Major 10
Test applicable to accounting professionals or foreign CPA holders

PART I – LAW ON ECONOMY, LAW ON INVESTMENT AND LAW ON ENTERPRISES

I. OVERVIEW OF ENTERPRISES

According to the Law on Enterprises 2005, an enterprise means *an economic organization having its own name, having assets and a fixed transaction office, and having business registration in accordance with the laws for the purpose of conducting business operations*[1]

An enterprise has the following fundamental legal features:

- Being an economic organization, having independent legal entity status.

- Having legal status established (incorporation and business registration) in accordance with processes and procedures as regulated by laws;

- Conducting business activities mainly for profit

Typical enterprise considerations include:

1. Establishment and Business Registration

On the principle of business freedom, establishing an enterprise is deemed to be a basic right of investors. Enterprises shall be established in accordance with the laws. Laws and regulations on enterprise establishment are developed for investors' right to business freedom on one hand, and for the purpose of the State Administration on the other hand. Main contents of regulations on enterprise establishment are as follow:

1.1. Organizations and individuals have the right to establish enterprises

All organizations being legal entities, including foreign invested enterprises operating in Vietnam, regardless of their registered office location, and all individuals, regardless of their residential location and nationality, shall have the right to establish or participate in the establishment of enterprises in Vietnam in accordance with the Law on Enterprises.

1.2. Business registration

The business registration procedures of an enterprise shall be conducted at the provincial business registration body, where the enterprise intends to place its head office (hereinafter referred to as provincial business registration body).

The founder of an enterprise shall prepare and submit all business registration documents[2] and shall be responsible for the accuracy and truthfulness of the business registration documents. A business registration agency shall be responsible for considering the business registration documents and shall issue a business registration certificate within a time-limit of ten (10) working days from the date of receipt of such business registration documents; where the business registration certificate is refused, the founder of the enterprise must be notified in writing. The notice must specify the reasons and the amendments or additions required. Business registration bodies shall consider and be responsible for the regularity of business registration documents upon issue of business registration certificates; may not require the founder of an enterprise to submit additional documents not provided by law.

[1] Clause 1, Article 4, Law on Enterprises
[2] See Articles 16 – 23, Law on Enterprises

2. Enterprise Restructure

2.1. Division of enterprises

Enterprise division is applied to limited liability companies and shareholding companies, whereby they shall be divided into a number of companies of the same type. The company being divided shall cease to exist upon registration of the business of the new companies. The new companies must be jointly liable for unpaid debts, labor contracts and other property obligations of the company being divided or shall agree with creditors, customers and employees in order for one of such companies to perform such obligations.

2.2. Separation of enterprises

Enterprise separation is applied to limited liability companies and shareholding companies, whereby the existing company (hereinafter referred to as the company being separated) shall use part of its assets to establish one or more companies of the same type (hereinafter referred to as the separate company). A part of the rights and obligations of the company being separated is transferred to the separate company (companies) without terminating the existence of the company being separated. The procedures for separation of enterprises are described in Article 151, Law on Enterprises. After business registration, the company being separated and the separate company (companies) must be jointly liable for unpaid debts, contracts and other property obligations of the company being separated, unless otherwise agreed among the company being separated, newly-established companies, creditors, customers and employees.

2.3. Consolidation of enterprises

Consolidation of enterprises is applied to companies of all types, whereby two or more companies of the same type (hereinafter referred to as the companies being consolidated) shall be consolidated into a new company (hereinafter referred to as the consolidated company) by way of transferring all lawful assets, rights and obligations and interest to the consolidated company and at the same time, terminating the existence of the companies being consolidated. The procedures for consolidation of enterprises are described in Article 152, Law on Enterprises. After business registration, the companies being consolidated shall cease to exist. The consolidated company shall assume the lawful rights and interests and be liable for unpaid debts, labor contracts and other property obligations of the company being consolidated.

2.4. Merger of enterprises

Merger of enterprises is applied to companies of all types, whereby one or more companies of the same type (hereinafter referred to as merging companies) shall be merged into another company (hereinafter referred to as the merged company) by way of transferring all lawful assets, rights and obligations and interest to the merged company and at the same time, terminating the existence of the merging companies. After business registration, the merged company shall assume the lawful rights and interests and be liable for unpaid debts, labor contracts and other property obligations of the merging companies.

2.5. Conversion of companies

There are various cases of conversion of enterprises and the specific procedures shall be provided for each conversion case.

3. *Dissolution of enterprises*

Main contents of regulations on dissolution of enterprises are as follow:

Cases of and conditions for dissolution of enterprises:

Dissolution of an enterprise is decided by its owner. However, when an enterprise no longer meets the conditions for its existence in accordance with the laws or its business activities are in breach of the laws, it shall be forced to be dissolved. An enterprise shall be dissolved in the following cases:

- The duration of operation stated in the Charter of the company expires and there is no decision to extend;

- As decided by the enterprise owner in the case of a private enterprise; by all unlimited liability partners in the case of a partnership; by the Members' Council or the company owner in the case of a limited liability company; by the General Meeting in the case of a shareholding company;

- The company does not have the minimum number of members stipulated in Law on Enterprises for a period of six consecutive months;

- The business registration Certificate is revoked.

Regulations on dissolution of enterprises are the legal basis of not terminating the existence of an enterprise. More importantly, these regulations protect the interests of the stakeholders, especially creditors, employees upon enterprise dissolution. Legally speaking, in case of dissolution, the most important consideration is to settle outstanding debts and contracts committed before dissolution.

4. *Bankruptcy of enterprises*

According to Law on Enterprises 2005, bankruptcy of enterprises shall be in accordance with law on bankruptcy (dated 15/6/2004).

II. TYPES OF ENTERPRISES

1. Private enterprises

A private enterprise is an enterprise owned by one individual who shall be liable for all activities of the enterprise to the extent of all of his or her assets[3].

Typical legal features of a private enterprise are as follow:

- A private enterprise is owned by one individual. Each individual is allowed to register the establishment of one private enterprise or one individual business household or to be a partner of a partnership unless otherwise agreed among the other partners. The owner of a private enterprise or an individual business household or partners of a partnership have the right to establish, participate in the establishment of one member limited liability companies, two or more members limited liability companies, shareholding companies.

- The owner of a private enterprise shall be liable for all activities of the enterprise to the extent of all of his or her assets (unlimited liability). There is no difference in legal status between the owner of a private enterprise and the enterprise itself. As the owner's liabilities and obligations are unlimited, the ownership of the assets used for business activities shall not be transferred to the private enterprise.

- Private enterprises are not allowed to issue any type of securities.

- Private enterprises are not legal entities.

2. Partnerships

A partnership shall have the following typical legal feature:

- There must be at least two members being co-owners of the company jointly conducting business under one common name (hereinafter referred to as unlimited liability partners); in addition to unlimited liability partners there may be limited liability partners;

[3] Article 141, Law on Enterprises 2005

- Unlimited liability partners must be individuals who shall be liable for the obligations of the company to the extent of their assets;

- Limited liability partners, organizations or individuals, shall only be liable for the debts of the company to the extent of the amount of capital they have contributed to the company.

- A partnership shall be a legal entities the date of its business registration certificate;

- During its business course, a partnership is not allowed to issue any type of securities;

In term of membership and liability, there are two types of partnerships in accordance with Law on Enterprises: the first is partnerships as in jurisdictions other than Vietnam with unlimited liability partners (unlimited liabilities to all assets and obligations); the second is partnerships with both unlimited liability partners and limited liability partners.

Partnerships must have at least two unlimited liability partners. The unlimited liability partners must be individuals. They have unlimited and joint liabilities to all assets and obligations. Creditors have the right to request any unlimited liability partner for debt payments. Moreover, unlimited liability partners shall be liable for all obligations of the partnership to the extent of all of their assets (direct investments and indirect investments).

Assets of a partnership shall include: Assets contributed as capital by partners the ownership of which has been transferred to the company; Assets created in the name of the company; Assets derived from business activities conducted by unlimited liability partners in the name of the company and from business activities in the registered lines of business of the company conducted by unlimited liability partners in their personal name; and other assets as stipulated by law.

For the public legal security, partnership administration is rarely bound by laws. Basically, the partners have the right to agree upon governance and management and the partnership on their own. In accordance with Law on Enterprises, governance and management structure of a partnership shall be agreed upon by the partners in the Charter of the company.

3. Shareholding companies

Shareholding company is a typical type of joint capital companies. In Vietnam, shareholding companies shall have the following features:

- The charter capital shall be divided into equal portions called shares. Shares issued in the form of securities are called stocks (share certificates). A stock may reflect the par value of one or more shares. Capital contribution is made by purchasing shares; a shareholder may purchase more than one share. Shareholders may agree upon and provide in the company charter the maximum number of shares that one shareholder to avoid the case that one shareholder have the right to control the company.

Shareholders may be organizations, individuals; the minimum number of shareholders shall be three and there shall be no restriction on the maximum number. A shareholding company must establish and maintain a Register of shareholders from the date of issuance of the business registration Certificate. Shareholders shall be liable for the debts and other property obligations of the enterprise only within the amount of capital contributed to the enterprise.

- Shareholders are free to assign their contributed capital: Contributed capital is shares. Issued shares are a type of goods. Shareholders are entitled to freely assign their shares to other shareholders and to non-shareholders in accordance with law, except for cases restricted by law;

- During the business course, shareholding companies may issue all types of securities to raise funds. Therefore, shareholding companies may raise a lot of funds;

- Shareholding companies shall have legal entity status from the date of issuance of the business registration certificate; be liable for their debts within their assets (limited liability);

Legal regulations on shareholding companies' asset cover shares, stock and shareholders' rights and obligations as well as related parties. The details are as follow:

- A share is the smallest portion of charter capital of a shareholding company and a share is equivalent to a stock. The par value of each share and the total value of all shares owned by a shareholder shall be recorded on his or her share certificates.

There may be two classes of shares issued by a shareholding company: ordinary shares and preference shares. Shareholding companies must have ordinary shares. Owners of ordinary shares shall be ordinary shareholders. Shareholding companies must have ordinary shares. Owners of ordinary shares shall be ordinary shareholders.

Ordinary shares may not be converted into preference shares. Preference shares may be converted into ordinary shares pursuant to a resolution of the General Meeting of Shareholders.

- Shares are valuable certificates which certify shareholders' ownership and membership of a shareholding company. According to Law on Enterprises - 2005, shares are certificates or book entries. In case of book entries, share information shall be recorded in the Register of Shareholders of the company. A shareholding company shall establish and maintain a register of shareholders from the date of issuance of the business registration certificate. The register of shareholders may be in the form of a written document or an electronic file, or both.

Shares may be purchased by Vietnam Dong, freely convertible foreign currencies, gold, the value of land use rights, intellectual property rights, technology, technical know-how and other assets as stipulated in the Company Charter and must be fully paid at one-time.

- Upon establishment, shareholding companies must have charter capital. Charter capital of companies in certain industries must not be lower than legal capital (if shareholding companies do business in industries required to have legal capital by law). One part of the charter capital must be ordinary shares. Founding shareholders must together register to subscribe at least twenty (20) per cent of the number of ordinary shares which may be offered for sale. Another part of the charter capital must be preference shares. Persons entitled to purchase voting preference shares shall be stipulated by law and persons entitled to purchase other preference shares shall be stipulated in the charter of the company or decided by the General Meeting of Shareholders.

- The Board of Management shall determine the timing and method of and the price at which shares shall be offered for sale for the number of shares which may be offered for sale. The price at which shares shall be offered shall not be lower than the market price at the time of offering, except the cases: initial offering of shares after business registration; shares offered to all shareholders in proportion to the respective numbers of shares they currently hold in the company; and shares offered to brokers or underwriters. Shares shall be sold to purchasers and share purchasers shall become shareholders of the company only when the following information is provided and documented on a complete and accurate basis: shareholder's name, address, number of each share class, the date of registering shares into the register of shareholders.

- During its business course, a shareholding company has the right to issue bonds in accordance with law to raise required funds. A shareholding company may issue bonds, convertible bonds and other classes of bonds in accordance with the law and the charter of the company. The Board of Management has the right to make decisions on the class of bonds, total value of bonds and timing of issue.

- Dividends are paid to shareholders only when the shareholding company generates profits after settling all tax obligations and other financial obligations in accordance with law. Even when all dividends are paid to shareholders, the company shall still have to pay debts and other property obligations on due.

- Shareholding companies have complicated financial systems which require accurate and appropriate accounting, auditing and statistic systems to protect the rights and interests of shareholders and stakeholders. The Law on Enterprises has several provisions on financial systems: enterprises must prepare accounting books, and accounting records, invoices and supporting documents and prepare true and fair financial statements. Enterprises must disclose their financial and non financial information on a periodic, accurate and complete basis to their business registration bodies. Annual financial statements of a shareholding company shall be verified and approved by the General Meeting of shareholders. If shareholding companies' annual financial statements are required to be audited by law, the annual financial statements must be audited by independent audit firms prior to be submitted to the General Meeting of shareholders. The annual financial statements must be submitted to statistic agency, management units, tax authorities and business registration body. The summary of the annual financial statements must be notified to all shareholders. All organizations and individuals may review or copy annual financial reports of shareholding companies at the competent business registration bodies.

4. Limited liability companies (Ltd)

4.1. Limited liability companies with two or more members

According to Article 38, Law on Enterprises, limited liability companies with two or more members shall have the following features:

- A member may be an organization, individual; the number of members shall not exceed fifty (50). A limited liability company with two or more members must establish a Register of members immediately after business registration. A member shall be liable for the debts and other property obligations of the enterprise within the amount of capital that it has undertaken to contribute to the enterprise (limited liability)***;***

- Capital contribution in limited companies shall be limitedly assigned, not freely assigned as in shareholding companies. The share of capital contribution of each member shall only be assigned in accordance with law (Articles 43, 44 and 45 of Law on Enterprises);

- A limited liability company shall have legal entity status from the date of issuance of the business registration certificate. A limited liability company shall be liable for the debts and other property obligations within its own assets (limited liability).

- A limited liability company may not issue shares. A limited liability company with two or more members is entitled to raise funds from securities market, even entitled to offer to the public securities not in the forms of shares.

Regulations on organizational and management structure of limited liability companies with two or more members:

- Limited liability company is a type of joint capital company, which is not allowed to issue shares for sales in the securities market. Upon establishment, all members must undertake to contribute capital in specific amount at specific time. Members must contribute capital in full and on time as undertaken. Upon full payment of the share of capital contribution, a member shall be issued a capital contribution certificate by the company. A capital contribution certificate shall contain the main particulars as provided in Clause 4, Article 39 of Law on Enterprises. Where a member fails to contribute in full and on time as undertaken, the unpaid amount shall be considered as a debt owed by that member to the company; such member must be liable for compensation for any damage arising from its failure to contribute capital in full and on time as undertaken. If the legal representative of the company does not notify the business registration body (Clause 1, Article 39 - Law on Enterprises), he or she, together with the members failing to contribute capital in full, must be jointly liable for the unpaid amount and any damage arising from its failure to contribute capital in full and on time as undertaken.

- A member of a limited liability company may demand the company to redeem its share of capital contribution in certain cases (See Article 43 of Law on Enterprises).

- During the business course, a member of a limited liability company with two or more members shall have the right to assign a part or all of its share of capital contribution to other persons (See Article 44 of Law on Enterprises). Law on Enterprises also stipulates Dealing with shares of capital contribution in other cases (See Article 45 of Law on Enterprises).

- By resolution of the Members' Council, the company may increase its charter capital by way of: increasing the contributed capital of members; increasing the charter capital relative to the increased value of assets of the company; raising contributed capital from new members. By resolution of the Members' Council, the company may reduce its charter capital by ways stipulated in Article 60 of Law on Enterprises.

- Limited liability companies with two or more members shall distribute profits to members only when they generate profits, settle all tax obligations and other financial obligations; and pay all debts and other property obligations on due.

4.2. One Member Limited Liability Companies

One member limited liability companies shall have the following features:

- A one member limited liability company is an enterprise owned by one organization or individual; the company owner shall be liable for all debts and other property obligations of the company within the amount of the charter capital of the company (limited liability).

- A company owner may only withdraw capital by way of assignment of a part or all of the charter capital to other organizations and individuals; in the case of withdrawal of a part or all of its contributed capital from the company in another form, the company owner must be jointly liable for debts and other property obligations of the company.

- One member limited liability companies shall have legal entity status from the date of issuance of the business registration certificate. Like the company owner, the company shall be liable for all debts and other property obligations within the amount of the charter capital of the company (limited liability).

- One member limited liability companies may not issue shares. Like limited liability companies with two or more members, one member limited liability companies are entitled to raise funds from securities market, even entitled to offer to the public securities not in the forms of shares.

Regulations on assets and financial system of one member limited liability companies are as follow:

- The company owner's properties must be separated from the company's assets. A company owner being an individual must separate his or her personal expenditures and expenditures for his or her family from the expenditures for him or her as the chairman of the company and the director or general director of the company;

- A company owner may only withdraw capital by way of assignment of a part or all of the charter capital to other organizations and individuals;

- The company owner may not withdraw profits of the company in cases where the company has not fully paid all debts and other property obligations on due.

5. Enterprises with foreign owned capital

5.1. Joint venture enterprises

Joint venture enterprises shall have the following features:

- Joint venture enterprises are established by foreign investors and a Vietnamese party (parties);

- To establish a joint venture enterprise, Vietnamese party (parties) shall contribute a part of the legal capital and foreign investors shall contribute the remaining part. According to Law on Foreign Investment in Vietnam, regarding to joint venture enterprises' capital, foreign investors must contribute at least 30% of the charter capital. In several cases as stipulated in Clause 2, Article 14 of Decree No. 24/2000/ND-CP dated 31/7/2000, in joint venture companies foreign investors may contribute capital at a lower proportion but not lower than 20% of the charter capital;

- A joint venture enterprise shall be established in the form of a limited liability company.

Main regulations on organization and operation of joint venture enterprises are as follow:

- The legal capital of a joint venture enterprise is the required capital for its establishment and shall be described in the Charter of the company. The legal capital of a joint venture enterprise may be considered as the charter capital of a local enterprise.

- The legal capital of a joint venture enterprise must be at least 30% of the investment capital. This proportion may be lower, but not lower than 20% for infrastructure construction projects, encouraged investment projects, afforestation projects and large-scale projects and this proportion must be approved by the license granting body.

- The capital contribution proportion of the foreign Party (Parties) shall be agreed upon among all parties, but not lower than 30% of the legal capital. This proportion may be lower, but not lower than 20% and approved by the license granting body in term of industry, technology, market, business performance and other socio-economic benefits of the joint venture.

- During its business course, a joint venture enterprise may restructure its investment and legal capital due to changes in its business objectives, business scales, partners, capital contribution ways and other cases. However, the restructured capital should not be lower than the above mentioned proportion and must be approved by the license granting body.

- The parties may contribute capital in different forms and all parties together determine the value of the contributed capital (Article 7, Article 9 of Law on Foreign Investment in Vietnam).

- The parties of a joint venture enterprise have the right assign their share of capital contribution to others, but to the other parties of the joint venture enterprise as the first priorities. The conditions for the assignment to others rather than the parties of the joint venture enterprise must not be more favorable than those for the assignment to the parties of the joint venture enterprise.

5.2. Enterprises with 100% foreign owned capital

An enterprise with 100% foreign owned capital is owned by foreign investors: established in Vietnam and managed by foreign investors.

An enterprise with 100% foreign owned capital shall have the following features:

- The owner shall be foreign investor(s), not Vietnamese party (parties). This is typically different from a joint venture enterprise;

- Foreign investor(s) shall fully contribute capital and assets to establish an enterprise with 100% foreign owned capital;

- An enterprise with one hundred (100) per cent foreign owned capital shall be established in the form of a limited liability company. The foreign investor(s) shall only be liable for the obligations of the enterprise within their contributed capital in the legal capital of the enterprise even when the only foreign investor is an individual;

- An enterprise with one hundred (100) per cent foreign owned capital shall be a legal entity in accordance with the law of Vietnam and shall do business by its charter capital (legal capital).

According to Law on Foreign Investment in Vietnam in 1996(amended in 2000), the legal capital of an enterprise with one hundred (100) per cent foreign owned capital must be at least 30% of the investment capital. This proportion may be lower, but not lower than 20% for infrastructure construction projects, encouraged investment projects, afforestation projects and large-scale projects and this proportion must be approved by the license granting body. During its business course, an enterprise with one hundred (100) per cent foreign owned capital must not reduce its legal capital.

6. State owned enterprises

In accordance with the law of Vietnam, «State owned enterprise means an enterprise in which the State owns over fifty (50) per cent of the charter capital » (Clause 22, Article 4, Law on Enterprises in 2005). There are three types of State owned enterprises: State companies, State shareholding companies, and one member State limited liability companies or state limited liability companies with two or more members.

- A State company is an enterprise in which the State owns the entire charter capital and which is established, and whose management is organized and whose operations are registered in accordance with Law on State owned Enterprises. State companies shall be organized in the form of independent State companies or State corporations. There are three types of State corporations: Corporations where the State made the decision on investment and establishment; Corporations invested in and established by companies; Corporations making investment and conducting business with State capital.

- State shareholding companies: There are two types of State shareholding companies: State shareholding companies with all shareholders being State companies or the organizations authorized by the State to make capital contribution and State shareholding companies where the State holds the controlling shareholding and which are organized and do business under Law on Enterprises.

- State limited liability companies: There are three types of State limited liability enterprises: one member State limited liability companies are limited liability companies in which the State owns the entire charter capital; State limited liability companies with two or more members in which the State owns the entire charter capital; State limited liability companies with two or more members in which the State holds controlling capital contribution, and whose management is organized and operations registered in accordance with the Law on Enterprises.

The Law on State owned enterprises - 2003 stipulates the rights and obligations of the state companies in market oriented view, not in subsidy system. All enterprises shall do business in a free and fair market and be self-responsible for their own business. Rights and obligations of state companies are stipulated in the Law on State owned enterprises with three focus areas: Asset and Capital; Organization and Management; Finance (financial rights and obligations).

III. LAW ON INVESTMENT

1. Forms of investment in Vietnam

In accordance with the Law on Investment, there are two forms of investment: direct investment and indirect investment.

1.1. Forms of direct investment

Direct investment is a form of investment whereby investor(s) invest capital and participate in managing investment activities.

In accordance with the applicable Law on Investment, forms of direct investment in Vietnam are as follow:

a) Investments into economic organizations (establishment or capital contribution)

Investors invest capital to establish a new enterprise or contribute capital into the charter capital to have the right to control an enterprise in place. Investments into economic organizations shall be grouped into two types:

- Investments for the establishment of enterprises with 100% local capital or enterprises with 100% foreign owned capital

- Investment for the establishment of enterprises with capital contribution by investors.

Investors of an economic organization do business by the legal status of the organization. Establishment and organization of economic organizations must be complied with both the Law on Investment and legal written documents on types of enterprises (Law on Enterprises, 2005).

b) Investments in contractual forms:

Investments in contractual forms include:

- Business Cooperation Contract (in short - BCC) is a form of investment where a contract is signed by investors to cooperate in business, to share profits or to share products without the establishment of a legal entity. The most important feature of a BCC is that shares of profits and shares of products are agreed and clearly described in the contract.

- Build-Operate-Transfer contracts (BOT), Build-Transfer-Operate contracts (BTO) and Build-Transfer contracts (BT): BOT, BTO, and BT are forms of investments where contracts are signed by a State authority and an investor.

c) Investments in business development:

Investment in business development is a form of investment whereby investors use capital to develop business and enhance performance capacity. Investments in business development are important to effectively use available capital and to add more capital for sustainable growth and development. Investments in business development include: expanding scale, increasing output capacity and business capability (opening branches, representative offices, dependent units...); renovating technology, improving product quality, reducing environmental pollution.

d) Investments in merger and acquisition of enterprises, branches:

- Merger of enterprises : one or more companies of the same type (hereinafter referred to as merging companies) may be merged into another company (hereinafter referred to as the merged company) by way of transfer of all lawful assets, rights, obligations and interests to the merged company and, at the same time, termination of the existence of the merging companies.

- Acquisition of enterprises, branches: investors are transferred the ownership of an enterprise, branches with payments. In accordance with the law on competition, merger and acquisition are enterprise behaviors for economic concentration.

1.2. Forms of indirect investment

Indirect investments are a form of investment whereby investors purchase shares, stocks, bonds, other valuable papers and invest in securities investment funds or via intermediary financial institutions but investors do not directly participate in managing investment activities.

The basic difference between direct investment and indirect investment is the level and extent of management and control over business operations by the investors. In forms of indirect investment, the investors shall not directly participate in managing and controlling the usage of their investments. Basically indirect investors shall be entitled to economic interests from their investments. Common forms of indirect investment are: purchase of securities (shares, stocks, bonds and other valuable papers); investments in securities investment funds; investment via banks, insurance enterprises...

2. Investors and rights, obligations of investors

In the Law on Investment, types of investors are expanded and regulations on local and foreign investors are consistent. Investors are organizations or individuals having investments in accordance with the law of Vietnam. Investors include:

- Enterprises of all economic sectors established in accordance with the Law on Enterprises;

- Co-operatives, co-operative association established in accordance with the Law on Co-operatives;

- Enterprises with foreign-owned capital established prior to the effective date of this Law;

- Business households, individuals;

- Foreign organizations, individuals; overseas Vietnamese; foreigners permanently residing in Vietnam;

- Other organizations in accordance with the law of Vietnam.

Regulations on investors in the Law on Investment and the Law on Foreign Investment in Vietnam have been adjusted with no unfair treatment: regardless forms of ownership, types of enterprises and nationality. This is important to protect investors on a free and fair basis and to encourage investments in the context of international economic integration.

Rights and obligations of investors is the basic content of the Law on Investment. Rights and obligations of investors are acknowledged by law. Investors may set forth their rights and obligations in each forms of investment.

3. Investment incentives and support

In the Law on Investment, there are several principles as follow:

3.1. Investment incentives

a) Applicable entities and conditions for investment incentives

Investors with investment projects in the investment incentive sectors and geographical areas shall be entitled to the incentives provided in the Law on Investment and other relevant laws.

Investment incentives shall be applicable to new investment projects and investment projects for expansion of scale, increasing output capacity and business capability, renovating technology, improving product quality, reducing environmental pollution.

b) Forms of investment incentives

- Tax incentives;

- Losses carried forward;

- Fast fixed assets depreciation for investment projects in investment incentive sectors, geographical areas and business projects with high economic efficiency;

- Incentives in period of land use right, exemption and reduction of land use fee and land rent;

- Incentives applicable to investors who invest in industrial zones, export processing zones, high- tech zones and economic zones.

3.2. Investment support

Forms of investment support include:

- Support for technology transfer;

- Training support;

- Support for and encouragement of development of investment services;

- Investment in infrastructure systems for industrial zones, export processing zones, high- tech zones and economic zones

4. Direct investment activities

The Law on Investment provides principled contents in implementation of investment projects: land lease, hand-over and receipt of land for implementation of investment projects; preparation of construction site; procedures for implementing investment projects involving mining and use of natural resources and minerals; implementation of investment projects involving construction; evaluation of machinery and equipment; sale of products in Vietnamese market; foreign currency accounts and Vietnamese Dong accounts; insurance; hire of management organization; temporary postponement of projects, revocation of investment certificates; termination of operation of investment projects; State guarantee for a number of works and important projects.

5. Business investments funded by State Capital

In the 2005 Law on Investment, the basic provisions on business investments funded by State capital are as follow:

- State capital invested in economic organizations: Capital from the State budget shall be invested in economic organizations by the State Capital Investment Corporation. The State Capital Investment Corporation shall operate in accordance with the Law on State owned Enterprises and other relevant laws; and shall perform the ownership rights on behalf of the State in one member limited liability companies, limited liability companies with two or more members, shareholding companies converted from independent state companies or newly established shareholding companies.

- State capital invested in public utility activities: State capital shall be invested in manufacture and supply of public utility products and services by way assigning plans, placing orders or conducting tendering. It is notable that all organizations and individuals of all economic sectors shall be entitled to equal participation in manufacture and supply of public utility products and services except for special cases regulated by the Government.

- State investment and development credit funds: Investment projects entitled to use State investment and development credit funds are in important industries and sectors, significant economic programs with socio-economic benefits and ability to repay loans. Projects applying for State investment and development funds must be evaluated and approved by fund providers in term of financial proposals and loan repayment schedules prior to any investment decision being made. The Government shall issue specific regulations on policies of State investment and development credit funds; lists of potential borrowers and conditions applicable in each period.

6. Investments in foreign countries

According to the Law on Investment, local investors shall be entitled to make direct and indirect investments in foreign countries to earn profits in accordance with the law of Vietnam and the law of the invested country. Main direct investments in foreign countries are:

- To invest to establish a new economic organization in the form of a sole proprietorship or a joint venture company;

- To invest in accordance with a business co-operation contract with the partners of the invested country (joint business);

- To purchase shares or contribute capital to directly participate in managing enterprises in the invested country;

- To involve in merger and acquisition in the invested country.

Investments in foreign countries may be indirect investments in several ways: investments on financial markets or securities markets by purchases of shares and bonds of enterprises in the invested country for dividends and interests without direct participation in managing enterprises.

IV. LAW ON COMMERCIAL CONTRACTS

1. Types of commercial contracts

Main types of commercial contracts are as follow:

a) Contracts for the sale and purchase of goods: Contracts for the sale and purchase of goods without foreign elements; contracts for the sale and purchase of goods with foreign elements (export, import, temporary import and re-export, temporary export and re-import, cross border trade) and contracts for the sale and purchase of goods via Commodity Exchanges (forwards, options).

b) Contracts for the provision of services: Contracts for the provision of services for the sales and purchase of goods (contracts for commercial promotion, contracts for commercial intermediary activities, other commercial contract); contracts for the provision of professional services (finance, banking, insurance, training, tourism...).

c) Contracts for specific commercial investments (contracts of construction and installation contractors and contracts for the transfer of new urban area projects and residential area projects, industrial zone infrastructure projects...).

2. Entering into commercial contracts

Commercial contracts are entered into on the principles of general contracts.

During the preparation of a commercial contract, the legal contents should be described are: (i) an offer to enter a commercial contract; (ii) acceptance of the offer; (iii) the date and the validity of the agreed contract. These contents are not provided in the Commercial Law; therefore they shall be in accordance with the Civil Code.

a) An offer to enter a commercial contract

An offer to enter a commercial contract shall describe the intention of the offeror to enter the contract and the commitment of the offeror with the named offeree.

Both the Civil Code and the Commercial Law do not specify forms of an offer to enter a commercial contract. However, based on Article 24 in the Commercial Law forms of an offer to enter a commercial contract are written forms, verbal forms, specific acts or a combination of these forms.

An offer to enter a commercial contract is sent to one or more offerees. The validity of the offer is normally determined by the offeror. In case, the offeror fails to specify the effective date of the offer, the effective date shall be the date when the offeree receives the offer. The evidence that the offeree has received the offer is: (i) the offer is sent to the residential place (in case the offeree is an individual) or to the registered office (in case the offeree is a legal entity); (ii) the offer is integrated in the formal information system of the offeree; (iii) the offeree is informed of the request via other channels.

The offeror may modify or revoke the offer: (i) the offeree receives the notice of offer adjustments or revocation prior to or at the time of receiving the offer; (ii) reasons for offer adjustments or revocation are in conditions for offer adjustments or revocation specified in the offer.

The offer shall be ineffective: in the cases: (i) the offeree rejects the offer; (ii) the time limit for acceptance of the offer is expired; (iii) the notice of offer adjustments or revocation is effective; (iv) notice on cancellation of the offer is effective; (v) upon agreement between the offeror and the offeree while the offeror is waiting of the offeree's response.

b) Acceptance of the offer to enter a commercial contract

Acceptance of the offer for agreements is the offeree's response to enter the contract. The time limit for acceptance of the offer shall be different from the following cases:

- If the offeror has set a time limit for the acceptance, the offeree must response within the set time limit; if the offeror receive the acceptance of the offeree after the set deadline, the acceptance shall be a new offer of the late respondent. If the acceptance of the offer is late due to objective reasons of which the offeror is notified or should be notified, the acceptance shall be effective, except the case where the offeror immediately response not to agree with the acceptance of the offeree.

- In case of direct communication via phone or other means, the offeree must accept the offer on the spot or in the agreed time-limit.

c) The effective date of a commercial contract

In accordance with Article 404 of the Civil Code, the effective date of a commercial contract shall be as follow:

- Commercial contracts are directly entered in written: the effective date shall be the time when the last party signs the contract;

- Commercial contracts are indirectly entered in written (via supporting documents): the effective date of the contract is the time when the offeror receives the acceptance of the offeree;

- Commercial contracts are verbally entered: the effective date is the time when the parties agree on the contractual contents. The parties may use legal evidences to prove their "agreements" on the commercial contract.

3. Methods of ensuring the performance of commercial contracts

Methods of ensuring the performance of commercial contracts are provided in the Civil Code as follow:

3.1. **A pledge** is an arrangement where the pledgor hands over the possession of an asset to the pledgee as security for the performance of a contractual obligation; and. A pledge must be made in writing; it may be made into a separate written document or be attached in the main contract.

3.2. A mortgage is an arrangement where the mortgagor uses its assets (without handing over the possession of such assets) as security for the performance of a contractual obligation. A mortgage must be made in writing; it may be made into a separate written document or be attached in the main contract. The alternative written document must be notarized, certified or registered in cases stipulated by law.

3.3. A ***Deposit*** mean a party transfers an amount of money, precious metals, gemstones or other valuable assets (deposit) to another party in a specific time limit as secure for the performance of a contractual obligation. Deposit must be made in writing.

3.4. Lease deposit means that the lessor of movable assets gives an amount of money or precious metals, gemstones or other valuable assets (lease deposit) to the lessor in a specified period as secure for return the leased assets.

3.5. Loan deposit means that the entity places an amount of money or precious metals, gemstones or valuable papers into an escrow account at a bank as secure for the performance of a contractual obligation.

3.6. Guarantee means that the third party (guarantor) undertakes with the guarantee to perform an obligation on behalf of the obligee when the obligee fail to perform the obligation on due. The parties may agree that the guarantor shall perform the obligation only when the obligee is unable to perform its obligation. A guarantee must be made in writing; it may be made into a separate written document or be attached in the main contract. The written guarantee must be notarized or truly certified in cases stipulated by law.

3.7. Trust means that a socio-political organization is entitled by law to secure (by trust) for poor individuals, households' borrowings from a bank or a credit institution for the purpose of production, doing business and providing services. Agreement on a trusted credit must be made in writing, specifying credit amount, credit purpose, credit period, interest rate, rights and obligations of the borrower, bank, credit institution and trustor.

4. Conditions for effective contracts and ineffective contracts

4.1. Conditions for effective commercial contracts

In accordance with the Civil Code (Article 122) and relevant laws, a commercial contract shall be effective when the following conditions are met:

(1) The parties of the commercial contract should be legal persons or legal entities (civil act capacity).

(2) The purpose and content of the contract should not be in breach of the laws and against the social ethics.

(3) The commercial contract is entered in accordance with the laws.

(4) The form of the commercial contract must be stipulated by law.

4.2. Conditions for ineffective contracts and dealing with ineffective contracts

a) A commercial contract shall be ineffective when one of the following conditions happens:

- The contents of the contract are in breach of the laws or against the social ethics;
- The contract is ineffective due to its fakement;
- The contract is ineffective due to mistakes or errors;
- The contract is ineffective due to tricks or threats;
- The contract is ineffective when the contract preparer can not control his or her actions.
- The contract is ineffective due to its wrong from.

A commercial contract may be:

- fully ineffective (absolutely ineffective contracts);
- partly ineffective (relatively ineffective contracts);

b) Dealing with ineffective contracts

When a contract is ineffective, no rights and obligations arise. The parties shall be back in their original situations. The parties shall be back in their original situations when:

- All received things are returned to their owners. If things can not be returned in kind, they shall be return in cash (except the case where the assets are seized by law).
- The party causing damages has to make compensations to the other.

5. Obligations due to breaches of commercial contracts

The party who is in breach of a commercial contract shall:

- be forced to perform the contract
- be fined for its breach
- make compensations
- Temporary delay, suspend and cancel of the contract

V. LAW ON COMPETITION

1. Law on Competition in Vietnam

The Law on Competition is designed to prevent and deal with competition cases of illegality, breaches of laws, ethics and common business practices.

The Law on Competition – 2004 is the first Vietnamese law on competition which was promulgated when the market economy was emerging. For the implementation of the Law on Competition, the Government has made a lot of efforts to provide the guidances. Together with the Civil Code, the Ordinance on the protection of consumers' interests and other relevant laws, the Law on Competition plays an important role to control and manage competition in Vietnam

2. Governing practices in restraint of competition

Practices in restraint of competition mean practices of enterprises which reduce, distort or hinder competition in the market. The Law on Competition stipulates practices in restraint of competition, prohibited agreements in restraint of competition and exemptions for prohibited agreements in restraint of competition (with or without a definite period of time) in certain conditions.

Practices in restraint of competition include:

(1) Agreements in restraint of competition

According to the Law on Competition, agreements in restraint of competition shall comprise:

- Agreements either directly or indirectly fixing the price of goods and services;

- Agreements to share consumers market, sources of supply of goods and services;

- Agreements to restrain or control the quantity, volume of goods, and services produced, purchased and sold;

- Agreements to restrain technical or technological developments or to restrain investment;

- Agreements to impose on other enterprises conditions for signing contracts for the sale and purchase of goods and services or to force other enterprises to accept the obligations which are not related in a direct way to the subject matter of the contract;

- Agreements to prevent, impede or do not allow other enterprises to participate in the market or to develop business;

- Agreements to exclude from the market other enterprises which are not parties to the agreement;

- Collusion in order for one or more parties to win a tender for supply of goods and services.

(2) Abuse of dominant market position

According to the Law on Competition, an enterprise shall be deemed to be in a dominant market position if such enterprise has a market share of thirty (30) percent or more in the relevant market or is capable of substantially restraining competition.

