

VIETNAM LEGAL UPDATE

June 2007

**SPECIAL FEATURE ISSUE:
SPOTLIGHT ON SECURITIES (part 2)**

Part 1 Selected New Legal Instruments	
1.1 Charter for Listing Companies	1
1.2 Redemption, Resales, Issuance of Shares	1
1.3 Circular on Foreign Banks	2
1.4 BOT Regulations	6
1.5 Trading and Distribution	8
1.6 Bank Cards	9
1.7 Compulsory Reverse Ratios	11
Part 2 Features	
2.1 Securities and Fund Management Companies	12
2.2 Summary of Laws in relation to Domestic Funds	16
Part 3 Did You Know?	
3.1 Effective Date for HCMC Stock Exchange	18
3.2 State Securities Commission	18
3.3 Code Language	18
3.4 General Director of LLC	19
3.5 First Visit to US by Vietnam's President	19
3.6 Vietnam's Largest Top Insurer in IPO	19
3.7 Vietnam to Finalize WTO Commitments	20
3.8 New Equitization Decree	20
Part 4 What's New?	
➤ NEW laws in Vietnam Laws Online Database	22
➤ NEW search function for Vietnam Legal Update	22

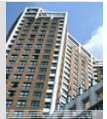
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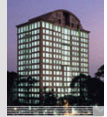
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Allens Arthur Robinson

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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.

As promised, this edition of the VLU is the second of a two-part special feature titled "Spotlight on Securities." With securities and the capital and financial markets continuing to grab the headlines, and interest and activity in this area high, this June VLU issue will provide further insight into the new laws and regulations in this area.

Please note that while the securities is the topic of focus for this issue, a number of other sectors are also covered, as there have been other important legal developments across the board in the past month. In Vietnam's post-WTO existence, this stepped-up pace of legislative activity is sure to continue, and the VLU will continue to stay on top of key developments for our readers.

Part 1 Selected New Legal Instruments

1.1 Charter for Listing Companies

Decision 15 of the Minister of Finance dated 19 March 2007 Issuing the Sample Charter Applicable to Companies Listed on the Stock Exchanges/Securities Trading Centres (Decision 15)

Charters of companies listed on the Vietnam Stock Exchange or at a Securities Trading Centre must contain all of the provisions in the sample charter (except for the provision regarding attorneys of Board of Management members). Investors are free to add additional provisions to the charter, provided that they do not conflict with the Law on Securities or any other law.

The sample charter in Decision 15 comprises 21 chapters and 57 articles. Of note, the sample charter contains provisions on:

- charter capital, shares and founding shareholders;
- rights and obligations of shareholders, general meeting of shareholders, board of management, board of management members, inspection board and the general director;
- profit distribution;
- reporting obligations; and
- termination and dissolution of the company.

The Charter must be made in 10 originals and must be filed as follows:

- 1 original to be submitted to the local public notary office;
- 5 originals to be registered with relevant authorities in accordance with regulations of the provincial People's Committee; and
- 4 originals to be filed at the company.

1.2 Redemption, Resales, Issuance of Shares

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

In accordance with Circular 18, a public company is entitled to redeem its own shares for conversion into fund certificates¹ if the company has:

- a General Shareholders' Meeting resolution in case of redemption of more than 10% but not exceeding 30% of total issued shares or a Board of Management resolution in case of redemption of 10% or less of total issued shares in a 12 month period;
- sufficient capital to redeem the shares; and
- a redemption plan with details of schedule and principles for price evaluation.

A public a company is not permitted to redeem its own shares if the company:

- is making losses or has outstanding debts;
- is in the process of making a public offer of shares to mobilize capital;
- is dividing shares or merging shares; and
- has shares being the subject of public offer.

Circular 18 also provides that public companies can only re-sell fund certificates after the termination date of the most recent redemption except in the cases of distribution to employees or use as bonus shares.

¹ Literal translation is "fund shares"

Public companies must report to the State Securities Commission and publically announce information on the redemption of shares or resale of fund certificates 7 days before the redemption or resale; and such information cannot be changed unless a force majeure event occurs.

According to Circular 18, within 10 days from the completion date of shares redemption or fund certificates resale, public companies must notify the State Securities Commission of the transaction result and announce such results to the public.

Circular 18 took effect as from 25 April 2007.

1.3 Circular on foreign banks

Circular 03-2007-TT-NHNN of the State Bank of Vietnam dated 5 June 2007 Providing Guidelines on Decree 22-2006-ND-CP of the Government dated 28 February 2006 on Organization and Operation of Foreign Bank Branches, Joint Ventures Banks, Banks with 100% Foreign Owned Capital and Representative Offices of Foreign Credit Institutions in Vietnam (Circular 03)

Introduction

In June 2004 the National Assembly passed amendments to the 1998 Law on Credit Institutions (**LCI**)² to become effective as of 1 October 2004. One of the key areas of amendment was to ensure increased compliance with international agreements, such as the US-Vietnam Bilateral Trade Agreement (**BTA**), in particular by allowing wholly owned foreign banks (**WOFBs**) to operate in Vietnam in addition to the other permitted forms of direct foreign investment, being foreign banks branches (**FBBs**) and joint ventures banks (**JVBs**). Under the BTA, the obligation to allow WOFBs as a form of investment by US investors was not required to take effect until 2010. However, under the subsequently negotiated WTO commitments on services, commitments on WOFBs were required to take effect from April 2007.

As positive as this reform was under the LCI, it could not be truly effective until the Government issued the necessary implementing regulations, detailing the criteria, procedures and scope of operation for the establishment and operation of WOFBs. At first glance, in March 2006 it appeared that the long wait since October 2005 was finally over when Decree 22 was issued with effect from 24 March 2006. However, this was not the case: investors were told to wait for further implementing laws, which have now been issued under Circular 03, almost three years after the changes to the LCI.

Forms of investment under Decree 22 and Circular 03

The following forms of foreign invested banks are recognised under Decree 22 and Circular 03:

(a) **FBB**

A FBB is a dependent subsidiary of a foreign bank, for which the foreign bank has provided a written guarantee that it will be responsible for all obligations and undertakings of the FBB in Vietnam. The FBB has its own separate legal personality in Vietnam. The foreign parent bank must be established in a foreign jurisdiction and “[its] main and usual activities are banking operations” (undefined).

(b) **WOFB**

A WOFB is established as a separate Vietnamese legal entity, with capital being contributed only from foreign entities. Amongst the foreign investors, there must be a “parent bank” and it must hold more than 50% charter capital. The foreign parent bank must be established in a foreign jurisdiction and “[its] main and usual activities are banking operations” (undefined).

