

The Brief

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South-East Asia

Editorial

The Gide South East Asia team would like to offer you its very best wishes for a happy and prosperous new Year 2009 – the year of the Buffalo, despite the turbulent global economical context.

What is there to expect in 2009 in South East Asia? Countries in the region will definitely strive to raise their competitiveness and attract more foreign direct investment ("FDI"), as Asia seems less affected by the financial crisis, despite a substantial downfall of its export volume. In the last quarter of 2008, Vietnam already experienced a serious drop in almost every sector, high value products, such as furniture or electronics, being the most affected.

Nevertheless, Vietnam remains among the top ranked countries in Asia in FDI attractiveness, and is even considered as the most attractive emerging market destination in several sectors, like retail market¹. According to a survey conducted by the Asian Business Council, Vietnam is ranked third for investment attraction among Asian nations in the 2007-2009 periods, after China and India.

¹ According to the 2008 Global Retail Development Index (GRDI), a study of retail investment attractiveness among 30 emerging markets conducted by management consulting firm A.T. Kearney



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Vietnamese authorities officially target to attract USD 31 to 33 billion this year (against USD 64 billions in 2008), and the GDP growth rate is planned at 6.5% (against 6.2% in 2008). A rescue package of USD 1 billion shall be disbursed by the governments between 2009 and 2011 to boost investment, domestic consumption and combat economic slowdown. This package shall help borrowing at low costs, with interest rates of 3 to 5% only, depending on the sector. The government will also grant an extension for companies to pay taxes.

After a series of cuts in 2008, Vietnam is still forecasted to further cut the benchmark interest rate in the first quarter of 2009 to 7%-7.5% from the current rate of 8.5%.

Vietnam definitely remains attractive for investors believing in the long term potential of the economy. Vietnamese companies are less and less reluctant to open their capital to foreign investors. The number of deals between foreign and Vietnamese companies doubled in 2008, compared to 2007. Fund management and commercial companies will continue to pursue and complete significant numbers of merger and acquisition deals in 2009, even if we can expect cautious investors and tough negotiations on prices.



VIETNAM

VIETNAM'S REAL ESTATE SECTOR, THE "SLEEPING GIANT"

A 47% return in 24 months. This is the outcome a real estate fund could receive by investing heavily in hotels, resorts and retail spaces in Vietnam¹ in the last few years. Indeed, Vietnam's real estate sector enjoyed a decade of continuous increase of prices, and was expected to boom in early 2008 and boost the country's economy. Property prices in Ho Chi Minh City had doubled in 2007 while USD 5 billion was injected into the Vietnamese property market.

But the strong policy of the Vietnamese government to reduce real estate speculation and overheating, coupled with the worldwide inter-credit banking crisis, triggered a real estate crisis on late August 2008, which caused several real-estate companies to declare bankruptcy. Notwithstanding this situation, investments in the real estate sector have not entirely ended in a deadlock: in particular, the Foreign Direct Investments on this market amounted to USD 28 billion in 2008, three times the 2007 figures! Of course, the State Bank of Vietnam (SBV) proved its willingness to back the sector, deciding last November three cuts in policy rates and two cuts in reserve ratios. At the same time, construction material prices fell by 4.9% as input costs fell and investment slowed.

Today, the difference between current and prospective prices in real estate makes investors consider the sector as a "sleeping giant". This is the opportunity to expose the main legal aspects of Vietnamese real estate as it is time now to take advantage of the present situation.

What are the main features of the land legislation in Vietnam?

Land in Vietnam is mainly regulated by the Land Law of 2003 (Law No. 13/2003/QH11) which was adopted by National Assembly on November 26, 2003 and entered in force on July 1, 2004. Decree

No. 181/2004/ND-CP was issued on November 16, 2004 and provides implementing regulations for the latter.