A group of enterprises shall be deemed to be in a dominant market position if they act together in order to restrain competition and fall into one of the following categories:

- Two enterprises have a market share of fifty (50) percent or more in the relevant market;

- Three enterprises have a market share of sixty five (65) percent or more in the relevant market;

- Four enterprises have a market share of seventy five (75) percent or more in the relevant market;

When an enterprise is deemed to be in a dominant market position, such enterprise shall be prohibited from abusing its dominant position to restrain competition. According to Article 13 of the Law on Competition, any enterprise or group of enterprises in a dominant market position shall be prohibited from carrying out the following practices:

- Selling goods or providing services under the total prime cost aimed at excluding competitors;

- Fixing an unreasonable selling, purchasing price or fixing a minimum re-selling price of goods or services, thereby causing loss to customers;

- Restraining production or distribution of goods or services, limiting the market, or impeding technical and technological development, thereby causing loss to customers;

- Applying different commercial conditions to the same transactions aimed at creating inequality in competition;

- Imposing conditions on other enterprises signing contracts for the purchase and sale of goods and services or forcing other enterprises to agree to obligations which are not related in a direct way to the subject matter of the contract;

- Preventing market participation by new competitors.

(3) Abuse of monopoly position

According to the Law on Competition, an enterprise shall be deemed to be in a monopoly position if there are no enterprises competing in goods and services in which such enterprise conducts business in the relevant market. Any enterprise in a monopoly position shall be prohibited from carrying out the following practices (in additions to prohibited practices in case of dominant market position):

- Imposing disadvantageous conditions on customers;

- Abuse of monopoly position in order to change or cancel unilaterally a signed contract without legitimate reason.

(4) Economic concentration

According to the Law on Competition (Article 16), economic concentration means conduct of enterprises comprising:

- Merger of enterprises;
- Consolidation of enterprises;
- Acquisition of an enterprise;
- Joint venture between enterprises;
- Other forms of economic concentration as stipulated by law.

According to the Law on Competition, not all economic concentration cases are prevented by law. Depending on the level of economic concentration and the possibility of unbalanced market, economic concentration may be controlled at different levels. Economic concentration cases may be divided into groups in different forms and at different control level as follow:

- Free economic concentration cases;
- Economic concentration cases approved by State authorities;
- Cases of exemption for prohibited economic concentration;
- Absolutely prohibited economic concentration cases (no exception).

3. Unfair competitive practices

Unfair competitive practices mean competitive practices by an enterprise during the business processes which are contrary to the general standards of business ethics and which cause or may cause damage to the interest of the State and/or to the legitimate rights and interests of other enterprises or of consumers.

Unfair competitive practices have the following basic features:

- Unfair competitive practices are performed by enterprises for the purpose of competition;

- Unfair competitive practices are aimed to target competitors;

- Unfair competitive practices are contrary to the general standards of business ethics or the laws;

- Unfair competitive practices cause damages or may cause damages to competitors or to consumers.

The law prescribes specific unfair competitive practices. All unfair competitive practices shall be prohibited without exemptions. To fight against unfair competitive practices is the legal right of enterprises.

Unfair competitive practices shall comprise:

(1) Misleading instructions;

(2) Infringement of business secrets;

(3) Coercion in business;

(4) Defamation of another enterprise;

(5) Causing disruption to the business activities of another enterprise;

(6) Advertisement aimed at unfair competition;

(7) Promotion aimed at unfair competition;

(8) Discrimination by an associate;

(9) Illegal multi-level selling of goods.

4. Competition legal proceedings

Competition legal proceedings are procedures performed by State bodies, organizations and individuals to deal with competition cases in accordance with the law.

Administrative competition legal proceedings are different from legal procedures at the private court and applicable procedures prescribed in Decree No. 116/2005/ND-CP dated 15/9/2005 providing in detailed guidance for the implementation of several articles in the Law on Competition.

VI. LAW ON BANKRUPTCY

The Law on Bankruptcy – 2004 applies to enterprises, cooperatives, associations of cooperatives (together referred as cooperatives), which are established and operate in accordance with the law.

The Law on Bankruptcy stipulates the conditions and the submission of bankruptcy applications for opening of bankruptcy procedures; the determination of property obligations and measures to preserve property in bankruptcy procedures; the conditions and procedures for restoration of business operation; the procedures for property liquidation and bankruptcy declaration; the rights and obligations of the applicants for opening of bankruptcy procedures; the rights and obligations of the enterprises and cooperatives requested for bankruptcy declaration and the rights and obligations of the participants in the settlement of requests for bankruptcy declaration.

1. Signals to define enterprises, co-operatives in the state of bankruptcy

According to Article 3 of the Law on Bankruptcy - 2004, «enterprises, cooperatives which fail to pay due debts as requested by creditors shall be deemed to fall in the state of bankruptcy». Therefore the nature of the bankruptcy is that at a specific time, an enterprise or a co-operative is unable to pay debts. In that case, creditors or the debtors shall prepare applications for bankruptcy procedures to the Court in accordance with the law.

2. Bankruptcy procedures

Bankruptcy procedures applicable to enterprises, co-operatives in the state of bankruptcy include four steps:

2.1. The submission of applications for opening of bankruptcy procedures

a) Right to submit applications for opening of bankruptcy procedures

- When realizing that enterprises and/or cooperatives fall into the state of bankruptcy, the unguaranteed or partially guaranteed creditors shall all have the right to submit applications for the opening of bankruptcy procedures applicable to such enterprises and/or cooperatives.

- Labourers have the rights to submit applications for the opening of bankruptcy procedures through trade union representatives or the assigned representative in case of no trade union.

- The owner of a state enterprise has the right to submit applications for the opening of bankruptcy procedures applicable to state enterprises.

- Shareholders of a shareholding company have the right to submit applications for the opening of bankruptcy procedures in accordance with the Charter of the company.

- Partners of a partnership have the right to submit applications for the opening of bankruptcy procedures applicable to partnership.

b) Obligation to submit applications for opening of bankruptcy procedures

The owners or the lawful representatives of enterprises or cooperatives have the obligation to submit applications for opening of bankruptcy procedures for when their enterprises, cooperatives are falling into the state of bankruptcy.

The applicant for opening of bankruptcy procedures is obliged to provide all required documents on time as stipulated and required by the Court during the implementation of the bankruptcy procedures.

c) Notification on enterprises, cooperatives falling into the state of bankruptcy

While performing their functions and tasks, if realizing that enterprises or cooperatives fall into the state of bankruptcy, the courts, procurances, inspectorates, capital-managing agencies, auditing organizations or agencies having decided on the establishment of the enterprises (which are not the State-owners of the enterprises) shall have to notify in writing the persons entitled to submit applications for opening of bankruptcy procedures thereof so that they consider the submission of applications for opening of bankruptcy procedures. The notifying agencies must bear responsibility for the truthfulness of such notification.

d) Reception of applications for opening of bankruptcy procedures

After receiving the applications for opening of bankruptcy procedures, if deeming it necessary to amend the applications and/or supplement documents, the courts shall request the applicants to effect the amendment and/or supplementation within ten days as from the date of receiving the courts' requests. The courts shall process the applications for opening of bankruptcy procedures as from the date the applicants produce the receipts of bankruptcy charge advance payment. Where the applicants shall not have to pay the bankruptcy charge advance, the date of processing the applications shall be the date the courts receive the applications.

d) Decision to open or not to open the bankruptcy procedures.

Within thirty days as from the date of receiving applications for opening of bankruptcy procedures, the courts must issue decisions to open or not to open the bankruptcy procedures.

The courts shall issue decisions to open the bankruptcy procedures when there are grounds proving that the enterprises, cooperatives fall into the state of bankruptcy.

The courts shall issue decisions not to open the bankruptcy procedures if deeming that the enterprises or cooperatives have not yet fallen into the state of bankruptcy.

2.2. Business operation restoration

a) Creditors' conferences

- Participants in a conference of the creditors are: the creditors included in the lists of creditors; the laborers' representatives, the trade union representatives, who are authorized by the laborers; the guarantors who have already repaid debts for the enterprises or cooperatives which fall into the state of bankruptcy.

- Contents in creditors' conferences:

The property-managing and-liquidating team leader shall brief the creditors' conference on the business situation and the financial situation of the enterprise or cooperative which falls into the state of bankruptcy; the results of property inventory, the list of creditors, the list of debtors and other contents deemed necessary.

+ The owner or lawful representative of the enterprise or cooperative presents ideas on the contents briefed to the conference by the property-managing and-liquidating team leader, propose plans and solutions to reorganize the business operation, the capability and time limit for debt repayment.

+ The creditors' conference shall discuss the contents informed by the property-managing and-liquidating team leader and ideas presented by the enterprise owner or the lawful representative of the enterprise or cooperative.

+ The creditors' conference adopts the resolution

In case of necessity to hold a subsequent conference of creditors, the agenda and contents thereof shall be decided by the judge.

- The creditors' conferences shall be valid only when the conditions are fully met in accordance with the law.

b) Conditions for application of business operation restoration procedures

- The judges shall issue decisions to apply the business operation restoration procedures after the first conference of creditors adopt resolutions approving solutions to reorganize business operations, plans on repayment of debts to creditors and request the enterprises or cooperatives to work out plans on business operation restoration.

- Within thirty days as from the date the first conference of creditors adopt the resolutions, the enterprise or cooperative which fall into the state of bankruptcy must work out plans to restore their business operations and submit them to the courts.

c) Contents of plans on recovery of business operations

- Plans on restoration of business operations of enterprises or cooperatives which fall into the state of bankruptcy must clearly state the necessary measures to restore business operations: conditions time and plans for debt repayment; ways to raise capital; changes in type of products; reorganization…

d) Consideration and adoption of plans on business operation restoration (as stipulated in Article 70, 71 of the Law on Bankruptcy).

d) Recognition of resolutions on business operation restoration plans and Supervision of the implementation of business operation restoration plans (Article 72, Law on Bankruptcy).

The maximum time limit for implementation of a plan on restoration of business operations of an enterprise or cooperative falling into the state of bankruptcy is three years as from the last day of publishing the court's decision on recognition the creditors' conference's resolution on plans for restoration of business operation of the enterprise or cooperative.

*e) Suspension of business operation restoration procedures and its legal consequences (*Article 76, 77 of the Law on Bankruptcy).

2.3. Property and Debt Liquidation

2.4. Properties of enterprises or cooperatives which fall into the state of bankruptcy and the property distribution orders:

Properties of enterprises or cooperatives which fall into the state of bankruptcy shall include: Properties and property rights possessed by the enterprises or cooperatives by the time the courts receive the applications for opening of bankruptcy procedures; the profits, properties and property rights which the enterprises or cooperatives will acquire from the performance of transactions established before the courts receive the applications for opening of bankruptcy procedures; properties used as security for the fulfillment of obligations of the enterprises or cooperatives; the land use right value of enterprises or cooperatives ...(Article 49 of the Law on Bankruptcy).

The distribution of the value of the remaining assets after secured debts have been paid shall be subject to the following order of priorities:

- Bankruptcy charge.
- Debts of wage, severance allowances, social insurance under law provisions and other interests under the signed collective labor accords and labor contracts.
- Unsecured debts payable to the creditors on the list of creditors on the principle that if the property value is enough for debt repayment, each creditor shall be repaid with his/her/its full debt amount; if the value of the property is not enough for debt repayment, each creditor shall be paid with part of his/her/its debt according to the corresponding ratio.

Where the value of the property of the enterprises or cooperative remains surplus after the repayment of all debts, the remaining amounts shall belong to:

- The cooperative members;
- The owners of private enterprises;
- The members of companies; the shareholders of joint-stock companies;
- The owners of State enterprises.

2.5. Declaring bankruptcy of enterprises, cooperatives

The judge issues decisions to declare bankruptcy of enterprises, cooperatives as follow:

Firstly, the judge issues decisions to declare bankruptcy of enterprises, cooperatives in special cases***:***

- Within thirty days as from the date the court-set time limit for advancing the bankruptcy charges expires, if the enterprise owners or the lawful representatives of enterprises or cooperatives, who have filed the applications for opening of bankruptcy procedures, have no more money or other properties for payment of bankruptcy charge advances, the courts shall issue decisions to declare that the enterprises or cooperatives are bankrupt.
- After receiving the applications for opening of bankruptcy procedures as well as documents and papers sent by the concerned parties, the courts shall issue decisions to declare bankruptcy of enterprises or cooperatives, if the enterprises or cooperatives falling into

the state of bankruptcy have no more properties or have properties but not enough for payment of bankruptcy charges.

Secondly, the judge issues decisions to declare bankruptcy of enterprises, cooperatives and to suspend property liquidation procedures at the same time***.***

3. Measures to preserve properties in case of bankruptcy

The Law on Bankruptcy provides regulations on preservation of properties of enterprises and cooperatives in case of bankruptcy.

3.1.Transactions considered invalid

The following transactions of the enterprises or cooperatives falling into the state of bankruptcy, which are effected within three months before the courts receive the applications for opening of bankruptcy procedures, shall be considered invalid:

- Donating movables or immovables to other persons;

- Liquidating bilateral contracts in which the obligations of the enterprises or cooperatives are clearly larger than the obligations of the other party;

- Repaying undue debts;

- Mortgaging or pledging properties for debts;

- Other transactions aiming to disperse properties of the enterprises or cooperatives.

When the transactions are declared invalid, the recovered properties must be included into the properties of the enterprises or cooperatives.

The property-managing and-liquidating team leaders and the creditors providing unsecured debts have the right to request the courts to declare that the above mentioned transactions are invalid.

3.2. Suspension of performance of valid contracts

In the course of carrying out the bankruptcy procedures, if it is deemed that the suspension of the performance of valid contracts which are being performed or have not yet been performed will be more beneficial for the enterprises or cooperatives, the performance of such contracts shall be suspended. The creditors, the debtors and the property-managing and-liquidating team leaders have the right to request the courts to issue decisions to suspend the contract performance.

3.3. Application of provisional emergency measures

In necessary cases at the requests of the property-managing and – liquidating teams, the judges in charge of carrying out the bankruptcy procedures shall issue decisions to apply one or some of the following provisional emergency measures in order to preserve the properties of the enterprises or cooperatives which fall into the state of bankruptcy:

- Giving or selling goods easy to decay, out of date goods;

- Distraining and sealing off properties of enterprises or cooperatives;

- Blocking banking accounts of enterprises or cooperatives;

- Sealing off storehouses, funds, seizing and managing the accounting books and relevant documents of enterprises or cooperatives;

- Forbidding or compelling enterprises, cooperatives, individuals, other relevant organizations to perform certain acts.

In addition to the above-mentioned measures, some other measures may also be applied in special case such as registering guaranteed transactions, suspending civil acts or settling the case.

VII. LAW ON SETTLEMENT OF DISPUTES IN TRADE AND COMMERCE

1. Features of disputes in trade and commerce

Disputes in trade and commerce are conflicts and disagreements in rights and economic interest among the related parties during the establishment and dealing with the relations in trade and commerce.

Features of disputes in trade and commerce are different from other disputes in social aspects such as labor, administrative, marriage and family.

Firstly, the main content of disputes in trade and commerce is conflicts of economic interests. This is because the key objective of doing business is to earn profits or make investments. Conflicts of economic interests is the key content of all disputes in trade and commerce

Secondly, the subjects of disputes in trade and commerce are different from that of other disputes. The subjects want to establish long term and stable relationships on the principle of co-operation and trust in trading and commercial activities. The rights and obligations of the subjects are always equal and mutually agreed with the key objective of economic interests. Therefore, the disputes may pose threats to and have negative effects on the rights and interests of the related parties while their economic interests are interrelated.

Thirdly, disputes in trade and commerce arise from trading and commercial activities. The trading and commercial activities are diversified and governed by market drivers such as demand and supply rule, continuous changes in prices... Disputes in trade and commerce, therefore, have a variety of forms, natures and solutions of the parties.

2. Solutions to settle disputes in trade and commerce

In accordance with the applicable laws, the solutions to settle disputes in trade and commerce shall include:

- Negotiation;
- Conciliation/compromission;
- Commercial arbitration;
- The People Court.

(1) Negotiation is the first solution agreed by the related parties in disputes and in fact most of disputes in trade and commerce are settled by this solution. The Government encourages to apply this solution to settle disputes in trade and commerce with the respect of the related parties' right to negotiate. Consequently, there are no legal regulations on negotiation solution.

2) Conciliation/compromission is the solution to settle disputes with the involvement of a third party who is an individual or an organization playing the intermediary role to assist in settling disputes. Conciliation results depend on the goodwill of the related parties and the prestige, experience and skills of the intermediary for conciliation. The final decision of conciliation is not made by the intermediary, but it depends on the parties in disputes. Conciliation is a favorable solution to settle complex disputes where the related parties do not understand each other.

(3) Commercial arbitration have such advantages as final judgment and the effectiveness of the arbitration decision on the settlement of disputes; confidentiality; continuity; flexibility; saving time; not being bound by territory rules; the parties have the right to select arbitration model and arbitrator to settle disputes and maintain the relationship; the parties are allowed to consult experienced experts.

(4) Disputes which are settled at the Court shall enjoy such advantages as (i) as the Court represents for the State power, all of its decisions and judgments shall be enforceable; (ii) on the principle of two – level judgments, mistakes and errors in the settlement of disputes may be discovered and corrected on a timely basis; (iii) in Vietnam, the court charges should be lower than arbitration charges.

REFERENCES FOR PART I

1. The 2005 Civil Code (Third Part).

2. The 2004 Code of Civil Procedure (Chapter 2, Chapter 3, First Part).

3. The 2003 Law on State owned Enterprises.

4. The 2005 Law on Enterprises (effective from 01/7/2006).

5. The 2005 Law on Investment (effective from 01/7/2006).

6. The 2005 Commercial Law (effective from 01/01/2006).

7. The 2004 Law on Bankruptcy.

8. The 2004 Law on Competition.

9. Decree No. 108/2006/ND-CP dated 22/09/2006 of the Government regulating in details and guiding the implementation of a number of Articles of Law on Investment

10. Decree No 78/2006/ND-CP dated 09/8/2006 of the Government providing for oversea direct investment.

11. Decree No 35/2006/ND-CP dated 31/3/2006 of the Government detailing the provisions of Commercial Law on Commercial Franchising.

12. Decree No 88/2006/ND-CP dated 29/8/2006 of the Government on business registration.

13. Decree No 139/2007/ND-CP dated 05/9/2007 of the Government providing detailed guidelines for implementation of a number of articles of the Law on Enterprises.

14. Decree No 116/2005/ND-CP dated 15/9/2005 of the Government providing detailed guidelines for implementation of a number of articles of the Law on Competition .

15. Decree No 25/2003/ND-CP dated 15/01/2004 of the Government detailing a number of articles of the Ordinance on commercial Arbitration.

16. Decree No 101/2006/ND- CP dated 21/9/2006 of the Government on re-registration, conversion and registration for replacement with investment certificates by enterprise with foreign owned capital in accordance with Law on Enterprises and Law on Investment.

17. Decree No 109/2007/ND-CP dated 26/6/2007 of the Government on conversion of enterprises with 100% State-owned capital into shareholding companies.

18. Decree No. 111/2007/ND-CP dated 26/6/2007 of the Government on organization and management of State owned corporations and conversion of State owned corporations, independent State companies and State owned parent companies into companies operating in accordance with the Law on enterprises.

19. Decree 109/2008/ND-CP dated 10/10/2008 of the Government on the sale and transfer of enterprises with 100% State owned capital.

20. Decree 114/2008/ND-CP dated 03/11/2008 of the Government on detailed provisions for the implementation of several articles in the law on bankruptcy applicable to enterprises in insurance, securities and other financial sectors.

21. Decree 09/2009/ND-CP dated 05/2/2009 of the Government promulgating the Regulation on financial management of state companies and management of state capital invested in other enterprises

PART II - FINANCE AND FINANCIAL MANAGEMENT

I. TIME VALUE OF MONEY

In financial practices, a dollar today is worth more than a dollar in the future because of three reasons:

Firstly, inflation (money loses its value due to inflation)

Secondly, risks in daily socio-economic life

Thirdly, investment opportunities, a dollar today can earn interest up until the time the future dollar is received.

The fact shows that money has its time value (time value of money), i.e. a dollar today is worth more than a dollar in the future. Interest is used to calculate time value of money.

In order to better understand time value of money mechanism, it is necessary to know mathematical formulas to calculate present value and future value of money

1. **Future value of money:** The total amount that an amount of money will be worth at a future date if it is invested at an interest rate.

1.1. Future value of an amount of money

PV : Present value of an invested amount

FV_n : Future value after n period

r : iInterest rate

$(1+r)^n$: interest factor .

$$FVn = PV (1+r)^n \qquad (1)$$

1.2. Future value of a cashflow

a) Future value of any cashflow

$$FV_n = \sum_{t=1}^{n} PV_t(1+r)^t$$

PV_t: value in t period.

b) Future value of an annuity. An annuity is a series of equal payments in equal time periods.

FVA_n: Future value of the annuity

a: The value of each payment in each period

- When each payment (a) arises at the end of each period:

$$FVA_n = a \frac{(1+r)^n - 1}{r}$$

- When each payment (a) arises at the beginning of each period

$$FVA_n = a \frac{(1+r)^n - 1}{r} (1+r)$$

$$\frac{(1+r)^n-1}{r}$$: Interest factor.

2. Present value of money

Present value is the value on a present date (original) of a future payment at a fixed discount rate.

2.1. Present value of an amount of money

From theFormula (1):

$$PV = FV_n(1+r)^{-n}$$

r : discount rate

$(1+r)^{-n}$: discount factor

PV: present value

2.2. Present value of a cashflow

a) Present value of any cashflow

$$PV_n = \sum_{t=1}^{n} CF_t(1+r)^{-t}$$

In which: PV_n : Present value of the cashflow

CF_t : Value of the cashflow in t period

b) Present value of an annuity:

PVA_n : Present value of the annuity

a : The value of each payment in each period

- When each payment (a) arises at the end of each period:

$$PVA_n = a\frac{1-(1+r)^{-n}}{r}$$

- When each payment (a) arises at the beginning of each period:

$$PVA_n = a\frac{1-(1+r)^{-n}}{r}(1+r)$$

$$\frac{1-(1+r)^{-n}}{r}$$: discount factor

II. VALUATION OF BONDS AND SHARES

1. Pairs of values

1.1. Liquidation value and going-concern value

These concepts represent the value of an enterprise under two different circumstances:

- *Liquidation value* is the net amount that will be realized if the enterprise or its assets are sold upon its termination.

- Going concern *value* is the net amount that will be realized when the on-going enterprise is sold.

1.2. Book value and market value

Book value can be understood as book value of a particular asset or book value of an enterprise. The book value of an asset is the value of the asset in accounting records which is the purchase price minus accumulative depreciation. The book value of an enterprise is the total assets minus the total liabilities and minus preference shares in the balance sheet.

- M*arket value* is the price of an asset or an enterprise in the market. In general, the market value of an enterprise is often higher than its liquidation value of its going concern value.

1.3. Market value and intrinsic value

This pair of values represent the value of securities and financial instruments.

- *Market value* of a security is its selling and buying price in the market.

- *Intrinsic value* of a security is its value determined by relevant factors.

2. Bond valuation

- *Bonds* are long-term debt instruments issued by the Government (Government bonds) or companies (corporate bonds) for the purpose of raising long – term capital.

- *Bond valuation* is the process of determining the fair price of a bond. The fair value of a bond is the present value of the stream of cash flows it is expected to generate in the bond period.

2.1. Valuation of perpetual bonds or consols

Perpetual bonds or consols are bonds with no maturity date. The value of a perpetual bond is determined by the present value of the annuity of the bond

• I Fixed interest

• P_d Bond value

• r_d Interest rate required by investors

The value of a perpetual bond is the total present value of the total interest amount of the bond.

The formula to calculate the present value of the perpetual annuity:

$$P_d = \frac{I}{(1+r_d)^1} + \frac{I}{(1+r_d)^2} + \ldots\ldots + \frac{I}{(1+r_d)^\infty} = \sum_{t=1}^{\infty} \frac{I}{(1+r_d)^t} = \frac{I}{r_d}$$

2.2. Valuation of nonzero coupon bonds

Nonzero coupon bonds are bonds with maturity date and interest in each period.

If

• MV is the market value of a bond,

• n is the number of years to maturity,

The value of bond shall be the present value of all cash flows earned from the bond in the future

$$P_d = \frac{I}{(1+r_d)^1} + \frac{I}{(1+r_d)^2} + ... + \frac{I}{(1+r_d)^n} + \frac{MV}{(1+r_d)^n}$$

2.3 Valuation of zero-coupon bonds

Zero-coupon bonds are bonds that do not pay interest during the life of bonds and that are sold at a price lower than its face value.

The valuation of zero-coupon bonds is similar to that of nonzero coupon bonds, the only difference is the interest rate of zero-coupon bonds is zero. Total interest of zero-coupon bonds, therefore, is zero. The price of zero-coupon bonds is its face value at maturity date.

2.4. Valuation of bonds with half-year interest payments

Bond interest is normally paid every year, but interests of some bonds are paid twice per year (*half-year interest payments*). Therefore, the formula used to calculate the price of common bonds needs to be adjusted to calculate the price of bonds with half-year interest payments.

$$P_d = \sum_{t=1}^{2n} \frac{I/2}{(1+r_d/2)^1} + \frac{MV}{(1+r_d/2)^{2n}}$$

2.5. Bond Yield

+ Bond yield to maturity

You buy a bond with the par value of $1000 for a period of 14 years at the annual interest rate of 15% at the market price of $1368,31. If you hold this bond until its maturity date, how much is the yield of this bond? The following formula is used to calculate bond yield to maturity

$$1368{,}31 = \frac{150}{(1+r_d)^1} + \frac{150}{(1+r_d)^2} + ... + \frac{150}{(1+r_d)^{14}} + \frac{1000}{(1+r_d)^{14}}$$

Use a calculator or an Excel spreadsheet, you will have your bond yield of 10%.

+ Bond yield to call

Corporate bonds may be callable (redeemable) before maturity date. This happens when it is forecasted that interest rate will reduce upon bond issuance. The issuer shall redeem its issued bond at a higher interest rate and alternatively issue new bonds at a lower interest rate and investors shall enjoy bond yield to call (YTC) instead of bond yield to maturity (YTM). The formula to calculate YTC is:

$$P_d = \frac{I}{(1+r_d)^1} + \frac{I}{(1+r_d)^2} + ... + \frac{I}{(1+r_d)^n} + \frac{P_c}{(1+r_d)^n}$$

in which:

n is the number of years to call

P_c is the call price of bonds

r_d is yield to call.

If the price of bonds (P_d), the call price of bonds (P_c) and annual interest rate (I) are known, bond yield to call(r_d = YTC) can be calculated from the above formula.

3. Valuation of preference shares

Preference shares are shares a fixed annual rate of dividend and no specific maturity date. Preference shares are similar to perpetual bonds. The formula to calculate the value of perpetual bonds, therefore, can be used to calculate the value of preference shares. The price of preference shares shall be determined as follow:

$P_{ps} = D_{ps}/ r_{ps}$

In which, D_{ps} is annual dividends of preference shares and r_{ps} is profitability ratio required by investors.

4. Valuation of ordinary shares

4.1. Basis

Ordinary shares are certificates of investments into shareholding companies. Ordinary share holders are entitled to annual distributed profits and are entitled to company ownership with the respect to the number of their shares.

Value of preference bonds and shares are the present value of the cash flows earned by investors.

Similarly, value of ordinary shares is the present value of the cash flows earned by investors from ordinary shares. The formula to calculate the value of ordinary shares is as follow:

$$P_e = \frac{d_1}{(1+r_e)^1} + \frac{d_2}{(1+r_e)^2} + ... + \frac{d_\infty}{(1+r_e)^\infty} = \sum_{t=1}^{\infty} \frac{d_t}{(1+r_e)^t}$$

In which, d_t is the dividend of a share in t period and r_e is profitability ratio required by investor. However, this formula is used in case investors hold ordinary shares forever to earn dividends. In case the investor purchases shares and holds them for two years and then re-sells them at a price of P_2, the price of shares shall be calculated as:

$$P_e = \frac{d_1}{(1+r_e)^1} + \frac{d_2}{(1+r_e)^2} + \frac{P_2}{(1+r_e)^2}$$

4.2. Dividend discount model

Dividend discount model is designed to calculate the intrinsic value of ordinary shares. This model is used on assumptions that: (1) foresee dividend increase rate and (2) foresee discount rate.

Cases of increase in dividends include:

a) No change in dividend increase rate:

The formula to calculate the share price is:

$$P_e = \frac{d_0(1+g)}{(1+r_e)^1} + \frac{d_0(1+g)^2}{(1+r_e)^2} + ... + \frac{d_0(1+g)^\infty}{(1+r_e)^\infty}$$

In which, d_0 is the present dividend of the shares and g is dividend increase rate

as $g < r_e$ and n -> ∞, $P_e = d_1/(r_e – g)$

b) Dividend increase rate is zero:

This is a special case where dividend increase rate is zero. The above formula, therefore, shall be $P_e = d_1/r_e$.. Rarely are there the cases where shares have zero dividend increase rate. For shares with stable dividends in a long term, this formula can be use to calculate the approximate price of shares. Preference shares may be considered as shares with zero dividend increase rate.

c) Change in dividend increase rate:

In case dividend increase rate (g) is changed in periods, the formula shall be as follow: (e.g dividend increase rate of the first five years is g and of the following years is g'):

$$P_e = \sum_{t=1}^{5} \frac{d_0(1+g)^t}{(1+r_e)^t} + \sum_{t=6}^{\infty} \frac{d_5(1+g')^{t-5}}{(1+r_e)^t}$$

d) Limitations of the dividend discounting model

The dividend discounting model may be applied in cases of zero dividend increase rate, no change in dividend increase rate (g) and changes in dividend increase rate in periods (in spite of complexity). However, this model can not be applicable in case where the company retains all profits for re-investment without dividend distribution to shareholders.

4.3. Share valuation by PE ratio. (Price-Earnings ratio)

This is a simple method to calculate share price. According to this method, the share price is the expected earnings per share multiplied by the industry average PE ratio. For instance, a company expects to earn an after-tax profit per share of $3 in the next year and the industry average PE ratio is 15, the share price shall be:

V = (expected after-tax profit per share) x (the industry average PE ratio)

V = $3 x 15 = $45

5. Profitability ratio of Shares

5.1. Preference shares

If the intrinsic value (P_{ps}) is replaced with the present market value (P_0) in the formula to calculate the intrinsic value of preference shares, the formula shall be:

$P_0 = D_{ps}/ r_{ps}$

In which: D_p is dividend of preference shares and r_p is profitability ratio required by investors. From this formula, the profitability ratio of preference shares shall be:

$r_{ps} = d_{ps}/ P_0$

5.2. Ordinary shares

Similarly, if the intrinsic value (P_e) is replaced with the present market value (P_0) in the formula to calculate the intrinsic value of ordinary shares, the formula shall be:

$P_0 = d_1/ (r_e – g)$

From this formula, the profitability ratio of ordinary shares shall be:

$r_e = (d_1/P_0) + g.$

III. SOURCES OF FINANCE FOR ENTERPRISES

1. Long-term sources

1.1. Ordinary shares

a) Definition and features

* Definition: An ordinary share represents a fractional ownership interest in the issuing company. An ordinary share is an evidence of the legal right to a fractional ownership interest in the issuing company of the ordinary shareholder

Ordinary shares shall have the following features:

+ Ordinary shares are equity securities. Companies issue ordinary shares to raise equity

+ Ordinary shares have no maturity date.

+ Dividends paid for ordinary shareholders shall depend on business performance and the dividend policies of the company.

b) Ways to increase capital by issuance of ordinary shares

The ways to issue new shares to increase capital shall be as follow:

+ Issue new shares which the existing shareholders are given the (preemptive) first priority right to purchase.

+ Issue and offer new shares to the third parties who have close relationship with the company such as suppliers, customers, management agencies

+ Issue and offer new shares to the public.

c) Advantages of issuing new ordinary shares to the public.

- Increasing long–term capital without the obligation to pay fixed dividends (different from the case of borrowing capital), this reduces risks of restructuring and bankruptcy.

- Ordinary shares' dividends are not fixed but depend on business performance. The issuer, therefore, is not legally liable to pay fixed dividends on due.

- Ordinary shares do have no maturity date. The issuer has no obligation to pay the principal at a specific maturity date. The issuer, therefore, are proactive and flexible in using capital without the concern of due debts.

- Increasing equity, increasing liquidity, increasing credit rating and trust, and reducing financial risks.

- In some cases, for instance, where the company earns a lot of profits, its ordinary shares shall be easier to be sold than preference shares and bonds, and the company shall quickly achieve its capital raising objective.

d) Disadvantages of issuing new ordinary shares

- Sharing the right to manage the company with new shareholders, causing difficulties in management.

- Sharing profits with new shareholders. This is a disadvantage for the current shareholders when the company enjoys potential development in the future.

- Cost of issuing ordinary shares is, in general, higher than that of issuing preference shares and bonds, because ordinary share purchases are riskier than other purchases.

- As dividends of ordinary shares are included in taxable corporate income, cost of raising capital by shares is much higher than cost of raising capital by borrowings.

In addition, it's necessary to consider the following conditions:

- The stability of corporate income and profit in the future.
- The current financial situation, especially capital structure.
- Requirements to reserve the right to manage the company of ordinary shareholders.
- Expenses for issue of new ordinary shares.

1.2. Preference shares

a) Definition and features

- Definition: A preference share represents a fractional ownership interest in the issuing company. A preference share is an evidence of the legal right to a fractional ownership interest in the issuing company of the preference shareholder. The preference shareholder enjoys several favorable conditions over ordinary shareholders.

- Main features:

+ Preference shareholders enjoy the priority right to be paid dividends and principal when the company is liquidated. Preference shares' dividends are fixed, not depend on business performance. Preference shareholders are paid dividends before ordinary shareholders are paid. Upon company liquidation, preference shares shall be paid to preference shareholders before ordinary shares are paid to ordinary shareholders.

+ Accumulative dividends: when the company faces difficulties in business, it may delay in paying dividends to preference shareholders. Such amount of dividends shall be accumulated and carried forward to next period.

+ Non-voting rights: preference shareholders do not have the right to vote for the board of management and for important decisions management.

+Preference shares are equity securities, representing a fractional ownership interest in the issuing company of the investor.

b) Advantages of issuing preference shares:

- It is not compulsory to pay dividend on due. The company has to pay fixed dividends, but unnecessarily on due, the company may delay paying dividends until next period. This helps the company to avoid the risk of bankruptcy when it is in difficult situation and unable to pay dividends on due.

- Ordinary shareholders do not have to share high profits with preference shareholders because preference shareholders are entitled to fixed dividends

- Ordinary shareholders do not have to share the right to manage the company with preference shareholders.

- The company does not have to provide pledges or mortgages or set principal payment funds (as in case of bonds). Raising capital by issuing preference shares is more flexible than raising capital by issuing bonds.

c) Disadvantages of issuing preference shares:

- Preference shares' dividends are higher than bond interests because it is riskier to buy preference shares than to buy bonds

- As preference shares' dividends are included in taxable corporate income, cost of raising capital by issuing preference shares is much higher than cost of raising capital by issuing bonds.

=> Due to the hybrid feature, i.e. preference shares are similar to both ordinary shares and bonds, it is proper to issue preference shares when it is unfavorable to issues ordinary shares or bonds.

1.3. Corporate Bonds

a) Definition and features

* Definition: A corporate bond is a security certifying the lawful right and interest in a fractional debt of the issuing organization of bond holders.

** Main features:*

- Bond holders are creditors of the company: the company issuing bonds is a borrower, bond purchasers are lenders or creditors of the company.

- Bond holders do not have the right to manage the issuing company's business activities. Creditors do not have the right to be candidates or be elected in the Board of management and do not have the voting right.

- Bonds have maturity date: On the maturity date, the issuing company has to repay all creditors bond principals .

- Bond interests are fixed: in general, bond interests are defined, not depend on annual business performance.

- Bond interests are excluded from taxable corporate income. I.e. bond interests and financial expenses in accordance with the law on corporate income tax

** Types of corporate bonds:*

+ In term of bond formality: bearer bonds and registered bonds.

+ In term of bond interest: fixed interest rate bonds and variable interest rate bonds.

+ In term of security requirements in bond issues: secured bonds and unsecured bonds

+ In term of bond nature: common bonds, convertible bonds and bonds with right to purchase shares.

+In term of credit risks: corporate bonds are classified into different types by credit rating…

b) Advantages of issuing term bonds

- Bond interest rate is fixed: Bond interest rate is pre-determined at a fixed rate. When the enterprise generates profits, bond issues will increase return on equity ratio without profits distributed to creditors.

- Cost of issuing bonds is lower than cost of issuing ordinary and preference shares. Bonds are, therefore, less risky and more attractive to investors than shares.

- Corporate owners do not have to share the right to manage the company with creditors.

- Bond interests are excluded from taxable corporate income, the issuer reduce borrowing expenses and taxes payable.

- Bond issues help the company restructure its capital in a flexible way to use capital effectively.

c) Disadvantages of issuing term bonds

- The issuing company has to pay bond interests at a fixed rate on due: This may cause financial risks if corporate income and profits are not stable.

- Increase in debts (high debt ratio): bond issues may increase return on equity ratio return on equity ratio, but also increase in debts .

- Issued bonds are term borrowings. The issuer has the obligation to repay principal and interest on due. If corporate income and profits are unstable or variable, bond issues may cause the issuer in liquidity risks and bankruptcy.

- Long-term bonds are long term borrowings. Long-term bond issues have both positive and negative effects. The positive effect is that issued bonds will play a role as a leverage for corporate development. The negative effect is that the issuer may be in danger of termination or non development.

In addition, the following should be taken into considerations before bond issues:

- The stability of corporate income and profits in the future: If corporate income and profits are stable, it is appropriate to issue bonds.

- Debt ratio: if debt ratio is low, it is appropriate to issue bonds and vice versa.

- The fluctuation of the market interest rate in the future: if the market interest rate tends to increase in the future, it is appropriate to issue bonds.

- The requirements to maintain the controlling rights of the current owners: if the shareholders don't want to share their controlling rights, it is necessary to issue bonds.

