

**DC** LAW  
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# NEWSLETTER

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## Legal News

*During this March of 2010, the Government has offered the legislations below to pursue the simplification of the administrative procedures and to provide additional helps for businesses to grow in Vietnam, one of which is the elaboration of the process for indemnification to those who are suffered due to wrongdoings committed by judicial agencies.*

### 1. Regulation of negotiated VND lending interest rates

On February 26, 2010, the State Bank of Vietnam issued Circular 07/2010/TT-NHNN ("Circular 07") regulating VND lending interest rates which can be negotiated by credit institution with clients. Circular 07 will now replace Circular 01/2009/TT-NHNN dated on January 23, 2009 on lending at negotiated interest rates for everyday living and on credit provision via issuance and use of credit cards, and guidelines on Circular 01; and Decision 16/2008/ QD-NHNN dated on May 16, 2009 on the mechanism for operating the basic interest rate in VND. In details of Circular 07, credit institutions shall only be allowed to provide VND loans at negotiated interest rates to clients on the two cases:



1. Medium and long-term loans for capital requirements for development of production, business, services and investment.
2. Short, medium, and long-term loans which directly serving daily needs of clients, and loans via the use of credit cards.

Credit institutions shall be allowed to control the credit limit applicable to any client and the sector for VND loans at negotiated interest rates. Also, the credit institutions shall forward the State Bank of Vietnam a monthly report on VND loans they have provided at negotiated interest rates.

This Circular shall be full force and effect as from the date of its signing.

## 2. Certificates of free sale applicable to import and export goods

On February 10, 2010, the Government issued Decision 10/2010/QĐ-TTg to regulate certificates of free sale (“CFS”) applicable to import and export products and goods. In details, goods manufactured in Vietnam for export shall be issued a CFS when they satisfy both of the following conditions:

- 1) A request from the exporter;
- 2) Standards have been announced as applicable with current law.

Once the CFS is issued, it shall be valid for two years from the date of issuance. Also, the CFS shall be printed in English and contain the following minimum items:

- Name of the CFS-issuing agency;
- Reference number of the CFS;
- Date of issuance of the CFS;
- Name of the goods for which the CFS is issued;
- Type or group of goods for which the CFS is issued;
- Name and address of the manufacturer;
- The CFS must then specify that goods were manufactured and are permitted to be freely sold on the market of the exporting country;
- Full name, position, and signature of the person issuing the CFS and seal of the CFS-issuing agency.

If an importing country requires business entities to lodge a CFS on the standard form which such country issues, then CFS-issuing agencies of Vietnam may issue their own SFC form based on such standard form requirement of the importing country.

A CFS must be issued no later than five (5) business days from the time when the CFS applicant lodges a complete and valid file. Nevertheless, in the case when a CFS is lost, damaged, or destroyed, an exporter may lodge a request with the CFS-issuing agency to issue a certified copy of the original CFS. A CFS shall be re-issued no later than five (5) business days when the CFS applicant lodges a file with the CFS-issuing agency requesting a certified copy of the original CFS.

A CFS shall be revoked from the exporter in the following case:

- The exporter or CFS applicant falsified vouchers;
- The CFS was issued for goods which fail to comply with the standards announced;
- The CFS was issued without authority.

The Ministry of Finance shall be responsible for providing all the detail fees and charges payable for CFS issuance.

This Decision shall be full force and effect as from May 1, 2010.

### **3. Draft on employment and administration of foreigners working in Vietnam**



The draft is the proposal to amend Decree 34/2008/ND-CP on employment and administration of foreigners working in Vietnam. According to the draft, any foreigner with experience in an occupation or trade must have a document certifying that he/she has at least five year experience in such occupation or trade. On the other hand, the Vietnamese investor must then report to the local Department of Labour on the status of recruitment, employment, and administration of foreigners. Also, each year employers must register their plan on employment of foreign employees with the Department of Labour.

However, foreigners in Vietnam including students and spouses who wish to work for an enterprise, organization, or individual in Vietnam shall not be required to obtain a work permit. In seven (7) days prior to the date on which the foreign employees will commence work, the enterprise, organization, or individual employing such foreigners must provide a report to the local Department of Labour where such foreigner will work.

This Draft is proposed to be effect as from July 1, 2010.

#### 4. Regulations on the function of Land Use Right Registration Offices

Land Use Right Registration Offices shall be established in provinces and cities under central authority (of provincial level) and in districts, towns and cities under provincial authority (of district level) according to the guidelines in the Joint Circular No. 05/2010/TTLT-BTNMT-BNV-BTC dated March 15, 2010 of the Ministry of Natural Resources and Environment, Ministry of Home Affairs and Ministry of Finance.