More generally, Vietnamese legislation is based on the simple principle (which may however prove difficult to operate in practice) that land is the property of the people and subject to the exclusive administration of the State. Departments of the Ministry of Natural Resources and Environment are in charge of the management of land use rights ("LURs"), which can be granted to individuals and legal entities. The distinction between the land and the assets attached to it is essential to understand the real estate legislation in Vietnam.

The granting rules of LURs vary depending upon whether or not the land user is Vietnamese. In practice, land users are classified into three main types as follows: (i) Vietnamese individuals and organizations, (ii) overseas Vietnamese and (iii) foreign investors, whose rights on land are strictly limited.

But if there is no right to own the land yet, this prohibition is counterbalanced by a certain flexibility on leasing rights.

What are the rights of foreign investors leasing land?

Foreign land users may be issued certificates of land use rights and enjoy the benefits from their investment on land, but are only entitled to lease the land from the Government. Their rights on the leased land vary depending on the payment arrangement of land use fees. Under a land lease with annual rental payment, foreigners are not allowed to transfer, sublease or mortgage their LUR. On the contrary, when a one-off payment of rentals for the entire lease term has been performed, land users are entitled to the following:

- transfer LURs and assets attached to the land (foreign investors with annual rental payment may only transfer assets attached to land);
- sublease land and assets attached to the land;
- contribute LURs and assets attached to the land as capital to joint ventures (foreign investors with

¹ As reported in *Forbes Asia*, dated July 21, 2008, "Risk Premium" about Vinaland, a real estate fund launched in 2006.



annual rental payment may only contribute assets attached to land);

- mortgage or guarantee LURs and assets to credit institutions in Vietnam during the term of the lease (foreign investors with annual rental payment may only mortgage or guarantee assets attached to land).

What about real estate activities of foreign investors?

Regulations on real estate business are provided for in the Law on Real Estate Business (No. 63/2006/QH-11) of 2006, entered in force on January 1, 2007 (the "**Law on Real Estate**"), its implementing Decree No. 153/2007/ND-CP dated October 15, 2007 ("**Decree 153**") and Circular No. 13/2008/TT-BXD dated May 21, 2008.

According to the Law on Real Estate, real estate business activities include (i) real estate business comprised of investment to create, purchase, assign, lease and hire purchase of real estate for the purpose of sale, re-assignment, lease, sublease and hire purchase to gain profits, and (ii) real estate service business comprised of activities to serve and assist real estate business and real estate market including brokerage, advising, valuation, auctions, advertisements, management and real estate trading floor services. Operating in the real estate business or services is mainly reserved to duly registered corporate or cooperative entities with a share capital of at least USD 375,000.

However, rights of foreign individuals, organizations and overseas Vietnamese related to business in real estate are subject to restrictions. Specifically, such investors may only invest in the building of houses, construction works for sale, lease and hire purchase, in land improvement and infrastructure systems on leased land in order to sublease the land.

The scope of these activities is expected to be extended in forthcoming regulations, in consistence with Vietnam's undertakings linked to international treaties, but today serious restrictions still remain: the ownership by foreign individuals for example is still very restricted, despite the Resolution No. 19/2008/QH12 of the National Assembly, dated June 3, 2008, establishing a Pilot Scheme allowing

foreign ownership of residential houses for the first time in Vietnam.

This Pilot Scheme unfortunately applies only to non-diplomat foreign individuals residing in Vietnam and holding a visa for over one year and falling into one of the following four categories:

- foreign individuals investing directly in Vietnam in accordance with Vietnamese investments laws or holding a management position in Vietnam;
- foreign individuals who have been cited by the Vietnamese government for their contributions to Vietnam (medals, honors, etc.);
- foreign individuals holding special technical skills needed in Vietnam; and
- foreign individuals married to Vietnamese nationals.

Foreign individuals falling into the above categories will then be allowed to own one apartment in a commercial housing development project for duration of fifty (50) years which may be renewed once. The foreign apartment owner may sell the apartment within months following the issuance of an ownership certificate, but may not lease the apartment.