(c) **JVB**

A JVB is established as a separate Vietnamese legal entity, with capital being contributed from one or more foreign banks and Vietnamese banks. Capital is not divided into shares. In JVBs, the capital contribution rate by the foreign bank(s) is capped at 50% of the capital

² Law on Credit Institutions dated 12 December 1998 (as amended 15 June 2004).

of the bank. In “exceptional cases” (undefined), a foreign bank may have a higher capital contribution but only if approved by the Prime Minister.

Capital requirement

Capital requirements are not specified in the LCI, Decree 22 or Circular 03. Rather, the capital requirement for each form of foreign owned bank is stipulated in Decree 141-2005-ND-CP of the Government dated 22 November 2006 Issuing List of Levels of Legal Capital of Credit Institutions (**Decree 141**). Decree 141 provides the following lock-step program of implementation:

Type of credit institution	By 31 December 2008 for existing credit institutions. New credit institutions established prior to 31 December 2008.	By 31 December 2010 for existing credit institutions. New credit institutions established after 31 December 2008.
State commercial bank	VND3,000 billion	VND3,000 billion
Shareholding commercial bank (joint stock bank)	VND1,000 billion	VND3,000 billion
FBB	USD15 million	USD15 million
WOFB	VND1,000 billion	VND3,000 billion
JVB	VND1,000 billion	VND3,000 billion

Conditions

(a) *Required assets of the foreign investors*

Under Decree 22, in order to receive a licence to open a FBB, the foreign parent bank must have total assets of at least US\$20 billion in the financial year prior to applying for the licence.

In order to receive a licence to open a WOFB or a JVB, the foreign parent bank must have total assets of at least US\$10 billion in the year prior to applying for the licence.

It is not clear whether the “assets” of the foreign parent bank include intangible as well as tangible assets.

(b) *Undertaking between State Bank and the competent regulatory and inspecting body of the parent bank’s jurisdiction*

Decree 22 and Circular 03 require that the administrating agency in the parent bank’s jurisdiction provide an undertaking in the form of a memorandum of understanding, an agreement, a letter of exchange or a similar form of document. The undertaking must be to co-operate with the State Bank in administering and supervising the operation of the bank licensed in Vietnam and on exchanging information.

This requirement is extremely unfortunate for those parent banks licensed in a jurisdiction where the administrating agency has not yet signed such an agreement with the State Bank (of which there are many). In our experience, even when the administrating agency looks favourably on such an arrangement, it takes months to finalise. During this period the foreign bank’s application for a licence is not considered complete and therefore will not be processed by the State Bank. This leaves the foreign investor in a horrible middle ground, where it has little or no control over completing its application, and can merely hope that government-to-government relations are strong, and the administration is speedy.

(c) *Other conditions regarding the parent banks*

The foreign parent bank must also satisfy a number of other requirements including that it has not committed a "serious breach" (undefined) of the regulations on banking operation or other laws in its home country in the three years prior to applying for a licence and up until the State Bank considers the licence; that it has international operational experience and has been classified by international credit rating institutions at the level of average and stable or higher; and it must prove that "it has the capability to implement financial undertakings and to continue normal operation even when the economic status and conditions change towards a non-profitable direction". It is not clear what this latter requirement means.

Decree 22 requires that the foreign parent bank must satisfy the requirements of international customs regarding minimum capital safety ratio. The presumption that Decree 22 refers to the Basel I Accord rate of 8% has been confirmed in Circular 03, which also requires:

- The parent bank meets other prudential ratios in accordance with international practice. Such open-ended, imprecise requirements are unfortunate.
- The parent bank has a bad debt ratio under 3% in the year prior to the application being made, and during the time the State Bank processes the application.
- The parent bank operates profitably for at least 3 consecutive years prior to the year of the application for licence.

(d) *Other conditions*

- The issued capital must meet the minimum stipulated above.
- There is permission from the relevant body of the parent bank's jurisdiction permitting the parent bank to open the subsidiary or branch in Vietnam.
- The executives have full civil legal capacity and appropriate qualifications.
- There must be a feasible business plan for at least three years.
- In the case of FBBs only, the foreign bank must provide to the State Bank a written statement issued by the competent body of the parent company's jurisdiction assuring that the competent body can supervise the overall operations of the branch in Vietnam.
- In the case of FBBs only, the foreign bank must provide to the State Bank a written undertaking to fulfil all relevant obligations of the branch in Vietnam where necessary.
- In the case of WOFBs and JVBs only, the parent banks must also commit to offer financial and technological support to their subsidiaries in Vietnam as well as meeting all legal requirements on minimum legal capital and operational safety.

(e) *Conditions on Vietnamese investors in JVBs*

Circular 03 lists a number of conditions applicable to Vietnamese investors in a JVB. Of note, they must have operated for five years, have been operating profitably for three years before the application for licence of a JVB is made, have minimum assets of VND10,000 billion and have a bad debt ratio under 2%.

Application documents

The application files and procedures are stipulated in detail in Circular 03. Of note:

- Circular 03 now provides that where a foreign investors cannot obtain a document from an authorized body permitting the foreign bank to open because the law of the home country does not have such a requirement, then the foreign investor must provide written evidence that such permission is not a requirement.

This is a welcomed addition because at times it can be difficult to determine what is the relevant authorised body, and even more difficult to obtain an official letter from this body providing the required permission. However, what is not clear under this new circular is who may provide the written evidence: the parent bank, a lawyer practising in the home country, the relevant authorised body or some other body?

- There is a new requirement under Circular 03 that the “authorized body” (undefined) of the home country must certify that the foreign bank complies with the law and certifying the financial status of the foreign bank. In reality in some jurisdictions it may be difficult to find an official body that is willing to provide this certification.
- Another new requirement under Circular 03 is that parent bank must submit a document from an international credit rating organization such as Moodys and Standard & Poor giving the credit rating of the parent bank. It may be difficult to consularize such a document (which is usually computer generated) and we understand the State Bank may be willing to show some flexibility on this point.
- In addition to the feasibility plan, the parent bank must now also submit a report on its history, development and operation including future developments of the foreign parent bank. There is no prescribed form that the report must follow, but this is a good opportunity for the parent bank to impress on the State Bank its size and credibility as well as to highlight what advantages it can bring to Vietnam when it makes its investment.
- There must be a written document from the “competent regulatory and inspecting body” (undefined) undertaking and guaranteeing that it has the ability to supervise the entire operation of the bank, including the operating of the FBB, WOFB and JVB on an overall basis in accordance with international practice. Again, in reality it may be very difficult to obtain this undertaking and guarantee.
- While English documents forming part of the application file must still be consularized, there are now exceptions for:
 - Documents sent directly from an authorized body of the home country to the State Bank. This is a welcome development under Circular 03 because in our experience a lot of prudential and finance regulatory bodies around the world will not issue a letter addressed to the State Bank to the parent bank: they will only send the letter directly to the State Bank. In such case it is difficult to subsequently get such a letter consularized and notarized.
 - Vietnamese translations of annual financial statements do not need to be notarized, instead they only have to be certified by an entity with authority to translate documents (such as Allens Arthur Robinson).

