares of capital contribution in the LLC on the same terms;</p> <p>A member may assign its share of capital contribution to a non-member of the LLC only if the other members of the LLC do not purchase or do not purchase in full within 30 days from the offering date.</p>
9 <i>Increase of charter capital</i>	<p>An LLC may increase its charter capital by one of the following ways:</p> <ul style="list-style-type: none"> <li>(a) Increasing the contributed capital of members;</li> <li>(b) Increasing the charter capital relative to the increased value of assets of the LLC;</li> <li>(c) Raising contributed capital from new members.</li> </ul> <p>An increase of the charter capital must be made pursuant to a decision of the Members' Council and registered with the competent authority.</p>
10 <i>Reduction of charter capital</i>	<p>An LLC may reduce its charter capital by one of the following ways:</p> <ul style="list-style-type: none"> <li>(a) Returning part of the contributed capital to members in proportion to their respective shares of contributed capital (subject to certain conditions stipulated by law);</li> <li>(b) Redeeming shares of capital contribution of members;</li> <li>(c) Reducing the charter capital corresponding to the reduced value of assets of the LLC.</li> </ul> <p>A reduction of the charter capital must be made pursuant to a decision of the Members' Council and registered with the competent authority.</p>

Issue	Overview
11 <i>Profits distribution</i>	<p>The LLC may distribute profits to its members if the following conditions are satisfied:</p> <p>(a) the LLC generates profits from its business;</p> <p>(b) the LLC has fulfilled its tax obligations and other financial obligations in accordance with law; and</p> <p>(c) the LLC ensures that debts and other property obligations may be paid in full after distribution of profits.</p>
12 <i>Management structure</i>	<p>An LLC must have:</p> <p>(a) a Members' Council consisting of all members;</p> <p>(b) a Chairman of the MC appointed by the Members' Council, and</p> <p>(c) a Director or General Director appointed by the Members' Council.</p> <p>For more details, please refer to the separate table on the management rules.</p>
13 <i>Establishment of representative office, branches and business locations of the LLC</i>	<p>Representative offices, branches and business locations are "dependent units" of the LLC.</p> <p>The law requires the lines of business of branches to conform with the authorized lines of business of the LLC.</p> <p>Representative offices, branches and business locations must bear the name of the LLC and a corresponding supplemental part identifying such representative office, branch and business location.</p> <p>An LLC may establish its representative offices and branches in Vietnam and overseas and it may also establish one or more representative office or branch in one locality.</p>

> **Table 3. General overview of a SC**

Issue	Overview
1 <i>Legal nature</i>	<p>An SC is an enterprise in which:</p> <p>(a) The charter capital is divided into equal portions called shares;</p> <p>(b) Shareholders may be organizations or individuals; the minimum number of shareholders is three and is not subject to any cap;</p> <p>(c) Shareholders are liable for the debts and other property obligations of the SC up to the amount of capital contributed to the SC; and</p> <p>(d) Shareholders may freely assign their shares to other persons, except in the cases stipulated by law.</p>
2 <i>Legal entity status</i>	<p>An SC will have legal entity status from the date of issuance of the business registration certificate</p>
3 <i>Name of the SC</i>	<p>There are 3 types of name for an SC:</p> <p>(a) Name in Vietnamese, which consists of two elements: type of enterprise (SC) and proper name;</p> <p>(b) Name in foreign language, which must be a correct translation of the name in Vietnamese. When translated into a foreign language, the proper name of the SC may be retained in Vietnamese or translated into such foreign language;</p> <p>(c) Abbreviated name, which may be an abbreviation of the Vietnamese name or</p>