Still very restrictive, this plan proves a fundamental progress in Vietnamese government policy and is likely to further progress in the coming years.

Regarding real estate business services, both domestic and foreign entities are entitled to intervene in different activities such as real estate brokerage, trading floor or consultancy services, with much less restrictive rules.



DISTRIBUTION: OVERVIEW ON VIETNAM'S LEGAL FRAMEWORK

Distribution is a sector that has been closed to foreign investors in Vietnam for a long time. Vietnam's WTO entry opens up new possibilities in this sector. However, companies are still facing difficulties in getting permission to engage in distribution related services even where Vietnam's WTO commitments allow them to do so.

General Legal Framework of Distribution Services in Vietnam

A series of regulations govern distribution services in Vietnam, including:

- Law on Investment dated November 29, 2005;
- Law on Enterprises dated November 29, 2005;
- Decree No. 23/2007/ND-CP of the Government dated February 12, 2007 providing regulations for the implementation of the 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 ("**Decree 23**");
- Decree No. 12/2006/ND-CP of the Government dated January 23, 2006 providing guidelines for the implementation of the Commercial Law regarding international goods sale and purchase and goods sale, purchase, processing and transit agency activities with foreign countries ("**Decree 12**");
- Decision No. 10/2007/QD-BTM of the Ministry of Trade dated May 21, 2007, providing roadmaps for goods trading and directly related activities ("**Decision 10**");
- Decree No. 72/2006/ND-CP of the Government dated July 25, 2006 providing detailed regulations for the implementation of the Commercial Law with respect to representative office, branch of foreign trader in Vietnam ("**Decree 72**");
- Circular No. 09/2007/TT-BTM of the Ministry of Trade dated July 17, 2007 providing implementing guidelines on Decree No. 23/2007/ND-CP of the Government dated February 12, 2007 implementing the Commercial Law regarding trading and

distribution activities by enterprises with foreign owned capital in Vietnam ("**Circular 09**");

- Circular No. 05/2008/TT-BCT dated April 14, 2008 of Ministry of Industry and Trade amending and supplementing Circular 09 ("**Circular 05**").

Definition of "*Distribution activities*"

Under Vietnamese law (c.f. Decree 23), *Distribution* means activities of (i) wholesaling, (ii) retailing, (iii) agency for purchase and sale of goods and (iv) franchising.

"*Distributive trade services*" are defined in the UN classification as activities of "selling merchandise to retailers, to industrial, commercial, institutional or other professional business users, or to other wholesalers, or acting as agent or broker (wholesaling services); selling merchandise for personal or household consumption including services incidental to the sale of the goods (retailing services)".

The definition of the UN classification of retailing activities (CPC 631, 632) do not refer to the sale of industrial products and the purpose of retailing under the UN Classification is only for personal and household consumption. Meanwhile, Decree 23 provides that "*retailing means the activity of selling goods directly to the final consumer*" when "*goods*" is defined very broadly in the Commercial Law to include (i) all types of moveable assets, including moveable assets to be formed in the future; (ii) objects attached to land. Hence, the concept of "*retailing*" under Vietnamese law is broader than scope of *retailing* under the UN classifications.

Distribution agreement with a Vietnamese company

The classical option for a company based outside Vietnam is to sell its products directly to a Vietnamese distributor previously identified through a representative office. A representative office may be used for business development purposes and to conduct *in situ* market studies. It could also be used as a consumer service supply platform (after sales service, maintenance, etc.).



Distribution via branch in Vietnam

Decree 72, which was promulgated on July 25, 2006, provides in principle for the potential establishment of branch offices of foreign companies in Vietnam for the purposes of trading and distribution. Before such a branch can be established in Vietnam, the company must have entered into an international treaty to provide for such rights and/or to have provided domestic implementing regulations for the establishment of branches. As of today, Vietnam has not provided any commitment for the establishment of a trading or distribution branch under any international treaty and has not implemented any domestic regulations providing for the establishment of such a branch. Therefore, it is currently not possible in practice for a foreign company to open a branch office in Vietnam to carry out trading and distribution activities.