Operation and transaction network

Under the previous regulatory framework, the main operational difference between JVBs and FBBs was that JVBs could open transaction offices (subject to certain conditions), but FBBs could not. The inability of FBBs to provide transaction points outside their branch office was one of the biggest restrictions on operating a foreign owned banking institution in Vietnam.

Now under Decree 22 and Circular 03, the following framework exists:

- FBB: the opening of ATMs outside the head office of the FBB is permitted, but only in accordance with State Bank regulations (yet to be issued) and subject to the LCI. The opening of other transaction points (điểm giao dịch) is not permitted by Circular 03. However, an FBB can open units ‘not conducting transactions with clients’ but only with the approval of the State Bank.
- JVBs and WFOB: the opening of transaction offices (sở giao dịch) (not to be confused with transaction points), branches, representative offices, subsidiary companies and professional units is permitted, but only in accordance with State Bank regulations (yet to be issued) and subject to the LCI. It was hoped that Circular 03 would provide more

information on the framework introduced by Decree 22, but on this point, Circular 03 is completely silent.

A transaction point (điểm giao dịch) is defined in Decree 22 as “a bureau set up outside the office of a [FBB] in order to conduct a limited number of transactions with clients in accordance with [State Bank] regulations”. While Decree 22 provisions were vague and unclear, it now seems under Circular 03 that a transaction point is limited to an ATM. Permitting FBBs to open an ATM network is a BTA requirement.

A foreign bank may open additional branches (article 34 of Decree 22) but to do so all conditions, including the minimum capital requirement, apply to each branch opened.

A transaction office (sở giao dịch) is not defined in either Decree 22 or in the LCI. Under Decision 10903, in the context of JVBs, a transaction office is defined as a section belonging to the JVB, with its own seal, its main operation being raising capital and lending within a locality and conducting a number of other professional banking activities on authorisation. This is obviously more than an ATM.

The LCI stipulates that the following conditions must be satisfied in order for a (foreign or domestic) credit institution to open a transaction office:

- The institution must have written approval of the State Bank.
- The institution has operated for a duration of no less than the minimum duration of operation stipulated by the State Bank;
- Business operations conducted by the institution are profitable; the institution has a sound financial status;
- Administrative and management mechanisms and internal inspection systems of the institution are effectively operated;
- The institution has established an information system capable of meeting management requirements;
- The institution has not committed any breach of the regulations on safety in banking and other relevant provisions of the law.

Similarly to foreign representative offices in other fields, a representative office of a foreign credit institution is not permitted to conduct business activities in Vietnam.

The other sub-forms of operation for WFOB and JVBs - ie branch, subsidiary company and professional unit - are undefined, and it is not clear what the differences between each are.

Duration

FBBs, WFOB and JVBs can now be licensed for up to 99 years. Under previous law, the maximum duration for a FBB was 20 years and a JVB was 30 years.

1.4 BOT Regulations

Summary of Decree 78-2007-ND-CP of the Government dated 11 May 2007 (Decree 78) on investment in the form of Build-Operate-Transfer Contracts, Build-Transfer-Operate contracts and Build-Transfer Contracts (collectively BOT)

Decree 78 replaces Decree 77 dated 18 June 1997 on BOT applicable to domestic investment, Decree 62 dated 15 August 1998 and its amendment, Decree 02 dated 27 January 1999 on BOT applicable to foreign investment.

Decree 78 stipulates the sectors, conditions, order, procedures and incentives applicable to investment projects for development of infrastructure facilities carried out in the form of BOT.

The Government encourages the following types of BOT projects:

- roads, bridges, tunnels and relevant utilities and facilities;
- railways and tramways;
- airports, seaports, river-ports and ferry-landings.

- water plants, drainage systems and waste or sewage treatment systems;
- power plants, power transmission lines; and
- other infrastructure facilities as decided by the Prime Minister.

The equity contributed by an investor in a BOT project must comply with the following ratios:

- for a project with investment capital of below VND75 billion, the equity must not be less than 30% of the investment capital;
- for a project with investment capital of between VND75 billion and VND1,500 billion, the equity must not be less than 20% of the investment capital; and
- for a project with investment capital of VND1,500 billion or more, the equity must not be less than 10% of the investment capital.

A list of projects calling for BOT investment will be published once a year. The list will also be posted on the websites of the relevant ministries and provincial people's committees and will also be published in central and local daily newspapers for three consecutive issues.

With respect to projects on the list of projects calling for BOT investment, domestic or international tenders must be held to select the investor for a BOT project except for the following cases:

- pre-qualification of investors has been done but only one investor satisfies the requirements of the pre-qualification;
- the project must be implemented to satisfy an urgent requirement for use of infrastructure facilities or to ensure a continuous requirement for use of products or services, but the tender cannot be carried out; and
- other cases as decided by the Prime Minister.

An investor can propose a project outside the list of projects calling for investment. Where two investors or more propose the same project, a tender must be held to select the investor.

The relationship between a BOT company and its foreign investor, can be set out in one of the following ways:

- the BOT company together with the foreign investor is a party to the BOT contract; and
- the BOT company can take over the rights and obligations of the foreign investor. The take-over will be set out in an agreement entered into between an authorised State body, the BOT company and the foreign investor. The agreement forms part of the BOT contract.

A lender to a BOT project is entitled to take over a part or all of the rights and obligations of a BOT company to continue implementing the project if the BOT company, or the foreign investor, fails to perform their obligations under either the BOT contract or the loan agreement signed with the lender.

Governing law can be a foreign jurisdiction with respect to foreign invested BOT contracts and related contracts. The body issuing investment certificates to a BOT project is the Ministry of Planning and Investment.

Build-Operate-Transfer and Build-Transfer-Operate enterprises are entitled to corporate income tax incentives like projects on the list of sectors entitled to special investment incentives for the whole duration of the BOT project. A Build-Transfer enterprise will be entitled to the same regime for tax incentives or the tax incentives will be agreed in the contract.

A dispute arising between (1) an authorised State body and a foreign investor, (2) an authorised State body and a BOT company, (3) a BOT company and a foreign individual or organisation or a Vietnamese economic organisation, and (4) foreign investors may be referred to:

- Vietnamese arbitration;
- foreign arbitration; or
- as otherwise agreed in the BOT contract.

