

# DC LAW NEWSLETTER

International

Issue January 2010



## INDEX

### Part 1. Legal News

1. [Lending in foreign currency by credit institutions to residents](#) Page 2
2. [Vietnamese Dong medium and long term bank loans enjoy 2% interest rate support](#) Page 3
3. [Guidelines of determining and controlling apartment building service fees](#) Page 4-5
4. [Management of use of villas in the urban areas](#) Page 6-7

### Part 2. Legal Advice

- [Issues in relation to the general director on one-member limited liability company](#) Page 8-10

**1. Lending in foreign currency by credit institutions to residents**



As supplemented by Circular 25/2009/TT/NHNN of the State Bank dated and became effective as from December 15<sup>th</sup>, 2009, credit institutions are now permitted to conduct foreign exchange activities of loans in foreign currency to residents with respect to the following requirements:

- Making payment to overseas parties for the purposes of importing goods and services in order to support the business operations.
- Making early repayment of foreign debt with few conditions.
- Making a direct offshore investment.
- Implementing an investment project on production in exporting goods and/or services.
- In the case of capital requirement not included in those mentioned-above, there must be a written consent form the Governor of the State Bank.

## 2. Vietnamese Dong medium and long term bank loans enjoy 2% interest rate support



On December 11<sup>th</sup>, 2009, Prime Minister of the Government issued Decision 2072/QĐ/TTg about continuing to provide interest rate support for organizations and individuals borrowing medium and long term bank loans denominated in Vietnamese dong for the following industries and economic sectors: agriculture and forestry; fisheries; the processing industry; scientific and technology activities; and purchasing and trading agricultural, forestry, fisheries goods and salt.

The interest rate support will be two per cent (2%) per annum for loans arising in the year 2010. The term of interest rate shall be twenty four (24) months from disbursement of the loan monies in the year 2010.

This Decision shall be of full force and effect as from January 1<sup>st</sup>, 2010.

### 3. Guidelines of determining and controlling apartment building service fees



On December 1<sup>st</sup>, 2009, Ministry of Construction issued Circular 37/2009/TT/BXD to provide guidelines on methods of determining and controlling apartment building service fees. In details, service fees shall be determined on the principles of calculation of correct and sufficient expenses to be used for management and daily operation. However, the fees must confirm with the actual socio-economic situation of each area, with income of people in each period, and must be approved by 50% or more of members of the management committee of that apartment building. In the case where management committee has not been established, the fees must be approved by 50% or more of households currently living in. Nevertheless, in the case where there has been an agreement on the service fees in contracts for purchasing and selling of apartments, then such fees shall be applied.

The content of services shall include controlling and maintaining operation of the equipment system of the commonly owned or used areas of the apartment building, security, hygiene, garbage collection, gardening, insect control, and other services to ensure the normal operation of the apartment building. On the other hand, usages of fuel, electricity, water, telephone, internet, and other services including expenses for maintenance shall not be included in the apartment building service fees.

The apartment building service fees shall include:

- Service expenses of the apartment building comprise direct expenses, expenses for general management by the managing and operating firm, expenses for the management committee (if any).
- A reasonable rate of profit shall be a maximum of 10% of the service expenses of the apartment building upon deduction proceeds from conducting business in services of commonly owned areas (exclusive of value added tax).
- Value added tax.

This Decision shall be of full force and effect after 45 days from the date of its signing.

#### 4. Management of use of villas in the urban areas



On December 8<sup>th</sup>, 2009, the Ministry of Construction issued Circular 38/2009/TT/BXD to provide guidelines to manage the use of villas in the urban areas. In details, villa owners will be responsible for:

- Carrying out maintenance of the villa.
- Providing or contributing funding for care and hygiene of trees, plants, and lawn within the land lot of the villa.
- Facilitating persons being responsible in the discharge of the obligations to maintain the commonly owned area of the villa.
- Implementing regulations on fire and explosion prevention.
- Detecting any conduct in breach of the regulations on management of use of villas and to report same to the authority.

However, villa owners will be prohibited in:

- Extending onto an area of commonly owned or used property.
- Renovating, removing, or changing the weight-bearing structure, technical infrastructure system, common use equipment or exterior architecture of the villa.
- Allocating commonly owned or used areas.
- Making noise above the stipulated noise level.

- Disposing waste, water, gas, or toxic substances which can cause leaking or environmental pollution.
- Conducting business in any line or merchandising which is flammable and explosive.
- Destroying old established trees within the land lot of a villa.

In the case of dispute resolution, they are listed as below:

- Any dispute related to the ownership of a villa shall be settled by a court.
- Any dispute on rights to use State owned villas shall be resolved by the provincial administrative authority for residential housing.
- Any dispute on civil contracts during the management of use of a villa shall be dealt with the law on civil contracts.

This Circular shall be of full force and effect on January 22<sup>nd</sup>, 2010.

## Legal Advice

### **QUESTIONS:**

We are asked to address a number of issues in relation to the general director (the “GD”) and relevant issues on one-member limited liability company (the “LLC”) owned by an organization (the “Owner”) under the Law on Enterprises (the “LOE”).