1.4. Long-term borrowings from credit institutions

- Long-term borrowings from banks is an important source of finance for the development of an enterprise. As during its business course, borrowings from banks bring a lot of benefits, many enterprises regular borrow from banks to raise capital for their business.

- Long-term borrowings from banks are normally borrowings with the term of more than one year. In fact, medium term borrowings have term of from one to three years and long term borrowing have term of more than three years

- Based on the nature and the purpose, banks may classify loans into: loans for purchases of fixed assets, loan for purchases of movable assets, loans for investment projects.

- Long-term borrowings have the same advantages as bonds. However in addition to disadvantages of bonds, long-term borrowings from banks also have the following limitations:

+ Credit conditions: the enterprises which want to borrow at commercial banks must meet credit conditions for safety of the banks. An enterprise must submit its application profile and provide required information. The bank shall analyze the application profile and perform credit assessment to make decisions on providing loans or not.

+ Conditions on collaterals: banks often require borrowers to pledge assets as securities for loans.

+ Bank controls: The purpose and usage of loans shall be under bank controls.

1.5. Financial Lease

* *Definition:* Financial lease is a form of medium and long-term credits thereby the lessee undertakes to buy an asset as requested by the lessor and takes the ownership of the leased asset. The lessee shall use the leased asset and make payments to the lessor during the agreed lease period. The lessee can not cancel the lease contract before due.

** Main features of financial lease*

- Lease period is the major part of the asset's useful life

- The lessee shall be liable for maintenance and repair of the leased asset.

- The lessee is not allowed to cancel the contract before due.

- The total payments paid to the lessor normally cover the purchase price of the leased asset.

- At the end of the lease period, the lessee is transferred the ownership of the asset or enjoys the right to purchase the asset or to continue to lease the asset for a new period in accordance with the lease contract.

2. Short-term sources

2.1. Credit provided by suppliers

Credit provided by suppliers is important for enterprises in need of current working capital. Enterprises purchase goods on credit, i.e. they purchase goods now but pay later. Goods purchased on credit is an additional source of current working capital.

** Features of credit provided by suppliers*

- the credit amount is limited to the volume of the purchased goods on credit

- the credit must be repaid in a specific period, normally short period.

- Cost of using capital is not clearly defined.

* *Advantages:* Trade credit is simple and convenient in business. Trade credit meets a part of capital requirements.

* *Disadvantages:* Trade credit increases debt ratio, liquidity risks and the possibility of bankruptcy.

* *Management requirements:* enterprises must regularly review trade credits to prepare cash for debt payments. Enterprises should not lose credit score due to failure to make payments on due.

2.2. Short-term borrowings from banks

- At present, short-term borrowings is an important source of finance for enterprises. Features of short term borrowings are: borrowings are used for the intended purpose in an effective way; borrowings are secured by pledges; borrowings are repaid with interests within a specific period.

- Commercial banks provide short-term loans in such types as:

+ Instalment loans

+ Credit-limit loans

+ Scheduled loans

- Features:

+ Short term loans must be in a specific limit

+ Short term loans have maturity date

+ Short term loans have interests.

* *Advantages:* Short term borrowings reduce difficulties in short term capital

* *Disadvantages:* Short term borrowings increase debt ratio, financial risks due to repayments of principals and interests on due.

2.3. Draft

- Definition: A draft is a valuable paper stating an unconditional promise or order to pay a certain amount of money on demand or at a definite future date to the beneficiary.

- There are two types of drafts:

+ Bill of exchange: is a valuable paper of an order by the drawer to the drawee to pay unconditionally a certain amount of money on demand or at a definite future date to the beneficiary.

+ Promissory note: is a valuable paper of an unconditional promise by the drawer to the drawee to pay a certain amount of money on demand or at a definite future date to the beneficiary.

Drafts are an important source of finance for enterprises. If an enterprise needs capital before the maturity of its draft, it may transfer or negotiate the draft to get money in advance to meet its capital need.

2.4. Other sources

In addition to the above sources of finance, enterprises may use other sources to meet current working capital needs: taxes and fees payable to State Treasury but not yet on due ; salaries, social insurance not yet paid to employees; dividends of not yet paid to shareholders, customer deposits etc. These are short-term sources of finance

IV. COST OF CAPITAL AND LEVERAGE SYSTEM

1. Cost of capital

1.1. Concept of cost of capital

Cost of capital is the market's required rate of return that a firm must achieve on the capital raised for a certain investment project.

From corporate perspective, cost of capital is the minimum rate of return required for capital investments to keep constant the shareholders' current income level.

1.2. Factors driving cost of capital

There are various factors driving an enterprise's cost of capital.

** Group of objective factors:*

- Market interest rate:

- Income tax policy: Loan interest payment is deductible from taxable income, thus lowering income tax amount. Loan interest, therefore, brings in tax benefit. The higher the tax rate is, the greater the tax benefit will be, thus lowering cost of debt and vice versa.

** Group of subjective factors:*

- Investment policy: in case, it is the policy of a company to invest in high-risk assets, the investors' required profitability ratio is also high and vice versa, thus making cost of capital vary.

- Financing policy: the higher debt in an enterprise capital structure, the higher the financial risk to investors' contributed capital, resulting in the increased cost of capital of the enterprise.

- Dividend policy: the dividend policy of a company determines the large or small scale of re-invested profit. A large scale re-investment scheme helps the company limit its capital financing from outside which has higher cost of capital.

1.3. Cost of capital of each source of finance

(1) Cost of debt

One of the typical characteristics of debt capital is that the payable interest shall be taken out before calculating income tax. Therefore, cost of debt must be determined separately for pre-tax cost of debt and after-tax cost of debt.

a) Pre-tax cost of debt

Cost of debt is defined as the minimum profitability ratio required on investment by debt to keep level of profit constant for the enterprise owner.

Supposing D is debt capital

- r_d is cost of debt.

- C_i is amount of money (principal and interest) paid to the creditor ($i = 1 \rightarrow n$).

Then: $$D = \sum_{i=1}^{n} \frac{C_i}{(1+r_d)^i} \qquad (a)$$

Note: From (a) we have:

$$f = \sum_{i=1}^{n} \frac{C_i}{(1+r_d)^i} - D = 0$$

take r_{d1} so that $f_1 > 0$

take r_{d2} so that $f_2 < 0$

$$r_d = r_{d1} + (r_{d2} - r_{d1}) \frac{f_1}{f_1 + |f_2|}$$

b) After-tax cost of debt

Interest is to be deducted from taxable income. However, dividend payable to preferred shareholders, dividend payable on contributed capital, etc. shall not enjoy this "special favor". Therefore, in order to have a uniform basis for comparing cost of different sources of capital, a common "point" is often selected. Such point is profit after tax.

Thus, cost of debt can be calculated by using the following formula:

After-tax cost of debt	=	Pre-tax cost of debt	x	1	-	Corporate Income Tax Rate

(2) Cost of retained earnings

Cost of retained earnings is measured by opportunity cost or in other words, cost of retained earnings is equal to shareholders' required profitability ratio on their invested shares (ordinary shares). As such, cost of equity is nothing but discounting ratio balancing the future dividends and the present investment capital (shown through price of share).

Supposing r_s is cost of re-invested profit

Then $$r_s = \frac{d_1}{P_0} + g$$

In which: P_0 is the present market price.

d_1 is expected dividend after year 1.

g is expected growth rate of dividend (supposing constant growth).

(3) Cost of ordinary shares

Cost of share issue shall incur upon issuance of new ordinary shares. Cost of share issue comprises: printing expenses, advertisement expenses, underwriting expenses, commission, broking fee...

Thus, the capital usable by the enterprise shall be equal to share issue price less cost of share issue.

Presuming P_0 is market price of ordinary shares

e is rate of cost of share issue, then net price is P_0 (1 - e)

d_1 is expected dividend on one ordinary share after year 1 g is expected growth rate of dividend (supposing constant growth).

r_e is cost of ordinary shares

$$r_e = \frac{d_1}{P_0(1-e)} + g = \frac{d_0(1+g)}{P_0(1-e)} + g$$

Note: Determine expected growth rate of dividend (g).

k is rate of re-invested profit.

ROE: Return on Equity in the preceding period

$$g = ROE \times k$$

(4) Cost of preferred shares

Preferred share is a hybrid security combining ordinary share and bond. As preferred shareholders receive fixed interest, preferred share is similar to bond. On the other hand, interest payable shall not be deductible before determining corporate income tax and preferred shares are accounted for in equity, making preferred share similar to share. Notable features are: preferred shareholders shall receive annual fixed interest and shall not benefit from return on profit growth.

If we call P_P is market value of preferred share.

e is rate of cost of share issue

d is dividend on one preferred share.

Then cost of preferred shares r_p shall be determined as follows:

$$r_P = \frac{d}{P_P(1-e)}$$

1.4. Weighted Average Cost of Capital

Each source of capital will have its own cost of capital; hence, it is necessary to determine weighted average cost of capital. Weighted average cost of capital is determined using weighted average method in which weight is the ratio of capital components in the aggregate resources raised by the enterprise. Weighted average cost of capital of an enterprise depends on two factors: Cost of capital of each component and capital ratio of each component.

Presuming WACC is weighted average cost of capital

f_i is capital ratio of the i^{th} capital component (i = 1-n)

r_i is cost of capital of the component i

$$WACC = \sum_{i=1}^{n} (f_i \times r_i)$$

1.5. Marginal cost of capital

+ *Concept:* Marginal cost of capital is the cost of raising one dollar of capital in the same period.

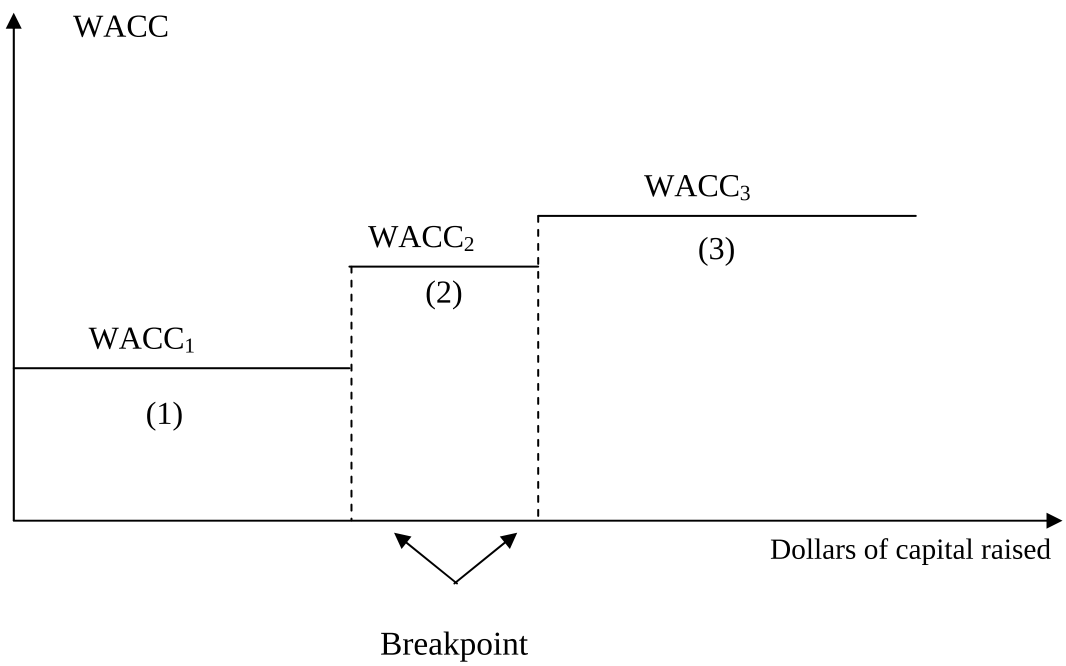
Marginal cost of capital in substance is the weighted average cost of each dollar of capital newly raised in the same period. Enterprise's raising of capital shall increase risk to its investors. The enterprise's management has to determine cost of each dollar of new capital raised, from which determine an optimal capital scale for realizing the investment project. Only dollars of capital having marginal cost of capital lower than the profitability ratio of the investment project shall be accepted.

+ Determining breakpoint on the marginal cost curve

When an enterprise raising new dollars of capital, cost of each dollar of capital at certain point of time will increase. Point at the limit point of time from which cost of new capital begins to increase is called breakpoint of the cost of capital. Breakpoint (also called jumping point) is determined using the following formula:

$$\text{Break (jumping) point} = \frac{\text{Aggregate amount of capital components having cost of capital lower than that of capital component i}}{\text{Ratio of capital component i in the capital structure}}$$

For an enterprise, whose policy is to continuously raise new dollars of capital with different costs of capital, there may have various breakpoints on the curve. Weighted average cost of capital and breakpoints may be illustrated by a chart.



Studying the weighted average cost of capital in general and cost of capital in particular is very crucial to an enterprise because it helps provide financiers with more accurate grounds for making decision on selection of investment project. Studying marginal cost shall be basis for selection of an optimal capital scale for carrying out the investment project.

2. Leverage system in an enterprise

In financial field, leverage is considered to be an instrument that an enterprise can use to maximize its profit. Two among the leverages that financial managers often use are operating leverage and financial leverage.

2.1. Degree of Operating Leverage (DOL)

Operating leverage reflects the percentage of fixed costs in a company's cost structure.

Operating leverage will be high in enterprises having high ratio of fixed costs in total operating costs. Operating leverage shows how an enterprise uses their costs in their business operations.

Degree of effect of operating leverage on earnings before interest and tax (EBIT) of an enterprise is determined by using the following formula:

$$\text{Degree of effect of operating leverage} = \frac{\text{Percentage of variation of EBIT}}{\text{Percentage of variation of revenue (or sale output)}}$$

As such, degree of effect of operating leverage reflects level of variation and EBIT resulted from the variation of sales (or sale output). In other words, it shows how many percent that EBIT will vary when sales (or sale output) changes 1%.

Presuming: F: is total fixed costs (exclusive of interest)

v: is variable cost of 1 product

g: is selling price of 1 product

Q: is quantity of products sold

$$DOL = \frac{Q(g- v)}{Q(g - v) - F}$$

From the above formula, we will have a formula for measuring impact of operating leverage on the variation of EBIT as follows:

$$\text{Percentage of variation of EBIT} = \text{Degree of effect of operating leverage} \times \text{Percentage of variation of revenue or sale output}$$

2.2. Degree of Financial Leverage (DFL)

a) Concept: Financial leverage reflects the amount of debt used in the capital structure of an enterprise.

An enterprise is considered to have high financial leverage if the ratio of debt in total capital of the enterprise is high. The higher the financial leverage is, the higher risk in financial activities is, but the greater the opportunity for increased return on equity (ROE).

Presuming: ROE is return on equity ratio (return on ordinary share capital ratio)

D is debt

E is equity (ordinary share capital)

ROA is return on assets

r_d is interest

t is corporate income tax rate

$$ROE = \left[ROA + \frac{D}{E}\left(ROA - r_d\right)\right] \quad (1-t)$$

Thus:

- When ROA >r_d: the enterprise's debt increases => higher ROE, also higher financial risk

- When ROA = r_d: the enterprise's debt increases but ROE remains unchanged, at the same time resulting in higher financial risk

- When ROA < r_d: the enterprise's debt increases => lower ROE, at the same time resulting in higher financial risk

This is the very limit of leverage ratio in an enterprise's capital structure, and this should be taken into account when making decision on capital raising.

b) Degree of effect of degree of financial leverage (DFL)

Degree of effect of financial leverage shows how many percent that return on equity (ordinary share capital) will vary when EBIT changes 1%.

$$\text{Degree of effect of financial leverage} = \frac{\text{Percentage of variation of equity profit ratio}}{\text{Percentage of variation of EBIT}}$$

If we call I to be interest payable:

$$DFL = \frac{Q(g - v) - F}{Q(g - v) - F - I}$$

From the above formula, we will have a formula for measuring impact of financial leverage on the variation of return on equity ratio (ROE) as follows:

$$\text{Percentage of variation of ROE} = \text{Degree of effect of financial leverage} \times \text{Percentage of variation of EBIT}$$

As such, financial leverage shows how an enterprise uses its financing sources of capital.

2.3. Combination of operating leverage and financial leverage

Operating leverage reflects the percentage of fixed costs in a company's operating cost structure. Degree of effect of operating leverage will be extremely high in enterprises having fixed costs higher than variable costs. However, operating leverage only impacts the company's EBIT because leverage ratio does not affect the size of operating leverage.

Degree of effect of financial leverage only depends on leverage ratio, not on structure of fixed and variable costs of the company. Therefore, financial leverage shall have effect on earnings after interest and tax. As such, when the impact of operating leverage does no longer exist, effect of financial leverage shall replace in order to maximize the company's return on equity (ordinary share capital) ratio. As a matter of fact, operating leverage is called the Tier 1 leverage and financial leverage is called the Tier 2 leverage. In addition, operating leverage and financial leverage can be combined in one degree total leverage. Degree of effect of total leverage (DTL) is determined as follows:

$$\text{Degree of effect of total leverage} = \text{Degree of effect of operating leverage} \times \text{Degree of effect of financial leverage}$$

$$DTL = \frac{Q(g - v)}{Q(g - v) - F - I}$$

Degree of effect of total leverage reflects the degree of sensitivity of the return on equity ratio (ordinary share capital) over the variation of revenue. In other words, how many percent that return on equity (ordinary share capital) will vary when revenue changes 1%.

V. ENTERPRISE'S CAPITAL INVESTMENT DECISION

1. Determining cash flows of the investment project

1.1. Principle for determining cash flows: In determining cash flows of the project, the following 5 fundamental principles should be applied:

(1) The cash flows should be measured on an incremental basis: In other words, cash flows of a specific project should be measured from the perspective that how entire cash flows of the enterprise would be affected if the project is approved in comparison with the impact if the project is not approved.

(2) Cash flows should be calculated on the after tax basis: Due to the fact that initial investment for a project would require after tax expenses in cash, income from the project should also be calculated in the same manner, i.e. after tax cash flows.

(3) All indirect effects of a project should be taken into account when measuring cash flows: For example, if a proposal for factory expansion would require an increment of working capital as the whole, probable in the form of higher cash on hand, inventory or accounts receivable. This increment of working capital should be included in the net investment required for the project.

(4) Damage costs should not be included in the cash flows of the project: Damage cost is a cost that has been proposed, thus it remains existing regardless of whether it has been approved or rejected. As damage costs are unrecoverable, such costs should not be included in the cash flows of the project. This cost is also called embedded cost – embedded cost is an improper cost.

(5) Values of assets used in a project should be measured by their opportunity costs: Opportunity costs of assets are the cash flows that such assets could generate if they would not been used in the project in question.

The above five principles for measuring cash flows can be applied in calculating net investment and net cash flows of a project.

1.2. Subjects of determination of net cash flows (typical) of a project

a) Determination of net investment cash flows (cash outflow)

Net investment in one project is the use of capital to form necessary quantity of assets for the project. Details comprise:

- Investment of capital to form fixed assets.

- Investment of capital to form on-going current assets for the project.

In addition, during the operation of the project, additional investment may be required, then such additional investment capital shall also be cash flows of the project.

In determining cash outflow of the project, attention should be paid to net income from disposing existing assets in case investment is an alternative decision, and tax implications in relation to disposal of existing assets or purchase of new assets.

b) Determination of net operating cash flows (cash inflow)

Cash inflow of an investment project reflects income cash flows generated by the investment project. For a production and business project, cash inflow comprises:

- Depreciation charged in the period.

- Profit after tax.

- Recovery of working capital.

- Recovery of residual fixed assets value (after tax).

c) Determination of annual cash flows of a project: is the difference between annual cash inflow less annual cash outflow of the project. Then we will only have the annual cash flow of the project, starting from CF_0 and until the end of the project's life cycle. Determining annual cash flow will help us reduce volume of calculation.

2. Capital investment in risk-free conditions

2.1. Payback period method (PP)

a) Concept: The payback period method is used to determine a period required for generating enough annual cash flows to cover the initial investment capital of the project. As such, the shorter the payback period is, the more attractive the investment project will be.

b) Determination method: There are probably two simulations in determining payback period:

First simulation: Annual incomes are the same, creating a homogeneous cash flow. Then we have:

$$\text{Payback period} = \frac{\text{Investment cost}}{\text{Annual income}}$$

Second simulation: Project's incomes form inhomogeneous cash flows; determination method will be as follows:

- To determine the remaining investment capital to be recovered as at year end by finding the difference between the investment capital and accumulated income.

- If the investment capital to be recovered is less than income of the succeeding year, we will divide the recoverable amount by income of that year. The result then will be multiplied with 12 months to determine the number of months required for recovering such investment capital.

c) Selection criteria: If we call T as the required period of time for fully recovering the investment capital:

- If the payback period > T: the project if rejected.

- If the payback period < T: we will then consider two situations:

  + in case of independent projects: all will be selected

  + in case of incompatible projects: the project with shortest payback period will be selected.

2.2. Discounted Payback Period (DPP) Method

a) Concept: Discounted Payback Period is the period of time required for total present value of all future flows of income of a project to adequately cover the initial investment capital.

b) Determination method: We may understand that the concept: "discounted payback period criterion is the period of time required for a project to recover the initial investment capital" – is perceived from the financial perspective. More clearly speaking, the discounted payback period criterion shows that we will need a payback period which has taken into account the opportunity cost of using the investment capital, profitability interval that this amount of capital could be generated from other projects.

Another way of perceiving this issue under different perspective is that: we convert the initial investment capital and flow of income into an equivalent future value and determine the point of time when these two values are equal to each other. This point of time shall be the required discounted payback period of the project.

2.3. Net Present Value (NPV) Method

a) Concept: Under this method, incomes and expenses of each project are brought to present values and compare them with each other. Net present value (NPV) is determined to be the difference between present values of incomes and present value of expenses of such project.

b) Determination method:

Presuming n: Life of the period (year)

Ti: Income of the period in year i $(i = 0 - \overline{n})$

r: Discount rate (actualization rate)

Si: Investment expense in the year i $(i = 0 - \overline{n})$

Thus, net present value is determined by:

$$NPV = \sum_{i=0}^{n} \frac{Ti}{(1+r)^{i}} - \sum_{i=0}^{n} \frac{Si}{(1+r)^{i}}$$

c) Selection criteria

- When NPV < 0, the investment is rejected.

- When NPV > 0, we will then consider two situations:

+ in case of independent projects: the investment may be accepted

+ in case of incompatible projects: the project with highest NPV will be selected.

d) Determination of actualization rate *(discount rate)*

When using the net present value criterion, it is necessary to select a discount rate to bring the future amounts of money back to their present value. The often-used rate is the weighted average cost of capital of the project. The weighted average cost of capital of the project is the profitability ratio required by investors on the capital invested in the project.

$$R = \sum_{i=1}^{n} f_i \times r_i$$

In which: R: Weighted average cost of capital

f_i : Ratio of capital category i to total investment capital

r_i: Cost of capital category i

n: Total of capital category being used

e) Pros and corn of NPV criterion

NPV criterion has more advantages than other criteria because:

Firstly, NPV criterion acknowledges that money has time value. Any investment principle which does not acknowledge time value of money shall not be able to make a correct decision.

Secondly, NPV only relies on two information grounds which are cash flow forecasted from the project and opportunity cost of a dollar of capital. Any investment projects the evaluation result of which is affected by the subjectiveness of a manager, the selection of accounting method or the profitability of other independent projects shall all lead to incorrect decision.

Thirdly, as all present values are measured by a today's dollar, it is possible for us to add them up. If you have two projects A and B, NPV criterion will help you promptly understand that NPV of the combined investment project is:

NPV (A + B) = NPV (A) + NPV (B)

The aforesaid adding-up nature is very crucial. Supposing that project B has a NPV smaller than 0, if you combine it with project A, the combined project (A+B) will have a NPV smaller than NPV of the project A itself. You, therefore, will not make mistake in accepting project B just because it is combined with project A. As we are aware, other criteria do not have this adding up nature. If you are not cautious enough, you would be cheated in deciding that a good project and a bad project may be better than a good project alone.

However, the net present value criterion - NPV has a disadvantage that it cannot give us a selective result in case projects are not homogeneous in terms of time as well as priority grading in the selection of investment projects when the enterprise's capital sources are limited.

2.4. Internal Rate of Return Method (IRR)

a) Concept: The internal rate of return is the rate of return promised by an investment project over its useful life.

b) Determination formula: The internal rate of return acts as a discount rate (actualization rate) that balances present value of incomes and present value of expenses of an investment project. In other words, the internal rate of return in substance is such a discount rate so that the net present value (NPV) is equal to 0, meaning that determining value of r so that:

$$NPV = \sum_{i=1}^{n} \frac{Ti}{(1+r)^i} - \sum_{i=0}^{n} \frac{Si}{(1+r)^i} = 0$$

c) Selection criteria:

- When IRR < WACC: if invested, the project will be in loss position, meaning that NPV < 0 by then.

- When IRR > WACC, meaning NPV> 0 by then.

+ In case of independent projects: the project is accepted

+ In case of incompatible projects: the project with highest internal rate of return will be selected.

d) Pros and corn of IRR criterion: Enterprises prefer using IRR criterion as in their opinion, it is important to know the spread range between the internal rate of return of an investment project and the enterprise's cost of capital. NPV method does not furnish the enterprise's management with such information. Notwithstanding the above, IRR criterion does create several traps.

Trap 1: Borrowing vs. lending? The internal rate of return method - IRR assumes that investment projects, if having IRR higher than the opportunity cost of investment capital shall be acceptable. This, however, shall only absolutely right when being applied to ordinary projects, i.e. NPV of such project will lower gradually when discount interest rate rises. It will be no longer right in case of extraordinary projects as not all cash flows of investment projects shall have NPV lowering gradually when discount interest rate rises.

Trap 2: The function in which IRR is unknown will become a multi-value function when the net cash flow changes the sign.

Trap 3: Real IRR may not be existed.

We have illustrated several cases that IRR may lead to wrong conclusion. So is IRR criterion reliable? Absolutely conversely, IRR criterion has an absolutely respective origin and although it is not easily usable as NPV criterion, if it is properly used, it will help us make an appropriate decision.

2.5. Profitability Index Method (PI)

a) Concept: Profitability Index (PI) is defined as the present value of cash flows of an investment project compared to the initial investment capital.

b) Determination formula:

$$PI = \frac{PV}{I}$$

In which: PV: The present value of cash flow generated by the project

I: The initial investment capital

Supposing cost of capital is 10% and the project's cash flows as follows:

	Year					NPV(10%)	IRR
	0	1	2	3	4		
CF	-600$	250$	250$	250$	250$	192.47$	24.1%

$$PI = \frac{792.47}{600} = 1.32$$

This index is interpreted as the investment will recover the initial investment capital plus NPV equivalent to 32% of the initial investment capital.

c) Selection criteria

In case of independent projects. If any projects have:

PI >1: the project is accepted

PI <1: the project is rejected

In case of incompatible projects: the project with PI that is highest and higher than 1 will be selected.

d) Pros and corn of PI criterion

In case resources are limited, we are unable to evaluate priority ranks for projects by their respective NPV criterion. We instead will evaluate priority ranks by the present value rate of future incomes over initial investment capital, i.e. using the profitability index PI.

The profitability index criterion (PI) still has its disadvantages in investment project evaluation compared to NPV. It is because similarly to IRR, PI criterion does not directly explain the difference in project sizes.

3. Capital investment in practice

3.1. Evaluation of investment projects in case of limited resources

Due to limited resources, enterprises have to arrange an optimal allocation of their available treasury resources to investment projects.

If an enterprise has a profuse treasury resource, it can accept all projects having NPV > 0. If the investment budget is limited, enterprises will maximize aggregate NPV of the whole budget. Such practice may lead to rejection of certain projects, i.e. projects with lower NPV.

As such, when initial investment resource is limited, PI would become an effective criterion for selecting projects. However, pilot surveys reveal that PI cannot be used unmethodically. Therefore, after grading projects by their respective PI, we will have to scan the list to determine whether we may need to make any adjustments to determine the project combination with highest aggregate NPV.

When budget is limited, we can build a common rule to determine the most effective project combination as follows:

Step 1: Grading projects by their respective PI.

Step 2: Make proper adjustments to the project list in order to maximize the use of available budget and maximize NPV.

Grading by PI would be especially useful when there are numerous projects being qualified to be accepted, because the adjustments made to projects that have been selected will affect certain projects at the bottom of the list.

3.2. Selection of incompatible projects with different project lives (time inhomogeneity)

For projects with different project lives, if we only rely on NPV or IRR to make selection decision, our decision made may wrong because the high NPV or the highest IRR in substance does not always go along with the most effective. To improve this weakness, we should convert such projects to the same project life. The most effective method is:

Step 1: To determine NPV of each project.

Step 2: Equally allocate NPV of each project to its respective years of existence.

Step 3: Project with highest result in the step 2 will be selected.

3.3. Conflict between NPV and IRR

Both NPV and IRR criteria evaluate the profitability of an investment project based on the substance that their cash flows take into account the time value of money. However, as we will see, they will not look like what we will see and they will not always lead to the same decision.

Both NPV and IRR criteria lead to the same decision on accepting or rejecting project when projects are evaluated independently from each other. This is because if NPV > 0, the discount interest rate at the point where NPV is equal to 0 must be higher than cost of capital r. In other words, if NPV > 0 then IRR > r. Similarly, if IRR > r then when cash flow is discounted at the interest rate r, NPV > 0.

In case it is required that a project must be selected from incompatible projects, NPV and IRR shall not always lead to the same selection. This is the most easily mistaken point in investment project evaluation in practice.

IRR is described by a percentage rate, while the financial position of an enterprise is measured by money. As such, IRR fails to directly explain the issue if viewed from the perspective of value-adding to the enterprise. In other words, NPV is measured by a specific amount of money, it can explain directly and in an effective manner the financial position of the enterprise.

Given the above, when there is a conflict between NPV and IRR, NPV criterion then will be more suitable if the enterprise’s objective is profit maximization.

3.4. Selection of project in inflation condition

Interest rate is often quoted as nominal interest rate rather than real interest rate. The formula describing relationship between nominal interest rate and real interest rate (fisher effect) is:

(1 + nominal interest rate) = (1 + real interest rate) (1 + inflation rate)

If discount interest rate is nominal interest rate, the consistency requires cash flows to be measured as nominal cash flows (i.e. having taken into account inflation factor that make selling price, wages, material costs, etc.).

It is, of course, of nothing wrong when the real cash flows are discounted by real interest rate although this practice is rarely done.

3.5. Replacement investment project

Normally, investment in replacing technological equipment means the replacement of old technological equipment with new and more efficient technological equipment.

Steps of implementation:

+ *Step 1:* To determine net investment capital when replacing old equipment with new ones.

Net investment capital = Investment capital on new equipment + Additional working capital (if any) – Net income from disposal of old equipment.

+ *Step 2:* To determine annual net cash flows of the Replacement investment project.

As this is an investment for replacement, we have to determine the incremental income resulting from the newly replaced equipment.

The incremental net income = The incremental profit after tax + The incremental fixed assets depreciation + Net income from disposal of fixed assets before the project ends + Recovery of working capital (if any).

+ *Step 3:* To determine net present value of the equipment replacement project and consider accepting the project. If NPV <0 the project is rejected, NPV > 0 the project is accepted.

4. Capital investment in risk conditions

4.1. Method of calculating risk weighted discount rate

Full discount rate may be determined by two methods: subjective and objective.

a) By subjective method: according to which all investment projects are rated by their respective risk level. Projects with high risk level shall have high full discount rate and shall be left to the enterprise's own discretion. For example:

Project types	*Full discount rate*
Prudent projects	5%
Low risk projects	8%
High risk projects	11%

3% difference here is called risk coverage provision.

b) By objective method: Risk frequency probability is often relied upon to adjust the discount rate. Formula for calculating full discount rate is as follows:

$$r(d)=\frac{r}{1-q}$$

In which: r : is discount rate (actualization rate);

r (d) : is full discount rate (risk weighted discount rate);

q : is risk frequency probability.

4.2. Determining project risk

+ Risk is reflected through income fluctuation of a project. Thus, the discount rate is unchanged, and only fluctuation of income is determined. The level of risk of a project is measured by standard deviation.

+ The following steps are carried out to determine the standard deviation:

Step 1: To evaluate incomes at different levels (low, moderate, high).

Step 2: To determine probability at different levels of income.

Step 3: To calculate mathematical expectation of the expected incomes.

Step 4: To calculate the standard deviation in order to determine project risk.

Conclusion: The higher the standard deviation, the higher the project risk, and the lower the prudential probability. The project, therefore, may be rejected.

+ In case two incompatible projects have different sample deviations, Coefficient of Variation (CV) shall be determined in order to evaluate which project has higher risk.

4.3. Analyzing the sensitivity degree of a project:

a) Fluctuation of income (output) when cost (input) changes

When input variables are considered to be not safe (being fluctuated with a corresponding probability), it will make the net present value (or the internal rate of return) vary. This variation is often reflected as a percentage compared to the initial expectation. The consequent 4 steps are as follows:

Step 1: To select input variables those are considered not safe.

Step 2: To select a method for calculation and measurement of project in risk-free conditions.

Step 3: To deem the variation levels of input variables compared to the original values in risk-free conditions.

Step 4: To calculate the variation of output variables resulting from the variation of one or more input variables at the same time.

b) Finding minimum value of input variables

Supposing, we use net present value criterion (NPV) to select investment project. The fundamental criterion for the project to be selected is NPV > 0. In this section, we will study input variables (product selling price, cost of investment capital, project's life expectation...), which will vary so that NPV = 0. That is the minimum value of inputs. Solving steps are as follows:

Step 1: To select input variables that are considered not safe (sale output, product selling price, project's life expectation, actualization rate, cost of investment capital, cost of production...).

Step 2: To select a method for calculation and measurement of the investment project (e.g.: NPV method).

Step 3: Put the net present value to 0 (NPV = 0) and solve the equation involving one unknown in step 2.

If there are n input variable being considered not safe, we will let these variable, one after another, vary while (n-1) variable being stable in order to find the minimum value.

VI. DISTRIBUTION OF ENTERPRISE'S PROFIT

1. Profit distribution in state owned companies

Consequence for profit distribution in state owned companies:

(1) Realised profit of a company after offsetting losses brought forward in accordance with Law on corporate income tax and paying corporate income tax shall be distributed as follows:

+ To distribute profit to joint venture members in accordance with the joint venture contract (if any);

+ To offset losses brought forward, which are no longer eligible to be carried forward to offset against pre-tax profit;

+ To transfer 10% to financial reserve fund until the balance of this fund is equal to 25% of the company's charter capital;

+ To establish special funds from profit after tax at the corresponding rates as stipulated by the Government applicable to special companies, which have to make such funds as required by laws;

+ The remaining (after transferring to different funds as specified above) shall be proportionally distributed between the State's capital invested in the company and the company's average self raised capital in the year.

(2) The distributed profit corresponding to the State's invested capital shall be used to additionally reinvest the State's capital in such state owned companies whose charter capital has not yet been contributed fully.

(3) The distributed profit corresponding to the company's self raised capital shall be distributed as follows:

a) To transfer at least 30% to the investment and development fund of the company;

b) To transfer up to 5% to the executive management bonus fund. Annual amount transferred shall not exceed VND500 million (applicable to the companies having a Board of Directors), VND200 million (applicable to the companies having no Board of Directors) depending on the degree of task fulfillment of the company's Board of Executive Management and the grading of the company.

c) The remaining profit shall be partly transferred to the reward fund and welfare fund of the company based on the company's corporate classification result.

d) The remaining profit after having been partly transferred to the reward fund and welfare fund shall be transfer to the company's investment and development fund.

(4) Owner's representatives decide the rate of transfer made to the Executive bonus fund based on the business performance and grade A or B assigned to a state owned enterprise.

(5) Enterprises operating in monopoly sectors are allowed to transfer an amount not exceeding its actual 3-month salary payment to the reward fund and welfare fund.

(6) For newly established companies, if in 2 consecutive years after the year it generate profit the company follows the principles for profit distribution as mentioned above and the profit transferred to the reward fund and welfare fund is not equal to its actual 2-month salary payment, the company is allowed to reduce its transfer to the investment and development fund in order to have full actual 2-month salary payment for the reward fund and welfare fund. The maximum reduction shall be equal to the full amount of profit to be transferred to the investment and development fund in the same period.

(7) For a state owned enterprise, which is designed to and in practice, regularly and stably supplies and/or provides utility products and services under the purchase orders placed

by the Government or in accordance with plan assigned by the Government, if after following the principles for profit distribution as mentioned above, the profit to be transferred to its reward fund and welfare fund is not enough as provided for in item 3 above, the enterprise is allowed to reduce its transfer to the investment and development fund and its profit share attributable to the invested state capital in order to have enough profit to transfer to the reward fund and welfare fund as regulated. The government shall consider sponsoring to such enterprise's reward fund and welfare fund in case the aggregate amount of its transfer to the investment and development fund and its profit share corresponding to the invested state capital is not enough to cover the required transfer to its reward fund and welfare fund.

2. Dividend policy of joint stock companies

a) Dividend and origin of dividend

- Concept: Dividend is the profit after tax that a company sets aside to pay to its existing shareholders.

- In practice, there are various ways that a joint stock company can adopt to make cash distribution to its shareholders, for example, the company may use its cash to redeem its shares for a certain objective. However, such distribution shall be called dividend if such cash distribution is made from the company's profit. As such, origin of dividend is profit after tax of a joint stock company, comprising the year-to-date profit and previous years' accumulated profit.

- Dividend can be paid to shareholders under different forms, such as in cash, by shares or in kind. The selection of different forms of dividend payment shall have certain impact, influence on the book value of the company's shares, value, investment capital...

- Regarding the joint stock company, the Board of Directors shall decide the rate and form of payment of dividend based on the company's business performance and the dividend policy that the company is pursuing.

b) Dividend policy of joint stock companies

- Concept: Dividend policy reflects the decision between distribution of profit to shareholders and reinvestment of profit in the company.

- The high or low rate of dividend payment shall affect the actual income at present and the potential growth of income in future of shareholders. Thus, dividend policy in substance is the resolution of relationship between present income and future growth.

c) Forms of dividend

+ *Cash dividend.*

+ *Stock dividend:* Stock dividend payment is some what like stock split. When paying stock dividend, a company will issue an additional number of new shares and make pro-rated distribution to its existing shareholders corresponding to their proportion of shares held.