1.5 Trading and Distribution

What follows is a summary update on new regulations in the trading and distribution sectors, given that several significant (and somewhat confusing laws have been issued and are in force in this area. The key new legal instruments governing trade and distribution are as follows:

Decree 23

Over the course of the past few months several items of legislation have been issued with respect to this important commercial sector. In our April 2007 Vietnam Legal Update we reported on Decree 23 -2007-ND-CP of the Government Providing Regulations of Commercial Law regarding Purchase and Sale of Goods and Activities Directly related to the Purchase and Sale of Goods by Enterprises with Foreign Owned Capital in Vietnam dated 12 February 2007 (**Decree 23**). Decree 23 sets out the licensing process for foreign invested commercial enterprises to conduct trading and distribution activities in Vietnam implemented in accordance with Vietnam's agreed WTO accession timetable. Decree 23 does not fully clarify certain procedures and a circular is still expected to be issued that will hopefully provide more guidance.

Decree 90

Ancillary to the trading and distribution rights of foreign-invested commercial enterprises set out in Decree 23 are the import and export rights of foreign business entities without a presence in Vietnam. This right was afforded to business entities of WTO member countries as from 11 January 2007, when Vietnam acceded to the WTO, but it took until 31 May 2007 for Vietnam to issue the legislation setting out such rights: Decree 90-2007-ND-CP of the Government Providing for Import and Export Rights of Foreign Business Entities Without a Presence in Vietnam dated 31 May 2007 (**Decree 90**). Decree 90 now permits foreign business entities to import into and export from Vietnam, goods that are permitted for import/export in accordance with Vietnam's schedule of commitments under WTO accession. A foreign business entity will need to complete the application process and to obtain first, a certificate of registration of its right to export and/or import and then, to register a tax code number with the tax authorities before it can start engaging in its import/export activities. The certificate is valid for 5 years, but is renewable. Decree 90 does not regulate distribution activities: only import and export. While a foreign business entity may now import and export goods into/from Vietnam in its own name, it will still need to engage the services of a local distributor (or foreign-invested joint venture distributor) until this service sector opens further.

Decision 10

Pursuant to its obligations arising from WTO accession, Vietnam has provided a detailed "roadmap" for implementing its policies on trading and distribution. Decision 10-2007-QD-BTM of the Ministry of Trade dated 21 May 2007 (**Decision 10**) sets out clearly the investment forms and schedule for implementation of trading and distribution activities. In three appendices to Decision 10 goods are listed which are permitted (and not permitted) for export, import, and distribution along with their corresponding scheduled dates for implementation. This is the most comprehensive listing of goods provided to date and foreign investors with interests in this sector should review these Decision 10 appendices in order to determine exactly what and when they can import, export and/or distribute.

Circular 59

Circular 59-2007-TT-BTC of the Ministry of Finance (guiding implementation of Import-Export duty) was issued on 14 June 2007 (**Circular 59**). Circular 59 repeals most of the provisions of Circular 113-2005-TT-BTC of the Ministry of Finance dated 15 December 2005 (**Circular 113**), especially in respect of the provisions on import and export duties, but the section on customs value stipulated in Circular 113 still continue to apply.

Draft Decree on WTO Commitments

On 29 November 2006, the National Assembly issued Resolution 71-2006-QH11 approving Vietnam's WTO accession protocol in preparation for Vietnam's accession to the WTO on 11 January 2007 (**Resolution 71**). Resolution 71 made sweeping changes and purportedly amended a number of laws to reflect Vietnam's various WTO commitments. The Government is now in the process of building upon Resolution 71 and drafting a decree (**Draft Decree**) that will stipulate the details and provide guidelines for implementing Vietnam's WTO commitments. Among the various commitments, include Vietnam's commitments with respect to trading rights as set out in Paragraphs 146 and 147 of the WTO Accession Report. The commitments of Vietnam in Paragraph 146 regarding the right of foreign business entities to engage in trading without having a presence in Vietnam have already been satisfied by the issuance of Decree 90. Vietnam's commitments in Paragraph 147 of the WTO Accession Report relate only to its obligation not to place any restrictions on a foreign (or foreign-invested) trading enterprise with respect to its selection of a distributor (that has the right to distribute in Vietnam). The Draft Decree is expected to cover these matters in more detail. However, the Draft Decree will not cover distribution rights because these rights, as mentioned in the Draft Decree, are already sufficiently covered by Decree 23.

1.6 Bank Cards

Decision 20-2000-2007-QD-NHNN of the State Bank of Vietnam (SBV) dated 15 May 2007 issuing Regulations on Issuance, Payment and Use of Bank Cards and on Auxiliary Bank Card Services (Decision 20).

After nearly eight years, on 15 May 2007 the SBV finally replaced Decision 371-1999-QD-NHNN1 on Bank Cards.

Under Decision 20:

- There is the inclusion of a new type of card which is a prepaid card.
- Bank cards can now be issued to both individuals and organisations (previously, they were only allowed to be issued to organisations).
- Term of use of credit cards is no longer limited to three years.
- The establishment of risk reserves is required to cover risks arising from the card issuing and card paying business.
- For the first time, Decision 20 allows card issuing entities to grant an overdraft.
- In addition to banks and non-banks, other organisations who are not credit institutions are also allowed to issue bank cards provided those other organisations are licensed by the SBV to carry out banking activities including bank card issuance.

Type of cards

Decision 20 regulates three types of bank cards:

- **Debit card** means a card which permits the cardholder to conduct card transactions within the limit of the money in a deposit payment account opened by such cardholder at a payment services institution authorised to receive on-call deposits.
- **Credit card** means a card which permits the cardholder to conduct card transactions within the credit limit approved, pursuant to an agreement with the card issuing institution.
- **Prepaid card** means a card which permits the cardholder to conduct card transactions within the value of money paid into the card and equivalent to the amount of money paid in advance by such cardholder to the card issuing institution. Prepaid cards include both named prepaid cards and un-named prepaid cards (bearer prepaid cards). The balance in a bearer prepaid card must not exceed the limit stipulated by the SBV; additional money may not be paid into such a card, and a bearer prepaid card may only be used to make payment for goods and services.

Card Issuing Banks

Banks must be authorised by the SBV to issue bank cards. A requesting credit institution must also satisfy the following:

- the card issuance business must be consistent with the operational scope, conditions and objectives of the card-issuing institution;
- compliance with regulations on prudential ratios during operation stipulated by law;
- formulate professional rules for implementing the card issuance business;
- comply with the principles on risk management during electronic banking activities applicable to card issuance business;
- comply with current regulations of the State Bank on internal control and inspection applicable to card issuance business;
- register with the State Bank the type of card and its function, prior to issuance;
- report and provide complete and accurate information and relevant data proving satisfaction of conditions for the card issuance business report completely and accurately the statistical information to service the administrative and regulatory objectives of the State Bank; and
- comply with other provisions in these Regulations.

Additionally, to issue international cards the applicant must also satisfy the conditions stipulated by the SBV for conducting foreign exchange activities.