Issue	Overview
	the name in a foreign language.
4 <i>Issuance of shares</i>	An SC can issue shares
5 <i>Classes of shares</i>	<p>(a) Ordinary shares</p> <p>(b) Preference shares, which are divided into the following classes:</p> <ul style="list-style-type: none"> <li>- Voting preference shares;</li> <li>- Dividend preference shares;</li> <li>- Redeemable preference shares;</li> <li>- Other preference shares stipulated in the charter of the SC.</li> </ul>
6 <i>Charter capital</i>	<p>An SC has "charter capital", which is:</p> <p>(a) the capital that the shareholders contribute or undertake to contribute in a certain period of time; and</p> <p>(b) stated in the Charter of the SC</p>
7 <i>Capital contribution into the charter capital by founding shareholders</i>	<p>Capital contribution can be made in the form of Vietnamese currency, freely convertible foreign currency, gold, value of land use rights, value of intellectual property rights, technology, technical know how, or other assets recorded in the charter of the company as being contributed by the members to form the capital of the company.</p> <p>Founding shareholders must together register to subscribe to at least 20% of the number of ordinary shares "which may be offered for sale" and must pay in full for the shares "registered for subscription" within 90 days from the date of issuance of the business registration certificate of the SC.</p> <p>Upon full payment of its capital contribution, a member must be issued a capital contribution certificate by the SC.</p> <p>Where any founding shareholder fails to contribute in full the amount of capital as undertaken, the unpaid amount is dealt with in one of the following ways:</p> <p>(a) The remaining founding shareholders contribute the unpaid amount in full in proportion to their share of capital contribution in the charter capital of the SC;</p> <p>(b) One or more founding shareholders agree to contribute in full number of shares;</p> <p>(c) Another person who is not a founding shareholder is called on and agree to contribute in full such number of shares; such person shall automatically become a founding shareholder of the company.</p>
8 <i>Ordinary shares subscription</i>	If founding shareholders do not register to subscribe for all the shares "which may be offered for sale", the remaining shares must be offered for sale and sold out within a 3 years from the date of issuance of the BRC to the SC.
9 <i>Shares transfer</i>	<p>(a) Shares may be freely assigned, except in the cases in (i) and (ii) below.</p> <p>Assignment of shares is conducted either in writing or by hand delivery of share certificates. The assignor remains the owner of the transferred shares until the name of the assignee is registered in the register of shareholders.</p> <p>(b) Cases of limitation of share transfer:</p> <p>(i) Within a period of 3 years from the date of issuance of the BRC of the SC, ordinary shares of founding shareholders can be assigned only to other founding shareholders, or to other persons only if approved by the General Shareholders Meeting. After expiry of 3 years period from the establishment of the SC, ordinary shares may be assigned freely.</p>

Issue	Overview
	(ii) Dividend preference shares cannot be transferred.
10 <i>Share certificate</i>	Share certificate may be under the form of (i) a certificate issued by a shareholding company or (ii) book entry in the register of shareholders certifying the ownership of shares. Share certificates may or may not indicate names.
11 <i>Register of shareholders</i>	<p>An SC must establish and maintain a register of its shareholders, which may be in the form of a document or electronic file, or both.</p> <p>Shareholders holding 5% or more of the total number of shares must be registered with the competent business registration body within 7 working days from the date of acquiring such ownership percentage.</p>
12 <i>Redemption of shares pursuant to shareholder's request</i>	<p>A member is entitled to demand the SC to redeem its share of capital contribution if such member votes against a decision on (a) re-organization of the SC, or (b) amendment of or addition to the provisions of the Charter of the SC relating to the rights and obligations of shareholders.</p> <p>If the SC does not redeem the share of capital contribution within 90 days from the date it receives the notice of the shareholder on redemption of shares.</p>
13 <i>Dividend distribution</i>	<p>The SC may distribute profits to its members if the following conditions are satisfied:</p> <p>(a) the SC has fulfilled its tax obligations and other financial obligations in accordance with law;</p> <p>(b) has appropriate all funds of the SC and fully covered previous losses in accordance with law and the charter; and</p> <p>(c) the SC ensures that debts and other property obligations will be paid in full after distribution of dividends.</p>
14 <i>Management</i>	<p>An SC must have:</p> <p>(a) a General Shareholders' Meeting consisting of all shareholders who have the right to vote;</p> <p>(b) a Board of Management consisting of between 3 to 11 persons appointed by the General Shareholders' Meeting;</p> <p>(c) a Chairman of the Board of Management appointed either by the General Shareholders' Meeting or Board of Management; and</p> <p>(d) a Director or General Director appointed by the Board of Management.</p> <p>(e) a Control Board if an SC has 11 or more individual shareholders, or a corporate shareholder holding more than 50% shares.</p> <p>For more details, please refer to the separate table on the management rules.</p>
15 <i>Establishment of representative office, branches and business locations of the SC</i>	<p>Representative offices, branches and business locations are "dependent units" of the SC.</p> <p>The law requires the lines of business of branches to conform with the authorized lines of business of the SC.</p> <p>Representative offices, branches and business locations must bear the name of the SC and a corresponding supplemental part identifying such representative office, branch and business location.</p> <p>An SC may establish its representative offices and branches in Vietnam and overseas and it may also establish one or more representative office or branch in one locality.</p>

>>> For more on Vietnam's new investment-enterprise regime, see recent issues of Vietnam Legal Update and our other legal updates available on [www.vietnamlaws.com](http://www.vietnamlaws.com)

>>> For English translations of the new Law on Enterprises, Law on Investment, and implementing legislation, subscribe to [Vietnam Laws Online Database](http://Vietnam Laws Online Database) on [www.vietnamlaws.com](http://www.vietnamlaws.com)

---

## Part 3 Did You Know?

---

### 3.1 National Assembly update

The 9<sup>th</sup> Session of the National Assembly's Legislature XI ran from 16 May until 27 June 2006.