+ *Dividend in kind*: This is the least popular form of dividend payment. However, in practice, there are several companies applying this form of dividend payment. For the purpose of dividend payment, the company may offer their existing shareholders the company's products or underlying assets of other joint stock companies that the company is possessing.

Adopting this form of dividend payment, the company's assets are also reduced and this also leads to the reduction in book value of shares.

3. Enterprise's funds

3.1. Financial reserve fund is used to:

a) Cover losses, damages in properties, bad debts during the course of business operations;

b) Cover operating loss of the company in accordance with the decision of the Board of Directors or Owner's Representatives.

3.2. The investment development fund is used to supplement the company's charter capital.

3.3. Reward fund is used for:

a) Making year-end or periodical productivity-based or performance-based rewards to workers and employees in state owned enterprise;

b) Making extra-ordinary reward to individuals, units in state owned enterprise;

c) Rewarding individuals and units outside the state owned enterprise that has made significant contributions to the enterprise's business operations and management.

The reward levels in accordance with the provisions at points a, b, c of this clause shall be subject to the decision of the enterprise's General Director or Director. Particularly for the reward under point a, the enterprise's Labor Union must be consulted prior to final decision.

3.4. Welfare fund is used for:

a) Construction or renovation of welfare works of the company;

b) Public welfare activities of the company's employees, social welfare activities;

c) Contributing to the construction of the industry's common welfare works or contributing to other entities under contracts;

d) In addition, part of the welfare fund may be used to pay ad-hoc allowance to employees, who face with unexpected difficult circumstances, including those who have retired or have had to give up their jobs due to poor health and now meet with difficulties without any support; or for social charity purposes.

The use of welfare fund shall be subject to the decision of the company's Board of Directors or the company's Director (where a Board of Directors is not available) after having consulted with the company's Labor Union.

4.5. Executive bonus fund of a company is used to reward its Board of Directors, Board of Management. The reward level shall be decided by the Owner's representatives based on the company's business performance, at the proposal of the Chairman of the Board of Directors or the company's Director (where a Board of Directors is not available).

VII. VALUATION OF ENTERPRISE

1. Factors driving enterprise value

When referring to enterprise value, there are two forms of enterprise value that are often mentioned: enterprise value attributable to owners (equity value) and enterprise value (implied for aggregate). Enterprise value is measured by incomes that the enterprise earns for its investors, while enterprise value attributable to owners is measured by incomes that the enterprise earns for its owners. As such, for determining enterprise value, we have to be able to measure incomes that the enterprise earns. However, whether the enterprise can derive income or not and how big the income is would depend on various factors. Therefore, in order to measure relatively precise enterprise value, we firstly have to be able to identify and analyze factors driving enterprise value. When considering driving factors, the following factors are often dealt with:

1.1. Business environment factors

a) General business environment

- Economic environment
- Political environment
- Socio-cultural environment
- Science – technology environment

b) Specific environment

- Customers
- Suppliers
- Competitors
- State agencies

1.2. Enterprise's intrinsic factors

a) Enterprise's assets

b) Business location

c) Business reputation

d) Employee qualification

e) Business management capacity

2. Methods for determining enterprise value

Determination of enterprise value (or also called enterprive valuation) is the estimation with the highest confident degree of incomes that the enterprise can derive during the course of its production and business operations.

Currently there are two major approaches in determining enterprise value: *first,* direct access to measure value of the enterprise's assets; *second,* based on the estimation of the future cash flows that the enterprise generates. Particularly, there are the following fundamental valuation methods:

2.1. Net asset value method

a) Theoretical base

+ Enterprise is also a type of goods;

+ Enterprise's operations are always carried out based on a real quantity of assets;

+ Enterprise's assets are formed from two capital sources: equity and debts.

b) Method for determination

In order to determine enterprise value, we calculate total market value of the assets that the enterprise is currently using in its production and business operations.

To determine enterprise value attributable to owners, the following formula is applied:

$$V = V_G - V_D$$

<u>*In which:*</u>

V : Enterprise value attributable to owners;

V_G : Total asset value;

V_D : Value of debts.

Based on the above formula, the following two calculation approaches are introduced:

+ *First approach:* Based on the information of assets and resources presented in the balance sheet as at the date of valuation for determination by: taking total assets presented on the assets side minus (-) liabilities on the resources side.

The enterprise value determined by this approach is normally historical-like information, data for reference when applying other approaches.

+ *Second approach*: Determination of asset value based on market prices.

In order to determine asset value based on market prices, firstly, all assets that are no longer necessary and no longer meet requirements of production and business must be excluded from the valuation list. Then the remaining assets will be valued based on *their market prices*.

c) Advantages and disadvantages of the method

- Advantages:

+ It can prove that enterprise value is a quantity of real assets;

+ The result is normally the minimum value of the enterprise;

+ It is suitable to small enterprise with few intangible fixed assets.

- Disadvantages:

+ The enterprise is not considered as an existing organisation, which is probably further improved and developed in future. It is measured under static position;

+ It fails to build up information bases, which measure the profitability prospect of the enterprise;

+ Immaterial factors with real value have been substantially omitted;

+ In many cases, the valuation techniques are too complicated, money and time costly.

Beside the two approaches for determining enterprise value as presented above (based on accounting records and based on market), enterprise value may also be determined by way of calculating liquidation value (with this approach, enterprise value is determined based on the liquidation value of the enterprise's assets; this approach is normally applicable to enterprises, which are seen as being at risk of bankruptcy, operating in loss position and having no or too low profitability against the potentiality of its useful assets), or by way of determining replacement value (with this approach, enterprise value is determined based on costs incurred in order to form assets with similar condition. This approach is rarely used in practice and is normally suitable in case of asset valuation for insurance purposes).

2.2. Goodwill method (determination of goodwill)

a) Theoretical base

+ Enterprise value shall not only comprise value of tangible assets but also value of intangible assets;

+ An enterprise may have a profitability ratio, which is higher than the average profitability ratio of sector that the enterprise belongs to because such enterprise has intangible assets. As such, value of the enterprise's intangible assets is the present value of the super profit flow that the enterprise will derive in future.

b) Method for determination: Based on the above mentioned theoretical base, it is possible that the enterprise value will be the total value of tangible assets and intangible assets.

$$\mathbf{V = V_H + GW}$$

$$GW = \sum_{t=1}^{n} \frac{P_t - i \times A_t}{(1 + r)^t} = \sum_{t=1}^{n} \frac{SP_t}{(1 + r)^t}$$

In which:

+ V: Enterprise value;

+ V_H: Value of tangible assets (calculated by using present asset approach);

+ GW: Value of intangible assets, also called goodwill;

+ P_t: Profit as at year t of the enterprise;

+ i: The average profitability ratio of assets being used for production and business operations;

+ A_t: Value of assets as at year t that the enterprise uses for production and business operations;

+ SPt: superprofit as at year t;

+ r: Discount rate;

+ t: Sequence of years;

+ n: Number of years.

c) Advantages and disadvantages of the method

- Advantages:

+ Determining enterprise value comprising value of intangible assets;

+ GW method determines enterprise value on the ground of taking into account benefit of both buyer and seller;

With strong theoretical base, enterprise value determined by GW quantifying method will always bring about a more firm trust.

- Disadvantages:

+ Argument about superprofit lacks basis for forecasting time limit (n) and lacks basis for generating hypotheses on future profit;

+ It faces the same limitations as those associated with the net asset value method and the method of actualisation of future financing sources (to be discussed later herein);

+ GW has significant fluctuation limit corresponding to insignificant variation of r.

2.3. Method of actualisation of future financing sources

Method of actualisation of future financing sources is concretised by three measures: share valuation measure, profit actualisation measure, and measure of actualisation of future net cash flows of enterprise.

Basis for these measures is directly originated from a point of view that enterprise value is measured by size of the income that enterprise may earn for its investors in future.

a) Share valuation measure

Enterprise value is equal to total value of different types of outstanding shares of the enterprise.

- Method for determination

General formula for determining real value of different types of securities is as follows:

$$V_0 = \frac{D_1}{(1+r)} + \frac{D_2}{(1+r)^2} + ... + \frac{D_t}{(1+r)^t} = \sum_{t=1}^{n} \frac{D_t}{(1+r)^t}$$

In which:

V_o: Enterprise value;

D_t: Total dividend in year t;

r: Actualisation ratio;

n: Number of year receiving income.

➢ *Assumption 1:* the enterprise may pay dividends annually on a stable basis. That said, future earnings are always a constant D and t → ∞:

$$V_0 = \sum_{t=1}^{n} \frac{D_t}{(1+r)^t} = D \times \sum_{t=1}^{n} \frac{1}{(1+r)^t} = \frac{D}{r}$$

In which:

- D_t: Total dividend in year t;
- D : Average dividend in a year.

➢ *Assumption 2:* Share dividend paid annually on a steady growth basis with the growth rate of g% (with g < r) and t → ∞:

$$V_0 = \frac{D_1}{r - g}$$

➢ *Assumption 3:* annually paid dividend varies among different years up to year n, from year n+1 onward, it is assumed that dividend will be paid annually on a steady growth basis with the growth rate to be g% (where g < r) and t → ∞:

$$V_0 = \sum_{t=1}^{n} \frac{D_t}{(1+r)^t} + \frac{V_n}{(1+r)^n} \qquad V_n = \frac{D_{n+1}}{r - g}$$

In which:

- V_n : Enterprise value as at year n.
- Advantages and disadvantages of the method:

+ Advantages:

- This is the first model which directly approaches incomes in the form of dividend;
- This measure is specially suitable to the minority shareholders' point of view in perceiving and evaluating enterprise values;
- This measure is suitable to enterprises having shares traded on stock market, which have intangible asset value and meet with difficulties in determining enterprise value using net asset method**.**

+ Disadvantages:

- It is not easy to forecast dividend;
- It depends on the policy of dividend distribution in future;
- The determination of parameters are not highly convincing (*t, n, i, g)*.

b) Profit actualisation measure

- Methodology basis

Enterprise value is measured by size of profits after tax that an enterprise may earn through out its existence duration.

- Method for determination

Enterprise value is measured by the following formula:

$$V_0 = \frac{Pr_1}{(1+r)} + \frac{Pr_2}{(1+r)^2} + ... + \frac{Pr_n}{(1+r)^n} = \sum_{t=1}^{n} \frac{Pr_t}{(1+r)^t}$$

In which:

V_0 : Enterprise value;

Pr_t : Profit after tax as at year t;

- *Assumption 1:* Annual profit after tax is the same year by year and is Pr, t $\rightarrow \infty$.

$$V_0 = \frac{Pr}{r}$$

- *Assumption 2:* Annual profit after tax grows steadily with the growth rate of g% (with g < r) and t $\rightarrow \infty$:

$$V_0 = \frac{Pr_1}{r-g}$$

- *Assumption 3:* Annual profit after tax varies among different years up to year n, from year n+1 onward, it is assumed that Annual profit after tax grows steadily with the growth rate is g%, t $\rightarrow \infty$ and g < r.

$$V_0 = \sum_{t=1}^{n} \frac{Pr_t}{(1+r)^t} + \frac{V_n}{(1+r)^n} \qquad V_n = \frac{Pr_{n+1}}{r-g}$$

- Advantages and disadvantages of the method:

+ Advantages:

- It is suitable for valuation of enterprises, which have few assets to be depreciated, possibility for accumulating capital from depreciation and retained earnings is minimal, substantial portion of profit after tax is used to pay dividend to shareholders;
- An additional key contribution of this method is the advantage for forecasting net profit parameter;
- Suitable to enterprises, which can hardly find new investment opportunity.

+ Disadvantages:

- In case of shortage of the above conditions, this method shall become unsuitable to both minority shareholders and majority shareholders;
- Adjusting historical data to draw a rule for profit in future is also not suitable to a strategic view on enterprise;
- The determination of parameters is not highly convincing (*t, n, r, g)*.

c) Net cash flow actualisation measure

- Methodology basis:

This is a measure for determining enterprise value based on the point of view of majority shareholders. According to the point of view of majority shareholders, acquisition of an enterprise is like an exchange for an under-implementation project, an opportunity, following which the investors may, after seizing control, may still operate the project. The enterprise value is measured by the present value of the future cash flow.

- Method for determination

❖ Discount of free cash flow to equity (FCFE)

FCFE	=	Profit after tax	+	Depreciation	+ -	Capital expenditure	-	Working capital spread	-	Debt prepayments	+	New debts

➢ <u>Assumption 1:</u> The free cash flow to equity is to grow steadily year by year with the growth rate of g% (with g < r) and t → ∞. Then, enterprise value to equity:

$$V_0 = \frac{FCFE_1}{r - g}$$

➢ <u>Assumption 2</u> The free cash flow to equity is to grow with different rates among different years up to year n, from year n+1 onward, it will grow steadily with the growth rate of g%, t →∞ and g < r. Then, enterprise value to equity:

$$V_0 = \sum_{t=1}^{n} \frac{\mathrm{FCFE}_t}{(1+r)^t} + \frac{V_n}{(1+r)^n} \qquad V_n = \frac{FCFE_{n+1}}{r - g}$$

<u>*In which:*</u>

- V_n : The enterprise value to equity as at year n.

❖ Discount of free cash flow for the firm (FCFF)

To determine value for the whole enterprise, we will determine cash flows of investors, comprising creditors, ordinary shareholders and preferred shareholders.

FCFF	=	CFE	+	Interest expense (1- interest rate)	+	Debt repayments	-	New debts	+	Dividend on preferred shares

<u>Or determine directly:</u>

FCFF = EBIT (1- interest rate) + Depreciation – Capital expenditure - Working capital spread

➢ <u>Assumption 1:</u> Cash flow is to grow steadily year by year with the growth rate of g% (with g < r) and t → ∞. Then, enterprise value to equity:

$$V_0 = \frac{FCFF_1}{r - g}$$

➢ <u>Assumption 2</u> Cash flow to equity is to grow with different rates among different years up to year n, from year n+1 onward, it will grow steadily with the growth rate of g%, t →∞ and g < r. Then, enterprise value to equity:

$$V_0 = \sum_{t=1}^{n} \frac{\mathrm{FCFF}_t}{(1+r)^t} + \frac{V_n}{(1+r)^n} \qquad V_n = \frac{FCFF_{n+1}}{r - g}$$

<u>*In which:*</u>

- V_n : The enterprise value to equity as at year n.

- Advantages and disadvantages of the method:

+ *Advantages*:

- The enterprise is considered to be an under-implementation project, future of which is perceived differently by different investors;
- The enterprise value is the highest price that the investors can afford;
- It explains clearly why this enterprise has a higher value than that of the other enterprise;
- It has put forward the bases on which each investor may freely develop his/her ideas if he/she becomes the owner of the enterprise;
- The viewpoint of cash flow helps avoid the adjustment of accounting figures so as to correctly reflect the time such amounts of money arise.

+ Disadvantages:

- Difficulties in forecasting parameters: i, n…;
- Enterprises having no business strategy or having unclear business strategy shall find it hard to adopt this method;
- Valuators are required to have expertise in investment project appraisal;
- It requires intensive information.

2.4. Market comparison method (P/E based valuation)

- Theoretical base:

This method is based on values of "equivalent" or "compatible" enterprises in order to find value of the enterprise to be evaluated. This method is use only when there is a developed stock market and there are various "equivalent" players being listed and traded on the market.

- Determination method

$$\text{Enterprise value} = \text{Expected earning per share} \times P/E$$

$$P/E = \frac{P_s}{EPS}$$

In which:

- P_s: Market share price;

- EPS: Expected earning per share, and equal to expected profit after tax divided by number of outstanding ordinary shares.

P/E ratios of giant companies in developed countries are published daily on industry newspapers and on internet.

- Advantages and disadvantages of the method

+ *Advantages:*

- To promptly give results so that decisions can be made in a timely manner;
- This method is based on market value.

+ *Disadvantages:*

- Too experience-based;

- Fail to explain why a dollar of income in this enterprise is evaluated higher (or lower) than in another enterprise.

This method also fails to provide bases for investors to analyse and assess the possibility of growth as well as potential risks affecting the enterprise value.

LIST OF REFERENCE DOCUMENTS OF PART II

I. For enterprise

1. Law on Enterprise.

2. Decision 206/2003/QD-BTC dated 12 December 2003 of the Minister of Finance on issuing the Regulations on management, use and depreciation of fixed assets.

3. Circular 13/2006/TT-BTC dated 27 February 2006 issued by the Ministry of Finance guiding the regime of setting up and use of provisions for inventories, loss of financial investments, bad debts and warranty for products, goods and construction works at enterprises.

4. Circular 18/2007/TT-BTC dated 13 March 2007 issued by the Ministry of Finance guiding the redemption and resale of stocks and some cases of additional issuance of stocks of public companies.

5. Circular 82/2003/TT-BTC dated 14 August 2003 issued by the Ministry of Finance providing guidelines for deduction, establishment, management, use and accounting of the reserve fund for severance allowance in enterprises.

II. For State run companies currently in operation

1. Law on State Owned Enterprises.

2. Decree 09/2009/ND-CP dated 05 February 2009 promulgated by the Government on issuing Regulations on financial management at State Owned Enterprises and management of state capital invested in other enterprises.

3. Decree 109/2008/ND-CP dated 10 October 2008 promulgated by the Government on sale and transfer of wholly State-owned enterprises.

4. Circular 24/2007/TT-BTC guiding the financial regulation applicable to state-owned one-member limited liability companies, political organizations and socio-political organizations.

III. Ownership transformation of state owned enterprises

1. Decree 109/2007/ND-CP promulgated by the Government on the transformation of 100% state owned enterprises into joint stock companies.

2. Circular 146/2007/TT-BTC guiding the implementation of certain financial issues upon transformation of 100% state owned enterprises into joint stock companies pursuant to Decree 109/2007/ND-CP dated 26 June 2007 of the Government.

PART III - LAWS ON TAXATION AND TAX ADMINISTRATION

I. VALUE ADDED TAX ("VAT")

1. Concept of VAT

Value Added Tax (also called VAT - Value Added Tax or TVA - Taxe sur la Valeur Ajoutée) is an indirect tax, which is imposed on consumption of goods and services. It is called VAT because in substance, VAT is only levied on the added value of goods and services at different stages from production, transportation to consumption. The total VAT collected from each main stage is equal to the VAT amount calculated on the selling price to the end-users. VAT shall be borne by the end-users; goods and service producers, providers, suppliers are tax payers paying tax to the State Budget on behalf of the end-users by adding VAT to the selling prices that the end-users have to pay when purchasing goods, services.

2. Scope of application of VAT

2.1. Taxpayers

Value added taxpayers shall be organizations and individuals engaging in manufacturing and trading of goods and services subject to VAT, irrespective of the line, form or organization of business (hereinafter collectively referred to as business establishments); and organizations and individuals importing goods subject to VAT (hereinafter all referred to as importers).

Business establishments comprise: enterprises in all forms from all economic sectors, business organizations of socio-political organizations, socio-professional organizations, all forms of cooperatives,...;

Business individuals comprise independent business people, business households and partnership of individuals engaging in a business operation without establishing a legal status.

2.2. Taxable objects, non-taxable objects

a) VAT taxable objects

Goods and services (including goods and services purchased from organizations and individuals overseas) used for the purposes of production, trading and consumption in Vietnam shall be subject to value added tax, except for non-taxable objects as provided in Section b hereunder.

b) Non-taxable objects

From 1 January 2009, there are 25 items of goods, services not subject to VAT, which can be categorised into the following main groups:

➢ *Group of goods, services being agricultural produces, agricultural production inputs:*

- Products of cultivation (including forestry cultivation), husbandry, aquaculture or fishing which have not yet been processed into other products or which have only been semi-processed by organizations or individuals that produce and sell these products by themselves and at the import stage.

- Products being breeding livestock and plant varieties (including breeding eggs, breeding stocks, seedlings, breeding seeds, sperm, embryos and genetic materials) at all stages of importation, production and commercial trading.

- Services directly serving agricultural production: Irrigation and drainage; ploughing and harrowing of land; embanking, dredging of interior field canals serving the agricultural production; services of agricultural produce harvesting.

- Salt products, comprising salt produced from seawater or natural salt mines, table salt and iodine salt.

➢ *Group of goods, services not subject to tax due to international commerce*

- Imported goods in the following cases: humanitarian aid and non-refundable aid (including imported goods under a non-refundable ODA source of fund); gifts and donations to State bodies, socio-political organizations, socio-professional organizations, people's armed force units; gifts and donations to Vietnamese individuals within the limit as permitted by Government's regulations; personal effects of foreign organizations and individuals under diplomatic immunity regulations; and hand luggage within duty-free limits; goods being personal belongings that a Vietnamese residing overseas brings along when returning to Vietnam.

Imported goods not subject to VAT at import stage shall be abide by the limits for import duty exemption as stipulated in the Law on Export and Import Duties and its guiding documents.

Goods or services sold to foreign organizations and individuals and international organisations for humanitarian aid or non-refundable aid to Vietnam.

Goods or services sold to those who enjoy diplomatic immunity in accordance with Ordinance on diplomatic immunity.

➢ *Group of goods, services not subject to tax due to social reasons*

- Life insurance, school insurance, pet insurance, cultivation plants insurance and re-insurance.

- Health services, veterinary services including medical examination and treatment, epidemic prevention services for humans and pets.

- Academic and vocational training in accordance with laws.

- Radio and television broadcasting funded by the State Budget.

- Publication, importation and distribution of newspapers, magazines, specialized newsletters, political books, textbooks, teaching materials, books of legislation, scientific - technical books, books printed in languages of ethnic minorities, and pictures, photos, posters, leaflets and brochures for propaganda purposes, including those in the form of visual or audio tape or disc and electronic data; and printing of money.

- Public hygiene and water drainage services for streets and residential areas; maintenance of zoos, public gardens, parks, street greenery and public lighting systems; funeral services.

- Maintenance, repair, construction of cultural and artistic works, public service works, infrastructures and gratitude houses funded by public contributions and humanitarian aid.

- Public passenger transportation by buses, trams in service of public traveling in inner cities, industrial parks or between urban areas and neighbouring industrial parks with fixed routes, stops, operating timetables and fares as stipulated by competent authorities.

➢ *Group of goods, services not subject to tax in accordance with international practices:*

- Credit granting services; securities business; capital assignment; financial derivative services, including interest rate swap, forward, futures, foreign exchange options and other financial derivative services as stipulated by laws.

- Goods in transit or trans-shipment via the territory of Vietnam; goods temporarily imported and re-exported and goods temporarily exported and re-imported; raw materials imported for production or processing of goods for export in accordance with production or processing contracts for export signed with foreign parties. Goods and services traded between foreign parties and non-tariff zones and traded among non-tariff zones.

- *Group of goods, services not subject to tax due to some other reasons:*

- Transfer of land use rights.

- Transfer of technologies in accordance with Law on technology transfer; transfer of intellectual property rights in accordance with Law on intellectual property; computer software, other than software for export.

- Machinery, equipment, materials which are not yet able to be produced domestically and are imported for direct use in scientific research and technological development activities; machinery, equipment, spare parts, specialized vehicles and materials which are not yet able to be produced domestically and need to be imported for carrying out prospecting, exploration and development of gas or oil fields; aircrafts, derricks, ships which are not yet able to be produced domestically and need to be imported to form fixed assets of enterprises or leased from foreign parties for use in production, business activities or for sublease.

- State owned residential houses sold by the State to existing tenants in accordance with the Government's regulations on purchase, sale and trading of residential properties.

- Specialized arms and weaponry required for national defence and security.

- Gold imported in ingots and foils and gold which is not yet fashioned into fine art articles, jewelry or other products.

- Exported products being unprocessed minerals or natural resources in accordance with the Government's regulations.

- *Group of goods, services not subject to tax due to low income of business individuals*

Goods and services of business individuals with average monthly income levels lower than the regional minimum salary level applicable to Vietnamese organizations and business establishments hiring employees as regulated by the Government.

Business establishments engaging in trading of goods and services not subject to VAT as mentioned above, shall not be entitled to VAT credit and refund on the VAT paid upon purchasing goods and services for using in production of and business in goods and/or services not subject to VAT, except where goods and/or services are allowed to apply the tax rate of 0% as prescribed by the Law on VAT.

3. Tax calculation bases

Bases for VAT calculation are taxable prices and tax rates.

3.1. VAT taxable prices

VAT taxable prices of goods and services shall be specifically determined as follows:

(i) For goods and services sold by production or business establishments, VAT taxable price is the selling price net of VAT. For goods and services subject to special consumption tax, VAT taxable price shall be the selling price inclusive of special consumption tax but exclusive of VAT.

Prices used for calculation of VAT on all types of goods and services shall include surcharges and additional fees on top of the price of the goods and services which the business establishment is entitled to, except for surcharges and additional fees which the business establishment must pay to the State Budget. Where a business establishment gives a sale discount, sale rebate (if any) to its customers, VAT taxable price shall be the rebated or discounted selling price applicable to customers.

(ii) In respect of imported goods, VAT taxable price shall be the import price at the border gate plus (+) import duties (if any) plus (+) special consumption tax (if any). The import price at the border gate used to calculate VAT shall be determined to be the import price at the import port, inclusive of freight and international insurance (also called CIF price).

Where imported goods are entitled to import duty exemption or reduction, the VAT taxable price shall be the price of the imported goods plus (+) import duties calculated at the rate of duty payable after the exemption or reduction.

(iii) In respect of goods and services used for the purposes of exchange, in-house consumption, gift or donation, the VAT taxable price shall be the VAT taxable price of goods or services of the same or equivalent category at the time when such activities are conducted.

For products, goods, services issued/provided by a business establishment for in-house consumption but not for production and business or for production of and trading in goods, services not subject to VAT, the business establishment must charge output VAT with the taxable price to be the selling price of products, goods, services of the same categories.

VAT shall not be applicable to internally circulated goods such as goods delivered into internal warehouses, materials and semi-finished products delivered for continuation of production process within a production and business establishment.

(iv) For services provided by foreign parties to end-users in Vietnam, the VAT taxable prices shall be the service fees payable to the foreign parties.

(v) For property leasing services, VAT taxable prices shall be the rental net of VAT. In case of leases for which the rental is paid in instalments or paid in advance for a period of lease, VAT taxable price shall be the ex-VAT rental amount paid in each instalment or pre-paid for such period. The rental agreed upon by the parties shall be determined in accordance with the underlying lease contract.

In case of lease of machineries, equipment or vehicles, which are not yet able to be produced domestically, from a foreign lessor for sub-lease, the VAT taxable price shall exclude the rental payable to the foreign lessor.

(vi) For goods sold on credit or instalment basis, the taxable price shall be the ex-VAT up-front payment price of the goods, excluding the interest applicable to sale on credit and instalments.

(vii) For goods processing services, the taxable price shall be the processing fees net of VAT, comprising: labour cost, fuel charges, power, auxiliary materials and other costs required for goods processing.

(viii) In respect of construction and installation, the VAT taxable price shall be the value of works or item of works or part of works performed and delivered, net of VAT.

- In respect of construction and installation including the supply of raw materials, the VAT taxable price shall comprise the VAT-exclusive value of such raw materials.

In respect of construction and installation excluding the supply of raw materials, plant and equipment, the VAT taxable price shall be the value of the construction and installation exclusive of value of the raw materials, plant and equipment.

- In respect of construction and installation for which payment is made on the basis of construction items completed and delivered or the quantity of works completed and delivered, the VAT taxable price shall be the value of construction items completed and delivered or the value on the quantity of works completed and delivered exclusive of VAT.

(ix) In respect of real estate business activities, the VAT taxable price shall be the ex-VAT transfer price of the real estate less (-) the actual land price (or the land lease price) at the date of transfer.

- Where the land price at the date of transfer declared by the taxpayer does not form a sufficient basis for determining a reasonable VAT taxable price in accordance with laws, the land price to be deducted shall be the land price (or the land lease price) stipulated by the provincial people's committee at the date of transfer. The maximum deductible land price used for determining VAT taxable price shall not exceed the actual payment made by the buyer.

- In the case of construction and commercial operation of infrastructure facilities or construction of housing for sale or transfer with payments made in accordance with the schedule of implementation of a project or schedule of payments stated in a contract, the deductible land price shall be the actual land price at the date of the first payment pursuant to the schedule. The deductible land price shall be calculated at a percentage (%) amount of money collected in accordance with the schedule of implementation of the project or schedule of payments stated in the contract over the actual price of the land at the date of transfer (the date of first payment pursuant to the schedule).

- In respect of business establishments being allotted with land from the State for investment in infrastructure for lease, the VAT taxable price shall be the lease price of the infrastructure net of VAT less (-) the land rental payable to the State Budget.

(x) In respect of agency and brokerage activities in connection with purchase or sale of goods and services, and import-export entrusting services provided on the basis of earning fee or commission, the VAT taxable price shall be the fee or commission earned from such activities exclusive of VAT.

(xi) For transportation, loading and unloading activities, the VAT taxable price shall be their ex-VAT charges, irrespective of whether the establishments conduct such activities by themselves, or have them outsourced to others.

(xii) For goods, services involving the use of pre-printed vouchers with VAT inclusive prices inscribed thereon (such as stamps, freight tickets, lottery tickets, etc.), the VAT taxable price shall be determined by the following formula:

$$\text{Ex-VAT price} = \frac{\text{Payment price (price of ticket or stamp…)}}{\text{1 + applicable VAT rate for such goods or services (\%)}}$$

(xiii) In respect of tourism services in the form of travel or tour package contracts (including accommodation, travel and meals), the package price shall be determined as VAT inclusive price.

Where the package price includes such costs as airfares for tourists coming to/leaving Vietnam; meals and accommodation, excursion costs and other certain expenses incurred overseas, which are supported by legitimate documents, such costs shall be deducted from the VAT taxable price (turnover).

(xiv) In respect of pawnbroking services, the VAT taxable price shall be the amount receivable from this service, comprising interest receivable from providing loans upon pawning and other income earned from selling pawned goods (if any).

(xv) In respect of books subject to VAT, which are sold at the publication price (cover price) in accordance with the Law on Publishing, such selling price shall be determined as VAT-inclusive price for the purpose of calculation of VAT and turnover of the establishment. Where books are not sold at the cover price, VAT shall be calculated on the actual selling price.

(xvi) In respect of printing services, the VAT taxable price shall be the printing fee. Where the printing establishment performs printing contracts and the payment price includes the printing fee and the costs of the paper used for printing, the VAT taxable price shall include the costs of the paper.

(xvii) For services of adjusting agency, compensation adjusting agency, third party claim agency , agency dealing with goods for which a claim for compensation of 100% is made, which are provided for earning fees or commission, the VAT taxable price shall be the ex-VAT fee or commission earned (prior to the deduction of any items of costs) by the insurance company.

Prices used for calculation of VAT on all types of goods and services mentioned above shall include surcharges and additional fees on top of the price of the goods and services which the business establishment is entitled to, except for surcharges and additional fees which the business establishment must pay to the State Budget.

VAT taxable prices shall be determined in Vietnamese Dong. Where a taxpayer has turnover in foreign currency, such revenue must be a translated into Vietnamese dong using the average inter-bank rate published by the State Bank of Vietnam at the time of earning revenue for the purpose of determining a VAT taxable price.

3.2. VAT rates

The Law on VAT stipulates three tax rates: 0%, 5% and 10% with details as follows:

a) The tax rate of 0%: applicable to exported and deemed-to-be-exported goods in accordance with current laws; exported services, including services provided directly to organisations, individuals overseas or located in non-tariff zones.

* Compulsory conditions for applying 0% rate:

- Export contract or export processing contract ; export entrusting contract or export processing entrusting contract; service contract signed with organisations, individuals overseas or located in non-tariff zones must be available;

- Document supporting the bank transfer payments for exported goods or services and other source documents in accordance with laws must be available;

- The customs clearance declaration for the exported goods must be available.

b) The tax rate of 5%

From 1 January 2009, there are 15 groups of goods and services subject to 5% VAT.

c) The tax rate of 10%

Applicable to remaining goods and services that are not categorised in the group of goods and services not subject to VAT or the two groups subject to 0% VAT and 5% VAT, respectively.

d) Principles for applying different tax rates

- The above mentioned VAT rates shall be applied consistently to each category of goods, services at the stages of importation, production, processing or trading.

- Business establishments involving different goods and services with different VAT rates shall declare VAT separately for each VAT rate corresponding to each category of goods and services; where it is unable to determine individual applicable tax rates, the highest tax rate applicable to the goods produced or services provided by the business establishment shall be applied.

- For imported goods, VAT rates prescribed in the VAT Rate Schedule pursuant to the List of Preferential Import Tariff (promulgated in conjunction with Circular 131/2008/TT-BTC of the Ministry of Finance) shall be applied.

- During the implementation progress, if there is a case where VAT rates are applied inconsistently between imported goods and locally made goods of the same category, then the local tax office and customs office shall report such inconsistency to the Ministry of Finance for guiding a consistent implementation.

4. Methods of VAT Calculation

Law on VAT stipulates 2 methods for VAT calculation: tax credit method (hereinafter referred to as the credit method) and the method of direct calculation of VAT on added value (hereinafter referred to as the direct method).

4.1. The tax credit method

a) Subjects of application: business establishments which fully implement regimes on accounting, invoices and supporting documents in accordance with the law on accounting, invoices and supporting documents and which register for tax payment in accordance with the tax credit method.

Where a business establishment paying VAT under credit method also engages in trading of gold, silver, gemstone, foreign currencies, revenue from such trading activities shall be accounted for separately for calculating VAT directly on the added value.

b) Determination of VAT payable:

VAT payable in a period	=	Output VAT	-	Deductible input VAT

In which:

- *Output VAT:* is total VAT charged on goods, services sold, to be determined equal to (=) taxable price of taxable goods, services sold multiplied by (x) VAT rate applicable to such goods, services.

- *Deductible input VAT*: deductible input VAT shall be equal to (=) the aggregate amount of VAT as stated in the VAT invoices for the purchase of goods or services (including fixed assets), the receipts for payment of VAT on imported goods or receipts for payment of VAT on behalf of foreign parties and satisfying all conditions for credit of input VAT as regulated in the Law on VAT and its guiding documents.

c) Principles for determining deductible input VAT amount (only applicable to VAT payers under credit method)

- The input VAT on goods, services used for production and trading of goods, services subject to VAT shall be fully creditable, including goods, services produced or procured for use in all forms of advertisement and promotion for the purpose of production and trading of goods, services subject to VAT.

- Input VAT on fixed assets which are used for production or trading of both VAT taxable and non-taxable goods and services shall be fully creditable, except for the following cases where input VAT shall not be deductible but capitalised as an additional cost of fixed assets:

+ Specialized fixed assets which are used in production of arms and weaponry required for national defence and security;

+ Fixed assets being office premises and specialized equipment used for the operations of credit institutions, re-insurance companies, life insurance companies, securities companies, hospitals and schools;

+ Civilian aircraft and yachts not used for cargo transportation, passenger transportation, tourism, hospitality business.

+ For fixed assets being passenger vehicles with up to 9 seats (other than those being used for cargo transportation, passenger transportation, tourism, hospitality business) valued more than VND1.6 billion, the input VAT amount corresponding to the value exceeding VND1.6 billion shall not be creditable.

- VAT on goods and services purchased by a business establishment for producing or trading goods or services to be supplied to foreign organizations or individuals or to international organizations for providing humanitarian aid, non-refundable aid to Vietnam shall be fully credited.

- Input VAT arising in any one month shall be declared and credited when the amount of tax payable for such month is determined. A business establishment, if discovers that there are any errors in the amount of input VAT declared and credited, shall be permitted to make a supplementary declaration and credit not later than 6 (six) months from the month when such error is discovered.

- For business households which pay VAT under direct method and are permitted to change to paying VAT under credit method, input VAT on goods, services purchased from the month when the credit method applies shall be creditable; input VAT on goods and services purchased before such month shall not be creditable.

- Input VAT of a business establishment shall not be eligible for being creditable if the related VAT invoices is not legitimately prepared in accordance with the relevant regulations such as: VAT amount is not stated in the VAT invoice (except for special cases where the payment price stated in the VAT invoice is permitted to be VAT inclusive price); any details such as name, address, tax code of the seller is not or is inaccurately stated in the VAT invoice, making it unable to identify the seller; false VAT invoices or false receipts for payment of VAT, VAT invoice being erased, or blank invoices (without purchase or sale of goods or services); VAT invoice reflecting inaccurately the actual value of goods, services purchased, sold or exchanged.

d) Conditions for credit of input VAT

Business establishments paying VAT under credit method shall eligibly declare and credit its input VAT if the following conditions are satisfied:

- Having legitimate VAT invoice for goods or services purchased or a receipt for VAT payment at the import stage;

- Having a receipt for payment via a bank for goods or services purchased, except for one-off purchase of goods or services with purchase value of below twenty (20) million Vietnamese Dong;

- For exported goods, services, in addition to the above mentioned conditions, the exporter shall be required to have: contract signed with the foreign parties on the sale, processing of goods, provision of services, invoices, bank transfer payment, customs clearance declaration for exported goods.

Payments received for the exported goods, services by way of off-setting between exported goods, services and imported goods, services, debt financing on behalf of the Government shall be deemed to be made via a bank.

4.2. The direct method

a) Subjects of application

- Business establishments and foreign organisations, individuals doing business without permanent establishments but having income sourced in Vietnam failing to implement completely regimes on accounting, invoices and supporting documents;

- Gold, silver, gemstone and foreign currency trading activities.

b) Method for determining VAT payable:

VAT payable	=	Added value of goods, service subject to VAT	x	VAT rate (%) applicable to such goods, service

Added value of goods, service	=	Payment price of goods, service sold	-	Payment price of relevant goods, service purchased

With respect to certain lines of business, the added value shall be determined as follows:

- With respect to production or trading activities, it is the difference between the sales and the value of supplies, goods and services purchased for production or trading. Where it is unable to separately account for the value of purchased materials, goods and services corresponding to the sales of goods, it shall be determined as follows:

Cost of goods sold is equal to (=) Beginning inventory plus (+) cost of goods purchased in the period, less (-) Closing inventory.