Scope of use of cards

- Payment for goods and services at card-accepting entities, sending or payment in money or its value, withdrawal of cash, or use of other services pursuant to the agreement with the card-issuing institution within the territory of Vietnam (domestic cards).
- Payment for goods and services at card-accepting entities, sending or payment in money or its value, withdrawal of cash, and use of other services in VND within the territory of Vietnam or in VND, a freely convertible foreign currency and other currencies which the card-paying institution accepts as a currency for payment, outside the territory of Vietnam (international cards).

Currency

- All domestic card transactions must be strictly in Vietnamese dong (VND) or must be converted to VND.
- Withdrawal of cash at ATMs, CDs or card-accepting entities in the territory of Vietnam must be conducted in VND.
- Outside the territory of Vietnam, international card transactions may be conducted in VND, a freely convertible foreign currency or other currencies which the card-paying institution accepts as a payment currency in current transactions in accordance with the law on foreign exchange control.

Reporting regime

- Card-issuing institutions and card-paying institutions should implement the regime of the State Bank on periodical statistical reporting.
- Card-issuing institutions and card-paying institutions should report to the SBV when there is a specific request from the SBV for its regulatory role and in any unusual fluctuation in issuance, payment or debt recovery from cardholders which may affect the operation of the card-issuing institution or card-paying institution.

Confidentiality of information

Card-issuing institutions, card-paying institutions, card-accepting entities and card transaction settling institutions are required to keep confidentiality of information about card transactions and

only disclose information when (i) there is a request from a cardholder, (ii) when there is a request from a card issuing institution or a card-paying institution, or (iii) when the law so requires.

Decision 20 also provides for the rights and obligations of card-issuing organizations, card-paying organizations, card-accepting entities and card holders.

The level of reserves, the method of establishing reserves and the use of reserves are to be implemented in accordance with regulations of the SBV and other relevant laws of Vietnam.

Decision 20 was effective as of 21 June 2007.

1.7 Compulsory Reserve Ratios

Decision 796-2004-QD-NHNN of the SBV dated 25 June 2004 on Adjustment of Compulsory Reserve Ratio with Respect to Credit Institutions

This Decision can be expressed in the following table:

Types of credit institutions	Compulsory reserve ratio in VND		Compulsory reserve ratio in foreign currency	
	Deposits on-call and on terms of less than 12 months should be equal to	Deposit on terms of 12 months to less than 24 months should be equal to	Deposit on-call and on terms of less than 12 months should be equal to	Deposit on terms of 12 months to less than 24 months should be equal to
State commercial Banks (excluding Agriculture bank), urban commercial joint stock banks, joint venture banks, foreign bank branches, financial companies	10% of the total of deposit balances	4% of the total of deposit balances	10% of the total of deposit balances	4% of the total of deposit balances
Rural commercial joint stock banks, cooperative banks, central people credit funds, financial leasing companies	4% of the total of deposit balances of compulsory reserve	4% of the total of deposit balances		
Agriculture bank	8% of the total of deposit balances			

Decision 1141 should be of full force and effect from 1 June 2007 and applies for the compulsory reserve period from June 2007 and replaces Decision 796 dated 26 June 2004 of the SBV.

Part 2 Features

2.1 Securities and Fund Management Companies

On 24 April 2007 the Ministry of Finance (**MOF**) issued the long awaited Decision 27/2007/QD-BTC on the Organisation and Operation of Securities Companies (**Decision 27**). On 15 May 2007, the MOF introduced Decision 35/2007/QD-BTC on the Organisation and Operation of Fund Management Companies (**Decision 35**). Since 1 January 2007, the MOF has not issued any licenses for a securities company (**SC**) or a funds management company (**FMC**). However, as of last month the State Securities Commission (**SSC**) has begun issuing SC and FMC licenses under the new securities law regime framed under the Law on Securities of the National Assembly dated 29 June 2006 (**Law on Securities**). One of the first companies being issued a license under the new regime is the well-known Saigon Securities Company, or SSI, who was granted a FMC license by the SSC. This article sets out the licensing requirement for SCs and FMCs and their scope of business activities.

Licensing

It is understandable why there was a rush in the month of December 2006 to get licensed under the old securities law regime. As was mentioned in our May VLU, the SSC during December 2006 issued 34 SC licenses and 9 FMC licenses. Companies were lining up to get licensed because there was speculation that the rules under the new securities law regime were going to be toughened. Their suspicion turned out to be true as the Law on Securities, Decision 27 and Decision 35 introduced stricter requirements which included:

- (a) Limiting the business line of a SC and FMC. Under the old securities law regime SCs were able to conduct portfolio management and FMCs were able to provide financial consultancy and securities investment consultancy. Those business lines were reconfigured and under the new securities law regime a SC may only engage in:
 - (i) Securities brokerage;
 - (ii) Underwriting;
 - (iii) Securities self-trading (Note that if a securities company conducts self-trading, it can only engage the other business activity of underwriting); and
 - (iv) Securities investment consultancy and financial consultancy.And a FMC may only provide the following services:
 - (i) Securities investment fund management; and
 - (ii) Portfolio management.
- (b) Increased the minimum legal capital required for a SC and FMC. The minimum legal capital required is listed in the summary table below.
- (c) Stricter infrastructure requirement. A SC must ensure that its head office have the following infrastructure:
 - (i) Minimum one year lease for head office premises with at least 150 square meters of space.
 - (ii) Computer system with software capable of performing securities trading and proper office equipment.
 - (iii) Internet website.
 - (iv) Safe and storage system for custody of securities.
 - (v) Fire fighting and prevention system.
 - (vi) Security system.The infrastructure requirement for the head office of a FMC includes:
 - (i) Minimum one year lease of the premises which must have a security system.

- (ii) Office equipment and computer system with software to conduct investment analysis and risk management.
- (d) Increased the minimum qualified professional staff required at the head office. A SC must have at least three qualified securities professional holding proper practising certificates and a FMC must have at least five qualified funds management professional holding proper practising certificates. The practising certificates are issued by the SSC and the SSC is currently deliberating on regulation for a grant of securities and fund management practising certificates.
- (e) Introduced new requirement to ensure that the capital contributors in the SC and FMC have financial capacity and that the capital contribution originates from the contributor and not a result of a nominee arrangement. If the capital contributor to the SC is a corporate entity, the capital contribution amount must be at least equal to the difference between the current assets and short-term liabilities of the capital contributor according to the latest annual audited financial statement. For a FMC, the capital contributor must not have made losses for the previous two years before applying for the SSC license.

The licensing process is a two staged process. Firstly, the SSC will issue an in-principle approval for a SC or FMC license based on the applicant providing a complete application file which includes:

- (a) Approved draft charter by the founding shareholders or members consistent with the model charters.
- (b) Statement on management and staffing.
- (c) Identity of the found shareholders or members and their passports or certificate of incorporation which have been properly legalised or notarised.
- (d) Three year business plan.
- (e) If the owner is a corporate entity the latest annual independently audited financial statement.