- > 11 laws were passed:
  1. Law on Real Estate Business
  2. Law on Information Technology
  3. Law on Civil Aviation of Vietnam (amended)
  4. Law on Social Insurance
  5. Law on Cinematography
  6. Law on Lawyers
  7. HIV/AIDS Prevention and Fighting
  8. Law on Securities
  9. Law on Juridical Support
  10. Law on Standardisation
  11. Law on Real Estate Registration
- > 12 laws were considered (and will be re-drafted for final approval at the October-November Session):
  1. Law on Dispatch of Employees to Work Abroad
  2. Law on Tax Management
  3. Law on Occupational Training
  4. Law on Equality of the Sexes
  5. Law on Dykes
  6. Law on Physical Education and Sports
  7. Law on Donation of people's bodily organs
  8. Law on Associations
  9. Law on Amendment of and Addition to a Number of Articles of the Labour Code (in relation to strikes and resolution of strikes)
  10. Law on Residence
  11. Law on Technology Transfer
  12. Law on Notarization
- > **New appointments in the Government**
  - Mr Nguyen Minh Triet - State President
  - Mr Nguyen Tan Dung - Prime Minister
  - Mr Nguyen Sinh Hung - Deputy Prime Minister
  - Mr Truong Vinh Trong - Deputy Prime Minister
  - Mr Pham Gia Khiem - Deputy Prime Minister and Foreign Minister
  - Mr Phung Quang Thanh - Minister of National Defense
  - Mr Ho Nghia Dung - Minister of Transport
  - Mr Le Doan Hop - Minister of Culture and Information
  - Mr Tran Van Truyen - Chief Government Inspector
  - Mr Vu Van Ninh - Minister of Finance
  - Mr Nguyen Thien Nhan - Minister of Education and Training

### 3.2 Definition of a "key national project"

In accordance with the official websites of the National Assembly and Communist Party, on 23 June 2006 National Assembly passed a resolution on criteria for key national projects ("Resolution"), which is coming into effect as of 1 October 2006.

Under the Resolution, the following projects will be considered as "key national project" and must be approved by National Assembly:

- > a project with the capital of VND20 trillion or more, with 30% or more coming from state budget;
- > a project posing a serious potential risk to the environment, such as nuclear power plants;
- > a project changing the land use of protected forests and natural reserves, involving resettlement displacing of 20,000 residents or more.

The Resolution has released concerns of the giant foreign investors, whose investment projects into Vietnam have capital of VND20 trillion or more, by stipulating that projects with that amount of capital will require National Assembly's approval only in case such projects use 30% or more capital from the state budget. In accordance with the Resolution, foreign invested projects with the capital of VND20 trillion or more will be approved by the Government.

Of note, up to now, only five projects were considered key national projects, including Ba Ria –Vung Tau gas-electric and fertiliser project, Dung Quat Oil refinery plant, project to grow 5 million ha of forest, Son La hydro power and Ho Chi Minh City Highway project.

### **3.3 Competition Law update**

It took 6 months after Vietnam's new Competition Law became effective on 1 July 2005 for the Government to officially establish the competition authorities to investigate and deal with anti-competitive offences and to process exemptions for mergers and acquisitions and anti-competitive agreements.

Vietnam Competition Administration Department ("VCAD") is responsible inter alia:

- > To accept and conduct investigations of competition cases concerning practices in restraint of competition (eg abuses of dominant market position) in order for the Competition Council to deal with them;
- > To conduct investigations into and deal with competition cases concerning unfair competitive practices (eg infringement of business secrets) and other practices in breach of the law on competition (eg failure to co-operate with competition investigations);
- > To assess files for request of exemption and forward them to the Minister of Trade for his decision or to submit same to the Prime Minister for his decision;
- > To control the process of economic concentration (ie mergers and acquisitions).
- > To build and manage a system of information on enterprises in a dominant market position and enterprises in monopoly position, on competition rules of associations, and on cases of exemption from competition law.