- With respect to construction and installation service, it is the difference between revenue from construction and installation of works or items of works less (-) cost of materials, power, transportation and services and other outside service expenses for performing the construction and installation of works or items of works.

- With respect to transportation activities, it is the difference between the revenue received from transportation, loading and unloading fees less (-) fuel costs, spare parts costs and other outside service expenses attributable to the transportation activities.

- With respect to catering activities, it is the difference between the revenue received from food and beverage services, service charges and other income less (-) costs of input and outside services attributable to the food and beverage services.

- With respect to activities of trading in gold, silver, gemstones and foreign currency: added value shall be the difference between the sales of gold, silver, gemstones and foreign currency, less (-) corresponding purchase cost of these goods.

- With respect to other business activities: added value shall be the difference between operating income less (-) the prime cost of outside goods and services purchased to carry out those business activities.

Revenue from sale of goods and services stipulated above shall include all surcharges and additional fees which business establishments are entitled to in addition to the selling price, irrespective of whether money has been received or not.

Costs of goods and services purchased as stipulated above shall include all taxes and levies paid as an inclusion in the payment price for such goods and services.

- Business establishments being taxpayers paying VAT under the direct method shall not be entitled to include the value of assets purchased externally and investment and construction for forming fixed assets in their input purchase price of goods and services for the purpose of calculating added value.

c) The determination of added value for each business establishment as follows:

- For business establishments which have complete invoices, supporting documents, accounting records for their sale and purchase of goods and services, the added value shall be determined on the basis of the selling price or the purchase price stated in such source documents.

- For business establishments which have complete invoices, supporting documents, accounting records for their sale of goods and services, thus are able to correctly determine their revenue from sale of goods and services according to their invoices for sale of goods and services but are unable to account for their cost of purchase of goods and services, then added value shall be determined by multiplying their sale revenue by (x) the deemed rate of added value on revenue.

- For business individuals (households) which fail to implement or incompletely implement regimes on invoices for their sale and purchase of goods and services, the tax authorities will base on the respective business situation of each household to determine their deemed taxable income; added value shall be determined by multiplying the deemed taxable income by (x) the deemed rate (%) of added value on income.

The deemed rates (%) of added value on revenue are subject to guidance from the General Department of Taxation in the manner of being appropriate to each business line and reasonable for different localities.

5. Invoices and supporting documents for sale and purchase of goods and services

Business enterprises must implement the regime on invoices and receipts as stipulated by law when upon their sale and purchase of goods and services.

5.1. Business establishments paying VAT under the tax credit method, when selling or providing VAT taxable goods or services must use VAT invoices, except for the cases where business establishments are permitted to use special invoices and supporting document with VAT inclusive price stated thereon.

When billing, business establishments must fill in fully and correctly all the stipulated items on the VAT invoice: ex-VAT selling price, surcharge and additional fee (if any), VAT amount and the total payment price inclusive of VAT. In case the ex-VAT selling price and VAT amount are not stated separately on the VAT invoice, but the VAT inclusive payment price, the output VAT shall be calculated on the payment price.

Business establishments shall not be entitled to input VAT deduction in case the input VAT is not separately stated on the VAT invoices for their purchase of goods and services.

5.2. Business establishments, who pay tax under the direct method, must use sale invoice when selling goods, providing services. The selling price stated in the invoice is the actual payment price inclusive of VAT (in case of goods, services subject to VAT).

5.3. If a business establishment wishes to use invoices, vouchers in such forms that are different from the commonly prescribed forms, such business establishment must register such invoices, vouchers with the Ministry of Finance (the General Department of Taxation) and shall not use such invoices, vouchers unless it is permitted by the Ministry of Finance in a written notification. For all cases where business entities register for use of self-print invoice, they must ensure the consistency of content, criteria stated in the invoice as prescribed by laws.

5.4. Business establishments, who directly involves in retail of goods, provision of services with value lower than the prescribed level subject to VAT invoice, have to issue VAT invoice in accordance with the relevant regulations upon request of the buyer. For retail of goods and provision of services for which VAT invoices are not issued, the business establishment must prepare a list of retail goods sold for VAT assessment purpose.

6. VAT refund provision

6.1. Subject and cases eligible for VAT refund

Business establishments paying VAT under the credit method are eligible for VAT refunds in the following cases:

(i) Business establishments having input VAT not fully credited within three (3) consecutive months or more. The amount of tax refund is the amount of input VAT not fully deducted in the period of refund.

(ii) Where a business establishment currently operating and paying tax under the credit method carries out a new investment project which is still in the construction period, if its input VAT from goods, services purchased for the investment purpose is not fully credited and the input VAT amount yet to be credited is of VND200 million or more, such business establishment shall be eligible for VAT refund.

(iii) A business establishment having goods or services exported in a month, if the input VAT on such exported goods is not fully credited and the uncredited input VAT amount is of VND200 million or more, may be eligible for having VAT refunded on a monthly or shipment basis (if it is possible to determine input VAT of shipment).

(iv) When making tax finalisation upon merger, combination, separation, split-up, dissolution, bankruptcy, production and business establishments that have overpaid VAT amount may request the tax authorities to refund such amount.

(v) Business establishment is eligible for VAT refund as decided by competent agencies in accordance with regulation of laws.

(vi) VAT refund to programmes, projects using the non-refundable official development assistance fund (ODA), or non-refundable aid, humanitarian aid:

- In the case of projects funded by non-refundable ODA, programme, project owners or the main contractor or the organisation which is designated by the foreign donor to manage the program or project shall be entitled to refund of VAT already paid on goods or services purchased in Vietnam for the programme or project.

- Organisations in Vietnam using humanitarian aid fund from foreign organisations or individuals to purchase goods or services for a programme or project funded by non-refundable or humanitarian aid in Vietnam shall be entitled to refund of VAT already paid on such goods or services.

II. SPECIAL CONSUMPTION TAX (SCT)

1. Concept

SCT is an indirect tax imposed on certain goods, services, the production or consumption of which must be regulated as prescribed by the Government. SCT forms a part of the selling price of goods, services and shall be borne by the consumers upon purchasing goods, services.

2. Scope of application of SCT

2.1. SCT taxpayers

SCT taxpayers are organisations, individuals (together referred to as business establishments) engaging in production, import of goods, provision of services subject to SCT.

- Producers and importers of goods and providers of services comprise: business entities under all forms, of all economic sectors such as: state owned enterprises, private enterprises; different forms of company being incorporated and operating under the Law on encouragement of inbound investment, Law on foreign investment in Vietnam; economic entities of political organisations; socio-political organisations, socio-professional organisations, people's armed forces units and other non-business administrative units; cooperatives...

- Individuals producing, importing goods, providing services including independent individual importers, producers, traders, households, individuals cooperating with each other to do business without establishing legal entities.

- Non-business individuals, who carry goods subject to SCT when entering into Vietnam shall also become taxpayers in case of goods carried along with them exceeding the allowable tax exemption level.

2.2. Taxable objects, non-taxable objects

a) Taxable objects

SCT taxable objects are the following goods, services, except for cases not subject to SCT as provided for in point b) hereunder:

- Goods subject to SCT are categorised into 10 groups: (i) Cigarettes, cigars; (ii) Alcohol; (iii) Beer; (iv) Vehicles of less than 24 seats; (v) Two-wheel and three-wheel motor vehicles with cylinder capacity of 125m^3 and higher; (vi) Aircraft, yachts; (vii) gasolines of all sorts, naphtha, reformade components and other components for mixing gasolines; (viii) Air conditioners with capacity of 90,000 BTU or less; (ix) Playing cards; (x) Votive gilt papers and votive objects (excluding those being children's toys, teaching aids and decorative objects).

- Services subject to SCT are categorised into 06 groups: (i) Discotheque business; (ii) Massage and karaoke business; (iii) Casino business; Electronic games with prizes including operating of jackpot, slot and the-like machines; (iv) Betting business; (v) Golfcourse business including golf membership, golf card; (vi) Lottery business.

b) Non-taxable objects

Under current regulations, several SCT taxable goods are exempt from SCT, comprising:

(1) Goods directly exported abroad by producers or processors, including goods sold to or processed for export processing enterprises (except vehicles of less than 24 seats), goods brought abroad for displaying and sale at trade fairs or exhibitions.

(2) Goods sold or entrusted by producers to exporters for export under economic contracts.

(3) Import goods in the following cases:

Goods imported as humanitarian or non-refundable aid. Donations or gifts donated by foreign organisations, individuals to State agencies, political organisations, socio-political organisations, social organisations, socio-professional organisations, people's armed force units. Donations or gifts are determined in accordance with the quotas prescribed by the Government or the Ministry of Finance. Personal effects of foreign organisations and individuals with diplomatic immunity quotas as prescribed by the Government of Vietnam in accordance with international conventions that Vietnam has entered into or participated. Personal effects within import duty-free luggage quotas of Vietnamese individuals and foreigners upon entry or exit via Vietnam border gates.

(4) Goods transited or transported via Vietnam in the following cases:

Goods transported directly from exporting countries to importing countries not via Vietnam border gates; Goods transported from exporting countries to importing countries via Vietnam border gates but procedures for their import into and export from Vietnam are not carried out; Goods transported from exporting countries to importing countries via Vietnam border gates and brought into bonded warehouses, but procedures for their import into and export from Vietnam are not carried out; Goods transited or transported via Vietnam border gates or border under agreements signed between Vietnamese and foreign Governments or between Vietnamese and foreign industries, localities, which have been authorised by the Prime Minister.

(5) Goods temporarily imported for re-exported. If such goods are actually re-exported within the time limit during which import duty is yet required to be paid under the relevant regulations, they will not be subject to SCT on the volumes of goods actually re-exported.

(6) Goods temporarily imported for display at trade fairs or exhibitions, which have actually been re-exported within the time limit during which import duty is yet required to be paid under relevant regulations. After the fair or exhibition, organisations or individuals that fail to re-export the temporarily imported goods shall declare and pay SCT; if being detected through inspection as failing to make declaration, organisations and individuals, apart from paying SCT, shall be sanctioned as regulated by laws.

(7) Goods imported from abroad into export processing zones, goods imported by export processing enterprises.

(8) Goods imported from abroad into non-tariff areas, goods sold from inland Vietnam into non-tariff areas and used only within the non-tariff areas, and goods traded between non-tariff areas, except for passenger vehicles of less than 24 seats.

(9) Aircrafts, yachts used for commercial transportation of cargos, passengers and for tourism business. If subsequently, SCT-free (or SCT exempted) aircrafts, yachts are used for purposes other than commercial transportation of cargos, passengers and for tourism business, they will be subject to SCT on their remaining value after deducting the provided depreciation expenses as regulated.

(10) Vehicles designed to be used as ambulances, prison vans or hearses, vehicles designed with seats and standing places for carrying at least 24 people; vehicles operating in the recreation, entertainment and sport areas which neither are registered for circulation nor move on roads.

(11) Air conditioners of 90,000 BTU or less, which, according to manufacturers' standards, are designed only to be fitted on transportation vehicles, including cars, train carriages, ships, boards or aircrafts.

3. Tax bases and tax rates

3.1. Tax bases

SCT is calculated based on taxable price of goods, services subject to SCT and SCT rate. Formula is as follows:

$$\text{SCT payable} = \text{SCT taxable price} \times \text{SCT rate}$$

SCT taxable price applicable to specific case

1. Taxable price in case of domestically produced goods: SCT taxable price shall be the selling price determined by the producers exclusive of value added tax and SCT, which shall specifically determined as follows:

$$\text{SCT taxable price} = \frac{\text{Selling price net of VAT}}{1 + \text{SCT rate (\%)}}$$

Selling price exclusive of VAT is determined in accordance with the Law on VAT.

- Where producers of SCT taxable goods sell their produced goods via their dependent accounting establishments (branch, shops...), SCT taxable price shall be the ex-VAT selling price set by such branch, shops. For producers of SCT taxable goods that have their goods sold by agents at the prices set by producers for commissions, the price serving as a basis for determining the SCT taxable price is the ex-VAT selling price inclusive of commission set by those producers.

- For SCT taxable goods being sold through trading establishments, SCT taxable price shall be the ex-VAT selling price set by the producers, which must not be 10% lower than the average selling price set by such trading establishments.

If the producer's selling price is lower than the selling price set by the trading establishment by more than 10%, the SCT taxable price shall be fixed by the tax authorities in accordance with the Law on tax administration and its guiding documents.

2. Taxable price in case of imported goods: Taxable price applicable to imported goods subject to SCT shall be determined as follows:

SCT taxable price = Import duty calculation price + Import duty.

The import duty calculation price is determined in accordance with the Law on Import Duty, Export Duty. For imported goods eligible for import duty exemption or reduction, SCT taxable price shall be exclusive of the exempted or reduced import duty amount.

3. For SCT taxable goods, the SCT taxable price is the price exclusive of VAT and SCT and inclusive of the tare.

For bottled beer, if a deposit is made for bottles, producers and customers shall make quarterly finalisation of such deposit and include the deposit sum equivalent to the value of irrecoverable bottles in the SCT taxable turnover.

4. For processed goods, the SCT taxable price is the taxable price of the goods sold, set by the processing-ordering establishments or the selling price of products of the same or similar kind at the same time when the goods are sold, exclusive of VAT and SCT.

5. For goods produced under the form of business cooperation between a producer and an owner of goods brands (trademarks) or production technologies, the SCT taxable price is the selling price exclusive of VAT set by that owners of goods brands (trademarks) or production technologies.

6. For goods sold in instalments or on deferred payments, the SCT taxable price is the up-front selling price exclusive of VAT and SCT, and exclusive of the instalment or deferred payment interest.

7. For goods and services used for barter, internal consumption, donation or sales promotion, the SCT taxable price is the SCT taxable price of goods or services of the same or similar kind at the same time, when such barter, internal consumption, donation or sales promotion activities occur.

8. For exporters that purchase SCT taxable goods from producers for export then do not export but sell these goods to domestic markets, the SCT taxable price in this case is the selling price exclusive of VAT, SCT as follows:

$$\text{SCT taxable price} = \frac{\text{The domestic selling price set by the exporter exclusive of VAT}}{1 + \text{SCT rate}}$$

In case an exporter declares a selling price (inclusive of VAT and SCT) as a basis for SCT taxable price determination lower than the selling price on market by more than 10%, the

SCT taxable price shall be fixed by the tax authorities in accordance with the Law on tax administration and its guiding documents.

9. For services, the SCT taxable price is the service fee charged by the service provider, exclusive of VAT and SCT, as follows:

$$\text{SCT taxable price} = \frac{\text{Service fee exclusive of VAT}}{1 + \text{SCT rate}}$$

3.2. SCT rate:

SCT rates vary among different types of goods, services, depending on the degree of requirement for regulation or limitation on production, consumption of such goods, services (For example: 65% for cigarettes, 45% for beer, 40% for discotheque business...).

3.3. Approach for SCT calculation:

SCT payable is determined as follows:

$$\text{SCT payable} = \text{Quantity of goods, services sold} \times \text{SCT taxable price} \times \text{SCT rate (\%)}$$

4. Provision on SCT refund

According to the Law on SCT No. 27/2008/QH12 and its guiding documents, SCT taxpayers are eligible to have the paid SCT amount refunded in the following cases:

4.1. Goods temporarily imported for re-export, including:

- Imported goods for which SCT has been paid but which are still kept in warehouses or yards at border gates, and are under the supervision of the customs authorities and will be re-exported abroad.

- Imported goods for which SCT has been paid for delivery and sale abroad through Vietnam-based agents; goods imported for sale to foreign firms' vehicles operating on international routes via Vietnam ports or to Vietnamese vehicles operating on international routes in accordance with the Government's regulations.

- Goods temporarily imported for re-export by the method of temporary import for re-export, then when being re-exported, the SCT amounts already paid on the volumes of goods actually re-exported will be refunded.

- For imported goods for which SCT has been paid, if subsequently is re-exported, the SCT amounts already paid on the volumes of goods actually re-exported will be refunded.

- Goods temporarily imported for display at trade fairs, exhibitions or showrooms or for other purposes within a certain period for which SCT has been paid, when they are re-exported, the paid SCT amounts will be refunded.

Goods temporarily imported for re-exported. If such goods are actually re-exported within the time limit during which import duty is yet required to be paid under the relevant regulations, they will not be subject to SCT on the volumes of goods actually re-exported.

- Imported goods for which SCT has been paid as declared but the volumes of actually imported goods are smaller than declared; imported goods being damaged or lost in the course of importation for plausible reasons for which SCT has been paid.

- For imported goods failing to meet quality or category requirements specified in contracts or import permits (at the fault of foreign goods owners), inspected by competent testing agencies and certified by foreign goods owners which are permitted to be imported, customs offices shall inspect and re-certify the payable SCT amount. Overpaid SCT amount, if any, will be refunded, and underpaid SCT amount, if any, will be added to equal the payable amount. In case goods are permitted to be re-exported, the SCT amount already paid on the volumes of re-exported goods will be refunded.

4.2. For goods which are raw materials imported for export production and processing, the SCT amount already paid on the volumes of raw materials used for the production of goods actually exported will be refunded. The SCT refund under this provision applies only to goods that are actually exported and the procedures, dossiers, order and competence for refunding SCT paid on the imported goods are similar to those applicable to import duty refund in accordance with the law on import duty, export duty.

4.3. When making tax finalisation upon merger, separation, split-up, dissolution, bankruptcy, change of ownership, assignment, sale, contracting or lease of state enterprises, production and business establishments that have overpaid SCT amount may request the tax authorities to refund such amount.

4.4. Other cases where SCT will be refunded:

- SCT refund as decided by competent agencies in accordance with regulation of laws.

- SCT refund in accordance with international treaties to which Vietnam is a contracting party.

- SCT refund in case the SCT amount paid is larger than the SCT amount payable in accordance with relevant regulations.

The procedures, dossiers, order and competence for SCT refund shall be in accordance with the Law on tax administration and its guiding documents.

III. CORPORATE INCOME TAX (CIT)

1. General issues on CIT

1.1. Concept

In normal meaning, corporate income tax is understood as a direct tax, which is levied directly on income of an organisation, a legal entity. However, from law perspective, this tax is also used to extend the scope of governing to income of certain individuals, group of individuals, subject to requirements of state management.

1.2. Role of corporate income tax

- It encourages investment for socio-economic development, encourages shift of economic structure by sector and territory through regulations on tax incentives, technical factors in tax calculation, tax administration.

- It is an important and effective instrument for ensuring state budget revenue, satisfying government spending requirements.

- It serves as an instrument that helps enterprises enhance their internal management as well as determine their business strategy for each period.

2. Key contents of the current Law on CIT

2.1. Taxpayers

CIT taxpayers are organizations, who engage in business activities and derive assessable incomes, including:

a) Enterprises incorporated and operating in accordance with the laws of Vietnam;

b) Enterprises incorporated and operating in accordance with the laws of foreign countries (hereinafter referred to as foreign enterprise) having permanent establishment or having no permanent establishment in Vietnam;

c) Organizations established and operating under the Law on Cooperatives;

d) Non-business units established in accordance with the laws of Vietnam;

e) Other organisations which conduct business activities and derive income.

2.2. Assessable income

Assessable income in a taxable period comprises income from production and trading of goods and provision of services and other income.

Assessable income in a taxable period is determined as follows:

$$\text{Assessable income} = \text{Revenue} - \text{Deductible expenses} + \text{Other incomes}$$

Income from production and trading of goods and provision of services is equal to revenue from production and trading of goods and provision of services less (-) deductible expenses relating to such production and trading of goods and provision of services. Where an enterprise engages in different business activities with different tax rate, income of each activity must be determined separately and is multiplied by corresponding tax rate.

Income from real property transfers must be separately determined in order to declare and pay tax. Enterprises are not allowed to off-set income from real property transfers with income or loss from other operating activities.

2.3. Approach for CIT calculation

- CIT payable is determined by using the following formula:

$$\text{CIT payable} = \text{Taxable income} \times \text{CIT rate}$$

- Where enterprise establishes Science and Technology Development Fund (STDF), then:

$$\text{CIT payable} = \left(\text{Taxable income} - \text{Transfers to STDF} \right) \times \text{CIT rate}$$

- CIT rate is 25%.

- A taxable period is determined according to the calendar year. If an enterprise applies a fiscal year other than the calendar year, the taxable period shall be determined according to the applied fiscal year. The first taxable period for a new enterprise and the final taxable period for an enterprise established as a result of form or ownership transformation, merger, separation, split, dissolution or bankruptcy shall be determined to conform to the accounting period in accordance with the laws and regulations on accounting.

- Enterprises which have expenses incurred, turnover generated, income earned in foreign currencies, such foreign currency amounts must be translated into Vietnam dong at the average inter-bank rate published by the State Bank of Vietnam at the time the related transaction occurred, unless it is otherwise regulated by laws. A foreign currency having no exchange rate with Vietnam dong must be translated via another foreign currency having an exchange rate with Vietnam dong.

2.4. Determination of bases for CIT calculation

Bases for CIT calculation are taxable income and tax rate.

a) Taxable income in a period is determined equal to assessable income less (-) CIT exempt income and losses carried forward as regulated. Formula is:

$$\text{Taxable income} = \text{Assessable income} - \text{Tax exempt income} + \text{Losses carried forward as regulated}$$

b) Assessable income in a period comprises income from business activities and other income.

Income from business activities is equal to (=) revenue less (-) deductible expenses. An enterprise which conducts different business activities subject to different tax rates shall separately calculate income from each activity, multiplied by the corresponding tax rate.

Approach for calculating assessable income:

Assessable income	=	Revenue	-	Deductible expenses	+	Other income

c) Tax exempt income: Tax exempt income is provided for in Article 4 of the Law on CIT, Article 4 of Decree 124/2008 and the guidance of the Ministry of Finance in Section VI, Part C of Circular 130/2008/TT-BTC dated 26 December 2008.

d) Losses carried forward

Enterprise's operating losses can be carried forward for a period of up to five (05) consecutive years as provided for in Article 16 of the Law on CIT (detailed guidance in Section VII, Part C of Circular 130/2008 of the Ministry of Finance).

đ) Other income

Other income comprises those provided for in sub-clause 2, Article 3 of the Law on CIT and guidance of the Ministry of Finance in Section V, Part C of Circular 130/2008. These are assessable income arising during a taxable period, which are not related to business activities having been registered in the enterprise's business registration.

2.5. Revenue used for calculating assessable income

a) Revenue used for calculating assessable income is the total of sales, processing charges or service fees, including price subsidies, surcharges and additional charges enjoyed by enterprises, regardless of whether money has been collected or not.

- For enterprises paying value-added tax under the credit method, revenue used for calculating assessable income is exclusive of value-added tax.

- For enterprises paying value-added tax under the direct method, revenue used for calculating assessable income is inclusive of value-added tax (total payment price).

b) Time for determining revenue for CIT calculation is determined as follows:

- For sales of goods, it is when the goods ownership or use right has been transferred to the buyer.

- For provision of services, it is the billing date or when service is completed. If the date of invoice is prior to the date of completion of services, the timing for recognition of revenue for the services rendered would be the time of invoice issuance.

- Other cases shall be in accordance with provisions of laws.

2.6. Deductible expenses for CIT purposes

Law on CIT No. 14/2008 and its guiding documents do have certain changes in provisions of deductible expenses, whereby such legal documents only provide for conditions for being considered as deductible expenses and list out all non-deductible expenses. Expenses satisfying conditions for being deductible, if its name is not named in the list, shall, as a matter of course, be deductible.

a) Conditions for expenses being accepted as deductible expenses:

- Expenses actually incurred in relation to the generation of revenue, taxable income in a tax year;

- Expenses are supported with sufficient invoices, supporting documents as regulated by laws.

b) There are 31 expense items undeductible for CIT purpose (refer to Circular 130/2008/TT-BTC).

2.7. CIT incentives

a) Incentives being preferential tax rates, which comprise the followings:

a1. The tax rate of 10% applied for fifteen (15) years.

a2. Preferential tax rate of 10% for over 15 years (up to 30 years).

a3. The tax rate of 10% for the whole project life.

a4. Preferential tax rate of 20% for ten (10) years.

a5. Preferential tax rate of 20% for the whole project life.

b) Incentives being duration of tax exemption and reduction, which comprise the followings:

b1. Tax exemption for 4 years, 50% reduction of the CIT payable for nine (9) subsequent years.

b2. Tax exemption for 4 years, 50% reduction of the CIT payable for five (5) subsequent years.

b3. Tax exemption for 2 years, 50% reduction of the CIT payable for four (4) subsequent years.

IV. LAW ON PERSONAL INCOME TAX

The Law on personal income tax has been passed by Legislature XI of the National Assembly at its 2nd Session on 21 November 2007.

1. General comments on Personal Income Tax

Personal income tax is a direct tax imposed on individuals' income. The implementation of this tax is an expression of each individual's obligations towards the country in the most direct way.

The scope of governing of personal income tax is extremely wide, covering all individuals having income from salary, wages; business income; income from indirect investment such as sale or purchase of shares, bonds, stocks, etc. Scope of application governed by personal income tax is not only local individuals but also foreign individuals having income. Income subject to personal income tax includes all types of income of individuals.

2. Provisions of current laws on personal income tax ("PIT")

2.1. Taxpayers

Personal income taxpayers comprise resident and non-resident individuals having income subject to tax.

A tax resident shall be taxed on his assessable income sourced in Vietnam and outside Vietnam, regardless of who is the income payer. Non-tax resident is only taxed on his Vietnam sourced income, regardless of who is the income payer, income payee.

2.2. Assessable income

Personal income subject to PIT comprises the following 10 types of income:

(1) Business income, including income from production and trading of goods, services in accordance with laws;

(2) Income from salary, wages paid by employers to employees;

(3) Income from capital investment, including:

a) Loan interest;

b) Share dividends;

c) Income from other forms of capital investment.

(4) Income from capital assignment, including income from assignment of interest in economic organisations; securities transfers; capital assignment under other forms.

(5) Income from transfers of real estate (transfer of land use right and properties attached to land; transfer of residential housing ownership or use right; transfer of lease right to land or water surfaces).

(6) Income from prize winnings in cash or in kind.

(7) Royalties.

(8) Income from franchises in accordance with the Law on Commerce.

(9) Income from receipt of a gift of securities, of capital portion in an economic organisation or business establishment, of real property or other assets for which ownership or use rights must be registered.

2.3. PIT exempt income

There are 41 types of income being exempt from PIT under the current laws.

2.4. PIT reduction

PIT reduction is applied to taxpayers who meet difficulties due to natural disaster, fire, accident, serious disease or illness, which affect their ability to pay tax. A tax reduction shall be considered correspondingly to the degree of their loss. Amount of PIT deductible shall be based on the amount of tax payable and proportion between the degree of loss and the aggregate income derived by the individual in the same year but not exceeding the amount of tax payable.

2.5. Approach and method for assessment of PIT applicable to resident individuals

A new point in the Law on PIT lies in the clear determination of assessable income and taxable income. PIT payable shall be determined by applying the PIT tariff to the taxable income. Among 20 types of assessable personal income, business income and income from salary, wages shall be subject to progressive tax rates net of allowable deductions under the current regulations. The rest 8 types of income shall apply full tax rate.

2.6. Basis of tax assessment applicable to non-resident individuals

a) For business income

Personal income tax on business income of a non-resident individual shall be determined by multiplying business income by (x) tax rate.

b) For income from salary, wages

Personal income tax on income from salary, wages of a non-resident individual shall be determined by multiplying taxable income from salary, wages by (x) the tax rate of 20%.

c) For income from capital investments

Personal income tax on income from capital investments of a non-resident individual shall be determined by multiplying the total amount of money receivable by such individual from capital investments in entities in Vietnam by (x) the tax rate of 5%.

d) For income from capital transfers

Personal income tax on income from capital transfers made by a non-resident individual shall be determined by multiplying the total amount of money receivable by such individual from transfers of interest in Vietnamese entities by (x) the tax rate of 0.1%, irrespective of whether the transfer is carried out in Vietnam or overseas.

đ) For income from real property transfers

Personal income tax on income from a real property transfer in Vietnam by a non-resident individual shall be determined by multiplying the transfer price by (x) the tax rate of 2%.

e) For income from royalties

g) For income from franchises

Tax on income from a franchise receivable by a non-resident individual shall be determined by multiplying the part of income which exceeds ten million dong pursuant to each franchise contract in Vietnam by the tax rate of 5%.

h) For income from winnings or prizes, and from receipt of an inheritance or gift receivable by a non-resident individual, personal income tax shall be determined multiplying the taxable income by (x) the tax rate of 10%.

V. AGREEMENTS ON DOUBLE TAXATION AVOIDANCE

1. Scope of application

The subjects that are residents of Vietnam or of the Contracting State to an Agreement concluded with Vietnam or of both.

1.1. Under the Agreements, the term “a resident of the Contracting State” means any person who, under the laws of that state, is liable to tax therein by reason of:

That person has a home, a period of residence in that State or any other criteria of similar nature, in the case of an individual; or has a place of management, a registered office, or is established in that State or has any other criteria of similar nature, in the case of an organization.

1.2. According to the laws of Vietnam, the following persons are regarded as residents of Vietnam:

Individuals holding the Vietnamese nationality, individuals who do not hold the Vietnamese nationality but reside indefinitely in Vietnam, foreigners who are present in Vietnam for 183 or more days computed over 12 consecutive months for the first taxable year as from the time those persons arrive in Vietnam and 183 or more days for the following calendar years, in which the day of arrival and the day of departure are counted as 01 (one) day.

Organizations established and operating under the laws of Vietnam, such as State owned enterprises, cooperatives, limited liability companies, joint-stock companies, private enterprises, partnerships, joint-venture enterprises, 100% foreign invested companies, joint-venture banks, joint-venture financial companies, 100% foreign invested financial companies, joint-venture finance leasing companies, 100% foreign invested finance leasing companies, which are licensed to conduct business in Vietnam.

In cases where a person is deemed to be a resident of both Vietnam and the Contracting State to an Agreement concluded with Vietnam, the priority order criteria shall serve as the basis for determining whether the person is a resident of Vietnam.

2. Principles for application of domestic laws and Double taxation avoidance agreements

Where there are disparities between the provisions of the Agreements and those of domestic laws, the provisions of the Agreements shall apply.

Where an Agreement contains provisions under which Vietnam is entitled to tax a certain type of income but Vietnam laws on taxation has not yet provided for the taxation of such income or provides for a lower rate, Vietnam laws on taxation shall apply.

The exemption, reduction of tax in accordance with provisions of the Agreements shall not be granted on the "automatic" basis. To enjoy the incentives under the Agreement, taxpayers shall have to fulfill all prescribed procedures.

3. Taxes on different types of income

Personal income tax

Corporate income tax

3.1. Determination of tax obligations

Where a foreign enterprise carrying on production and business activities in Vietnam without forming a legal status in Vietnam, income from production and business activities in Vietnam of such foreign enterprise shall be taxed in Vietnam only if such enterprise has a permanent establishment in Vietnam and such income is directly or indirectly related to that permanent establishment. In this case, the foreign enterprise shall be taxed in Vietnam only on the portion of income apportioned to such permanent establishment.

3.2. Permanent establishment means a fixed place of business of an enterprise, through which the business of the enterprise is wholly or partly carried on.

4. Methods for elimination of double taxation in Vietnam

When a taxpayer being a resident of Vietnam, derives an income from the Contracting State to an Agreement concluded with Vietnam and has paid tax in that State (under the provisions of the Agreement and that State's laws), Vietnam may still tax such income but, at the same time, it is also obliged to apply methods for elimination of double taxation so that that taxpayer does not have to pay double tax.

Depending on each concluded Agreement, Vietnam may apply one or a combination of the following methods for elimination of double taxation:

4.1. Tax credit method

Where a resident of Vietnam derives income from and has paid tax in the Contracting State to an Agreement concluded with Vietnam, if in that Agreement, Vietnam commits to apply the tax credit method, then, when this resident makes income tax declaration in Vietnam, such income shall be included in his/her taxable income in Vietnam in accordance with Vietnam laws on taxation and the tax amount already paid in the Contracting State shall be deducted from the tax amount payable in Vietnam. Nevertheless, in all cases, the deducted tax amount shall not exceed the tax amount payable in Vietnam, which is computed on the income derived in the Contracting State in accordance with Vietnam laws on taxation.

4.2. Method of deduction of deemed tax

Where a resident of Vietnam derives income from and must pay tax in the Contracting State to an Agreement concluded with Vietnam (a reduced or exempted tax as a special preference), if, in that Agreement, Vietnam commits to apply the method of deduction of deemed tax, when this resident makes income tax declaration in Vietnam, such income shall be included in his/her taxable income in Vietnam in accordance with Vietnam laws on taxation and the deemed tax amount shall be deducted from the tax amount payable in Vietnam. Nevertheless, in all cases, the deductible deemed tax amount shall not exceed the tax amount payable in Vietnam, which is computed on the income derived from abroad in accordance with Vietnam laws on taxation.

The deemed tax amount is the amount which should have been paid by a resident of Vietnam in the Contracting State to an Agreement concluded with Vietnam on the income derived from that Contracting State, which, however, according to that Contracting State's law, is exempted or reduced as a special preference.

4.3. Method of deduction of indirect tax

Where a resident of Vietnam derives an income from the Contracting State to an Agreement concluded with Vietnam, for which corporate income tax has been paid before it is distributed to that resident, if in the Agreement, Vietnam commits to apply the method for deduction of indirect tax, in making income tax declaration in Vietnam, such income shall be included in the taxable income in Vietnam in accordance with Vietnam laws on taxation and the indirect tax amount already paid in the Contracting State shall be deducted from the tax amount payable in Vietnam. Nevertheless, in all cases, the deductible tax amount shall not exceed the tax amount payable in Vietnam, which is computed on the income derived from abroad in accordance with Vietnam laws on taxation.

The deductible indirect tax amount is the tax amount already paid by a joint-stock company being a resident of the Contracting State to an Agreement concluded with Vietnam in that Contracting State in the form of corporate income tax before the dividend is distributed to the resident of Vietnam, provided that the resident of Vietnam directly controls a minimum percentage (normally 10%) of the voting right in the joint-stock company.

Notwithstanding the provision above, under which Vietnam shall apply the method of deduction of indirect tax only when it so commits in the Agreements, if, according to Vietnam's laws, incomes derived from abroad by residents of Vietnam enjoy deduction of indirect tax, this provision is still implemented.

5. Procedures for implementation of the Agreements

***5.1.* Handling agencies**

- General Department of Taxation

To deal with the applications for tax exemption, deduction in accordance with the Agreements. Such applications shall be forwarded by provincial tax departments to the General Department of Taxation after having gathered sufficient documents in the following cases:

a) The aggregate tax liability of a taxpayer for a related tax year is over VND500,000; or

b) Taxpayers run different business establishments at different provinces or cities; or

c) Taxpayers have inter-company transactions, contracts that have not complied with the arm's length principle in transactions among dependent business entities.

- Tax departments of provinces, cities

To deal with other cases of application for adoption of Tax avoidance agreements.

5.2. Detailed guidance on procedures:

- Procedures for having tax paid abroad credited to tax payable in Vietnam:

Taxpayers send dossiers of application for deduction of the tax amounts paid abroad from their tax amounts payable in Vietnam to the municipal/provincial tax authorities where they register their tax payment. Such a dossier consists of:

+ An application for tax deduction, clearly stating in which:

* Overseas tax code (if any);

* Type of income: business profits, income from the provision of services, dividends, interests, royalties, income from the alienation of property, income from the alienation of shares, income from dependent personal services, or other income;

* Name of country where the income is derived, period when the income is derived;

* Total amount of tax deduction applied;

* Tax year.

+ Original copy of the income tax payment receipt in the foreign country;

+ A copy of the income tax payment declaration in the foreign country;

+ Certificate of the foreign tax authorities of the paid tax.

- Procedures for tax exemption, reduction in Vietnam for individuals and organizations in accordance with the Agreements:

Vietnam non-residents:

A taxpayer must send dossiers of application for tax exemption or reduction under an Agreement to the municipal/provincial tax authorities where they register their tax payment. Taxpayer is permitted to authorise any legally representative persons to apply, on his behalf, for tax exemption or reduction to him under an Agreement. A dossier of application for tax exemption or reduction under an Agreement consists of:

(i) An application for tax exemption, reduction under the Agreement; (ii) Resident certificate issued by tax authority of the country of residence (clearly stating in which the tax year that the taxpayer is qualified as a tax resident); (iii) A copy of the business registration or tax registration certificate issued by the country of residence in case of a business organisation or independent professional individual or a copy of passport in case of a dependent professional individual (employee under an employment contract); (iv) A copy of the economic contract, service contract, agency contract, entrusting contract, technology transfer agreement or a copy of the employment contract signed with a Vietnamese organisation or individual, certificate of deposit in Vietnam, certificate of capital contribution in a company in Vietnam (depending on type of income as the case may be) in accordance with the current laws and regulations on copy of documents;

Vietnamese resident:

Taxpayer has to submit an application to tax authorities for tax exemption, reduction under the Agreement. A dossier of application for tax exemption or reduction under an Agreement consists of: (i) Certificate issued by the tax authorities of the foreign country certifying that before coming to Vietnam for studying, teaching, doing research, such individual is a resident of that country; (ii) Certificate of the income paying organisation about the nature of the income being wages or pension paid by the Government of the foreign country, payments for the purposes of maintenance, education or training in case of student, apprentices, income paid to teaching, research activities.

- Procedures for confirmation of tax paid in Vietnam for foreign residents:

Where as required by an Agreement and Vietnam laws on taxation, residents of the Contracting State to an Agreement concluded with Vietnam having income derived in Vietnam shall be subject to income tax in Vietnam, based on the tax declaration, tax payment certificate and the application of a foreign resident or the lawful representative of such resident, the provincial or municipal tax authorities, within 15 days from the date of receipt of such request, shall review the application and issue a written certificate certifying the amount of tax paid in Vietnam to the foreign residents.

- Procedure for confirmation on residential status of Vietnam:

In case an organization or individual applies for confirmation of their Vietnamese resident status in accordance with an Agreement, the municipal, provincial tax authorities shall refer to provisions of Article 4 of the Agreement to consider and issue the residential certificate to the organisation, individual mentioned above.