Following the in-principle approval the applicant has 6 months to ensure that it complies with the infrastructure requirement and have the relevant legal capital deposited into an escrow account. Once it completes these requirements and the SSC has inspected the infrastructure of the SC or the FMC, the SSC will then issue the full operational and establishment license.

Scope of Business

(a) Funds Management Company

As indicated above an FMC can only manage a securities investment fund and provide portfolio management. Decision 35 prescribes a range of restrictions and conditions on the operations of a FMC including:

- (i) The FMC must separate the assets of each of the funds it manages, each of the investors and assets of the FMC.
- (ii) The FMC may delegate its authority to manage the funds and investment portfolio but such delegation must:
 - (A) not adversely impact upon the interests of the investors;
 - (B) be approved by the investor representative committee of the investment fund and board of the FMC;
 - (C) ensure that the delegate is a financial institution licensed to conduct the delegated tasks; and
 - (D) be reported to the SSC.
- (iii) The FMC must develop internal controls including reporting to its internal control department any securities transactions personally conducted by the staff of the FMC or board members.

- (iv) The FMC must ensure that investments of assets by foreign investors comply with laws on foreign ownership caps.
- (v) The FMC must not be a related person of the custodian or depository bank of the fund it manages.
- (vi) The FMC must not use assets of fund it manages or its own assets to invest in a public fund it also manages.
- (vii) The FMC must keep a register of investors.

(b) Securities Companies

Decision 27 has introduced a common framework for the prudential management of the finances of an SC. The following are the key prudential management requirements of an SC:

- (i) The SC must maintain its liquidity ratio of at least 5% measured against its liquid capital to its total adjusted liabilities. If the SC's liquidity ratio is below 6%, the SC must report to the SSC within 48 hours and take measures to ensure that the ratio does not reduce further. If the liquidity ratio is below 5% it must also report this to the SSC within 24 hours and must cease conducting any new business. The SSC may suspend the operations of the SC if the liquidity ratio falls below 5% for 6 consecutive months.
- (ii) The SC must ensure that its total debt-to-equity ratio must not exceed 6 times.
- (iii) The SC must not invest 20% or more of the total outstanding shares of a listed company or invest 15% or more of the total outstanding shares of a non-listed company.
- (iv) The SC must not use more than 20% of its total assets to invest or purchase shares in another entity.

The business activities of each of the business lines of SC have also been prescribed in Decision 27. Below are a summary of the key operational requirements of an SC placed against each of the business lines.

(i) Securities brokerage

- (A) The SC must open a securities trading account for each of its clients.
- (B) The SC must update its clients on each of their financial situation, investment risks and profit expectations.
- (C) The SC must manage separately deposits for securities transactions of clients from those of the SC.
- (D) The SC must only execute orders of the client after the client has completed an order note. This could be completed via the Internet, telephone or fax, however, the identity of the client must be known.

(ii) Securities self-trading

- (A) The SC must give priority in executing orders from its clients over the trades of the SC.
- (B) If the SC is to execute a substantial order for a client, it must not in advance execute orders for itself using that information or disclose the information to a third party.
- (C) If the SC places a limit order for its client, the SC may not trade the same type of securities until the order of its client has been settled.

(iii) Underwriting

- (A) The SC has not breach the securities law for 6 consecutive months prior to the time of underwriting.
- (B) The liquidity ratio of the SC is more than 5% for 3 consecutive months.

- (C) The SC must not underwrite an issue if it holds 10% or more of the charter capital of the issuer or if 30% or more of the charter capital of the SC and the issuer are held by the same entity.
- (D) The SC must open a separate bank account for the underwriting service.
- (iv) **Securities investment consultancy**
- (A) The SC must not collect and manage certain information about its clients including income, financial position, investment objective, ability to accept risk and investment experience.
- (B) The SC must not advise clients on securities investments without providing complete information to the clients.
- (C) The SC must not provide misleading or untruthful information to entice clients to purchase or sell certain securities.

Foreign participation

Under Vietnam's WTO commitments on services, from 11 January 2007 to 10 January 2012, foreign investors may only joint venture with a local Vietnamese partner to establish a SC or a FMC. After that time, foreign investors may establish a 100% foreign owned SC or FMC. Foreign SCs and FMCs may also establish a representative office. However, it is not until 11 January 2012 that branches of foreign SCs and FMCs may be established. Although under a recent draft regulation on foreign participation in the Vietnamese securities market, certain FMC branches may be established but there is a high threshold. This was discussed in our May VLU.

Summary Table

	Securities Company	Funds Management Company
Business Line	Securities brokerage, underwriting, securities self-trading, securities investment consultancy and financial consultancy (Note that if a securities company conducts self-trading, it can only engage the other business activity of underwriting)	Securities investment fund management and portfolio management.
Minimum Legal Capital	<ul style="list-style-type: none"> Securities brokerage (VND 25 billion or about USD 1.5 million). Underwriting (VND 165 billion or about USD 10.3 million). Securities self-trading (VND 100 billion or about USD 6.25 million). Securities investment consultancy (VND 10 billion or about USD 625,000). 	VND 25 billion or about USD 1.5 million.
Licensing timeframe	In-principle approval by SSC – 30 days after submitting application file. Grant of license by SSC – 7 days after confirmation of deposit of legal capital and meeting infrastructure requirements.	In-principle approval by SSC – 30 days after submitting application file. Grant of license by SSC – 7 days after confirmation of deposit of legal capital and meeting infrastructure requirements.
Other minimum requirements	<ul style="list-style-type: none"> Infrastructure requirements for head office: minimum 1 year lease, floor space of 150 sqm, proper computer systems to execute trade, website, archive system, fire prevention system and security system. 	<ul style="list-style-type: none"> Infrastructure requirements for head office: minimum 1 year lease, computer systems with software for investment analysis and risk management.

	Securities Company	Funds Management Company
	<ul style="list-style-type: none"> • Properly qualified general director and deputy general director. • Must have at least three qualified securities professionals. • Corporate entities that contribute capital must ensure that the difference between the current assets and short-term liabilities for the latest audited financial year is at least equal to the capital contribution to the SC. 	<ul style="list-style-type: none"> • Must have at least five qualified professionals with funds management practising certificate at the head office. • Properly qualified general director and deputy general director. • Corporate entities that contribute capital must not have been making losses for the past two years from the date of the licensing application.