### **The relevant legislation in answering these questions is as follows:**

#### **1. Members’ Council or President of the LLC**

Under the LOE, the Owner may appoint one or more authorized representatives with a term of no more than five (5) years to execute its rights and obligations under the LOE and other relevant laws (Article 67.1 of the LOE).

In the event two or more authorized representatives are appointed, the LLC’s management structure shall be comprised of the Members’ Council, the GD and the controllers. In such event, all authorized representatives constitute the Members’ Council (Article 67.3 of the LOE). On the other hand, if only one authorized representative is appointed, he/she shall be the company president. In such event, the LLC’s management structure shall be comprised of the company president, the GD and the controllers (Article 67.4 of the LOE).

The functions, rights, duties of the Members’ Council, the company president, the GD and the controllers are provided under Articles 68, 69, 70 and 71 of the LOE.

#### **2. Legal Representative of the LLC**

The LCC’s charter must expressly state either the chairman of the Members’ Council, the company president or the GD as the legal representative of the LLC. The legal representative of the LCC must reside in Vietnam. If he/she is absent from Vietnam for more than thirty (30) days, he/she must authorize another person to act as legal representative in writing in accordance with the principles stated in the LLC’s charter (Article 67.5 of the LOE).

#### **3. Powers and Obligations of and Conditions to Become the GD**

The GD can be appointed or hired by the Members’ Council or the company president with a term of no more than five (5) years to manage the daily business activities and operation of the LLC. He/she shall be responsible before the laws, the Members’ Council and the company president (Article 70.1 of the LOE) and shall have the following powers and obligations and must satisfy the following conditions:

**3.1 Powers of the GD (Article 70.2 of the LOE)**

- a) To implement the decisions of the Members' Council or company president;
- b) To decide issues in respect of daily business activities;
- c) To implement the business and investment plans;
- d) To issue internal management rules;
- e) To appoint, remove, dismiss managers except for the appointment, removal, dismissal of those under the authority of the Members' Council or company president;
- f) To sign contracts on the LLC's behalf, except for cases which are under the authority of the Members' Council or company president;
- g) To make proposals on organisational structure plan;
- h) To submit annual financial reports to the Members' Council or company president;
- i) To make proposals on financial plans;
- j) To recruit employees; and
- k) To have other rights as provided in the LLC's charter and/or labour contracts entered into between the GD and the chairman of the Members' Council or company president.

**3.2 Obligations of the GD (and also of the Council's Members, the President and Controllers) (Article 72.1 of the LOE)**

- a) To observe the laws, the LLC's charter and to implement the decisions of the Owner;
- b) To perform his/her assigned rights and duties in an honest, careful and optimal manner in order to ensure maximum benefits for the LLC and the Owner;
- c) To be loyal to the LLC and the Owner and not to use business information, know-how and opportunities of the LLC and not to abuse his/her position, title or assets of the LLC for his/her own benefits or otherwise;
- d) To notify promptly, fully and accurately to the LLC of his/her status as related/connected person or dominant shareholder or having controlling capital shares. Such notification shall be posted at the head office and branches of the LLC; and
- e) Other obligations as provided under the LOE and the LLC's charter.

**3.3 Conditions to Become the GD (Article 70.3 of the LOE)**

- a) Having full civil act capacity and not being prohibited from managing an enterprise in accordance with the LOE;
- b) Not being a related/connected person of the Council's Members or the company president or being a person who is entitled to directly appoint the authorised representatives or the company president; and
- c) Having relevant expertise and experience in business management or major business areas of the LLC or fulfilling other qualifications and conditions provided under the LLC's charter.

**4. Removal of the GD**

If the Members' Council or the company president employs a GD, the GD will enter into a labour contract with the chairman of the Members' Council or the company president. Therefore, the removal of the GD must comply with the Labour Code of Vietnam. The cases when an employer may and may not unilaterally terminate the labour contract with an employee are provided under Articles 38 and 39 of the Labour Code.

Please contact us at DC Law offices or visit us at [www.dclaw.com.vn](http://www.dclaw.com.vn) for further information

## Ho Chi Minh Office

Email: [info@dclaw.com.vn](mailto:info@dclaw.com.vn)  
Website: [www.dclaw.com.vn](http://www.dclaw.com.vn)  
11A-11C Phan Ke Binh Street, DaKao Ward,  
District 1, Saigon  
Tel: 84 8.3821 9928  
Fax: 84 8.3821 9929

## Hanoi Office

Email: [info@dclaw.com.vn](mailto:info@dclaw.com.vn)  
Website: [www.dclaw.com.vn](http://www.dclaw.com.vn)  
Harec Building, Suite 1, Floor 9,  
4A Lang Ha street, Ba Dinh District, Hanoi  
Tel: 84 4.37772 6972  
Fax: 84 4.37772 6973



The contents of the newsletter do not constitute legal advice and do not necessarily reflect the opinions of our firm or any of our attorneys or consultants. The newsletter provides general information, which may or may not be correct, complete or current at the time of reading. The content is not intended to be used as a substitute for specific legal advice or opinions. Please seek appropriate legal advice or other professional counseling for any specific issues you may have. DC LAW expressly disclaims all liability relating to actions taken or not taken based on any or all contents of the newsletter.