Setting up a Vietnamese corporate entity

Distribution rights of foreign invested manufacturing enterprises in Vietnam

Enterprises with foreign owned capital shall be permitted to directly sell their own products which they have manufactured in Vietnam by wholesale, retail or via agents as an activity which is ancillary to the manufacturing activity authorized in the investment certificate (without expressly authorizing distribution activity). Sale of products by such companies is not only constrained as regards the geographical area or the State control over prices of goods and services; but in cases where goods or services are managed by the State fixing their prices, the framework of prices as announced by the competent State body must be applied.

Distribution rights as an independent intermediary activity

Vietnam's WTO commitments for distribution services are as follows:

- as of the accession to the WTO, it is possible to establish joint venture companies between Vietnamese and foreign partners (foreign party's capital share may not exceed 49%);
- as of January 1, 2008, the restriction on the foreign party's contribution to the capital of the joint venture company had been abolished;

- as of January 1, 2009, it is possible to create wholly-foreign-owned companies.

Some goods are excluded from the commitments of Vietnam to the WTO in the distribution sector: cigarettes and cigars, books, newspapers and magazines, video records in whatever medium, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar. Pursuant to Decision 10, foreign investors are prohibited from distributing these goods in Vietnam.

Some goods considered to be "sensitive" are subject to special treatment, such as cement, tires (excluding aircraft tires), paper, tractors, motor vehicles, cars and motorcycles, iron and steel, audiovisual equipment, wines, spirits and fertilizers. These markets will be opened up to foreign investors on a step by step basis.

Issues and Impediments

The systematic intervention of authorities when opening additional retail outlets gives them a wide power of discretion.

Economic Needs Test (ENT)

Each proposed creation of an additional retail outlet by foreign investors will be subject to an "economic needs assessment" and will therefore be reviewed on a case by case basis. The main criteria include, in particular, the number of existing service suppliers in a particular geographic area, the stability of market and the geographic scale. These criteria appear to be very broad and general, Vietnamese authorities have wide discretion in approving or refusing the application of the foreign investors to open retail sales outlet.

Regulatory backdrop

- Official letter No. 6446/BCT-KH of the Ministry of Industry and Trade dated July 25, 2008 provides that a 99% foreign owned joint venture companies is "*not feasible*", introducing a proposed approach for licensing authorities- assessing the "*feasibility of the project*" when considering the issuance of a license in distribution sector.



- Official letter No. 9332/VP-DT of People's Council and People's Committee of Ho Chi Minh City introduces a new policy regarding foreign investment in the import/export and distribution sector. The new policy is to "encourage" a minimal charter capital of USD 1,000,000 (one million) for any new foreign invested import/export and distribution companies. Furthermore, the DPI is to "discourage" any investment of less than USD 200,000. Projects falling in between will be "considered carefully".

The above official letters show the reluctance of Vietnamese authorities in granting licenses in distribution services business. The letters though have no official legislative authority, but nevertheless guide the practice of government authorities.

Conclusions

Vietnam's distribution market is officially open from January 1, 2009. However, some licensing authorities are reluctant to grant licenses in distribution service business; new restrictive policies were introduced recently. Therefore, it remains to be seen what additional requirements will be imposed in the context of applications to establish distribution businesses in Vietnam in 2009.

CORPORATE INCOME TAX: LATEST AND OVERVIEW

The Corporate Income Tax Law 2008 ("CIT Law 2008") was issued on June 12, 2008 and comes in full force as from January 1, 2009, replacing the Corporate Income Tax Law No. 09/2003/QH11. On December 11, 2008, the Government issued the Decree No. 124/2008/ND-CP providing guidance to the CIT Law 2008.