2.2 Summary of laws in relation to domestic funds

Overview

There are two types of domestic funds in Vietnam: public and members' funds. Public funds are further characterised as either an open or closed investment funds. The establishment of domestic funds is regulated by the Law on Securities of the National Assembly dated 29 June 2006 (*Law on Securities*) and Decree 45/2007/QD-BTC of the Ministry of Finance dated 5 June 2007 (*Decree 45*). The State Securities Commission (**SSC**) is responsible for licensing domestic funds and local fund managers which are the only entity that can manage domestic funds.

Public funds

(a) Minimum requirements of public funds

- There must be at least 100 investors, excluding the institutional investors.
- Investors must subscribe to a minimum of VND 50 billion (c. USD 3.125 million) in fund certificates of the public fund.
- The minimum management structure comprises the general meeting of investors, an investor representative committee.
- There must be plans for issuance and investment disclosed in the prospectus.
- There must be a public fund charter and terms of fund management.

(b) Difference between open and closed public funds

According to the Law on Securities the only difference between a open public fund and a closed public fund is that in an open public fund the fund must redeem the fund certificates at the request of the investor, however, redemption is not permitted in a closed public fund.

(c) Investment restrictions

Assets of an open public fund cannot be used to:

- Invest in other funds or fund certificates;
- Invest more than 15% of the value of the securities of an issuer;
- Invest more than 20% of the value of the fund's assets in the securities of an issuer;
- Invest in real estate assets;
- Make a loan or provide guarantee for a loan.

Assets of a closed public fund cannot be used to:

- (i) Invest in other funds or fund certificates;

- (ii) Invest more than 15% of the value of the securities of an issuer, except for Government bonds;
- (iii) Invest more than 20% of the value of the fund's assets in the securities of an issuer, except for Government bonds;
- (iv) Invest in real estate valued at more than 10% of the fund's assets;
- (v) Make a loan or provide guarantee for a loan.

Except for using the assets of a public fund to make a loan or provide guarantee, the Law on Securities allows public funds to deviate from the investment restrictions above but only if the deviation relates to an increase or decrease in the value of the fund's assets.

Closed public funds may invest in the financial assets below.

- (i) Shares of public companies.
- (ii) Government and municipal bonds and corporate bonds.
- (iii) Money market instruments including deposit certificates at credit institutions, treasury notes and 12 months credit notes.
- (iv) Other financial assets in accordance with the law and approval of the general meeting of investors.

Members' Funds

(a) Minimum requirements

- (i) There can only be a maximum of 30 investors.
- (ii) There must be a minimum capital contribution of VND 50 billion from the investors.
- (iii) Assets of the fund must be deposited at an independent depository bank.
- (iv) The minimum management structure is the general meeting of shareholders.
- (v) There must be a charter and terms of fund management.

(b) Investment restrictions

There appears to be no investment restrictions for a members' fund, except it must be in accordance with the charter and other relevant provisions of the law.

Listed Stocks and Brokers on the Securities Trading Centres (STC)

	Hanoi STC	Ho Chi Minh City STC
No. of Listed Stocks	88	108
No. of Listed Bonds	68	184
No. of STC members (Brokers)	46	52

This data was obtained from the websites of the Hanoi and Ho Chi Minh City STCs on 2 July 2007. Interestingly, the statistics indicated that there is about one broker for every two listed stock!

Part 3 Did You Know?

3.1 Effective Date for HCMC Stock Exchange

As reported in last month's VLU, on 11 May 2007 the Prime Minister issued Decision 559/QD-TTg on conversion of HCMC Securities Trading Centre (**HCMCSTC**) into the HCMC Stock Exchange (**HOSE**). We noted that Decision 559 was to take effect 15 days after publication in the Official Gazette. However, the actual effective date for the change was 6 June 2007.

According to officials from the State Securities Commission (**SSC**), it is estimated that by late 2008 the HOSE will operate as a stock exchange. The SSC and the Ministry of Finance are currently working on the rules and regulations for the HOSE.

The Law on Securities sets a deadline of 18 months from 1 Jan 2007 for current securities trading centres to conduct conversion procedures to become stock exchanges or securities trading centre with new regulations of the Law on Securities.

3.2 State Securities Commission

Decision 63-2007-QD-TTg of the Prime Minister dated 10 May 2007 on functions, duties, powers and organizational structure of the State Securities Commission

On 10 May 2007 the Primer Minister issued Decision 63-2007-QD-TTg providing functions, duties, power and organizational structure of the State Securities Commission (**SSC**).

The SSC remains the state agency under the Ministry of Finance, specializing on management of securities and securities market; administrating and supervising securities activities, administrating services activities relating on securities and securities market.

The SSC will be responsible to draft the laws and regulations relating to securities and securities market. The SSC is the agency in charge of issuing, extending, suspending, revoking licences or certificates relating to securities and securities market.

The SSC consists of administrative section (11 departments), professional sections (3 departments) and the professional section subject to conversion (3 departments, being HCMSTC, HASTC and the securities depository centre).

Decision 63 replaces Decision 161/2004/QD/TTg of the Prime Minister dated 7 September 2004 on same subject.

3.3 Code Language?

Under Circular 03 of the Ministry of Planning and Investment dated 19 October 2006 on business registration procedures and Decision 1088 of the Ministry of Planning and Investment dated 19 October 2006 providing sample forms for implementing investment procedures in Vietnam, an application and a business registration certificate must state the "national economic codes" for each sector that the company will engage in. A charter does not seem necessary to follow this requirement.

Currently, the licensing authorities in some cities and provinces have relied on the national economic codes provided under Decision 10 of the Prime Minister dated 23 January 2007 (**Decision 10**). Decision 10 provides a list of economic sectors in which each sector has a code ranging from 2 to 5 digits, depending on whether such sector is broad or specific.

However, these legal instruments fail to specify how many digits of each code are required. The Foreign Invested Enterprises Division of the HCMC Department of Planning and Investment verbally advises to the investors that the each code must have minimum 4 digits. But the Business Registration Division (for domestic enterprises) of the same Department does not require the codes to be included in the applications and the business registration certificates for domestic companies established in HCMC, claiming that the codes do not cover all sectors. This is one of many examples showing that there is still confusion among relevant authorities on the implementation of the Law on Enterprise and the Law on Investment (both effective 1 July 2006).

3.4 General Director of LLC – Who is Eligible?

Under the new Law on Enterprises, a 100% foreign invested company must be established as single member limited liability company (**SLLC**). Article 70.3 of the Law on Enterprises provides various criteria for the General Director of an SLLC. One of the criteria is that the General Director must not be a related person of:

- (i) a member of the Members' Council;
- (ii) the Chairman of the company;
- (iii) the person authorized to directly appoint the members of the Members' Council or the Chairman of the company.

(collectively **Management Persons**)

The vague wording of Article 70.3 raises a question: Can the General Director of an SLLC concurrently be a Management Person.