These are public administrative agencies having the function of organizing the implementation of registration and issuance of land use right certificates and certificates of ownership of housing and other property attached to land; revision of changes in land use, housing and other property attached to land, development and management of cadastral records in accordance with the laws.

According to this Circular, a provincial-level Land Use Right Registration Office shall perform procedures for issuance of land use right certificates and certificates of ownership of housing and other property attached to land within a province for organizations, religious establishments, Vietnamese people permanently residing abroad (except for those who are permitted to own houses in Vietnam), foreign organizations and foreign individuals; registration of land use right and ownership of housing and other property attached to land for organizations, religious establishments, Vietnamese people permanently residing abroad (except for those who are permitted to own houses in Vietnam), foreign organizations and foreign individuals. A district-level Land Use Right Registration Office shall perform procedures for issuance of certificates within a district for households, individuals and Vietnamese people permanently residing abroad but permitted to own houses in Vietnam; registration of land use right and ownership of housing and other property attached to land; revision of changes in land, housing and other property attached to land for the residential community, households, individuals and Vietnamese people permanently residing abroad but permitted to own houses in Vietnam.

## 5. New Decree in the State Indemnity Law

Decree No. 16/2010/ND-CP dated March 3, 2010 of the Government stipulates in details and provides guidelines on implementation of a number of articles of the State Indemnity Law.

According to this Decree, as of April 20, 2010, any public affairs executor deliberately causing damages but not so serious as to be prosecuted for criminal liabilities shall refund in full the amount of money the State has indemnified the victim, to the maximum value not exceeding 36 months' salary of such person, at the time of decision on such refund. The State shall not indemnify for damages occurring objectively, unforeseeably and irreparably although the public affairs executor has applied all necessary and possible measures.

The Decree shall be full force and effect as of April 20, 2010.



## Legal Advice

### QUESTIONS:

We understand your company intends to wind down and you want to know how to lay off employees as a step of the winding down process.

#### **1. When should staff be informed of laying off?**

The labour laws of Vietnam provide tersely that an employer may unilaterally terminate a labour contract due to winding down (Article 38 of the Labour Code). For proceeding with it, we have to refer to job loss due to organisational restructuring and technological changes, and provide guidelines on an analogous basis.

The company must inform the local trade union (operating at the business) on the lay off and then notify the local labour department. Winding down is a must to the company; therefore, the trade union or the labour department cannot stop the company's decision. Only after 30 days from the date of notifying the labour department, may the lay off take place (Article 17 of the Labour Code and Official Letter No. 3772/LDTBXH-LDVL of the Ministry of Labour, Invalids, and Social Affairs ("the MOLISA") dated 22 October 2003).

Sometime, before the 30 day notified period, the company should inform the employees of the winding down and entitlements they will get. This will enable them to find another job and to save the company from potential challenges with them later on. Among the employees, there would be those whose contracts expire on or about the date of winding down. Therefore, the company should make a list of employees classified by their time of contract expiration.

#### **2. How about payment for lay off?**

The employer must pay an allowance for loss of work equivalent to the aggregate amount of one month salary for each year of employment but no less than two months' salaries. The period of time used to determine the allowance is the total time that the employee actually has worked for the employer, including probation period (Article 17 of the Labour Code).

It is noteworthy to distinguish between allowance for loss of work and severance pay due to expiration of contract. The former is one month salary for each year of service while the latter is half a month.

In the preceding section we mention the list of employees classified by their contract expiration. This list will allow the company to pay just severance pay to those whose contract is expired on the date of winding down.

### **3. Is lay off any difference if a company terminates its operation because of some reasons?**

From employer's standpoint, lay off due to winding off is differed from the same due to organisational restructuring or technological changes of a business, although the impact upon employees is the same: loosing job.

Organisational restructuring and technological changes of a business are elaborated as:

- replacement in part or in whole of the machinery and equipment with higher labour productivity;
- replacement of some phases of or entire production process with advanced and high productivity; or
- change in the organisational structure such as merger and dissolution of some sections of the business, etc.

(Article 11 of Decree No. 39/2003/ND-CP dated 18 April 2003)

The laws of Vietnam restrict lay off due to organisational restructuring and technological changes, the employer must at first retrain its employees to use them in new jobs. Lay off due to winding down is of a different nature, no further requirement. From employees' standpoint; in both circumstances their sufferings are the same: loosing job. Our view given herein focuses on the sufferings of the employees and how to save employers from potential disputes.

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