- Consular legalization procedures:

+ Signature, seal affixed on the following papers, documents issued by government agencies of contracting states to Agreements concluded with Vietnam must be consular legalised, meaning that they must obtain consularized stamps of the foreign affairs representative agency of Vietnam overseas in accordance with provisions of Circular 01/1999/TT-NG dated 3 June 1999 of the Ministry of Foreign Affairs:

(i) Resident certificate issued by the foreign tax authorities; (ii) A copy of business registration in the country of resident or certificate of tax registration issued by the country of residence.

+ Signature, seal affixed on the papers, documents issued by Vietnamese agencies, which are used in a foreign country, if requested can be consular legalised, meaning that being affixed with consularised stamps of the Consular Department of the Ministry of Foreign Affairs or Department of External Relations - Hochiminh City.

- Settlement of complaints

As provided for in an Agreement, where a Vietnamese resident deems that their tax obligations assessed by the Vietnamese tax authorities are not in accordance with the provisions of an Agreement, such resident may lodge complaints thereabout to the competent agencies for settlement. The procedures for complaint lodging and settlement are as follows: Complaints may be lodged by such taxpayer following the procedures prescribed by Vietnamese laws as well as provisions of the laws on taxation of Vietnam regarding the settlement of complaints or such taxpayer is permitted to lodge his complaint directly to the General Department of Taxation (Ministry of Finance) without having to follow the above mentioned procedure for complaint settlement. Time required for settlement of this complaint shall be in accordance with the time frame prescribed in the Article "Mutual Agreement Procedure" in the Agreements.

The General Department of Taxation of Vietnam shall, on behalf of the Ministry of Finance of Vietnam, review and settle all complaints. In case of necessity, the General Department of Taxation of Vietnam shall negotiate with the competent authorities with respect to the Agreement of the contracting State with Vietnam to find solutions to complaints by a bilateral agreement.

The General Department of Tax of Vietnam shall be responsible to coordinate with the competent authorities with respect to the Agreement of the contracting States with Vietnam to find solutions to tax related complaints of residents of such states in accordance with provisions of the Agreement.

LIST OF REFERENCE DOCUMENTS OF PART III

I. Law on Tax Administration

1. Law on Tax Administration No. 78/ 2006/QH11 dated 29 November 2006.

2. Circular 60/2007/TT-BTC dated 14 June 2007 issued by the Ministry of Finance guiding the implementation of a number of articles of the Law on Tax Administration and guiding the implementation of Decree No. 85/2007/ND-CP dated 25 May 2007 promulgated by the Government detailing the implementation of a number of articles of the Law on Tax Administration.

II. Value Added Tax

1. Law on Value Added Tax No. 13/2008/QH12 dated 03 June 2008.

2. Decree 123/2008/ND-CP dated 08 December 2008 promulgated by Government detailing the implementation of a number of articles of the Law on Value Added Tax.

3. Circular 129/2008/TT-BTC dated 26 December 2008 issued by the Ministry of Finance guiding the implementation of a number of articles of the Law on Value Added Tax and guiding the implementation of Decree 123/2008/ND-CP dated 08 December 2008 promulgated by Government detailing the implementation of a number of articles of the Law on Value Added Tax.

III. Corporate Income Tax

1. Law on Corporate Income Tax No. 14/2008/QH12 dated 03 June 2008.

2. Decree 124/2008/ND-CP dated 11 December 2008 promulgated by Government detailing the implementation of a number of articles of the Law on Corporate Income Tax.

3. Circular 130/2008/TT-BTC dated 26 December 2008 issued by the Ministry of Finance guiding the implementation of a number of articles of the Law on Corporate Income Tax and guiding the implementation of Decree 124/2008/ND-CP.

4. Circular 134/2008/TT-BTC dated 31 December 2008 issued by the Ministry of Finance providing guidelines for taxation of foreign organizations and foreign individuals doing business or having income in Vietnam.

IV. Special Consumption Tax

1. Law on Special Consumption Tax No. 27/2008/QH12 dated 14 November 2008.

2. Decree 26/2008/ND-CP dated 16 March 2008 promulgated by Government detailing the implementation of a number of articles of the Law on Special Consumption Tax.

3. Circular 64/2009/TT-BTC dated 27 March 2009 issued by the Ministry of Finance guiding the implementation of Decree 26/2008/ND-CP dated 16 March 2008 promulgated by Government detailing the implementation of a number of articles of the Law on Special Consumption Tax.

V. Personal Income Tax

1. Law on Personal Income Tax No. 04/2007/QH12 dated 21 November 2007.

2. Decree 100/2008/ND-CP dated 08 September 2008 detailing the implementation of a number of articles of the Law on Personal Income Tax.

3. Circular 84/2008/TT-BTC dated 30 August 2008 issued by the Ministry of Finance guiding the implementation of a number of articles of the Law on Personal Income Tax.

4. Circular 62/2009/TT-BTC dated 27 March 2009 issued by the Ministry of Finance providing guidance on the amendment of and supplementation to Circular 84/2008/TT-BTC.

VI. Agreements on Double Taxation Avoidance

- OECD’s Model Convention on Income and Tax.
- Circular 133/2004/TT-BTC dated 31 December 2004.

SECTION IV – LAWS ON ACCOUNTING AND CORPORATE ACCOUNTING

I. THE SYSTEM OF VIETNAMESE LAWS ON ACCOUNTING AND CORPORATE ACCOUNTING

In order to strengthen the consistent management of accounting in the national economy, ensuring accounting is a tool for tight, effective management, and supervision on economic, financial activities, whereby providing information in an adequate, honest, timely and reliable manner, accounting contents must have a highly legal nature. Therefore, the system of laws on accounting is the system of legal documents on accounting issued by State competent agencies, serving as the basis for governing all the accounting activities in the national economy.

The current system of Vietnamese laws on accounting can be classified into 3 legal levels: The first level is the Accounting Law and Decrees providing guidelines on implementation of the Law; the second level is the system of Vietnamese Accounting Standards; the third level is the specific policies, guidelines on accounting.

The system of legal documents on Vietnamese corporate accounting can be described as the following:

SYSTEM OF LEGAL DOCUMENTS	ISSUING COMPETENCE	LEGAL MEANING
Accounting Law	**National Assembly**	**Accounting regulations incorporated in the Law**
Instructive Decrees	**Government**	**Providing detailed regulations & guidelines for implementing some articles of the Law**
System of Accounting Standards	**Ministry of Finance**	**Examplary regulations on accounting**
Regimes and instructive documents on accounting	**Ministry of Finance, Minitries, sectors**	**Specific regulations on accounting for enterprises in general and each sector, field**

Wherein the legal meaning and basic contents of legal documents are as the following:

1. Accounting Law

The Accounting Law is the highest-ranking legal document on accounting issued by the National Assembly (passed by the 11th National Assembly on 17 June 2003 at its 3rd session). The Accounting Law provides regulations in principle and serves as the basis, background for establishing Accounting Standards and Accounting regimes.

The Accounting Law is established in the form of a detailed law, i.e., those regulations on accounting that rarely change and can be detailed shall be put into the law; those regulations that can still be changed and cannot be detailed yet or still depend on the characteristics of each sector, of the accounting entity shall be regulated in Decrees which provide guidelines on implementing the Law. Therefore, in the Accounting Law, besides the general regulations on the subject of application, governing scope; accounting duties, requirements, principles; units used in accounting, accounting period; values of accounting vouchers, accounting data, the Accounting Law regulates specific issues on: Contents of Accounting Work; Organization of Accounting Apparatus and Accounting Personnel; Professional Accounting Activities; State administration of accounting; Commendations and Rewards, Dealing with Breaches.

After the Accounting Law was promulgated, the Government promulgated the Decree No.129/2004/ND-CP dated 31 May 2004 "Detailing and guiding the implementation of a number of articles of the Accounting Law, applicable to business activities". The contents of the Decree only focus on the detailing and guiding the implementation of a number of articles of the Accounting Law. The Decree does not guide the implementation of the entire Law on Accounting. Besides, to ensure strict compliance with the Accounting Law and legal documents on accounting, the Government also promulgated the Decree No. 185/2004/ND-CP dated 4 November 2004 on punishment of administrative breaches in the accounting field.

2. Accounting Standards

Based on the regulations in the Accounting Law, the Accounting Standards provide regulations and guideline on basic principles and methods of accounting for the basis of accounting records and preparation of financial statements to obtain honest, reasonable, objective assessment on the financial position, business performance of an enterprise which is generally accepted. The Accounting Standards only deal with accounting methods and financial statements belonging to accounting and finance, not provide regulations on management accounting. The Accounting Standards focus on the preparation and presentation of financial statements used by parties outside the enterprise. The Accounting Standards do not regulate specific professional elements such as accounting vouchers, accounting accounts and accounting records.

Therefore, the Accounting Standards are considered as exemplary regulations of accounting, the basis for specific accounting regulations and must be strictly observed.

3. Accounting regimes and instructive documents on accounting

Accounting regimes and instructive documents on accounting regulate specific contents, methods of accounting for production, business enterprises in general and provide instructions suitable for specific features of some specific fields or business sectors. General and specific matters of accounting vouchers, accounting accounts, accounting records and financial statements (e.g. contents, forms, measuring methods, preparing methods) are regulated in the accounting regimes and instructive documents on accounting. For the format of documents, the accounting regimes are promulgated in accordance with the Decision of the Ministry of Finance, and instructive documents on accounting are promulgated in the form of circulars of the Ministry of Finance.

II. BASIC CONTENTS OF THE SYSTEM OF LAWS ON CORPORATE ACCOUNTING

1. Basic contents of the Accounting Law

The Accounting Law consists of 7 chapters, 64 articles:

- Chapter I: General Provisions (16 articles)

- Chapter II: Contents of Accounting Work (31 articles)
- Chapter III: Organization of Accounting Apparatus and Accounting Personnel (7 articles)
- Chapter IV: Professional Accounting Activities (4 articles)
- Chapter V: State Administration of Accounting (2 articles)
- Chapter VI: Commendations and Rewards, Dealing with Breaches (2 articles)
- Chapter VII: Implementing Provisions (2 articles)

Basic contents of the Accounting Law:

1.1. About the governing scope and subject of application

The Accounting Law regulates the governing scope which includes: The contents of accounting work and the organization of accounting apparatus, of accounting personnel and of professional accounting activities.

Applicable entities of the Accounting Law include enterprises from all economic sectors established and operating pursuant to the law of Vietnam, including cooperatives, individual family households, co-operative groups, branches and representative offices of foreign enterprises operating in Vietnam; accounting personnel and other persons involved in accounting.

1.2. About the accounting duties, accounting requirements, accounting principles

The Accounting Law places the accounting duties on the right nature and genuine position of accounting, i.e. collection and processing of accounting information and figures in accordance with the subjects and contents of accounting work; inspection and supervision of items of financial revenue and expenditure, of obligations to receive and to pay debts; inspection of management and use of assets; and identification and prevention of conduct in breach of the laws on finance and accounting; analysis, provision of accounting information and figures in a timely, publicized, transparent manner, provision of advice and proposed solutions servicing management requirements, and making strategic decisions.

The Accounting Law identifies the accounting requirements as being full, timely, clear, accurate, truthful, continuous, systematic. The law regulates 5 basic principles of accounting for business entities as the following: Historical cost principle, consistency principle, objective principle, publicized principle, prudent principle.

1.3. About units of calculation to be used in accounting

The Accounting Law regulates the currency unit being the Vietnamese dong (for which the national symbol is "đ" and the international symbol is "VND"). In the event that an economic and financial transaction arises in a foreign currency, it must be recorded in the original currency and converted into Vietnamese dong at the actual exchange rate or recorded in the original currency and converted into Vietnamese dong at the exchange rate announced by the State Bank at the time the transaction arises; at the same time, the Law regulates exceptions where a foreign currency does not have an exchange rate with Vietnamese dong. The Accounting Law permits accounting entities whose transactions mainly arisen in foreign currencies to select a type of foreign currency which the Ministry of Finance stipulates to be used as a currency unit for accounting but, when financial reports are prepared for use in Vietnam, it must be converted into Vietnamese dong at the exchange rate announced by the State Bank at the time of preparing the financial statements.

When the accounting needs to use units in kind and units in labor duration, it is required to use official units of measurement of the Socialist Republic of Vietnam; if other units of measurement are used, they must be converted to official units of measurement of the Socialist Republic of Vietnam.

1.4. About the accounting periods

The Accounting Law regulates that an annual accounting period shall be from 1 January to 31 December annually and permits accounting entities to select an annual accounting period being twelve (12) full months. A quarterly accounting period shall be three months calculated from the beginning of the first day of the first month of a quarter until the end of the last day of the last month of the quarter; A monthly accounting period shall be one month calculated from the beginning of the first day until the end of the last day of the month.

The Accounting Law regulates the initial accounting period of a newly established enterprise and final annual accounting period for an accounting entity which separates, divides, consolidates, merges, converts its form of ownership, dissolves, reaches the end of its duration of operation or is declared bankrupt.

1.5. About the Financial accounting, management accounting

The division into financial accounting and management accounting is based on implementing method, purpose and subject of using accounting information. The financial accounting provides economic, financial information for those having financial or economic relations with the accounting entity and for publicizing. The management accounting is for the internal management, governance in an accounting entity. The management accounting in different entities is not totally identical, but depends on the requirements and management capability of each entity.

1.6. About the accounting vouchers

The Accounting Law identifies accounting vouchers as papers and materials which contain information reflecting each economic and financial transaction of an accounting entity and thus plays a crucial role. Whether the accounting is correct or wrong results from whether the vouchers are correct or wrong. Therefore, accounting vouchers must ensure main contents are sufficient and must be prepared in accordance with the right regulations. The Accounting Law clearly regulates 7 contents of accounting vouchers, electronic vouchers, invoices for sale of goods and signing accounting vouchers.

1.7. About the accounting accounts and Accounting records

The Accounting Law regulates that each accounting entity shall use a chart of accounts. Accounting entities shall be permitted to base on the chart of accounts regulated by the Ministry of Finance for selection and application of a chart of accounts which is appropriate at the entity and may sub-divide their selected accounting accounts in order to service management requirements of the entity.

The Accounting Law regulates that Accounting records must ensure to have very high legal validity. Accounting entities are permitted, on the basis of the regulations of the Ministry of Finance on systems of Accounting records, to select a system of Accounting records applicable to the entity and to open only one system of Accounting records. The opening, posting entries, closing and correcting of Accounting records are also specifically regulated in the Accounting Law.

1.8. Financial statements

The Accounting Law regulates financial statements which are suitable for each field of operation, organizations using State budget revenue and those not using State budget and accounting entities conducting business operations.

The Accounting Law only regulates the maximum time-limits for submitting financial statements to the competent State agency is 90 days from the date on which the annual accounting period ends. Specific regulations of the time-limits for submitting financial statements for each field of operation, each management level and the time-limits for submitting budget finalization report shall be instructed in under-law documents.

The Accounting Law regulates every accounting entity must publicize its main financial criteria and clearly regulates that the contents, form and time-limits for publicizing financial statements must be suitable for each field of operation.

1.9. About the preservation and archiving of accounting data

The Accounting Law regulates that accounting data includes accounting vouchers, Accounting records, financial statements, management accounting reports, audit reports, accounting inspection reports and other accounting documents must be fully and safely preserved during the process of its use and archiving. In cases where accounting data is lost or destroyed, there must be minutes attached with copies or to confirmation. Accounting data which is archived shall be original copies. Accounting data must be archived for the following periods:

- A minimum period of five years applicable to accounting data used for management or operation of the accounting entity (including accounting vouchers not used to post entries in the Accounting records and to prepare financial statements);

- A minimum period of ten (10) years applicable to accounting data used to post entries in the Accounting records, annual Accounting records and financial statements;

- Accounting data which is significant in terms of economics, national security and defense shall be permanently archived.

1.10. About the organization of accounting apparatus and accounting personnel

The Accounting Law regulates that every accounting entity must organize an accounting apparatus. Small accounting entities shall arrange accounting personnel. Enterprises and some entities have the right to hire organizations, individuals who have registered for conducting business on accounting services for doing accounting work. Entities having organized an accounting apparatus shall arrange a chief accountant or hire a chief accountant. Accounting personnel must have professional ethics, be honest and incorruptible, and have a sense of responsibility to comply with the law, professional qualifications and skills in accountancy. Accounting personnel shall be entitled to be independent regarding their professional accounting work. Accounting personnel shall be responsible to comply with the laws on accounting and to do the work assigned to them, and they shall be responsible for their professional work.

1.11. About the standards, conditions and rights of chief accountants

The Accounting Law regulates that chief accountant is a position arranged in all accounting entities, and depending on the magnitude, field of operation of each entity, the chief account shall be required to have corresponding capability. Standards and conditions for a chief accountant are as below:

- Have professional ethics, be honest and incorruptible, and have a sense of responsibility to comply with the law;

- Have professional qualifications and skills in accountancy from intermediate or higher level;

- Have two or more years actual accounting work experience in the case of a person with professional accounting qualifications and skills at the intermediate level;

- A chief accountant must have a certificate of having passed a chief accountant training course.

1.12. About the hiring of accounting personnel, chief accountants

The hiring of accounting personnel, chief accountant regulated in the Accounting Law has reflected that the accounting work is not only of accounting entities but has become a type of financial service, an independent profession. According to the Accounting Law, an accounting entity shall be permitted to sign a contract with an accountancy services enterprise or with an individual with business registration for accountancy services to hire them to act as accounting personnel or chief accountant. When accounting personnel or a chief accountant is hired, a written contract must be prepared in accordance with the provisions of law. Any accounting entity which hires accounting personnel or a chief accountant shall be responsible to provide fully, promptly and truthfully all information and data relating to the hiring of the accounting personnel or chief accountant and shall pay fully and promptly the fees for accountancy services as agreed in the contract.

Any person hired to act as chief accountant must have a certificate of practicing accounting and must fully satisfy the conditions, standards regulated for accounting personnel. An enterprise providing accountancy services and any person hired to act as accounting personnel, chief accountant shall be liable for accounting information and data within the scope agreed in the contract.

People managing enterprises that provide accounting services, personnel practicing accounting must have practicing certificates of accounting before they can act as hired accounting personnel, chief accountants.

1.13. About dealing with breaches in accounting

The Accounting Law regulates that any organizations or individuals in breach of the provisions of the laws on accounting shall, depending on the nature and seriousness of the breach, be disciplined, be subject to administrative penalty or be subject to criminal prosecution; and if loss and damage is caused, compensation must be paid in accordance with law. The Accounting Law provides specific conducts of breaching in accounting in the provisions of the Law, such as conducts which are strictly prohibited, persons who are not permitted to act as accounting personnel.

The Accounting Law is promulgated in the period of robust renovation in finance, accounting, and therefore it reflects many things of renovation, openness, enabling enterprises and organizations to actively use accounting tools in their business work and strengthening the State management of economics, finance. The renovation of the Accounting Law reflecting a further step forward of integration, approaching international practices will definitely contribute to creating an open investment environment.

2. Basic principles and contents of the system of Vietnamese accounting standards

2.1. Principles for building the System of Vietnamese Accounting Standards

(1) The basis for building the System of Vietnamese Accounting Standards is the system of international accounting standards issued and publicized by International Federation of Accountants (IFAC).

(2) The Vietnamese Accounting Standards must be prepared in conformity with actual conditions of Vietnam.

(3) The Vietnamese Accounting Standards need to be presented in a simple, clear manner, terms used must be common, easy to understand, not complicated, and must be

promulgated in conformity with stipulated document formats and legal documents of Vietnamese law.

(4) The Vietnamese Accounting Standards do not present contents, matters which the Vietnam's economy has not yet had nor reached the qualifications for approaching.

2.2. Some basic characteristics of the system of Vietnamese Accounting Standards (VAS)

(1) The IAS (and especially IFRS) emphasizes the principle of market cost; therefore it provides resolving methods suitable with this principle. Meanwhile, the VAS places emphasis on the historical cost, not allowing enterprises to evaluate their assets by themselves.

(2) Some IAS applied for developed market economies. Vietnam has not yet built the VAS for, such as, Financial Reporting in Hyperinflationary Economies (IAS 29); Financial instruments: Presentation (IAS 32); Impairment of Assets (IAS 36); Financial Instruments: Recognition and Measurement (IAS 39)... and all the IFRS are not yet updated (except IFRS 04 – Insurance contracts which has been built into VAS 19).

(3) Some specific IAS has not yet been built, such as: Employee Benefits (IAS 19); Accounting for Government Grants (IAS 20); Accounting And Reporting By Retirement Benefit Plans (IAS 26); Agriculture (IAS 41)...

(4) Some regulations suitable for conditions in Vietnam, such as:

(4.1) Regulations on Presentation of financial statements (VAS 21) have specific features different from those of IAS 1:

- The content of "Statement of changes in equity" does not regulate into a separate report form, but included as a part in the explanatory notes to the financial statements;

- VAS 21 regulates the compulsory nature in the application of VAS, while IAS 1 permits the flexibility in the application of IAS;

- VAS 21 provides the form of the Balance sheet, while IAS 1 does not provide the form of this statement.

(4.2) VAS regulates the minimum value norm for recognition of tangible, intangible fixed assets;

(4.3) VAS permits the provision making for impairment, such as: Provision for inventories; Provision for devaluation of financial investments; Provision for bad debts;

(4.4) IAS 21 "The effects of changes in foreign exchange rates" regulates the standard method and alternative method. VAS 10 only regulates the standard method; foreign exchange differences are dealt with differently for enterprises in the basic construction period and in the period of production and business;

(4.5) VAS 07 "Accounting for investments in associates" regulates that an enterprise can only present according to the historical cost method in the investor's separate financial statements;

(4.6) VAS 06 "Leases" regulates the financial lessors only include finance leasing companies;

(4.7) VAS 14 "Revenue and other income" does not permit the recognition as interest for differences between the fair value and nominal value of an amount receivable.

2.3. Basic contents of 26 Vietnamese Accounting Standards (VAS)

(1) VAS 01 - Framework

This VAS regulates fundamental contents as backgrounds and bases of accounting, such as: Basic principles; Elements of Financial Statements and method of recognition of these elements.

* ***Basic accounting principles***

- Materiality, Accrual basis; Going concern; Historical cost; Matching principle; Consistency; Prudence; Materiality.

* ***Requirements on accounting information***

Integrity; Objectivity; Completeness; Timeliness; Understandability; Comparability.

**** Elements of financial statements***

- *Financial position*

The elements directly relating to the measurement of financial position are assets, liabilities and equity.

- *Operating performance*

The elements directly relating to the measurement of operating situation and performance are revenue, other income, expenses and operating results.

**** Recognition of the elements of financial statements***

Financial statements recognize the elements of the financial position and business performance of an enterprise; in which the elements must be recognized by item. An item is recognized in the financial statements when it concurrently meets the following criteria:

+ It is probable that any future economic benefit associated with the item will flow to or from the enterprise; and

+ The item has value that can be reliably measured.

(2) VAS 02 – Inventory

This standard includes measurements of inventories; methods of inventory costing; recognition as an expense.

* ***Measurement of inventories***

Inventories are determined at cost. Where the net realizable value is lower than cost, inventories should be measured at the net realizable value.

The cost of inventories comprises all costs of purchase, costs of conversion and other direct costs incurred in bringing the inventories to their present location and condition.

**** Methods of inventory costing***

The cost of inventories is measured using one of these methods: Specific identification; Weighted average; First-in, first-out; Last-in, first-out.

**** Recognition as an expense***

When inventories are sold, the cost of those inventories should be recognized as production, operating expenses in the period in which the related revenue is recognized.

(3) VAS 03 – Tangible fixed assets

Basic contents of this standard include:

+ A fixed asset should be recognized as a tangible fixed asset when it concurrently meets all of the four (4) criteria of recognition.

+ Tangible fixed asset must initially be measured at its cost.

+ Subsequent expenditure relating to a tangible fixed asset that has already been recognized should be added to the carrying amount of the asset when it is probable that such expenditure will increase future economic benefits from the use of the asset. All other subsequent expenditure should be recognized as an expense in the period in which it is incurred.

+ Subsequent to initial recognition as an asset, during its life, a tangible fixed asset should be carried in terms of cost, accumulated depreciation and net book value. When the tangible fixed asset is re-valued in accordance with state regulations, then its cost, the accumulated depreciation and net book value should be adjusted to the re-valuation.

+ The depreciation value of a tangible fixed asset shall be allocated systematically during its useful life. The depreciation must be suitable with the business interest the asset brings to the enterprise.

+ The useful life of an item of tangible fixed assets should be reviewed periodically – normally at year end. If there is any significant difference in evaluation of a tangible fixed asset's useful life, depreciation charge should be adjusted.

(4) VAS 04 – Intangible fixed assets

**** Definition of intangible fixed assets***

An intangible fixed asset is an identifiable asset without physical substance but can be measured which is held for use in the production or business, service provision or for rental to others by the enterprise which satisfy the recognition criteria of intangible fixed assets.

Enterprises frequently expend resources on the acquisition of intangible resources. In order to determine whether intangible resources match the definition of intangible fixed assets, the factors that should be considered are: identifiability, control over a resource and existence of future economic benefits.

**** Specific contents include:***

- Recognition and initial measurement of intangible fixed assets;
- Measurement of cost of intangible fixed assets in specific cases;
- Recognition of an expense;
- Subsequent expenditure on an intangible asset after initial recognition;
- Value measurement subsequent to initial recognition of an intangible fixed asset;
- Amortization of an intangible fixed asset;
- Residual value of an intangible fixed asset;
- Review of amortization period and amortization method of an intangible fixed asset;
- Concession and disposal of an intangible fixed asset.

(5) VAS 05 – Investment property

**** Definition of investment property***

Investment property: is property (including land-use rights or a building or part of a building or both, infrastructure) held by the owner or by the lessee under a finance lease to earn a return on the investment, either in the form of rent or capital gain, rather than for use in the production or supply of goods or services or for administrative purposes or sale in the ordinary course of business.

**** Specific contents include:***

- Recognition conditions of investment property;
- Initial measurement of investment property;

- Subsequent expenditure on investment property after initial recognition;
- Value measurement subsequent to initial recognition of investment property;
- Change in use of investment property;
- Disposals of investment property.

(6) VAS 06 - Leases

(6a) Leases in the Financial Statements of Lessees

** Finance leases*

- Lessees should recognize finance leases as assets and liabilities in their balance sheets at amounts equal to the fair value of the leased property at the inception of the lease.

- Initial costs directly attributable to a finance lease are included as part of the cost of the lease asset.

- Lease payments should be apportioned between the finance charge and the reduction of the outstanding liability.

- A finance lease gives rise to a depreciation expense for the asset as well as a finance expense for each accounting period.

** Operating leases*

- Lease payments under an operating lease (excluding costs for services, insurance and maintenance) are recognized as operating expenses on a straight-line basis over the lease term, regardless of the mode of payment, unless another systematic basis is more relevant.

(6b) Leases in the Financial Statements of Lessors

** Finance leases*

- Lessors should recognize assets held under a finance lease in their balance sheets and present them as a receivable at an amount equal to the net investment in the lease.

- The lease payment receivable is treated by the lessor as an account receivable of principal and finance income from its investment and services.

- The recognition of finance income should be based on a constant periodic interest rate on the lessor's net investment outstanding.

** Operating leases*

- Lessors should present assets subject to operating leases in their balance sheets according to classification of the asset of the enterprise.

- Lease income from operating leases should be recognized on the straight-line basis over the lease term regardless the mode of payment, unless another systematic basis is more relevant.

(7) VAS 07 – Accounting for investments in associates

- If an investor holds, directly or indirectly through subsidiaries, 20% or more of the voting power of the investee, it is presumed that the investor does have significant influence, unless otherwise regulated or agreed upon. Conversely, if the investor holds, directly or indirectly through subsidiaries, less than 20% of the voting power of the investee, it is presumed that the investor does not have significant influence, unless otherwise regulated or agreed upon.

- An investment in an associate that is included in the separate financial statements of an investor should be accounted for under the cost method.

- An investment in an associate should be accounted for in consolidated financial statements under the equity method.

(8) VAS 08 – Financial reporting of interests in joint venture

(8a) This standard mentions three forms of joint ventures:

+ Business cooperation contract involvement in the form of jointly controlled operations (Jointly controlled operations);

+ Business cooperation contract involvement in the form of jointly controlled assets (Jointly controlled assets);

+ Joint venture contract involvement in establishment of jointly controlled entities (Jointly controlled entities).

(8b) Two common features of forms of joint ventures:

+ Two parties or more in a joint venture cooperating with each other on the basis of a contractual arrangement;

+ Agreement through a contractual arrangement establishing a joint control.

(8c) Basic contents include:

- Identification and accounting for business cooperation contract involvement in the form of jointly controlled operations.

- Identification and accounting for business cooperation contract involvement in the form of jointly controlled assets.

- Accounting for joint venture contract involvement in establishment of jointly controlled entities.

(9) VAS 10 – The effects of changes in foreign exchange rates

(9a) Initial recognition of foreign currency transactions

A foreign currency transaction is a transaction which is denominated in or requires settlement in a foreign currency.

(9b) Reporting at balance sheet date

- Foreign currency monetary items should be reported using the closing rate;

- Non-monetary items denominated in a foreign currency should be reported using the exchange rate at the date of the transaction;

- Non-monetary items which are carried out at fair value denominated in a foreign currency should be reported using at the exchange rate at the date when the fair value was determined.

- Recognition of exchange differences.

(10) VAS 11 – Business combination

All business combinations shall be accounted for by applying the purchasing method. Application of this method requires:

- Identifying the acquirer;

- Identification of the cost of a business combination;

- Allocating the cost of a business combination to the assets acquired and liabilities and contingent liabilities assumed.

(11) VAS 14 – Revenue and other income

- Revenue should be measured at the fair value of the consideration received or receivable.

- Revenue from the sale of goods should be recognised when all the five (5) following conditions have been satisfied:

+ The enterprise has transferred to the buyer the significant risks and rewards of ownership of the goods;

+ The enterprise retains neither continuing managerial involvement as an owner nor effective control over the goods sold;

+ The amount of revenue can be measured reliably;

+ The economic benefits associated with the transaction has flown or will flow to the enterprise;

+ The costs incurred or to be incurred in respect of the transaction can be measured reliably.

- Revenue of a transaction involving the rendering of services is recognised when the outcome of this transaction can be estimated reliably. Where a transaction involving the rendering of services is attributable to several periods, each period's revenue should be recognised by reference to the stage of completion at the balance sheet date.

- Revenue from interest, royalties and dividends earned by the enterprise should be recognised when these two (2) conditions are met:

+ It is probable that the economic benefits associated with the transaction will flow to the enterprise;

+ The amount of the revenue can be measured reliably.

- Other incomes dealt with in this Standard include receipts from non-recurrent and irregular activities, other than the revenue generating activities.

(12) VAS 15 – Construction contracts

- Contract revenue should comprise:

+ the initial amount of revenue agreed in the contract; and

+ variations in contract work, claims and incentive payments to the extent that it is probable that they will result in change of revenue and they are capable of being reliably measured.

- Contract costs should comprise:

+ costs that relate directly to the specific contract;

+ costs that are attributable to contract activity in general and can be allocated to each specific contract;

- Such other costs as are specifically chargeable to the customer under the terms of contract.

- Revenue and expenses of a construction contract are recognised in accordance with either of the following cases:

+ The case where it is specified in the construction contract that progress payments are made to contractor.

+ The case where it is specified in the construction contract that payments are made by reference to the amount of work completed.

(13) VAS 16 – Borrowing costs

(13a) Recognition of borrowing costs

- Borrowing costs should be recognised as an expense in the period in which they are incurred, except to the extent that they are capitalized.

- Borrowing costs that are directly attributable to the acquisition, construction or production of an asset in progress should be included (capitalized) in the cost of that asset when meeting the qualifications required.

(13b) Borrowing costs eligible for capitalization

- To the extent that funds are borrowed specifically for the purpose of acquiring, constructing or producing an asset in progress, the amount of borrowing costs eligible for capitalization on that asset should be determined as the actual borrowing costs incurred on that borrowing less (-) any investment income on the temporary investment of those borrowings.

- To the extent that funds are borrowed generally and used for the purpose of acquiring, constructing or producing an asset in progress, the amount of borrowing costs eligible for capitalization in the accounting period should be determined by applying a capitalization rate to the accumulated weighted average expenditures incurred for the acquisition, construction or production of that asset..

(14) VAS 17 – Income tax

- The tax base of an asset or a liability is the amounts attributable to such asset or liability for tax purpose.

- Current tax for current and prior periods should, to the extent unpaid, be recognised as a liability. If the amount already paid in respect of current and prior periods exceeds the amount due for those periods, the excess should be recognised as an asset.

- Detailed contents include:

+ Recognition of deferred tax liabilities and deferred tax assets.

+ Measurement of current tax liabilities, deferred tax assets and deferred tax liabilities.

+ Recognition of current and deferred tax.

(15) VAS 18 – Provisions, contingent assets and contingent liabilities

- Distinguishing provisions and liabilities.

- Relationship between provisions and contingent liabilities.

- A provision shall be recognised when:

+ An enterprise has a present obligation (legal or constructive) as a result of a past event;

+ It is probable that an outflow of resources embodying economic benefits will be required to settle the obligations;

+ A reliable estimate can be made of the amount of the obligation.

- An enterprise shall not recognise a contingent liability and shall not recognise a contingent asset.

(16) VAS 19 – Insurance contract

- Standard on Financial Instruments applies to ***derivatives embedded in an insurance contract***.

- Deposits relating to Insurance contract are required to be disclosed.

- Measurement and recognition: Accounting policy application; Changes in accounting policies.

(17) VAS 21 – Presentation of Financial Statements

(17a) Requirements for preparation and presentation of financial statements

- To present fairly;

- To select and apply accounting policies in accordance with requirements of each applicable Vietnamese accounting standard.

(17b) Requirements in preparation and presentation of financial statements, comprising:

- Going concerns; Accrual basis of accounting; Consistency of presentation; Materiality; Offsetting; Comparative information.

(17c) Structure and basic contents of financial statements

- General information about an enterprise should be disclosed in each financial statement.

- Reporting period.

- Structure and contents of Balance Sheet.

- Structure and contents of Income Statement.

- Structure and contents of Statement of Cash Flows.

- Structure and contents of Notes to the Financial Statements.

(18) VAS 22 – Disclosures in the financial statements of banks and similar financial institutions

In order to comply with VAS 21, "Presentation of Financial Statements", and thereby enable users to understand the basis on which the financial statements of banks and similar financial institutions are prepared, this standard provide accounting policies dealing with the following items need to be disclosed:

- The recognition of principal types of income;

- The valuation of investment and trading securities;

- The distinction between those transactions and other events that result in the recognition of assets and liabilities on the balance sheet and those transaction and other events that only give rise to contingent liabilities and commitments.

- The basis for the determination of losses on loans and advances and for writing off uncollectible loans and advances.

- The basis for determination of charges for general banking risks and the accounting treatment of such charges.

(19) VAS 23 – Events after the balance sheet date (subsequent events)

- An enterprise should adjust the amounts recognised in its financial statements to reflect adjusting events after the balance sheet date.

- An enterprise should not adjust the amounts recognised in its financial statements to reflect non-adjusting events after the balance sheet date.

(20) VAS 24 – Statement of cash flows

- An enterprise should report cash flows in a period in their Statement of cash flows, which are classified by three activities: operating, investing and financing activity.

- An enterprise should report separately cash inflows from, outflows to investing and financing, except to the extent that cash flows are reported on a net basis.

(21) VAS 25 – Consolidated financial statements and accounting for investments in subsidiaries

(21a) Presentation of consolidated financial statements

- Parent entities, other than those considered as exceptional cases, should prepare and present consolidated financial statements.

- A parent which issues consolidated financial statements should consolidate all subsidiaries, foreign and domestic, other than those considered as exceptional cases.

(21b) Key contents include:

- Consolidation procedures;
- Accounting for investments in subsidiaries in a parent's separate financial statements;
- Presentation of consolidated financial statements.

(22) VAS 26 – Related party disclosures

Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions.

Related party significant transactions shall be disclosed in the financial statements of the reporting enterprise in the period which they affect.

(23) VAS 27 – Interim financial reporting: This Standard defines the minimum content of an interim financial report as including condensed financial statements and selected explanatory notes.

A set of condensed interim financial statements comprises:

- A condensed balance sheet;
- A condensed income statement;
- A condensed statement of cash flows;
- Selected explanatory notes.

(24) VAS 28 – Segment reporting

- This standard provides definitions of segment revenue, expense, result, assets and liabilities.

- The nature of an enterprise's risks and returns should govern whether its primary segment report (report on primary segment) will be business segment or geographical segment.

- An enterprise's business and geographical segment for external reporting purpose should be those units that are within organizational structure of that enterprise. Segment information prepared by these units is reported to the management for the purpose of evaluating the enterprise's operating performance and for making decision in operation and management.

(25) VAS 29 – Changes in accounting policies, accounting estimates and errors.

a) Changes in accounting policies: Regulate the application of changes in accounting policies, which shall be dealt with in specific circumstances.

b) Changes in accounting estimates:

The effects of a change in an accounting estimate, except for special cases, should be applied prospectively and included in the income statement in:

+ the period of the change, if the change affects that period only; or

+ the period of the change and future periods, if the change affects both.

c) Errors:

An enterprise should retrospectively correct material errors relating to prior periods in the financial statements issued right after their detection of errors.

(26) VAS 30 – Earnings per share

Basic earnings per share is calculated by dividing the profit or loss attributable to the ordinary shareholders of the company by the weighted average number of ordinary shares outstanding during the period.

III. KEY CONTENTS OF ACCOUNTING REGIMES AND ACCOUNTING GUIDELINES

1. Overview

System of accounting regimes and accounting guidelines to corporate accounting transactions is accounting regulations and guidelines serving as a basis for accounting entities perform their accounting work. Document forms include: Decision of the Minister of Finance on issuance of (or amendments of, supplementation to) Accounting regime and Circulars guiding the revision, addition of accounting transactions or Circulars guiding the implementation of accounting standards issued by the Ministry of Finance.