Significant changes in Corporate Income Tax regime

The CIT Law 2008 provides for several important changes as following:

- *Scope of application:* The CIT Law 2008 only applies to taxpayers operating in a corporate form, whereas individuals earning business income now are subject to the Personal Income Tax in

consistency with the new Personal Income Tax Law which also takes effect on January 1, 2009. The new Law reiterates that enterprises established in Vietnam must pay tax on taxable income arising in and outside Vietnam. Foreign enterprises shall be subject to tax on income earned in Vietnam whether or not they have established as a resident.

- *CIT Rate:* The standard corporate income tax rate has been reduced from 28% to 25%. Such decrease has been ordered to increase Vietnam's competitiveness in the region. The CIT rate applicable to activities of prospecting, exploration and mining of petroleum and gas and other rare and precious natural resources ranges from 32% to 50%, depending on each specific project and business establishment (amended from the previous 28% to 50%).
- *Tax incentives:* The revised incentive regime provides two preferential tax rates, the 20% tax rate which will apply for 10 years and the 10% tax rate which will apply for 15 years; the new Law dropped the 15% tax rate.
- The 20% tax package will include additional incentives like a CIT exemption of up to two years and a CIT reduction of 50% for up to four subsequent years. Its beneficiaries are new business establishments from investment projects which are implemented in a region on the list of geographical areas with difficult socio-economic conditions.
- The 10% tax package includes a CIT exemption of up to four years and a CIT reduction of 50% for up to nine subsequent years. Its beneficiaries are newly established businesses from investment projects operating in education, health care, sport/culture, high technology, environmental protection, science research and technology development, infrastructural development, computer software manufacture or operating in economic zones, high-tech zones and in a region on the list of geographical areas with difficult socio-economic conditions.

There will be no tax exemption and reduction for "business expansion", with the exception of accelerated depreciation. Relocated enterprises are no longer entitled to enjoy tax exemption and reduction like before.



- *Deductible expenses:* The new Law contains a general deductibility clause that allows expenses to be deductible if they
 - relate to the production or trading of the enterprise;
 - are properly substantiated (i.e accompanied by complete invoices and source vouchers); and
 - are not specifically identified as being non-deductible.
- *Tax exemption/reduction:* The new Law also provides for additional cases of tax exemption, such as aid funds receivable for use in educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam and income earned from activities of production and/or business in goods and services by enterprises specially reserved for employees being reformed addicts and people infected with HIV.
- *Advertising and Promotion expenses:* The 10% cap on advertising and promotion (A&P) expenditure continues to exist in the new CIT Law. However, newly-established enterprises will be allowed a 15% cap on A&P expenses for the first three years from establishment (not commencement of operations as before).
- *Research and Development Fund:* From 2009, enterprises can appropriate up to 10% of annual profits before tax to a Research and Development Fund (R&D). However, if the R&D funds are only partially utilized (less than 70%) or are utilized for a different purpose within 5 years, the enterprise shall pay the corresponding CIT and interest rate charges.
- According to the new Law, the tax payers who have branches in different provinces are required to allocate the tax payment to the respective provincial tax authorities in the locations where it has branches.
- The new Law does not retain the surtax on gains on transfer of land use rights/ land lease rights, instead, the Decree 124 has one chapter on the income on real estate property transfers.

Latest regulations to cope with economic crisis

In order to alleviate the economic downturns and relieve hardships for enterprises, on January 21, 2009 the Prime Minister issued Decision No. 16/2009/QĐ-TTg ("**Decision 16**") issuing tax solutions for implementing the policy in stimulating investment and sales. According to the Decision 16, aside from reducing 50% of VAT for a number of goods and services, the time for tax payment of the CIT in 2009 will be extended by 9 months in the following sectors:

- Manufacture of mechanical engineering products being means of production.
- Manufacture of building materials comprising the various types of bricks and tiles; and lime and paint. Construction, assembly and installation.
- Tourism services.
- Food products business.
- Fertilizer business.