VCAD is headed by a director, who is appointed (and subject to removal) by the Prime Minister on the proposal of the Minister of Trade. The present director of VCAD is Dr Dinh Thi My Loan. Of VCAD's 6 divisions, 3 are dedicated to competition matters. Two of VCAD's several deputy directors are in charge of competition matters, Mr Bui Xuan Dung and Mr Tran Anh Son. VCAD's personnel now numbers 25, with 5 new appointments in early 2006. VCAD plans to recruit 20-30 additional staff by the end of 2006. VCAD's head office is in Hanoi and it will open representative offices in HCMC and Da Nang (and other places as required).

A permanent Competition Council has also now been officially established. The Vietnam Competition Council ("VCC") is responsible inter alia:

- > To organize dealing with competition cases concerning practices in restraint of competition (eg abuses of dominant market position) after investigation by VCAD;

- > To establish case-specific competition panels (officially known as 'councils dealing with competition cases') to hold hearings into competition cases;
- > To resolve complaints regarding competition cases concerning practices in restraint of competition.

The VCC will consist of 11-15 members, appointed (and subject to removal) by the Prime Minister on the proposal of the Minister of Trade. One member of the VCC will be the Chairman, again appointed by the Prime Minister on the proposal of the Minister of Trade. In early 2006, the Minister of Trade submitted to the Prime Minister his list of proposed members of the VCC and his proposal for Chairman. VCC is still waiting for the Prime Minister's approval. A VCC secretariat to assist the work of the VCC has still not been established.

VCC and the Japan International Co-operation Agency held a seminar on "Implementation of Vietnam's Competition Law – Sharing Experiences of Japan" in Ho Chi Minh City on 13 June 2006. Of great interest to audience members like ourselves, VCC Deputy Director Mr Tran Anh Son advised that any parties to contracts signed before the effective date of the Competition Law (ie 1 July 2005) which contain provisions prohibited by the Competition Law may be prosecuted for breaches of the Competition Law if the contracts remain effective post-1 July 2005. Does this suggest that, once VCC and VCC are fully operational, they may bare their teeth?

### **3.4 Foreign invested real estate projects in HCMC**

According to Thanh Nien (Youth Newspaper), only five foreign invested real estate projects were licensed in HCMC from 2004 to February 2006 (see [www.thanhvien.com.vn](http://www.thanhvien.com.vn)). Of these, Phillips Fox acted on three - Saigon Pearl, Villa Riviera and Saigon Sports City. We are also acting on several others that are currently in the negotiation/licensing pipeline.

### **3.5 Foreign investment in Vietnam in the first half of 2006**

According to an article in Lao Dong newspaper, US\$2.714 billion has been invested in the country in the first half of 2006 (a reduction of 0.6% in comparison to the same period last year). The total implemented capital is US\$1.85bl (increase of 17.7%).

The FIEs' revenue in the period is US\$12.45 bl (in which export accounted for US\$6.642 bl). The FIEs' payment to the State budget is US\$565 ml.

In the first six months, 327 new investment projects have been licensed, the biggest ones are: Intel (US\$605 ml), Westlake Co.(US\$314 ml) and Winvest Investment (US\$300 ml).

### **3.6 US – Vietnam bilateral market access agreement for Vietnam's WTO accession**

On 14 May 2006 Vietnam and the United States reached an agreement-in-principle and on 31 May 2006 the parties officially signed the US-Vietnam WTO bilateral market access agreement ("Agreement"). Under the Agreement, Vietnam commits to open markets in a number of sectors and to reduce import tariffs for a wide range of industrial and agricultural products. Vietnam has also committed to improved market access in key services of interest to the U.S. including banking, insurance, telecom, distribution, express delivery, and energy services.

The US was the last country to have concluded an agreement with Vietnam in order for it to join the WTO. Commitments made in this agreement will be multilateralized and extended to all members of the WTO.

### **3.7 Establishment of EVN group**

On 22 June 2006, Prime Minister signed the Decision 147/2006/QD-TTg approving the pilot project of establishment of EVN Group. Accordingly, EVN Group will operate in several fields, in particular production and business of electricity, public telecommunication and mechanical electronics.

Decision 147 provides that companies of EVN Group include:

- > 6 one member limited liability enterprises 100% owned by the State;

- > 5 enterprises converted into one member limited liability enterprises in 2006-2007;
- > 2 one member limited liability newly established;
- > 26 enterprises with the EVN Group's stakes of more than 50% of chartered capital;
- > 6 affiliates; and
- > 5 professional units.

