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| |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  |  | | --- | --- | | **Legal News Update - January 2012**  (2012-02-03) | | | |  |  | | --- | --- | | VIETNAM LEGAL NEWS UPDATE  No. 01/2012 | | | **BROSS & PARTNERS LLP**  [**www.bross.vn**](http://www.bross.vn/)    **Practice areas:**  *- Investment*  *- Corporate*  *- Banking & Finance*  *- Securities & Capital Market*  *- Private Equity*  *- Contracts*  *- Real Estate & Construction*  *- Merger & Acquisition*  *- Labour & Employment*  *- Taxation*  *- Debt collection*  *- Litigation & Dispute resolution*  *- Criminal & Civil law*  *- Intellectual property & Copyright*  *- Franchising & Technology transfer*  *- Market survey*    **Contact us:**  *Hanoi:*[*contact@bross.vn*](mailto:contact@bross.vn)  *HCMC:*[*saigon@bross.vn*](mailto:saigon@bross.vn) | *31st January 2012*    **VIOLATIONS OF COPYRIGHT WILL BE FINED UP TO VND 500 MILLION**  *On December 02, 2011, the Government issued the Decree No. 109/2011/ND-CP amending, supplementing some articles of the Decree No. 47/2009/ND-CP dated May 13, 2009 on sanctioning administrative violations of copyright and related rights.*  As regulated in this Decree, for acts of reproducing a work without permission of the copyright holder or the copyright collective representative organization, a fine of between VND 400,000,000 and 500,000,000 shall be imposed in case infringing goods are valued at between over VND 500,000,000;  The Decree also regulates the determination of the value of infringing goods on copyright and related rights as follows: after seizing sanction administrative goods, persons competent to sanction administrative violations must fix a price for defining fine frame, sanction authorities for sanction administrative violations as prescribed.  The value of infringing goods, documents and bases for determining values of infringing goods must be written clearly on the minute of sanction administrative violations and archived.  These amendments and supplements will take effect on January 20, 2012.  **ONLY SIGN CONTRACTS WITH FOREIGN LABORERS WHEN HAVING WORK PERMITS**  *On November 03, 2011, the Ministry of Labor, War Invalids and Social Affairs issued the Circular No. 31/2011/TT-BLDTBXH guiding the implementation of a number of articles of Decree No. 34/2008/ND-CP dated March 25, 2008 of the Government and Decree No. 46/2011/ND-CP dated June 17, 2011 of the Government amending, supplementing a number of articles of Decree No. 34/2008/ND-CP dated March 25, 2008 of the Government defining recruitment and management of foreigners working in Vietnam.*  Prior to the recruitment of foreigners for at least 30 (thirty) days, the employer must inform the labor recruitment demand to be Vietnamese into the positions expected to recruit foreigners on at least 01 (one ) number of central newspaper and at least 01 (one) number of local newspaper by one of the forms such as print press, audio press, visual press or electronic press on the contents. After being granted work permits, the foreigners and the employers must sign the labor contracts in writing in accordance with provisions of the labor law of Vietnam.  Within 05 (five) days calculated by working days from the date of contract labor, the employer shall send a copy of labor contract signed and a copy of a work permit granted to the authority where issued the work permit for foreigner there. The contents of labor contract are not contrary to the contents of their work permit issued.  This Circular takes effect from December 18, 2011 and replaces the Circular No. 08/2008/TT-BLDTBXH dated June 10, 2008 of Ministry of Labor, War Invalids and Social Affairs.  **SETTING UP NO MORE THAN ONE TRADE PROMOTION REPRESENTATIVE OFFICE IN EACH LOCALITY**  *The foreign trade promotion organization is entitled to set up no more than one representative office in one province or centrally run city. The representative office, as a subordinate unit of the foreign trade promotion organization, is not permitted to set up a representative office under it.*  The above contents are stipulated in the Decree no. 100/2011/ND-CP dated 28 October 2011 of the Government providing the establishment and operation of representative offices of foreign trade promotion organizations in Vietnam.  The foreign trade promotion organization may be considered for being licensed to establish a representative office in Vietnam when meeting the two following conditions: being an organization established under foreign laws and having a charter and operation principles and objectives for its representative office which are in accordance with Vietnamese law.  The representative office may act as a liaison office; Carrying out activities to step up trade promotion from abroad into Vietnam and vice versa; supporting foreign enterprises to enter and operate in the Vietnamese market; researching and providing economic commercial and market information to foreign business organizations; boosting foreign trade/cross-border trade with Vietnam and activities to link trade ties between overseas enterprises and enterprises in Vietnam…Representative offices may not carry out profit-making activities directly in Vietnam.  This Decree takes effect on December 15, 2011; Representative offices which are established before the effective date of this Decree may continue their operations and shall carry out procedures for re-grant of representative office establishment licenses under this Decree within six months after the effective date of this Decree.  **PROHIBITED ACTS IN REVOCATION OF LICENSES AND LIQUIDATION OF ASSETS OF CREDIT INSTITUTIONS**  *On October 28, 2011, the State Bank of Viet Nam issued the Circular No. 34/2011/TT-NHNN guiding the order and procedures for revoking licenses and liquidating assets of credit institutions and foreign bank branches; the order and procedures for revoking licenses of representative offices of foreign credit institutions and other foreign institutions engaged in banking activities.*  Under this Circular, after bodies with deciding competence of credit institutions or foreign bank branches approve the revocation of licenses and request credit institutions or foreign bank branches to terminate their operation, these credit institutions and foreign bank branches are prohibited from hiding or dispersing assets; paying unsecured debts; waiving or reducing debt claims; converting unsecured debts into debts secured with their assets; donating, giving as gifts, pledging, mortgaging and leasing assets; and signing new contracts other than contracts for terminating their operation; transferring money and assets abroad.  The decisions on license revocation shall be sent to credit institutions, foreign bank branches, representative offices, State Bank branches, People’s Committees, the Vietnam Deposit Insurance, the National Financial Supervisory Commission, the Vietnam Banks Association and the Ministry of Finance.  Besides, within seven working days after a decision on revocation of the license of a credit institution, foreign bank branch or representative office takes effect, the State Bank shall have the responsibility to publish such decision on its website and on a national daily newspaper for three consecutive issues. The credit institution, foreign bank branch or representative office must post up such decision at its head office and branches (for credit institutions) or its head office (for foreign bank branches and representative offices).  Also, under this Circular, the liquidation time limit for credit institutions, foreign bank branches and representative offices is twelve months after a decision on license revocation takes effect. The process of liquidation will be completed completion in the following cases: the credit institution or foreign bank branch has fully paid debts to its creditors; It is purchased by another credit institution which agrees to pay all debts to its creditors; It is unable to fully pay debts to its creditors or the specified liquidation time limit has expired as regulated.  This Circular takes effect on December 11, 2011; replaces the State Bank Governor’s Decision No. 45/1999/QD-NHNN dated February 5, 1999 and Clauses 40, 41, 71, 72 and 73 of the State Bank’s Circular No. 03/2007/TT-NHNN of June 5, 2007.    **TIGHTENED RULES ON ISSUING CORPORATE BONDS**  *On October 14, 2011, the Government promulgated the Decree No. 90/2011/ND-CP on issuance of corporate bonds. Under the Decree, if bonds are issued to finance programs or projects, the issuer must maintain a minimum equity ratio of 20 per cent of the total investment capital of the program or project.*  Corporate bonds include 3 types: non-convertible bonds, convertible bonds and bonds that are issued under the certificate of deposits, book entries or electronic data. Corporate bonds have a term of one year or more. Like the previous regulations, the minimum par value of bonds must be VND 100,000. Other par values must be multiples of VND 100,000.  For conditions for the issuance of non-convertible bonds, a company issuing bonds must have been in operation for no less than one year and must have been profitable during the years prior to the year of issuance and have its financial statements audited. Besides, as for an enterprise operating in conditional business lines, it must satisfy the required capital prudential ratios and other restrictions ensuring safety during its operation; and the bond issue plan must be approved by the competent authorities.  As for the issuance of convertible bonds or bonds with detachable warrants, in addition to meeting the above requirements, the bond issuers must be in the subjects that are permitted to issue convertible bond or bond with detachable warrants. They must also ensure the foreign shareholding restrictions in Vietnamese enterprises as stipulated in the regulations. Moreover, the enterprise must satisfy the condition that there must be at least a 6 month interval between 2 trenches of convertible bonds.  This Decree shall take effect on December 01, 2011 and replace the Decree No. 52/2006/ND-CP dated 19 May 2006 of the Government on issuance of corporate bonds and the provisions on issuance of corporate bonds on the international capital market in Decree 53/2009-NDCP of the Government dated 4 June 2009 on issuance of international bonds.    **THE STATE WILL HOLD A MORE THAN 50 PER CENT STAKE IN THE FIVE TELECOMMUNICATION ENTERPRISES**  *The Prime Minister signed the Decision No. 55/2011/QD-TTg dated October 14th, 2011 promulgating the list of telecommunications service providers with network infrastructure in which the state holds a more than 50 percent of charter capital or capital contributions.*  Under the Decision, there are the five telecommunication enterprises that will come under State control including:  Viet Nam National Post and Telecoms Group (VNPT), military-run Viettel Group, Viet Nam Maritime Communication and Electronics LLC (Vishipel), GTel Mobile Joint Stock Company (GTel), and Indochina Telecom Joint Stock Company (Indochina Telecom).  Based on the specific situation in each period, the Ministry of Information and Communications will coordinate and cooperate with other relevant ministries to propose the amendments and supplements of enterprises in the list.  The Decision shall take effect on December 01, 2011. | | | | |  | | --- | |  | |  | | |  |  |