ENVIRONMENT: VIETNAM'S LEGAL FRAMEWORK

Environmental concerns constitute delicate issues for developing countries, especially for those who have launched industry plans in the last two or three decades. With the constant need to attract foreign investment and maintain growth rates on the one hand and international pressure on environmental issues and local victims on the other hand, these countries, including Vietnam, are now facing serious challenges.

Vietnam has opted for a rapid industrialization of its economy, which has been effective for its development but relatively detrimental for its environment. Numerous scandals have recently revealed not only the lack of regulation but also the weak implementation of existing rules. Korean and Taiwanese companies notably have lately been condemned to pay substantial administrative fees amounting up to VND 15 billions².

² Vedan notably, which has been rejecting waste water in rivers for years has been condemned last year to pay VND 127 billions as recovery for the taxes on waste water rejection it has never paid in 14 years.



Others have been forced to indemnify victims of their polluting activities, such as aquacultures who suffer the rejection of non treated water. However, the amounts at stake are still relatively low compared to benefits these companies generate.

Today, the authorities (and, to a certain extent, the population) acknowledge a critical need for a better environmental protection. Nobody denies that this could only be achieved with a relevant, severe and improved legal framework governing polluting activities. Mostly, the two main issues of Vietnam environmental protection policies so far are the amount of the penalties and the weak implementation of existing rules (including inefficiency if not absence of inspections).

Regulation of the environment in Vietnam is primarily governed through the Law on Protection of Environment No. 52/2005 ("**Law on Environment**"), dated November 29, 2005, and entered into force on July 1, 2006.

The Law on Environment implements a system of national environmental standards, including environmental quality standards for the establishment of new companies.

The Vietnamese criminal code also contains a few articles dealing with breaches of environmental regulations and the pollution of waters or destruction of aquaculture resources³. It establishes quite severe imprisonment sentences of one to five years term for the most serious cases.

Vietnam has also recently adopted its own Agenda 21 on sustainable development and created a national council to supervise its implementation.

Requirements for new investment projects

The Law on Environment provides that projects, depending on their lines of business, must either undergo an "environmental assessment" or provide an "environmental protection undertaking" at the time of applying for a business license.

³ And *inter alia*, Articles 172 (Breaching regulations on natural resource surveys, exploration and/or exploitation), 175 (Breaching regulations on forest exploitation and protection), 182 (Causing air pollution), 183 (Causing water source pollution), 184 (Causing land pollution), 188 (Destroying aquatic resources), 189 (Destroying forests), 190 (Breaching the special- protection regime for nature preservation areas).

Environmental Impact Assessment Reports

Projects subject to environmental impact assessment report⁴ requirements include, *inter alia*, large scale projects such as projects for exploitation of natural resources (water, oil, gas), projects for the development of all kind of Industrial Zones, projects for telecommunications infrastructure, construction, and more generally all projects with a potential risk of causing an adverse impact on the environment (article 18 of the Law on Environment).

Such assessment report (the "**Report**") must be submitted together with an official letter from the project owner requesting appraisal and the feasibility study of the project by the project owner before commencement of the project. The Report shall list and detail the description of items of works of the project together with their scale in terms of space, time and workload; operational technology of each item of work and of the entire project. It shall also contain project specifications, operational technology of the project, measures to minimise negative effects on the environment, an undertaking to apply environmental protection measures during the construction and operation phases, and opinions of the local People's Committee where the project is carried out.

Once finalized, the Report may be appraised by an environment assessment service agency or an appraisal board organized by the People's Committee of the province or the city under central authority where the project is carried out. Depending on the project, a time-limit of thirty (30) to forty five (45) working days from the date of receipt of a complete and valid application file is applied for appraisal of projects. The projects may be approved and issued with an investment licence, construction permit or operational permit only after approval of the Report.

After approval of the Report, the project owner must publicly list a summary of the approved Report, and must also provide a copy of the approval to the local authorities.