On the same day, the Prime Minister also signed Decision 148/2006/QĐ-TTg on the establishment of parent company - EVN Group. Accordingly, EVN Group will be established on the basis of organizational restructure of management and operating of dependent accounting subsidiaries of EVN Corporation.

EVN Group is a state owned enterprise with the international name Electricity of Vietnam (EVN).

The managing structures of EVN Group include a board of management of max 9 members; an inspecting board of max 5 members; chairman of board of management; and the general director of the Group.

### **3.8 Import of cigarettes and cigars**

According to Decree 12-2006-ND-CP of the Government dated 23 January 2006 on implementation of the Commercial Law (for information on Decree 12 see January – February Issue of Vietnam Legal Update on [www.vietnamlaws.com](http://www.vietnamlaws.com)), cigarettes and cigars are not on the list of goods the import of which is prohibited, rather their import shall be implemented in accordance with separate regulations (see 1.4 above). In this Decree, the Government has assigned the Ministry of Trade (MOT) to co-ordinate with the Ministry of Industry (MOI) to provide specific regulations on the import of these lines of goods, based on the current provisions of law on the manufacture, trading and use of all types of cigarettes and based on relevant international undertakings. However, up to now, no such regulations have been issued by the MOT and MOI.

On 16 June 2006, the MOT issued Official Letter 3743-TM-XNK in reply to various enquiries from local authorities and businesses regarding import of cigarettes and cigars. Accordingly, the MOT provides that the Prime Minister has agreed to postpone the time-limit for promulgation of regulations on importation of cigarettes and cigars until Vietnam's final official undertaking is approved by the countries involved in the negotiations for WTO entry in the Official Letter No. 2010-VPCP-KTTH dated 14 April 2006. Therefore, importation of cigarettes and cigars pursuant to Decree 12 should only be permitted after there is a joint circular from the MOT and the MOI, ie after Vietnam's official undertakings to WTO entry is finally settled.

### **3.9 Duration of foreign invested enterprises**

Under current law, the establishment/operation of foreign invested enterprises ("FIEs") and domestic invested enterprises ("DIEs") are subject to two different legal requires.

Under the Law on Foreign Investment ("LFI"), the duration of an FIE may not exceed 50 years (or 70 years in special cases), being the duration for which the FIE is permitted to implement a particular project. On the other hand, the laws on Vietnamese enterprises clearly differentiate between a DIE and its investment project(s) and therefore do not restrict the duration of such DIE. This discrimination is supposed to disappear as from 1 July 2006, when the two legal systems are unified under the new Law on Enterprise ("LOE") and the new Law on Investment ("LOI").

The new LOE/LOI will regulate limited liability companies ("LLC"), shareholding companies ("SC") and their investment projects. The duration of a company will be indefinite (unless the owners of such company agree a definite duration as stated in its charter), while the duration of a project will be limited to 50 years (or 70 years in very special cases). Those FIEs which were established prior 1 July will enjoy indefinite duration only if they are re-registered as an LLC or convert into an SC after 1 July; however their investment projects will still be subject to a definite duration.

Therefore, it appears that the duration of a foreign invested LLC/SC will be indefinite if (i) it is established from 1 July, or (ii) an FIE re-registers/converts into an LLC/SC after 1 July. However, such LLC/SC will have to obtain an investment certificate for each investment project or line of business that it undertakes, and such investment certificate will be subject to a definite (ie specified limited) duration.

### **3.10 New business laws a rort?**

The following article appeared in the English language section of Dau Tu's website on 30 June 2006.

The business community is awaiting the implementation of the Unified Business Law and Investment Law from July 1, which it is hoped, will help enliven the business environment. One purported aim of the new laws is to reduce inequality between the state-run business sector and the private sector.

However, such a lofty goal from a government regime that no matter what it says advertently maintains favouritism for all state industry seems far from likely as many provisions in the new law run counter to impartiality toward the private sector.

While not all are happy with the new business decrees, what is of utmost importance is the guiding decree that will spell out what investment restrictions there will ultimately be.

From July 1, businesses of all kinds are compelled to reorganise under the Unified Business Law. Foreign invested businesses will have to make a decision of business re-registration within two-years from July 1. In comparison, state-run businesses will have four-years to shift into a shareholding or limited liability company.

Private businesses will have to face more stringent regulations of finance, accounting, labour and environment, said Nguyen Dinh Tai, a director from the Central Institute of Economic Management CIEM. Moreover, "Domestic private investors must register their investment projects worth 15 billion dong (US\$900,000) or more. And projects worth 300 billion dong or more projects listed as "conditioned investment areas" will have to be appraised," said Tai.