They are suitable for management and accounting requirements of business entities of all economic sectors, all business fields, all industries, etc. The Corporate accounting regimes and guidelines are classified into General Corporate Accounting Regime and Specified Corporate Accounting Regime; Details are as follows:

1.1. General Corporate Accounting Regimes and Guidelines

The current Corporate Accounting Regime has been promulgated in conjunction with Decision 15/2006/QD-BTC dated 20/3/2006 of the Minister of Finance consistently applied to all forms of businesses throughout the country. This accounting regime has been updated with all innovations as to financial policies, tax and accounting standards having been issued, published up to 31/12/2005.

System of regulations, guidelines on corporate accounting consists of: Decision 15/2006/QD-BTC dated 20 March 2006 promulgating corporate accounting regime and Circulars guiding the implementation of accounting standards, such as:

- Circulars guiding the implementation of accounting standards include: Circular 20/2006/TT-BTC dated 20/3/2006 guiding the implementation of six accounting standards of Batch 4; Circular 21/2006/TT-BTC dated 20/3/2006 of the Minister of Finance guiding the implementation of four accounting standards of Batch 5 and Circular 161/2007/TT-BTC dated 31/12/2007 guiding the implementation of 16 accounting standards issued, published so far in three batches 1,2,3 (in which: VAS 19 “Insurance contract” and VAS 22 “Disclosures in the Financial Statements of Banks and Similar Financial Institutions” shall be guided for implementation upon drafting new accounting regime for insurance companies (for VAS 19) and accounting regime applicable to credit institutions (for VAS 22).

1.2. Specific regimes and instructive documents on accounting

- Since some fields, sectors, enterprises have specific features in their operations, management, on the basis of the general corporate accounting regime, the Ministry of Finance has studied, built and promulgated the Specific regimes and instructive documents applicable to these types of enterprise, such as: Small and medium enterprises; Banks and credit institutions; Insurance companies; Lottery companies; Securities companies; Agricultural cooperatives; Individual business households in conformity with the general corporate accounting regimes mentioned above.

- Besides, to meet requirements of management for each sector, field of specific nature, the Ministry of Finance has approved in writing the application of the Corporate accounting regime for a number of big corporations, with complicated operation, entire-sector accounting, such as: Electricity of Vietnam Corporation; Vietnam Post and Telecommunications Corporation; Vietnam National Shipping Lines, Vietnam National Oil & Gas Corporation, Vietnam Airlines, etc.

2. Basic contents of regimes and instructive documents on accounting

The contents of legal regulations on accounting profession incorporated into the Regimes and instructive documents on corporate accounting include regulations on Accounting vouchers, Accounting accounts, Accounting records and Financial statements, specifically as the following:

2.1.Accounting vouchers

Legal regulations on accounting vouchers are those about the contents, forms of accounting vouchers, method of preparing accounting vouchers, sequence of rotating accounting vouchers and preserving and archiving accounting vouchers.

To ensure the legality of accounting vouchers, the regime of accounting vouchers provides regulations as compulsory principles with which entities have to comply. However, for convenience of the implementation of accounting work inside the entity, there are also instructive regulations so that entities can apply for conformance with their own management requirements.

2.1.1. Compulsory legal regulations

Compulsory legal regulations on vouchers include: Elements of vouchers, method of preparing, circulating, preserving and archiving accounting vouchers; specifically as the following:

- Basic elements of accounting vouchers include: Name, number of vouchers; day, month, year of vouchers; name, address of the entity and contents of economic, financial transaction incurred, signature, etc.

- Regulations on preparing accounting vouchers, recording the economic content on the voucher, etc; e.g. Vouchers must be prepared in a clear, honest, timely manner with completeness of elements; an ink pen must be used for writing, figures and letters must be written consecutively and uninterruptedly, etc.

- Electronic vouchers and vouchers prepared and archived in the computer system must ensure full reflection of economic, financial information in accordance with regulated criteria and these types of vouchers must be printed out for archiving in accordance with the regulations.

- Regulations on signing vouchers include: Use an ink pen to sign a voucher, never use red ink pens to sign vouchers or stamps with an engraved signature. It is strictly forbidden to sign accounting vouchers when the vouchers are not yet completely written. Signatures on accounting vouchers used for the disbursement of monies must be signed on each copy, etc.

- Besides, there are regulations on inspecting accounting vouchers, circulating, preserving and archiving of accounting vouchers, etc.

- Conducts which are forbidden such as: Directors and chief accountants of enterprises are forbidden to sign blank vouchers, printed forms, distort economic contents of vouchers, correct, erase or cross out information on accounting vouchers, remove vouchers illegally or remove vouchers of which the archiving period has not expired, forgery of accounting vouchers, non-conforming or illegal use of vouchers…

For compulsory forms of vouchers, enterprises must apply the right forms regulated in the Regime of corporate accounting vouchers. During the implementation of the forms, enterprises are not allowed to amend the forms stipulated by the State. Where enterprises wish to supplement, mend the forms for suitability with special features of their operation, such supplementation and/ or amendment must be approved in writing by the Ministry of Finance.

2.1.2. Instructive regulations

Besides compulsory regulations, the regime of accounting vouchers provides instructive regulations so that entities can apply for conformance with their own management requirements, such as:

- For instructive accounting vouchers, the State provides instructions on special criteria, based on which enterprises may apply in their actual condition for suitability. Enterprises may add, omit some special criteria, or change the form design for suitability with their recordings and requirements of business operation management, but still ensure necessary legality of the vouchers.

- Aside from vouchers regulated in the regime of corporate accounting vouchers, it is possible to design additional vouchers for the requirements of management accounting of enterprises, however, these vouchers must still ensure all basic regulations are observed.

2.2. Charts of accounts

For systemising information relating to overall economic and financial operations of the accounting entity for management purpose, the entity's accountants should use the accounting account method. The accounting account method is used for classifying accounting objects, reflecting movements of accounting objects in order to provide information for management purpose.

For closely monitoring and managing the overall situation of assets, materials, capital of an enterprise and for efficiently providing information for management purpose, both regulations of principle and guidelines for application are included by the Government in the section of Guide to Chart of Accounts.

Regulations of principle relating to chart of accounts include regulations on account names, account codes, structure and content of accounts, etc; such as:

- Each accounting account only reflects one accounting object with separate economic content; each accounting account has its own name; codes for first tier accounts are consistently applied with three digits, etc.

- Regulations on posting methods, recognition of economic, financial transactions to accounts, methods for classification and arrangement of accounting accounts, such as: Chart of Accounts for corporates comprises nine account categories on Balance Sheet ranging from Account Category 1 to Account Category 9 and 1 Off balance sheet account category, in which: Account categories from 1 to 4 comprise accounts having closing balance for preparation of Balance sheet. Account categories from 5 to 9 reflecting revenue, expenses and operating results are used for preparation of income statement, hence no closing balance is available. Account category 0 comprises off balance sheet accounts, reflecting assets which are not under the ownership of the accounting entity but are held under the entity's management, monitoring or such accounting objects which need further follow up for management purpose.

Accounting entities shall, on the basis of the charts of accounts stipulated by the Ministry of Finance, select a chart of accounts applicable at the entity and shall strictly comply with regulations of principle as to contents, structure and posting method of each accounting account. Where any enterprise wishes to make any additions or any amendments to the consistently applied Chart of Accounts, approval from the Ministry of Finance must be obtained.

For ensuring the compliance with regulations of principle whilst still matching the actual conditions of the enterprise, beside regulations of principle, there are also instructive regulations for enterprises' application to their actual conditions, for example: enterprises can sub-divide accounting accounts from the Third Tier Accounts for their own management purpose.

2.3. Accounting forms and systems of Accounting records

Accounting records are the expression form of accounting accounts used to record, systemize and retain all economic and financial transactions which have arisen and relate to the accounting entity. Specific feature of accounting records is that they are records reflecting economic transactions in chronological order and by their economic contents in accordance with the accounting methods based on the accounting vouchers' data.

To ensure the above mentioned important role, the accounting record regime provides compulsory regulations as to contents, forms and methods for posting entries in accounting records, methods for error correction, methods for management and use of records, etc, such as:

- Regulations on opening, posting entries to accounting records and bookkeeper, such as: Each accounting entity shall open and maintain one and single formal system of accounting records; Accounting entities shall rely on accounting vouchers in order to post entries in the accounting records; Accounting records must be opened at the beginning of an annual accounting period or as from the date of establishment decision; etc.

- Accounting records shall contain the following basic particulars: Date, month on which entries are posted; symbol and date, month of the accounting voucher used as the basis for the entry in the accounting record; summary of contents of the economic and financial transactions; etc.

- Regulations on posting entries in and corrections to accounting records: Entries must be posted in accounting records in the chronological order in which economic and financial transactions arise; Entries must be posted in accounting records consecutively, as from the date the books are opened up until the date the books are closed; information and data posted in the accounting records must be clear, uninterrupted, in systematic manner with no insertions, overlapping, omission of lines; information and figures posted in Accounting records must be written with an ink pen for which erasement is not allowed; etc.

- Regulations on closing, keeping and archiving accounting records, etc, such as: Accounting entities shall close their accounting records at the end of an accounting period; Upon completion of all accounting work, the accounting entity shall arrange, classify, pack, enumerate and prepare a list of accounting records for archiving and have them stored in the common archive area of the entity; etc.

Forms of accounting records applicable to business entities including: General Journal; Journal Voucher; Document Journal; General Ledger and Computerized Accounting System. Each form of accounting records shall includes detailed regulations on numbers of books, structure of accounting records, the order and methods of posting entries in accounting records and the relationship between such accounting records. Enterprises have the right to select form of accounting that is suitable to their conditions and management requirements.

For facilitating the accounting work in the entity, besides the aforesaid compulsory regulations, the accounting record Regime also provides instructive regulations as guidlines for entities' application, such as: Accounting entities shall, on the basis of the regulations of the Ministry of Finance on systems of accounting records, select a system of accounting records applicable to the entity; An accounting entity may sub-divide the selected accounting records in order to service accounting requirements of the entity; An accounting entity shall open suitable sub-ledgers based on their management requirements; etc.

2.4. Financial reporting system

Financial reporting is the financial information system reflecting movements of assets, resources, operating status and results of an enterprise in an accounting period. Financial reporting system aims to summarize and present the overall and comprehensive situation of assets, liabilities, equity and operating results of the enterprise in the period. Financial reporting system provides key economic and financial information for evaluating the actual financial situation of the enterprise, evaluating operating status and results of the enterprise in the past period as well as its forecasts in the future. Information contained in the financial statements serves as an important base for investors, shareholders, existing and prospective creditors of the enterprise to make decisions on management, business operation or investment in business entities.

Currently, the Government only provides compulsory regulations as to Corporate Financial Reporting System whilst the development of management accounting reporting system for corporate internal use is at sole discretion of the enterprise based on the guidance provided by the Ministry of Finance.

Financial reporting system for enterprises comprises general regulations on preparation of financial statements, addresses for submission of financial statements and time-limits for submitting and publicizing financial statements, audit of financial statements, etc.

Detailed regulations on financial reporting system including: principles on preparation; forms of financial reports; methods for development of items on specific financial statements: Balance sheet; Statement of income; Statement of cash flows; Notes to financial statements.

3. Details of regulations on sanctions in the accounting

3.1. Documents relating to regulations on sanctions in the accounting

In order to ensure the accounting affairs are strictly in compliance with regulations on accounting operations, the Government has issued regulations on sanctions in the accounting domain. Regulations on sanctions in the accounting domain are compulsory legal regulations that accounting practitioners and the competent management bodies in the accounting domain have to comply with, including regulations on accounting inspections and dealing with administrative breaches in the accounting domain (Law on Accounting, Decree on dealing with administrative breaches in the accounting domain).

3.2. Details of regulations on sanctions in the accounting domain

3.2.1. Regulations on administrative sanctions against breaches in the accounting domain

Administrative breaches in the accounting domain are breaches committed by domestic and foreign individuals, agencies and organizations operating in Vietnam that intentionally or unintentionally commit acts of violating the provisions of accounting legislation which are not subject to criminal prosecution.

Basic contents of regulations on administrative sanctions against breaches in the accounting domain include regulations on types of breaches, level of sanctions, authorities for sanction decision, etc. Details are as follows:

- Administrative violations in the accounting domain includes: Violations of regulations on accounting vouchers, accounting records, accounting accounts, financial statements and disclosure of financial statements; Violations of regulation on accounting inspection; Violations of regulations on preservation and archival of accounting records; Violations of regulations on accounting practice; Violations of accounting regulations relating to tax obligations, etc.

- Extenuating circumstances, including: Individuals or organizations that had committed administrative violation but then actively stopped and reduced the harms of their violations or voluntarily remedied consequences and paid damages , etc.

- Aggravating circumstances, including: violations committed in an organized manner, violations committed time and again or recidivism, abusing one's position or powers to commit violations, etc.

- Sanctioning competence and statute of limitations for execution of administrative violation-sanctioning decisions shall be defined specifically by each level, each sector, including: Competence of the People's Committees of district, provincial, city levels; Competence of the financial inspectorate at all levels, etc.

- Regulations on statute of limitations for execution of administrative violation-sanctioning decisions, procedures for execution of administrative violation-sanctioning decisions and regulations on complaints, denunciations and handling of violatons in accounting domain, etc.

3.2.2. Regulations on Accounting inspection

Accounting inspection is a very important activity in accounting; accounting inspection helps to prevent negative acts, misappropriations and lavishment, contributing to safety protection of the entity's assets and capital. Accounting inspection includes internal inspections and inspections performed by State competent bodies. For internal inspections, the entity itself shall develop program, plan and scope of inspection in order to ensure its accounting, financial affairs complying with law regulations. However, the Government only provides regulations on inspections performed by higher level entities, competent management bodies to enterprises.

Basic regulations of accounting inspections include regulations on authority of inspection, contents of inspection, responsibilities of the inspection team and the entity being inspected, such as:

- Authority of accounting inspection, such as: Accounting entities shall be subject to an accounting inspection by the competent State body as regulated by laws, but there shall not be more than one inspection in a year with respect to the same matters; An accounting inspection shall only be conducted when there is a decision from the authorized level in accordance with law.

- The contents of accounting inspections shall comprise: Inspection of implementation of the contents of accounting work at the entity: Details and methods for preparing vouchers, posting entries to accounting records and preparing financial statements; Inspection of the organization on the accounting apparatus and accounting personnel (such as criteria, conditions applied to accounting practitioners), etc.

- Rights and responsibilities of accounting inspection teams: When an accounting inspection is conducted, the inspection team must present the inspection decision. An inspection team shall have the right to require the accounting entity which is being inspected to provide accounting data relevant to the contents of the accounting inspection, including accounting vouchers, accounting records, financial statements and other documents directly related to the contents of accounting inspection (such as: sales contracts and other documents, etc).

- Responsibilities and rights of accounting entities being inspected: An accounting entity which is being inspected shall be responsible for providing the inspection team with accounting data relevant to the contents of the accounting inspection and explaining its contents on request by the inspection team; implementing the conclusions of the accounting inspection team; An accounting entity which is being inspected shall have the right to refuse an inspection if it considers that the inspection is unauthorized or that the inspection contents are contrary to the relevant provisions; to lodge a complaint about the conclusions of an accounting inspection team with the competent body which made the inspection decision.

3.2.3. Regulations on audit of financial statements

Pursuant to Article 34 of the Accounting Law, the accounting units' annual financial statements which are, as prescribed by law, subject to audit must be audited before they are submitted to competent State bodies and before they are publicized. The audited financial statements, when being submitted to competent State bodies specified in Article 31 of the Accounting Law, must be enclosed with the audit reports.

LIST OF REFERENCE DOCUMENTS FOR PART IV

1. Accounting Law (Law No. 03/2003/QH11 dated 17 June 2003).

2. Decree 129/2004/ND-CP dated 31 May 2004 of the Government providing detailed regulations and guidelines for implementation of a number of articles of the Accounting Law applicable to business operations.

3. Decree 185/2004/ND-CP dated 4 November 2004 of the Government on sanctions against administrative breaches in the accounting domain

4. Circular 120/2004/TT-BTC dated 15 December 2004 of the Ministry of Finance providing guidance on a number of articles of Decree 185/2004/ND-CP dated 4 November 2004 of the Government on dealing with administrative breaches in the accounting domain.

5. Decisions on the issuance, publication of 26 Vietnamese Accounting Standards (No. 149/2001/QD-BTC dated 31/12/2001; No. 165/2002/QD-BTC dated 31/12/2002; No. 234/2003/QD-BTC dated 31/12/2003; No. 12/2005/QD-BTC dated 15/02/2005; No. 100/2005/QD-BTC dated 28/12/2005).

6. Circulars providing guidance on implementation of Vietnamese Accounting Standards (Circulars 20, 21 dated 20/3/2006; Circular 161/2007/TT-BTC dated 31/12/2007).

7. Decision 15/2006/QD-BTC dated 20 March 2006 promulgating corporate accounting regime.

8. Circular 53/2006/TT-BTC dated 12 June 2006 of the Ministry of Finance guiding the application of management accounting regime in an enterprise.

9. Decision 48/2006/QD-BTC dated 14 September 2006 promulgating accounting regime for SMEs.

PART V - LAWS ON AUDIT AND ASSURANCE SERVICES

I. COMMON AREAS OF INDEPENDENT AUDIT

1. Definition and nature of independent audit

Independent audit: Being audit conducted by professional, independent auditors working in audit firms. Independent audit is under the form of a service, thus, this shall be performed at request and agreement to pay fees of customers as specified in economic contract.

Independent audit plays an important role, especially, for the sake of enterprises, local and foreign investors, equity owners, creditors and for the sake and meet requirements of the State. Users of audited results must be ensured that they are provided with fair, objective, highly reliable information serving as a basis for their economic decision making or management, supervision executing.

As defined by the International Federation of Accountants (IFAC) "Audit means inspection of independent auditors over financial statements so as to give their opinion on the financial statements".

Article 2, Decree 105/2004/ND-CP dated 30/3/2004 of the Government states "Independent audit means the inspection and certification of auditors and auditing firms on fairness of accounting documents, accounting data and financial statements of enterprises and organizations (hereinafter referred to as audited entities) when so requested by such entities".

2. Operating principles of independent audit: (Article 4 Decree 105/2004/ND-CP)

(1) Compliance with Vietnamese laws and Vietnamese Standards on Auditing.

(2) Bearing responsibilities to law for professional activities and audit results.

(3) Compliance with auditors' professional ethics.

(4) Assurance of professional independence, interests and fairness, legality and objectivity of independent auditing activities.

(5) Assurance of confidentiality of information of audited entities, except otherwise agreed by the audited entities or otherwise provided by law.

3. Auditors and practising auditors

Independent auditing is performed by independent auditors. Decree 105/2004/ND-CP gives clearly definition on auditors and practising auditors.

3.1. Criteria of auditors*:* (Article 13 Decree 105/2004/ND-CP and point 1 part A section II Circular 64/2004/TT-BTC)

(1) Vietnamese and foreigners permitted to reside in Vietnam fully meeting the following criteria shall be recognized as auditors:

a) Having professional ethics, being honest and incorruptible and having a good sense of responsibility to comply with the law; not being persons subject to restriction in registration for independent audit practice as defined from clause 3 to clause 7, Article 15 Decree 105/2004/ND-CP.

b) Having bachelor degrees in economics-finance-banking or accounting-auditing, granted by Vietnam or foreign countries and recognized by the Ministry of Finance, and having been engaged in practical financial and/or accounting work for 5 years or more, or having worked as assistant auditors in auditing firms for 4 years or more.

If their major bachelor degrees are in domains other than economics-finance-banking or accounting- auditing, they must acquire second bachelor degrees in the above-said domains after 3 years, or 2 years for assistant auditors, and the total duration of their engagement in practical financial and/or accounting work must be full 5 years, or full 4 years or more for assistant auditors in auditing firms.

c) Being able to use one of the five common languages: English, Russian, French, Chinese and German, and having a good command of computers;

d) Having passed the auditor-recruitment exams organized by the Ministry of Finance and being granted with certificate of certified public accountant (CPA) by the Finance Minister.

(2) To be granted with CPA certificate by the Finance Minister, Vietnamese and foreigners permitted to reside in Vietnam who have accounting specialist's certificates or accounting/audit certificates issued by foreign or international accounting and/or auditing organizations and recognized by the Ministry of Finance, must pass examinations in Vietnamese economic, financial, accounting and audit laws, organized by the Ministry of Finance.

3.2. Criteria of practicing auditors**:** (Article 14 Decree 105/2004/ND-CP)

(1) Vietnamese who fully meet the following criteria shall be recognized as practicing auditors and entitled to register for practicing independent audit:

a) Fully meeting the criteria of auditors as prescribed in Article 13 Decree 105/2004/ND-CP (described in section 3.1, part I);

b) Having labor contract to work in an auditing firm established and operating under Vietnamese laws, except for cases where it is prescribed by Vietnamese laws that labor contracts are not required.

(2) Foreigners who fully meet the following criteria shall be recognized as practicing auditors and entitled to register for practicing independent audit in Vietnam:

a) Fully meeting the criteria of auditors as prescribed in Article 13 Decree 105/2004/ND-CP (described in section 3.1, part I);

b) Being permitted to reside in Vietnam for one year or more;

c) Having labor contract to work in an auditing firm established and operating under Vietnamese laws.

(3) At a given time, an auditor shall only be allowed to register to practise auditing in one auditing firm. In cases where auditors have already registered for practicing audit but actually do not practice the profession or concurrently practice their profession in other auditing firms, their names shall be removed from the list of registered practising auditors.

(4) Persons registered for audit practice for the second time onward must fully participate in annual technical update programs of Vietnam Association of Certified Public Accountants (VACPA) as authorised by the Ministry of Finance.

3.3. Conditions for professional practice by auditors**:** (Article 14 Decree 105/2004/ND-CP and point 2 part A Section II Circular 64/2004/TT-BTC).

(1) Audit- practicing conditions:

a) Auditors may register to practice auditing only when they fully meet the criteria for practising auditors prescribed in Article 14 Decree 105/2004/ND-CP (described in section 3.2 part I).

b) Auditors who concurrently work at enterprises other than audit firms and audit firms may register to practice auditing only when obtaining written consents from the legal representatives of enterprises other than audit firms.

c) Auditors who have registered their professional practice in an audit firm may register their professional practice in another audit firm when they obtain decision on labor contract termination from the first audit firm.

(2) Auditors who are not on the lists of registered practicing auditors certified by the Ministry of Finance (from 1 January 2007, certified by the Vietnam Association of Certified Public Accountants (VACPA)) shall not be allowed to sign audit reports.

(3) Practicing auditors shall be removed from the lists of registered practicing auditors in the following cases:

a) Committing one of the prohibited acts of practicing auditors (defined in secion 1.4 Part II);

b) Not practicing audit but intentionally registering for audit practice;

c) Committing acts of violating law or discipline or professional ethics, which are prohibited by audit laws.

(4) Auditors who have been removed from the lists of registered practicing auditors shall not re-register for professional practice for 3 years from the date of removal.

(5) Audit firms employing auditors who are not on the lists of registered practicing auditors to sign audit reports, shall, together with such auditors, be sanctioned under law provisions.

(6) The Ministry of Finance (from 01 January 2007, VACPA) shall not certify the lists of registered practicing auditors for those auditors who have registered to practice audit but actually not.

4. Organization form, establishment conditions and operations of audit firm (Decree 105/2004/ND-CP; Decree 30/2009/ND-CP).

4.1. Organization form

Independent auditing is performed by independent auditors. As per international practices, auditors may practise their profession under the form of an enterprise or individually . However, Vietnamese laws does not permit auditors to practise their profession individually. Auditors who wish to practise their profession must register and be approved to work in an auditing enteprise which is legally established.

Currently, Decree 105/2004/ND-CP dated 30/03/2004, Decree 30/2009/ND-CP dated 30/03/2009 of the Government provide that audit firms are to established in following forms: a limited liability company with two or more members, a partnership, private enterprise. One member limited liability audit firms with foreign-invested capital established and operating under laws on enterprises before 14 May 2009 may continue to operate under the form of one member limited liability company upto expiry date set out in their Investment Certificates (of Investment Licence); whilst, foreign – invested audit firms established from 14 May 2009 may operate under one of following forms: a limited liability company with two or more members, a partnership, private enterprise.

4.2. Conditions for establishment and operation of audit firms:

a) Conditions for establishment:

- Fully meeting prevailing law provisions on establishment and operation of following forms of enterprise: a limited liability company with two or more members, a partnership, private enterprise.

- Having at least three auditors having CPA certificate including Director or General Director. If the Director or General Director is a member of liability limited company, partnership, he/she must own at least 10% charter capital of the company. Director or General Director of an audit firm must have at least three years' professional experience since receiving CPA certificate and must not simultaneously join management, operation of other companies.

b) Conditions for operation:

- Audit firms having registered list of practising auditors and certified by the Ministry of Finance (from 1 January 2007, certified by the Vietnam Association of Certified Public Accountants (VACPA)).

- In the course of operation, an audit firm must ensure that there are at least three practising auditors working for the enterprise under full-time labor contracts. If the enterprise fails to meet this condition for six consecutive months, it must stop the provision of audit services.

4.4. Conditions for establishment and operation of branches of audit firms**:** (Decree 105/2004/ND-CP).

a) A branch of audit firm is a dependent unit of the audit firm, operating as authorized by the audit firm within the scope of professional activities stated in business registration certificate of the audit firm.

b) A branch of audit firm is established and operates under law provisions on establishment of branch and head of audit firm's branch must be a practicing auditor who satisfies all criteria and conditions prescribed in Decree 105/2004/ND-CP.

c) Audit firm must be responsible for the activities of its branches.

5. Subjects of audit (Decree 105/2004/ND-CP; Circular 64/2004/TT-BTC)

(1) Annual financial statements of the following enterprises and organizations must be audited by audit firms:

- Foreign-invested enterprises and organizations established and operating under Vietnamese laws, including branches of foreign-invested enterprises operating in Vietnam;

- Organizations engaged in credit activities, established and operating under the Laws on Credit Institutions; banks of different economic sectors and the Vietnam Development Bank;

- Financial institutions and insurance business enterprises, insurance brokerage enterprises;

- Particularly for joint-stock companies, limited liability companies which are listed and participate in securities trading, the audit shall be subject to the law provisions on securities trading;

- For enterprises and organizations borrowing capital from banks, the audit shall be subject to laws on credit.

(2) The annual financial statements of the following enterprises and organizations must be audited by audit firms according to the provisions of Decree No. 105/2004/ND-CP:

- State-owned enterprises, including State companies, State-owned joint-stock companies, State-owned limited liability companies and enterprises with more than 50% State - owned capital;

- Finalization reports of investment projects from group A upward.

(3) Other subjects as defined by Laws, Ordinances, Decrees and Decisions of the Prime Minister.

(4) State-owned enterprises, the Vietnam Development Bank and investment projects from group A upward, which are notified in annual audit plan of the State audit shall not compulsorily have their financial statements in that year audited by audit firms.

6. Management over independent auditing activities

Decree 105/2004/ND-CP regulates the State management over independent auditing, including:

- Develope and give instruction on implementation of strategy, plan on development of independent auditing in Vietnam.

- Promulgate, disseminate, instruct and organize implementation of standards on auditing and guidance for implementation of standards on auditing and auditing methods.

- Promulgate and organize the implementation of the regulations on professional training and annual technical updating; prescribe forms of examining and CPA granting; establish the State-level examination council and grant CPA certificate.

- Consistently manage list of auditors and audit firms currently practicing the independent audit nationwide. Every two year, the Ministry of Finance shall publicly announce list of registered practising auditors and audit firms.

- Inspect compliance with laws on independent audit, audit standards and relevant regulations of audit firms.

- Suspend implementation of, and request amendments to, regulations, decisions of audit firms which are contrary to law provisions on organization of audit firms and audit practice.

- Apply measures to support the development of independent audit profession.

- Manage international cooperation activities on audit.

- Settle complaints, denunciations, and handle violations of independent audit laws.

II. RIGHTS, RESPONSIBILITIES AND OTHER REGULATIONS RELATING TO AUDITORS AND AUDIT FIRMS

1. Practising auditors

1.1. Rights of practising auditors (Article 16 Decree 105/2004/ND-CP)

- To be professionally independent.

- To audit financial statements and provide services of audit firms.

- To request audited entities to sufficiently and timely provide accounting documents and other documents, information related to service contracts.

- To inspect, certify economic and financial information related to audited entities from internal and external sources. To request competent units, individuals to provide professional expertise or consultancy when necessary.

1.2. Responsibilities of practising auditors (Article 17 Decree 105/2004/ND-CP)

- To comply with the principles of independent auditing activities; In the course of providing services, auditors shall not intervene in the affairs of audited entities.

- To sign audit reports and bear responsibility for their professional activities.

- To refuse providing audit service for clients if they deem they are not fully qualified or do not meet fully the conditions therefor or clients violate laws.

- To constantly improve their technical knowledge and professional experience; To participate in annual technical update programs as regulated.

- Practising auditors who violate provisions of laws shall, subject to nature and seriousness of the violation, be temporarily suspended or permanently banned from registering for audit practice, or bear responsibilities according to law provisions.

- Other responsibilities prescribed by law.

1.3. **Practising auditors shall not be allowed to conduct audit in the following cases:** (Article 18 Decree 105/2004/ND-CP and point 5 part A Section I Circular 64/2004/TT-BTC)

1.3.1. Their names are not in the list of registered practising auditors certified by the Ministry of Finance for that year (from 01 January 2007, certified by the Vietnam Association of Certified Public Accountants).

1.3.2. They are providing or provided in the preceding year the following services for audited entities: Posting entries to accounting records; preparing financial statements; acting as chief accountant; internal auditors; revaluating assets; providing management consultancy; financial consultancy; tax consultancy or other services which may affect their independence with audited entities.

1.3.3. Auditors who are providing or provided in the preceding year audit services shall not be allowed to provide the following services in the current year: Posting entries to accounting records; preparing financial statements; acting as chief accountan; internal auditors; revaluating assets; providing management consultancy; financial consultancy; tax consultancy or other services which may affect their independence with audited entities.

1.3.4. They have economic-financial relations with the audited entities such as capital contribution, purchase of stocks or bonds; capital lending; purchase or sale of other assets, or other economic-financial transactions that may affect the principle of independence of auditing activities.

1.3.5. Their parents, spouses, children, siblings are members of the management or chief accountants of the audited entities.

1.3.6. They are deemed to professionally unqualified or fail to meet the conditions for audit practice.

1.3.7. Audited entities make requests contrary to professional ethics or professional auditing requirements or contrary to law provisions.

1.4. *Acts prohibited for practicing auditors*: (Article 19 Decree 105/2004/ND-CP and point 6 part A section I Circular 64/2004/TT-BTC)

- Contributing capital to, borrowing capital from or lending capital to, or buying any kind of stocks of the audited entities regardless of their volume and value from audited entities.

- Purchasing bonds or other assets of the audited entities, which may affect the principle of independence of auditing activities.

- Receiving any sums of money or material benefits from audited entities, apart from service charges and fees already agreed upon in the contracts; or abuse their positions as auditors to get other benefits from the audited entities.

- Leasing, lending or letting other parties to use their names and their CPA certificates to conduct professional activities.

- Working for two or more accounting/audit firms at the same time.

- Disclosing information, acquired in the course of practicing their profession, on audited entities except so consented by the audited entities or otherwise provided for by law.

- Entering into processing contracts, providing entrusted import-export of materials, goods; acting as goods agents or brokerage agents; or involving in other economic-financial transactions, which may affect the principle of independence of auditing activities.

- Abusing their responsibilities, powers to earn profits; acting in collusion with, or covering up violations of the audited entities.

- Signing as both auditors in charge and directors (or their authorized persons) in the audit reports.

- Committing other acts prohibited by laws on audit.

2. Audit firms.

2.1. Rights of audit firms (Article 24 Decree 105/2004/ND-CP)

- To provide services already stated in their investment licenses or business registration certificates; to refuse providing services when they deem they are unqualified or the professional ethics can be breached.

- To hire domestic and foreign experts to perform service contracts or enter into audit cooperation with other audit firms.

- To set up their branches or set up overseas operating bases.

- To join professional organizations on auditing; join as a member of the international audit organization.

- To request audited entities to fully and promptly provide accounting documents and other necessary documents and information relevant to service contracts.

- To inspect and certify economic and financial information related to audited entities from internal and external sources. To request competent units and individuals to provide professional expertise or consultancy when necessary and exercise other rights provided for by law.

2.2. Obligations of audit firms (Article 25 Decree 105/2004/ND-CP)

- To operate in the practising domains as stated in investment licenses or business registration certificates.

- To perform the contents under contracts signed with their clients.

- To compensate for damage caused by their auditors' faults to clients when providing audit services and other relevant services.

- To purchase professional liability insurance for their auditors or set up professional risk reserves to ensure payment sources for damage compensations caused by enterprises' faults to their clients.

- In the auditing course, if audited entities are detected to violate financial and accounting legislations, audit firms shall have to notify such detection to the audited entities or give their opinion in audit reports.

- To supply auditing workpapers, documents at written requests of competent State agencies and perform other obligations under law provisions.

2.3. Responsibilities of audit firms: (Article 26 Decree 105/2004/ND-CP and point 6, part B section II Circular 64/2004/TT-BTC)

(1) Audit firms shall bear responsibilities to law, their clients under the signed audit contracts and be partly responsible to users of audit results and for services provided. Audit firms shall be responsible to users of audit results only when the latter:

- Have benefits directly relating to audit results of audited entities at the date of audit reports; and

- Have a proper knowledge of the financial statements and basis of financial statement preparation, i.e. accounting standards, accounting system and relevant legal regulations; and

- Have used prudentially information in the audited financial statements.

(2) The damage extent caused by audit firms, for which they have to pay compensation to their clients, shall be agreed upon by the two parties or determined by the competent agencies under law provisions. The sanctioning forms and extent shall be agreed upon by the two parties, which may include:

- Termination of the signed audit contracts;

- Prohibition to sign audit contracts in the subsequent years;

- Deduction within amount of agreed professional fees;

- The maximum sanction shall be 10 times of professional fees of the contract subject to the sanction that year.

At the same time, audit firms have to bear responsibilities under prevailing regulations, such as:

- To directly manage professional activities of auditors registered for professional practice in the enterprises. To bear civil liability for professional activities conducted by their auditors, which are related to audit firms.

- To prepare service contracts or to make written commitments as regulated for all services provided to their clients and fully perform provisions set out in the service contracts signed.

- To control their operation quality by themselves and to be subject to quality control of the Ministry of Finance (from 2007, of VACPA).

2.4. Services to be provided by audit firms: (Article 22 Decree 105/2004/ND-CP)

(1) Audit firms may register to provide the following audit services: Financial statement audit; Financial statement audit for taxation purpose and tax settlement; Operation audit; Compliance audit; Internal audit; Audit of finalization report of investment projects (including annual reports); Project settlement report audit; Financial information audit; Verification of financial information based on agreed-upon procedures.

(2) Audit firms may register to provide the following other services: Financial consultancy; Tax consultancy; Human resource consultancy; Information technology application consultancy; Management consultancy; Bookeeping service; Asset valuation service; Service for financial, accounting and auditing knowledge training and updating; Other relevant financial, accounting and tax services as prescribed by law; Financial statement review services.

(3) Audit firms must not register for and provide services which are irrelevant to the services prescribed in the above clauses 1 and 2.

III. SYSTEM OF VIETNAMESE STANDARDS ON AUDITING (VSA)

System of Vietnamese Standards on Auditing has following main features:

- System of Vietnamese Standards on Auditing consists of 38 standards issued by the Ministry of Finance from 1999 to 2005 on basis of highest compliance with international standards on auditing which are suitable with development of Vietnam's market economy.

- Currently, System of Vietnamese Standards on Auditing has not been updated with changes of new international standards on auditing which has been revised, amended and restructured.

- According to Decision 1053/QD-BTC dated 13/5/2008, the Ministry of Finance authorized Vietnam Association of Certified Public Accountants to study, update, redraft System of Vietnamese Standards on Auditing and submit to the Ministry of Finance for issuance in as soon as possible (in 2009/2010 as estimated).

1. Objective and general principles governing an audit of financial statements (VSA 200)

(1) *Objective of an audit of financial statements*: is to enable the auditor and audit firm to express an opinion whether the financial statements are prepared, in all material respects, in accordance with prevailing (or accepted) accounting standards, accounting system and relevant legislation. Audit of financial statements also aims to assist the audited entity be aware of issues, errors for improvement so as to improve financial information quality of the entity.

(2) Basic principles governing an audit of financial statements, including:

- Compliance with the State laws;
- Compliance with professional ethnics;
- Compliance with standards on auditing;
- Professional behaviour of skepticism.

2. Audit contract (VSA 210)

(1) Audit contract: Refers to a written agreement engagement between the contracting parties (the audit firm and the client) on the terms and conditions to conduct the audit of the client and the audit firm, which identifies audit objective, scope, respective parties' rights and obligations, form of audit report, timing and terms on fees, violations handling.

(2) Elements of an audit contract: An audit contract should consist of sufficient general provisions of an economic contract as regulated. In addition, an audit contract consists of the followings:

- Purpose, scope and content of the audit or other services;

- Responsibilities of Director (or leader) of the audited entity for the preparation and the presentation of the financial statements and the audited entity's responsibilities for provision of accounting vouchers, accounting documents and other information relating to the audit;

- Audit scope, form of audit report or other forms showing audit results;

- A point clearly states that there is an unavoidable risks due to nature and inherent limitations of an audit.

Parties may add to the audit contract the followings: Provisions relating to audit planning; the client's responsibility in provision of written confirmations on the information provided to the auditor; description forms of letters, other reports which the audit firm may send to the client; provisions on participation of other auditors and experts and participation of internal auditors and staff of the client; For initial audit engagement, procedures applied to the previous auditor, limitation on financial liability of the auditor and the audit firm when audit risks happen.

3. Quality control for audit work (VSA 220)

(1) Quality of an audit: means degree of satisfaction of the users of audit results in terms of objectivity and reliability of audit opinion; and also satisfaction of the audited entities' expectations on the auditors' opinions in order to improve the performance effectiveness within a certain period and with reasonable fees.