⁴ See also Circular 05/2008/TT – BTNMT, providing implementing guidelines on Strategic Environment Assessment Reports, Environmental Impact Assessment Reports and Environment Protection Undertaking and Decision 19/2007/QĐ-BTNMT which stipulates the conditions and operations of assessing service on environmental impact report.



Environment Protection Undertakings

Pursuant to the Law on Environment, manufacturers and business and service establishments not covered by a compulsory environmental impact assessment report must provide an undertaking to protect the environment to be registered before the commencement of an investment project.

The application file for registration of an environmental protection undertaking shall contain the environmental protection undertaking and a feasibility study report or project investment explanatory report. The contents of the undertaking must include (i) the location of the Project's performance, the form and scale of manufacturing, business or provision of services and the raw materials and fuel used, the types of waste produced and (ii) undertakings to (a) apply measures to minimise and treat waste and (b) comply with the Law on Environment. The written environmental protection undertaking must be registered with the local district People's Committee where the project is located before commencement of the project.

After receipt of a complete and valid application file and within the time limit of 5 working days, the District People's Committee or the authorized level People's Committee will be responsible for issuing a certificate confirming registration of an environmental protection undertaking.

Inspections

The chapter XIV of the Law on environment establishes an *Environmental Protection Inspectorate*, under the Ministry of Natural Resources and Environment, which shall supervise environmental protection activities and inspect environmental protection by manufacturing business and services establishments subject to Environmental Impact Assessment Reports.

Moreover, Decision No. 1899/2006/QĐ-BCA dated November 29, 2006 has established a new Department of police for environment protection. This police department is under the authority of the Ministry of police, and has been set up jointly with the Ministry of Natural Resources and Environment. This new police department is entitled to impose penalties amounting to VND 500 millions at maximum. But it has not yet

been granted the competence to arrest individuals or sequester goods of the infringing company.

Taxes, fees versus incentives

Environment Tax: applicable to organizations and individuals producing goods that have negative environmental and health consequences, the National Assembly to decide the list of goods subject to environment tax.

Environment Protection Fees: organizations and individuals discharging waste, the result of which would cause negative effects to the environment, must pay environment protection fees. The Ministry of Finance publishes the fees in co-operation with the Ministry of Natural Resources and Environment.

At the same time, companies that are willing to invest in waste water treatment or solid waste recycling infrastructures shall benefit from incentives such as a 50% discount on their electricity bill, as well as on costs related to land, including the rent, and on waste transportation costs. Finally, the environmental sector benefits from the lowest CIT rate of 10%.

Environmentally-friendly establishment

An "environmentally-friendly" establishment is defined as one satisfying the following requirements:

- complies strictly with the law on protection of the environment and has been certified as satisfying environmental standards;
- has policies for product control throughout the entire process of the existence of the products and for control of waste matter which comply correctly with law, and in which more than 70% of the volume of waste materials is recycled or reused;
- has been issued with certificate ISO 14001 on environmental control and successfully applies such certification;
- saves more than 10% of raw materials, energy, fuel and water used as compared with general consumption levels;



- participates in and has made a positive contribution to the program for increasing public awareness of protection of the general environment and of the communal environment;
- the community in the locality of the establishment does not oppose its recognition as an environmental friendly establishment.

According to a very recent decree of 2009 (Decree No. 04/2009/ND-CP), "environmentally friendly establishments" shall also benefit from incentives granted to companies operating in the environment sector, as listed above.

Environmental Protection Fund

According to Decision No. 35/2008/Q –TTg of March 3, 2008, enterprises, organizations and individuals are encouraged to establish environmental protection funds, at central and local levels and in all industries and sectors in order to support environmental protection activities. Environmental protection funds shall benefit from resources from the State budget, environment protection fees, compensation for environmental damage, administrative monetary penalties and contributions from domestic and foreign organizations and individuals. Such funds are perfect vehicles to support and advertise a company's green policy.

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