At present, the guiding decree is accompanied with a list of preferential investment areas, a list of geographical areas named as having disadvantageous or difficult socio-economic conditions, a list of prohibited investment areas, a list of conditional investment areas comprising 11 areas, two terms of references for other investment areas and conditions applied to foreign investment.

Investment conditions applied to local investors are stated in separate legal documents or will be stipulated sometime in the future as per the requirements of the state agency that will have control of such businesses.

These pre-conditions and approvals would become another obvious rort for government officials to force even more bribes from frustrated companies needing one of many more approvals. The feudally inclined so-called ask-and-grant mechanism by officials that was gradually whittled away under the Enterprise Law over the last six years ago is likely to see a intense resurgence.

And if the guiding decree is as opaque with intentionally vaguely worded provisions like most new laws, then it will be a boon for officials to interpret the laws as they wish to extract money from all and sundry before permission, or permits are granted.

But at least there is some consistency in the fact that government ministry or state agency that require their input to any draft law riddle the law with enough ambiguities rendering it open to total individual interpretation simply to maintain their money-making ways at the cost of businesses and national competitiveness.

#### **Correction to May 2006 VLU**

In our May 2006 VLU issue, we mentioned that the draft Investment Decree no longer prescribes the main contents of a BCC. In fact, the draft Investment Decree still stipulates the compulsory contents of a BCC. We apologize for this mistake.

In summary, there appears to be no substantive change with respect to the regulation of BCCs from 1 July 2006 compared with the current regime.

## 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 close to 3,000 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 & conditions).

With the introduction of Vietnam's new investment-enterprise regime on 1 July 2006, we've taken the opportunity to adjust various existing subject categories and to add some new ones.

- > We've 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-category within *Investment-Corporate*.
- > Other new categories identify legislation relating to *WTO & Other Treaties, Anti-Dumping & Other Safeguards, Anti-Corruption, Franchising, Mergers & Acquisitions*, and more.

Have a browse and let us know what you think - we welcome your **feedback** at any time.

### >>> UPDATED on 19 June 2006, Vietnam Laws Online Database now includes:

- > Latest draft decrees (*so you can be prepared*) on investment & buying shares in Vietnamese banks, amongst others
- > Law on Investment & Law on Enterprises, effective 1 July 2006
- > Circular 09 on franchising, 25 May 2006
- > Decree 52 on company bonds, 19 May 2006
- > Decision 30 on Securities Investment Funds, 12 May 2006
- > Law on E-Transactions, effective 1 March 2006
- > New Civil Code, Commercial Law, Maritime Code & more, effective 1 Jan 2006

Above is just a snapshot of the wide range of legislation available.

### >>> NEW search function for Vietnam Legal Update

All issues of Vietnam Legal Update from 1997 to date are available on [www.vietnamlaws.com](http://www.vietnamlaws.com). For your convenience, there's an index of contents of all issues of Vietnam Legal Update. Now you can search for keywords in our index. This will make it easier for you to find articles in Vietnam Legal Update on topics of interest to you.



Phillips Fox was proud to accept the **Business Innovation Award** at the Australian Business Awards in Vietnam 2004, in recognition of our innovative work in developing [www.vietnamlaws.com](http://www.vietnamlaws.com) and our **Vietnam Laws Online Database**.

Hanoi Branch Office  
Suite 401, Hanoi Tower  
49 Hai Ba Trung  
Hanoi  
Vietnam  
Tel +84 4 936 0990  
Fax +84 4 936 0984  
[bill.magennis@phillipsfox.com](mailto:bill.magennis@phillipsfox.com)

Ho Chi Minh City Branch Office  
Suite 605, Saigon Tower  
29 Le Duan Boulevard  
District 1, Ho Chi Minh City  
Vietnam  
Tel +84 8 822 1717  
Fax +84 8 822 1818  
[nigel.russell@phillipsfox.com](mailto:nigel.russell@phillipsfox.com)

Melbourne Office  
Level 21, 140 William Street  
Melbourne  
Australia  
Tel +61 3 9274 5000  
Fax +61 3 9274 5111  
[maureen.mclaughlin@phillipsfox.com](mailto:maureen.mclaughlin@phillipsfox.com)

Adelaide Brisbane Canberra Melbourne Perth Sydney Auckland Wellington Hanoi Ho Chi Minh City