Technically, the answer should be yes as the law prohibits only related person of the Management Persons from being the General Director and does not expressly prohibit Management Persons themselves from being the General Director.

However, reading Article 70.3 in conjunction with provisions of the Law on Enterprises on the requirements for general director of other corporate forms (ie two member limited liability company or shareholding company) indicates that the answer may not be so definitive.

The following points speak in favour of the position that the General Director of an SLLC is prohibited from concurrently being a Management Person:

- (i) the Law on Enterprise does not stipulate similar restriction in respect of the general director of a two member limited liability company or a shareholding company;
- (ii) the Law on Enterprises expressly allows the general director of a two member limited liability company or a shareholding company to concurrently be the chairman, while it is silent in respect of SLLC.

If the above position proves to be correct, then many existing foreign invested companies may be affected by the provision of Article 70.3 as it is currently a common practice for the General Director in such companies to also be the chairman.

It is expected that this issue will be resolved in the circular of the Ministry of Planning and Investment on implementation of the Law on Enterprises.

3.5 First Visit to U.S. by Vietnam's President

According to newspaper reports, the United States and Vietnam signed a trade and investment pact 22 June 2007 during a landmark visit by Vietnamese President Nguyen Minh Triet. The two former battlefield enemies inked the trade and investment framework agreement or TIFA, prelude to a full blown free trade agreement, on the eve of Triet's talks with US President George W. Bush at the White House on 23 June.

3.6 Vietnam's Largest Insurer in IPO

(Reuters, June 04)

HANOI, Vietnam (Reuters)—Vietnam's biggest insurer, Bao Viet, raised \$272 million through the sale of nearly 9% of its shares in an initial public offering, the Hanoi stock market announced Monday.

Bao Viet's IPO, followed by those of four state-run banks due later this year, is seen as a test of Vietnam's commitment to open its markets as part of its membership of the World Trade Organization, which it joined in January.

Vietnam's insurance sector has grown rapidly in recent years, reflecting the country's robust growth of more than 8% in 2005 and 2006. Growth potential in a country of 84 million people is

significant as Vietnam spent \$10.10 per head on insurance in 2005, compared to \$46.3 in China, industry reports show.

Hanoi-based Bao Viet sold all 59.44 million shares on offer, or a stake of 8.74 percent, at an average price of 73,910 dong in the May 31 auction, the over-the-counter market said in a statement, raising 4.39 trillion dong.

That average price valued the company, formally known as Vietnam Insurance Corp., at \$2.75 billion. Bao Viet forecast its 2007 net profit would jump by almost two-thirds to 524 billion dong (\$32.5 million) as it expands into banking and real estate.

The IPO result was delayed as market staff had to work through the weekend to process the offering after investors sought to buy more than 388 million Bao Viet shares, officials said.

Foreign investors bought 13.6 million shares—all they were allowed to buy at the auction, the Hanoi market said. It did not identify the buyers.

Bao Viet previously hoped to raise \$112.5 million from its IPO, having set a starting price for bids at 30,500 dong each.

Bao Viet claims market leadership in Vietnam's nonlife insurance market, with almost 35% percent, and ranks second in life insurance, with 36.5%, behind Prudential's 41.6% share.

Bao Viet Chairman Le Quang Binh said last month the post-IPO shares would be registered with the stock market, while a domestic listing would follow within two years.

Mr. Binh said the company would also consider listing overseas.

After the IPO, Bao Viet will offer 18% to foreign strategic investors, sell 7.22% to domestic strategic investors, and earmark 0.7% for staff. The state would retain 65.34 percent ownership in the firm

3.7 Vietnam to Finalize WTO Commitments

(5 June 2007– Vietnam Banking Times)

The government of Vietnam made a strong commitment to finalizing its WTO commitments, particularly in the banking sector by allowing the establishment of 100% foreign owned bank branches, Deputy Trade Minister, Le Danh Vinh reaffirmed at the Consulting Group Meeting held in northern Ha Long City. Under Vietnam's WTO commitments, 100% foreign owned bank branches are authorized to be formed from April 1, this year. Ownership limits on foreign strategic partners in JS commercial banks will be raised to 15-20%, from 10%. Vietnam Banking Times newspaper cited Vinh as saying Vietnam's banks are likely to face tough challenges, and risk losing potential retail markets if they do not improve professional capacity and diversify services. Managing director of Citibank, Charly Madan appreciated the Vietnamese government's move, in compliance with WTO commitments. Currently, branches of 37 foreign banks and six joint venture banks operate in Vietnam, where over 40 commercial banks are operating, but five state-run banks control more than 70% of lending. International Monetary Fund said last month that Vietnam, India and China need to tighten monetary control this year because of fast credit growth and rising asset prices. Total loans rose 27% in 12 months to the end of March 2007, according to World Bank data. It is five months since Vietnam became the 150th WTO member, and the country is forecast to suffer a huge trade deficit of \$3.3 billion, up 139% on-year, as imports continue growing faster than exports, according to the Government's General Statistics Office (GSO). The country is estimated to bag \$18.1 billion from goods exports during the five months, up 18.4% on-year, while import spending hit \$21.4 billion, up 26.9%. The high import growth results from the new flow of both domestic and foreign investment in Vietnam after the nation's full WTO membership from January 11, 2007, said GSO economists.

3.8 New Equitization Decree

Decree 109/2007/ND-CP of the Government dated 26 June 2007 on conversion of 100% state owned companies into shareholding companies (**Decree 109**) has just been issued to replace the former Decree 87/2004/ND-CP of the Government dated 16 November 2004 on conversion of

state owned companies into shareholding companies (**Decree 87**) on equitization. We will report on the contents of this new and important decree in the July issue of the VLU.

Part 4 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 new investment-enterprise regime in July 2006, we've adjusted various existing subject categories and added some new ones. In particular:

- ➔ 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-categories within *Investment-Corporate*.
- ➔ we've 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 June include the following:

- ➔ Decision 44 ending refund of special sales tax on foreign trademark cigarettes produced domestically and exported
- ➔ Circular 03 on foreign bank branches, joint venture banks, banks with 100% foreign owned capital and representative offices of foreign credit institutions in Vietnam
- ➔ Decision 35 on fund management companies (in full)
- ➔ Decision 45 on establishment and management of Funds
- ➔ Decision 10 on schedule for implementation of trading and distribution rights
- ➔ Draft Regulations on offshore investment on the Vietnamese securities market
- ➔ Circular 01 on registration of industrial property rights
- ➔ Decree 90 on import and export rights of foreign business entities which do not have a presence in Vietnam
- ➔ Decision 1141 raising compulsory reserve ratios of banks on deposits, dated 28 May and applicable from
- ➔ Decision 20 on bank cards

The list above is merely a snapshot of the wide range of new legislation now uploaded and available on Vietnam Laws Online for January – June 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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