(2) Responsibilities for quality control for audit work

a) Audit firm: Audit firms must set up and perform quality control policies and procedures with a view to ensuring that all audits are conducted in accordance with the Vietnamese Standards on Auditing or International Standards on Auditing accepted in Vietnam so as to constantly improve audit quality. Quality control policies and procedures of individual firms may vary but must comply with provisions on the quality control of auditing activities.

In order to achieve the objectives of quality control of auditing activities, the audit firms normally integrate the following policies: Compliance with principles on professional ethics, professional skills and competence, assignment, guidance and supervision, consultation, retention and acceptance of clients, examination.

b) Auditors and audit firms must apply the quality control policies and procedures to all auditing activities of the audit firms and to every audit engagement.

c) Individual audit contract: Auditors and audit assistants must apply their firms' quality control policies and procedures to each audit contract in an appropriate manner, including: guidance, supervision, examination.

4. Documentation (VSA 230)

(1) Audit documentation: the audit documents prepared, collected, classified, used and archived by the auditor. Materials in audit documentation are presented in papers, films, pictures, informatics means or any other archiving means as regulated by prevailing laws.

- Audit documentation is used for: archiving evidences obtained during an audit and serving as a basis for audit opinion; assisting audit planning and performing, examining, reviewing and evaluating audit quality and handling subsequent events.

- The auditor is required to collect and archive in the audit documentation all necessary materials, information relating to the audit to serve as a basis for the audit opinion and to prove that the audit has been performed in accordance with the Vietnamese Standards on Auditing (or generally accepted international standards on auditing).

(2) Contents and forms of audit documentation

- During audit, the auditor should prepare detailed and sufficient audit documentation so as to other auditors or persons in charge of examination (review) can understand the audit. Audit documentation is prepared and archived into two categories: General audit documentation and annual audit documentation.

- The auditor shall record and archive in the audit documentation all materials and information relating to: audit plan; conduct of audits, nature, timing and extent of audit procedures performed; results of procedures performed; the auditor's conclusions drawn from audit evidence obtained.

(3) Confidentiality, safety, archival and ownership of audit documentation

- The auditor and the audit firm are required to keep audit documentation confidential and ensure safety of audit documentation..

- Audit documentation shall be archived according to prevailing regulations: 10 years as minimum.

Audit documentation is under ownership of and an asset of the audit firm. Clients or third parties may read, use part or the whole of the documentation subject to consent of the audit firm's director or as regulated by the State and professional organizations.

5. Fraud and error (VSA 240)

(1) Responsibility for fraud, error:

a) Responsibility of director (or leader)

Director (or leader) bears direct responsibility for preventing, detecting and handling of fraud and error in the entity through setting up and regularly operating an appropriate accounting system and internal control system.

b) Responsibility of the Auditor and the Audit Firm

In planning and performing the audit, in assessing and reporting audit results, the auditor and the audit firm should assess the risk of fraud and error which may exist and may materially impact the financial statements. Therefore, through the audit, the auditor and the audit firm are to assist the client entity in detecting, handling and preventing fraud and error; however, they are not directly responsible for prevention of fraud and error in the client entity.

(2) Procedures to be applied when there is an indication that fraud or error may exist

- When the application of audit procedures indicates the possible existence of fraud or error, the auditor and the audit firm should consider the potential effect of fraud and error on the financial statements. If the auditor and the audit firm consider the indicated fraud or error could have a material effect on the financial statements, they should perform appropriate modified or additional procedures. Where suspicion of fraud or error is not dispelled by the results of modified or additional procedures, the auditor and the audit firm should discuss the matter with the client entity's management and assess effects of the matter on the financial statements and the audit report.

- The auditor and the audit firm should inform detected fraud and error to the Director (or leader), to users of the audit report and relevant competent authorities.

6. Consideration of laws and regulations in an audit of financial statements (VSA 250)

(1) Responsibility:

- The audited entity:

Director (or the leader) of the audited entity bears responsibility to ensure that the entity strictly complies with laws and current regulations; to prevent, detect and handle non-compliance with laws and regulations in the entity.

- The auditor and the audit firm:

When preparing audit plan and carrying out audit procedures, evaluating the results and preparing audit report, the auditor and the audit firm should pay attention to the fact that the non-compliance with laws and relevant regulations of the audited entity may materially affect the financial statements. The auditor and the audit firm do not have obligation to assess and determine non-compliance with laws and regulations in general. Where it is required to determine non-compliance with laws and regulations (referred to as “non-compliance”) which have material effects on the financial statements, the auditor and the audit firm should seek for advice from legal experts or relevant competent authorities.

(2) The auditor’s consideration of compliance with laws and regulations is set out in paragraphs 10-23.

(3)Audit procedures when non-compliance is identified are set out in Paragraphs 23-29.

(4) Reporting of non-compliance to the director of the audited entity, users of audit report on financial statements and relevant competent authorities.

7. Communications of audit matters with those charged with governance (VSA 260)

(1) Responsibility

- The auditor and the audit firm should communicate audit matters of governance interest arising from the audit of financial statements with those charged with governance of the audited entity.

The auditor is not required to identify and report to management of the entity all matters of governance interest.

(2) The auditor and the audit firm shall:

- Determine the relevant persons who are charged with governance and with whom significant matters, including audit matters of governance interest are communicated.

- Consider significant matters, including governance matters arising from the audit of the financial statements and communicate these matters with those charged with governance to assist the client entity’s management to take timely and appropriate actions.

- Consider other matters.

8. Planning (VSA 300)

(1) The auditor and the audit firm should plan the audit work so that the audit will be performed in an effective manner. Planning has three components: Strategic plan, overall audit plan, audit program.

(2) The strategic plan should be developed for large-scale, complex audits with large coverage, or audits of financial statements for several years.

(3) The overall audit plan should be prepared for all audits with description of the expected scope and conduct of the audit. The overall audit plan shall be sufficiently detailed to guide the development of the audit program and shall vary depending on the size of the client entity, complexity of the audit and the specific audit methodology and technology used by the auditor.

(4) An audit program should be developed for and implemented in every audit, setting out the nature, timing and extent of audit procedures required to implement the overall audit plan. In preparing the audit program, the auditor would consider the specific assessments of inherent risks, control risks and the required level of assurance to be provided by substantive procedures.

(5) The overall audit plan and the audit program shall be revised as necessary during the course of the audit if there are changes in conditions or unexpected results of audit procedures.

Conducting an audit

Coduct of an audit means process to collect audit evidence to serve as a basis for the auditor to provide the audit opinion. This phase mainly consists of study, assessment of the internal control system and performance of control procedures and substantive procedures for each operation of the client entity or each item in the balance sheet.

Actually, conduct of an audit often commences before balance sheet date: the auditor conducts the interim audit to study, assess the internal control system and perform a number of substantive procedures. The remaining substantive procedures and activities for audit completion shall be performed on or after the balance sheet date. Time allocation for these two phases is subject to various factors, in which risk assessment plays an important role.

9. Knowledge of the business (VSA 310)

(1) Necessity: In performing an audit of financial statements, the auditor should have or obtain a knowledge of the business sufficiently to assess and analyze the events, transactions or practices of the audited entity that, in the auditor's judgment, may have materially effects on the financial statements, on the auditor's examination or audit report.

(2) The auditor's responsibility: The auditor is required to collect information on business situation of the audited entity from a number of sources and use the knowledge to make professional judgments and the followings: assessing risks and identifying problems; planning and performing the audit effectively and efficiently; evaluating audit evidence; providing better services to the clients.

(3) Knowledge of the business – matters to consider: The auditor is required to obtain knowledge of the audited entity's business, including: general knowledge on economics; business environment and business fields of the audited entity; internal factors of the audited entity; the ownership and management of the audited entity; business situation, financial capacity, reporting environment, legal environment of the audited entity.

10. Audit Materiality (VSA 320)

Upon planning and conducting audits, auditors must pay attention to information materiality and its relationship with audit risk.

(1) Upon audit planning, auditors must determine an acceptable materiality level to serve as a basis for detecting quantitatively material errors. However, to judge errors as material, auditors must consider them both quantitatively and qualitatively.

There is an inverse relationship between materiality and audit risk in an audit: the higher the materiality level is, the lower the audit risk would be and vice versa. Auditors should take this relationship into account when determining the nature, timing and extents of audit procedures in an appropriate manner.

(2) In performing an audit, based on determined materiality level, auditors shall determine specific impacts of errors detected.

Upon assessment of fairness of financial statements, auditors shall consider whether aggregate of errors detected during audit which remains uncorrected may combine together to constitute a material error for corrective proposal.

Where directors of the audited entities refuse to adjust the financial statements and results of additional audit procedures permit the auditors to conclude that the aggregate of uncorrected errors is material, auditors should consider to revise audit reports.

11. The auditor's procedures in response to assessed risks (VSA 330)

(1) Necessity: The auditor and the audit firm should obtain a sufficient understanding of the audited entity and its business environment, including its internal control system, to identify and assess the risks of material misstatements to serve as a basis for designing audit procedures.

(2) Assessment of risks of material misstatements:

a) Overall responses: This section requires the auditor and the audit firm to determine overall responses to address risks of material misstatement at the financial statement level and provides guidance on the nature of those responses.

b) Audit procedures responsive to risks of material misstatement at the assertion level: This section requires the auditor to design and perform additional audit procedures, including tests of the operating effectiveness of controls, when relevant or required, and substantive procedures, whose nature, timing, and extent are responsive to the assessed risks of material misstatement at the assertion level.

12. Risk assessments and Internal control (VSA 400)

(1) Audit risk: Audit risk means the risk that the auditor and the audit firm give an inappropriate audit opinion when the financial statements are materially misstated. Audit risk has three components: inherent risk, control risk and detection risk.

The auditor should obtain a sufficient understandings of the accounting system and internal control system of the client entity to prepare an overall audit plan and develop an effective, appropriate audit approach. The auditor should use professional judgment to assess audit risk and to design audit procedures to ensure that the audit risk is reduced to the lowest acceptable level.

(2) When developing the audit approach, the auditor should consider the preliminary assessment of inherent risk, control risk to determine an appropriate detection risk that is acceptable to the financial statement assertions and to determine the nature, timing and extents of substantive procedures for such assertions.

(3) In performing the audit, the auditor should conduct tests of control to obtain sufficient audit evidence about effectiveness of the accounting and internal control systems in respects of their design and operation. Based on the results of the tests of control, the auditor shall design and perform audit procedures corresponding with those in substantive procedures.

13. Auditing in a Computer Information Systems Environment (CIS Environment) (VSA 401)

(1) Necessity of assessing information systems environment

In auditing financial statements, auditors should assess effect of information systems environment on auditing. Information systems environment may affect: procedures applied by auditors to gain understanding of the accounting and internal control systems; determination of inherent risk, control risk and auditors' assessment on audit risk; design and performance of appropriate tests of control and substantive tests to achieve audit objectives.

(2) Phases in assessing Computer Information Systems Environment

- *In planning the audit* of financial statements whose parts may be affected by the client's CIS environment, auditors and audit firms should consider significance and complexity of the CIS and availability of data which may be required for the audit.

- *In assessing risks and internal control*, auditors make an assessment of inherent risk and control risk for assertions relating to financial statement items. The inherent risk and control risk in CIS environment may have both a pervasive effect and an account-specific effect on the likelihood of material misstatements of a balance or transaction in certain circumstances.

- *In designing audit procedures,* auditors should consider the CIS environment to reduce audit risk to the lowest acceptable level.

14. Audit considerations relating to entities using service organizations (VSA 402)

(1) Necessity

The auditor should consider how the services rendered by a service organization affect the client's accounting and internal control systems so as to plan the audit and develop an effective audit approach.

A service organization may establish and execute policies and procedures that affect the client's accounting and internal control systems. The auditors should determine the scope of services provided by the external organization and their impact on the audit.

(2) Elements which the audit firm and the auditor should consider are set out in paragraphs 07-21.

On consideration of necessary elements, the auditor concludes that the activities of the service organization do not affect (or significantly affect) to the entity and, therefore, do not affect (or have effects on) the audit. The auditor should obtain information on effectiveness of internal control system and assess control risk at an appropriate level.

15. Audit evidence (VSA 500)

(1) Audit evidence: is all materials, information obtained by the auditor in respect to the audit and used by the auditor in arriving at the conclusions on which the audit opinion is based.

- Conduct of an audit actually means that the auditor uses technical methodologies to obtain sufficient appropriate audit evidence serving as a basis for the audit opinion on the audited financial statements.

- The auditor and the audit firm should obtain sufficient appropriate audit evidence to serve as a basis for the audit opinion on financial statements of the audited entity.

- Audit evidence is obtained through proper combination between tests of control and substantive tests. In some cases, audit evidence can be obtained through substantive tests only.

(2) Assertions of the financial statements

Assertions of the financial statements: Serve as a basis to ensure that elements and information disclosed in the financial statements prepared by Director (or leader) of the entity in accordance with the accounting standards and accounting system are clearly stated or stated basing on evidence.

Assertions of the financial statements shall have following seven criteria: existence, rights and obligations, occurence, completeness, accuracy, presentation and disclosure.

The auditor should obtain audit evidence for every financial statement assertion. Audit evidence in respect of this assertion cannot cover lack of audit evidence for another assertion. The nature, timing and extent of substantive tests may vary upon each audit assertion. The tests may, at the same time, provide audit evidence for many audit assertions.

(3) Methods to obtain audit evidence

Technical methods usually applied in an audit of financial statements include: inspection, observation, inquiry, confirmation, recalculation and analytical procedures.

16. Audit Evidence -Additional Considerations for Specific Items (VSA 501)

(1) Special items and events in the audit of financial statements (para.04) include: Inventory; Accounts receivable; Long-term investments; Litigation and dispute cases; Information on business or geographical segment.

(2) Following actions should be taken by auditors for special items or events:

- For inventory: Participation in inventory counts.

- For accounts receivable: Confirmation of accounts receivable.

- For long term investments: Obtainment of sufficient appropriate audit evidence to exam valuation and presentation of long-term investments.

- For litigation and dispute cases: Conduct of procedures to acknowledge whether litigation and dispute cases involve the units and may have a material effect on the financial statements.

- For information on business or geographical segment: Audit evidence relating to this information shall be collected only when it is determined to play a material role in the financial statements.

Detailed guidance for principles and procedures on special items or events is set out in paragraphs from 05-46.

17. External confirmations (VSA 505)

External confirmation is used to obtain sufficient appropriate audit evidence for financial statement assertions. In making determination of whether the use of external confirmations is necessary, the auditor should consider materiality, inherent risk, control risk and ability to reduce audit risk to an acceptably low level from the audit evidence, (para.02-08).

Relationship of external confirmation procedures to the auditor’s assessments of the inherent risk and control risk: External confirmations can be used even when assessed level of inherent risk and control risk is low. However, when the assessed level of inherent and control risk increase, using of external confirmation procedures brings effect on adequately provision of appropriate audit evidence (para. 09-13).

Guidance on activities and audit procedures relating to external confirmations is set out in paragraphs 14-39.

18. Initial engagements – opening balances (VSA 510)

(1)Initial audit engagement: An engagement in which the financial statements for the prior year were not audited or were audited by another auditor. Opening balances reflect the effects of transactions and events of prior years and accounting policies applied in the prior year.

(2) Requirements: In performing the initial audit engagement, the auditor shall obtain sufficient appropriate audit evidence to ensure:

a) The opening balances do not contain misstatements that materially affect the current year's financial statements;

b) The prior year's closing balances have been correctly brought forward to the current year or, when appropriate, have been appropriately reclassified;

c) Accounting system has been applied consistently or changes in accounting system have been adjusted in the financial statements and have been appropriately disclosed in the notes to the financial statements.

(3) Completeness and appropriateness of audit evidence on opening balances are subject to four following elements: accounting system applied by the client entity; audited or unaudited financial statements of the prior year and content of prior year's financial statements (for audited financial statements); content, nature of accounts and risks of material misstatements which may affect this year's financial statements; materiality of opening balances in respect of this year's financial statements.

(4) Detailed audit procedures are set out in paragraphs 07-11.

(5) Conclusion and preparation of audit report are set out in paragraphs 12-15.

19. Analytical procedures (VSA 520)

(1) Requirement: The auditor is required to perform analytical procedures when planning an audit and when performing overall review of the audit.

Analytical procedures are also performed in other phases of an audit.

(2) Purpose: Analytical procedures are used in three phases of an audit to: assist the auditor to determine nature, timing and extent of other audit procedures; serve as a substantive test; and to examine the whole financial statements in the final review of an audit, (para. 08).

(3) Procedures: Detail procedures are set out in paragraphs 09-14.

(4) The reliability of analytical procedures: Results of analytical procedures are influenced by four following elements: materiality of accounts or types of transactions; other audit procedures with the same audit objective; estimated accuracy of analytical procedures; assessment of inherent risks and control risks (para. 15-17).

(5) Investigation of differences: If analytical procedures identify material differences or inconsistent relationships with other relevant information or significant difference from expected amounts, the auditor shall investigate such differences to obtain sufficient appropriate audit evidence.

20. Audit sampling and other selective testing procedures (VSA 530)

(1) Responsibility: When designing audit procedures, the auditor should determine appropriate means for selecting audit sample so as to gather audit evidence to meet the objective of audit testing.

(2) Gathering audit evidence from tests of control and substantive tests on basis of audit sampling

- Audit sampling for tests of control is generally appropriate when application of the control leaves evidence of performance.

- When performing substantive tests of details, audit sampling and other means may be used by the auditor to verify one or more assertions about a financial statement amount.

- Sampling risk and non-sampling risk can affect the components of audit risk. For both tests of control and substantive tests, sampling risk can be reduced by increasing sample size, while non-sampling risk can be reduced by proper engagement planning, audit supervising, and reviewing.

(3) Methods to obtain audit evidence: When designing audit procedures, the auditor can choose one of three methods or combine three methods to select items for testing: Selecting all items (100% examination); Selecting specific items; Audit sampling.

21. Audit of accounting estimates (VSA 540)

a) Definition: Accounting estimate means an approximation of a financial statements item. There are two kinds of accounting estimate, i.e. accounting estimate of items that have occurred and accounting estimate of items that are likely to occur (para.04).

b) Nature of Accounting Estimates: Accounting estimate may be simple or complex; accounting estimates may be determined regularly or only at period end (para.06-07).

c) Audit Procedures: In auditing accounting estimates, the auditor should adopt one or a combination of the following approaches: review and test of the process used by management to make the estimates; review of subsequent events (para. 11). Detailed guidance for these procedures is set out in paragraphs 12- 25.

d) Evaluation of audit procedure results: The auditor should make a final assessment of the appropriateness of the accounting estimates based on the auditor's understandings of the client entity's business and consistency of the accounting estimates with other audit evidence (para.26-29).

22. Auditing fair value measurements and disclosures (VSA 545)

(1) Definition of fair value: Collectible value (exchangeable value) of an asset or a liability in an arms length transaction between willing and knowledgeable parties.

In this VSA, fair value is determined on a presumption that the entity is a going concern in a foreseeable future (para.07); is determined by various measurements and based on estimates (therefore, it is usually imprecise) (para.05,06); The measurement of fair value may be relatively simple for certain assets or liabilities but may be more complex for other assets or liabilities (para.08).

(2) Requirement: The auditor and the audit firm should obtain sufficient audit evidence on whether the audited entity's fair value measurements and disclosures in the financial statements are in accordance with the accounting standards and accounting system.

Detail guidance on audit procedures, fair value measurement and disclosure is set out in paragraphs 10-65.

23. Related parties (VSA 550)

(1) Related parties: parties are considered to be related if one party has the ability to control or exercise significant influence over the other party in making financial and operating decisions.

(2) Existence and Disclosure of Related Parties

When performing an audit of financial statements, auditors should identify the related parties and examine sufficient disclosure of such parties in the financial statements. Procedures on related parties identification and relevant information disclosure are set out in paragraphs from 10 to 17.

(3) Audit Conclusions and Audit report

If the auditors are unable to obtain sufficient appropriate audit evidence concerning related parties or conclude that related party information in the financial statements is not adequately disclosed, the auditors should revise the audit reports accordingly.

24. Subsequent Events (VSA 560)

(1) Three following subsequent events relate to responsibility of auditors and audit firms.

+ *Events occurred up to the date of audit report:* auditors must perform audit procedures to determine all events occurred up to the date of audit report, which may affect the financial statements, and request the units to make adjustment of, or disclose information in the financial statements (para. 10-13).

+ *Events occurred after the date of audit report and before the date of financial statement publication*: Auditors are not required to review matters relating to the financial statements after the date of audit report. However, when auditors become aware of these events may materially affect the financial statements, they must consider whether or not to revise the financial statements and audit reports and must discuss with the audited units' directors so as to take appropriate measures in each particular circumstance (para.14-18).

+ *Events occurred after the date of financial statement publication*: Auditors are not required to consider and examine any data or events relating to audited financial statements. However, when auditors become aware of these events may cause the auditors to revise the audit reports, the auditors should consider whether or not to revise the financial statements and the audit reports and must discuss this matter with the directors of the audited units to take appropriate measures in each particular circumstance (para. 20-24).

(2) Where audited entities are allowed to issue securities in securities market, auditors must consider law provisions relating to securities issuance.

25. Going concern (VSA 570)

(1) Management's Responsibility

Management of audited entity should specifically review and assess the entity's ability to continue business as a going concern. Financial statements should be prepared on a going concern basis and the entity shall continue its normal businesses in the foreseeable future. (para.06).

Matters that the management is required to consider in assessment of going concern assumption, significant doubts on appropriateness of going concern assumption, etc (para.07,08).

(2) **Responsibility of the auditor***:*

The auditors' responsibility is to consider the appropriateness of the going concern assumption used in the preparation and presentation of the financial statements, and consider whether there are any material uncertainties which may affect the entity's ability to continue as a going concern that need to be disclosed in the financial statements. However, the absence of any reference to going concern uncertainty in an auditor's report cannot be viewed as a guarantee as to the entity's ability to continue as a going concern.

26. Management presentations (VSA 580)

(1) Management presentations: are acknowledgement of the audited entity's Director on his/her responsibility for the entity's financial statements.

The auditor shall collect audit evidence that the audited entity's Director acknowledges his/her responsibility for the fairly preparation and presentation of the financial statements in accordance with the applicable accounting standards and accounting system and has approved the financial statements.

(2) Management presentations shall be used as audit evidence and should be filed in the audit workpapers in form of a summary of verbal discussions or written representations.

Where the Director refuses to prove representations, the auditor shall express "qualified opinion" or " a disclaimer of opinion" (para.17).

27. Using the work of another auditor (VSA 600)

(1) Acceptance as principal auditors

To accept audit contracts as principal auditors, auditors and audit firms must consider the following matters: the materiality of the audited financial statements; the principal auditors' knowledge about the business situation and risks of material errors in financial statements of subordinate units; and the possibility to perform additional audit procedures, etc. (para.08).

(2) Audit procedures performed by the principal auditors

The principal auditors should perform necessary procedures with attention paid to followings: advising the other auditors of relevant matters; discussing with the other auditors about the audit procedures applied by them; discussing with the directors of the subordinate units on significant findings; filing documents relating to the financial statements of the subordinate units audited by the other auditors (para.11-16)

(3) Cooperation between auditors

The other auditors must cooperate with the principal auditors where the principal auditors use their auditing materials. The cooperation should be agreed upon by the authorities managing the audits (para.17).

(4) Responsibility of the principal auditors

The principal auditors must be responsible for the financial statement audit risks including financial information of the subordinate units and other relevant economic units (para.21).

28. Using the work of internal auditors (VSA 610)

(1) External auditors and internal auditors may apply the same audit approaches, audit procedures. External auditors may use the work of internal auditors to assist the determination of nature, timing and extent of external audit procedures. However, audit opinion on the financial statements of internal auditors cannot be as independent, objective as this of external auditors. External auditors bear all responsibilities for their opinion on the financial statements. These responsibilities shall not be reduced even when external auditors use the work of internal auditors (para.07).

(2) Communication and cooperation:

When having intention of using the work of internal auditors to determine nature, timing and extent of external audit procedures, external auditors shall discuss with internal auditors about timing, extent of internal audit procedures, tests, sampling methods, recording methods, internal audit report examination and preparation procedures.

External auditors have rights to refer to the work of internal auditors. If internal auditors refuse to cooperate, external auditors shall have right to impose the case as if the audit scope is limited.

29. Using The Work Of An Expert (VSA 620)

(1) Determining the need to use the work of an expert

In many cases, the auditor may need to use an expert's works in the form of reports, opinions, valuations and statements, such as valuation of certain assets; determination of the remaining useful life of machinery and equipment.

When it's necessary to use the work of an expert, the auditor should consider: the materiality of the financial statement items being considered; the risk of misstatements due to nature and complexity of the items being considered; the quantity and quality of other available audit evidence (para.07).

(2) Competence, Objectivity and Scope of work of the Expert:

When planning to use the work of an expert, the auditor should assess the professional competence and objectivity of the expert to demonstrate that the expert's work can meet the audit requirements.

(3) Assessing the Work of the Expert

It's important that the expert's work should be appropriate, relevant to audit assertions being considered. To assess the appropriateness, the auditor is required to determine whether the expert's work supports the audit assertions. If the results of the expert's work do not provide sufficient appropriate audit evidence or if the results are not consistent with other audit evidence collected, reasons of differences must be identified (para.12-15).

(4) Reference to the expert's work in the audit report: There is a need to distinguish 2 cases:

- In case of unqualified audit report, the work of an expert shall not be referred to in the audit report.

- In case of audit report other than unqualified audit report, the auditor can make reference to the expert's work (if agreed by the expert) to give explanations for issuance of the audit report. If the expert does not accept permission and the auditor believes a reference is necessary, the auditor may need to seek legal advice.

30. The audit report on financial statements (VSA 700)

(1) Audit report: A written report prepared and issued by the auditor and the audit firm to express their independent opinion on audited financial statements of an entity.

(2) Requirements of audit report.

The auditor and the audit firm shall review and assess conclusions drawn from audit evidence obtained and use these conclusions as the basis for the expression of an opinion on financial statements of the audited entity.

In their opinion, the auditors and audit firms shall determine conformity of financial statements with prevailing accounting standards and accounting system or with accounting principles and accounting standards generally accepted in Vietnam, as well as compliance with relevant law provisions when preparing financial statements.

Audit report shall have a paragraph to clearly state opinion of the auditor and the audit firm on the audited financial statements.

(3) Basis contents of audit report

a) Audit report on financial statements consists of following main elements and is presented in following order:

General paragraph of the audit report, opening paragraph of the audit report, paragraph on scope and basis for conduct of the audit, audit opinion on the audited financial statements: Location and time to prepare the audit report, signature and stamp.

Audit report shall be signed by the auditor who have registered for practising auditors in Vietnam – who in charge of the audit and by Director (or authorised person) of the audit firm (or the firm's branch).

Underneath of the auditor's signature, full name, CPA number in Vietnam of the practising auditor shall be clearly stated. Above signature of Director (or authorised person), stamp of the company (or company's branch) issuing the audit report, shall be sealed.

In accordance with general international practices, Director (or authorised person) is allowed to sign by name of the company instead of his/her name; however, his/her full name, Vietnam's CPA certificate number is still required and sealed with the company's stamp.

b) Types of audit opinion

Based on audit results, the auditor shall issue one of following types of audit opinion on financial statements as follows: unqualified opinion, qualified opinion, a disclaimer of opinion; adverse opinion.

31. Comparatives (VSA 710)

(1) Comparatives in audited financial statements may present amounts (such as financial position, operation results, cash flows) and disclosures in Notes to financial statements of an entity for more than one financial year, subject to corresponding, comparative data.

(2) The auditor and the audit firm should determine whether the comparatives comply, in all material respects, with accounting standards on preparation and presentation of audited financial statements (detailed in the Corporate Accounting Standard System issued under Decision 15/2006/QD –BTC of the Ministry of Finance).

As prescribed by the standards on auditing, the auditor bears specific responsibilities upon collection of audit evidence and preparation of audit report on financial statements with comparatives.

32. Other information in documents containing audited financial statements (VSA 720)

(1) Other information in documents containing audited financial statements means financial and non-financial information issued together with the audited financial statements of the entity (For examples, annual report) as required by statutes or practices.

The auditor should consider other information disclosed to identify material inconsistencies (conflicts) with the audited financial statements. Besides, the auditor is required to access to other information disclosed before the date of audit report, however, the auditor has no obligation to determine whether such information is appropriately stated as the audit objective and scope have already been included in the audit report.

(2) If the auditor becomes aware that the other information appears to include a material misstatement of fact, the auditor should discuss the matter with the entity's management or consider taking further appropriate actions like sending written notice to the audited entity or relevant persons or seek for legal advice.

33. The Auditor's Report on Special Purpose Audit Engagements (VSA 800)

(1) The auditor's report on special purpose audit engagements set out in VSA 800 involves following subjects: Financial statements prepared in accordance with an accounting basis other than Vietnamese Accounting Standards or other accounting standards accepted in Vietnam; Report on a component of financial statement parts; Reports on Compliance with Contractual Agreements; Reports on Summarized Financial Statements.

(2) The auditor should review and assess the conclusions drawn from the audit evidence obtained during the special purpose audit engagement serving as a basis for an expression of opinion. Auditor's opinion should be clearly expressed in the audit report.

(3) Before undertaking a special purpose audit engagement, the auditor should ensure that there is an agreement with the client as to specific content of the contract and the form, content of the audit report to be issued.

Audit report and audit procedures for each special purpose audit engagement are set out in paragraphs 10-26.

34. Engagements to Review Financial Statements (VSA 910)

(1) A review of financial statements is to enable auditors to conclude that any material matter(s) has come to the auditor's attention that causes the auditors to believe that the financial statements are not prepared, in all material respects, in accordance with accounting standards..

Engagements to review financial statements do not provide reasonable assurance which an audit of financial statements does. A review engagement provides a moderate level of assurance that the information subject to review is free of material misstatement.

(2) Terms of engagements and engagement planning, review procedures, review documentation, review report are set out in paragraphs 10-28.

35. Engagements To Perform Agreed-Upon Procedures Regarding Financial Information (VSA 920)

(1) The objective of an agreed-upon procedures engagement is for the auditor, based on conduct of agreed-upon procedures among the auditor, the audited entity and any relevant third parties, to report on engagement findings. As the auditor simply provides a report of the actual findings of agreed-upon procedures, no assurance is expressed as to the reliability of financial information. Users of the report assess for themselves the procedures and findings reported by the auditor and draw their own conclusions from the auditor's work.

(2) Major contents relating to engagement terms, examination procedures, result report are set out in paragraphs 09-13.

36. Engagements to compile financial information (VSA 930)

(1) Engagements to compile financial information mean engagements including the preparation of a part or the whole set of financial statements, combined financial statements, consolidated financial statements or the collection, classification and summarization of other financial information by accounting practitioners. Accounting practitioners are enterprises providing accounting services, individual accounting practitioners or audit firms providing accounting services.

The objective of a compilation engagement is for accounting practitioners to use accounting expertise to collect, classify and summarize financial information, not to assess the information assertions. The procedures employed do not enable accounting practitioners to express any assurance on the financial information compiled.

(2) Major contents relating to engagement contract, planning and documentation, conduct of services, report on compilation engagements are set out in paragraphs 08-20.

37. Audit of final accounts of investment (VSA 1000)

(1) Overview: Final accounts of investment refers to the system of financial reports prepared in accordance with prevailing accounting standards, accounting system, investment management regulations and relevant provisions of law for fair reflection of economic, financial information and other important information of the investment process of construction works and projects.

(2) Objective: The objective of an Audit of final accounts of investment is to enable the auditor and audit firm to express an opinion as to whether the final accounts of investment have been prepared in accordance with the accounting standards, accounting system and current regulations on investment costs settlement; comply with the provisions of law and relevant regulations on construction management; and fairly present, in all material respects, the condition and results of investment cost.

(3) Responsibility:

a) Director (or leader) of audited entity (investment owner or project management) is responsible for fair preparation and presentation of Final accounts of investment in accordance with accounting standards, accounting system, current regulations on investment costs settlement and relevant provisions of law.

b) The auditor and the audit firm is responsible for auditing final accounts of investment, final accounts dossiers and express an opinion on the audited final accounts of investment.

38. Professional ethnics of the accountant, auditor.

(1) Purpose: The purpose of this Standard is to establish principles, contents and provide guidance on professional ethnics of accounting practitioners, practising auditors and accountants, auditors working in enterprises and organizations in order to achieve the highest standards on professional expertise, operating level and meet the increasingly higher interest of the public.

(2) Content: This VSA regulates purposes, fundamental professional ethnics, general professional ethnics applied to all accountants and auditors; specific professional ethnics applied to practising auditors, groups of auditors and audit firms; professional ethnics applied to CPA holders or accounting practising certificate holders working in enterprises, organizations.

(3) Fundamental principles of professional ethnics applied to accountants, auditors, including: Independence (mainly applied to practising auditors and accounting practitioners); Integrity, Objectivity; Professional competence and due care; Confidentiality; Professional behaviour; Technical standards.

Objective and fundamental principles of the Professional ethnics of accountants, auditors are to provide regulations to deal with ethnics of accountants and auditors in specific circumstances. Regulations set out in this standard provide guidance on objective and common criteria applied in typical cases of auditing, accounting practice. This standard regulates and guides the approaches only but does not list all cases which may lead to risks of non-compliance and corrective actions required.

IV. SYSTEMT OF LEGAL DOCUMENTS ON INDEPENDENT AUDIT

(Refer to Appendix 02)

✯ ✯ ✯

Appendix 01

Vietnamese Standards on Auditing issued and publicized by the Ministry of Finance.

Up do date, the Ministry of Finance of Vietnam has issued and publicized eight batches with 38 following standards on auditing:

- VSA 200 - Objective and general principles governing an audit of financial statements
- VSA 210 – Audit contract
- VSA 220 - Quality control for audit work
- VSA 230 - Documentation
- VSA 240 - Fraud and error
- VSA 250 - Consideration of laws and regulations in an audit of financial statements
- VSA 260 - Communications of audit matters with those charged with governance
- VSA 300 - Planning
- VSA 310 - Knowledge of the business
- VSA 320 - Audit Materiality
- VSA 330 - The auditor’s procedures in response to assessed risks
- VSA 400 - Risk assessments and Internal control
- VSA 401 - Auditing in a Computer Information Systems Environment
- VSA 402 - Audit considerations relating to entities using service organizations
- VSA 500 – Audit Evidence
- VSA 501 - Audit Evidence -Additional Considerations for Specific Items
- VSA 505 - External confirmations
- VSA 510 - Initial engagements – opening balances
- VSA 520 - Analytical procedures
- VSA 530 - Audit sampling and other selective testing procedures
- VSA 540 - Audit of accounting estimates
- VSA 545 - Auditing fair value measurements and disclosures
- VSA 550 - Related parties
- VSA 560 - Subsequent Events
- VSA 570 - Going concern
- VSA 580 - Management presentations
- VSA 600 - Using the work of another auditor
- VSA 610 - Using the work of internal auditors
- VSA 620 - Using The Work Of An Expert
- VSA 700 - The audit report on financial statements
- VSA 710 - Comparatives
- VSA 720 - Other information in documents containing audited financial statements
- VSA 800 - The Auditor's Report on Special Purpose Audit Engagements
- VSA 910 - Engagements to Review Financial Statements

- VSA 920 - Engagements To Perform Agreed-Upon Procedures Regarding Financial Information
- VSA 930 - Engagements to compile financial information
- VSA 1000 - Audit of final accounts of investment
- Professional ethnics of the accountant, auditor.

LIST OF REFERENCES FOR PART VI

1. Decree 105/2004/ND-CP of the Government dated 30 March 2004 on Independent Auditing.
2. Decree No.30/2009/ND-CP dated 30/03/2009 of the Government on amendment of and supplementation to a number of articles of Decree No. 105/2004/ND-CP.
3. Decision No.120/1999/QD-BTC dated 20/9/1999 of the Ministry of Finance on issuance and publication of four Vietnamese Standards on Auditing (Batch 1).
4. Decision No.219/2000/QD-BTC dated 29/12/2000 of the Ministry of Finance on issuance and publication of six Vietnamese Standards on Auditing (Batch 2).
5. Decision No.143/2001/QD-BTC dated 21/12/2001 of the Ministry of Finance on issuance and publication of six Vietnamese Standards on Auditing (Batch 3).
6. Decision No.28/2003/QD-BTC dated 14/3/2003 of the Ministry of Finance on issuance and publication of five Vietnamese Standards on Auditing (Batch 4).
7. Decision No.195/2003/QD-BTC dated 28/11/2003 of the Ministry of Finance on issuance and publication of six Vietnamese Standards on Auditing (Batch 5).
8. Decision No.03/2005/QD-BTC dated 18/01/2005 of the Ministry of Finance on issuance and publication of six Vietnamese Standards on Auditing (Batch 6).
9. Decision 47/2005/QD-BTC dated 14/7/2005 of the Minister of Finance on authorizing professional associations to implement some functions in the management of accountants and auditors' practice.
10. Decision No.87/2005/QD-BTC dated 01/12/2005 of the Minister of Finance on issuance and publication of professional ethical standards for Vietnamese accountants and auditors.
11. Decision No.101/2005/QD-BTC dated 29/12/2005 of the Minister of Finance on issuance and publication of four Vietnamese Standards on Auditing (Batch 7).
12. Decision No.32/2007/QD-BTC dated 15/5/2007 on issuance of "Regulations on control over quality of accounting and auditing services".
13. Decision No.89/2007/QD-BTC dated 24/10/2007 promulgating regulations on selection of audit firms permitted to audit issuing, listing or trading organizations.
14. Decision No.94/2007/QD-BTC dated 16/11/2007 of the Ministry of Finance on issuance of the Regulations on examination and issuance of CPA and ACP certificate.
15. Circular No.64/2004/TT-BTC dated 29/6/2004 of the Ministry of Finance guiding the implementation of a number of articles of the Decree No.105/2004/ND-CP dated 30/3/2004 of the Government on independent audit.
16. Circular No.72/2007/TT-BTC dated 27/6/2007 on registration and management of accounting practice.

*

*   *