



Vietnam Legal Update

May 2004

Hanoi Branch Office
Suite 401, Hanoi Tower
49 Hai Ba Trung
Hanoi
Vietnam
Tel +84 4 936 0990
Fax +84 4 936 0984
bill.magennis@phillipsfox.com

Ho Chi Minh City Branch Office
Suite 605, Saigon Tower
29 Le Duan Boulevard
District 1, Ho Chi Minh City
Vietnam
Tel +84 8 822 1717
Fax +84 8 822 1818
nigel.russell@phillipsfox.com

Melbourne Office
Level 44, 120 Collins Street
Melbourne
Australia
Tel +61 3 9274 5000
Fax +61 3 9274 5111
maureen.mclaughlin@phillipsfox.com

www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City

Part 1 Selected New Legal Instruments

1.1	Foreign Shareholdings	2
1.2	Enterprise Law	3
1.3	Foreign Construction Contractors	6
1.4	Land Compensation and Clearance	9

Part 2 Features

2.1	Property Funds in Vietnam	11
2.2	Labour Recruitment Checklist	13
2.3	New Anti-Dumping Legislation	16

Part 3 Did You Know?

3.1	National Assembly Update	19
3.2	Equitization - Latest Policy	20
3.3	Foreign Invested Shareholding Companies	21
3.4	Penalties for Environmental Damage	21
3.5	Customs Valuation	22
3.6	Insurance Sector	22
3.7	Copyright Protection at Borders	22

Phillips Fox
is proud to announce
the launch of its new website
www.vietnamlaws.com
on 1 June 2004

This publication is copyright. Except as permitted under relevant laws, no part of this publication may be reproduced by any process, electronic or otherwise, without the specific written permission of the copyright owner. ©Phillips Fox, Vietnam Laws

The material contained in Vietnam Legal Update is intended to inform you of recent legal developments in Vietnam. It is not intended, and should not be relied upon, as legal advice. Should you wish further information in relation to any legal instrument or matter mentioned in this issue, please do not hesitate to contact one of our offices.

For all past issues of Vietnam Legal Update (complete with index of contents), go to www.vietnamlaws.com
or www.saigontoday.net

Part 1 Selected New Legal Instruments

1.1 Foreign Exchange Control over Foreign Shareholdings in Domestic Enterprises

Circular 03-2004-TT-NHNN of the State Bank of Vietnam ("SBV") dated 25 May 2004 Providing Guidelines for Foreign Exchange Control With Respect to Capital Contribution to or Purchase of Shares in Vietnamese enterprises by Foreign Investors

Hot off the press, Circular 03 regulates the following foreign exchange activities relating to capital contribution to, or purchase of shares in, Vietnamese enterprises by foreign investors:

- transfer of capital into Vietnam for capital contribution or purchase of shares;
- conversion of foreign currency into Vietnamese dong;
- opening and use of a Vietnamese dong account for capital contribution or purchase of shares;
- conversion of Vietnamese dong into foreign currency; and
- remittance of foreign currency abroad.

In order to contribute capital to, or purchase shares in, Vietnamese enterprises, foreign investors must open a special "capital contribution-share acquisition in Vietnamese dong" account at a commercial bank operating in Vietnam. All transfers and other activities relating to capital contribution or purchase of shares by foreign investors must be conducted via this account. Such account is to be used solely for the purpose of capital contribution to or purchase of shares in Vietnamese enterprises. This special account must be registered with the SBV within 2 working days from the date of opening. Any change of the details of such account must also be registered.

The above account must be closed in following cases: (i) remittance of the total balance of the account abroad or to a securities operation account; (ii) liquidation, bankruptcy and termination of an investor being an entity, and in other cases as provided by the SBV.

Circular 03 is expected to become effective by the end of June 2004.

1.2 Enterprise Law

Decree 125-2004-ND-CP of the Government dated 19 May 2004 on Amendment of and Addition to Decree 03-2000-ND-CP of the Government dated 3 February 2000 Providing Guidelines for Implementation of a Number of Articles of the Law on Enterprises

More than 4 years after the Law on Enterprises became effective and radically reformed the Vietnamese business environment, the Government has revised its implementing regulations for the first time.

Decree 125 comes shortly after Decree 109-2004-ND-CP of the Government dated 2 April 2004 on Business Registration, which revised the duties and powers of business registration offices ("BROs") and the rights and duties of organizations and individuals registering businesses (reviewed in Part 1.3 of the April 2004 Issue of Vietnam Legal Update).

Decree 125 introduces a range of reforms, including:

- With respect to foreign organizations and non-resident foreign individuals contributing capital to and purchasing shares in domestic enterprises, it is now expressly required that the change in charter capital and change in membership of the domestic enterprise must be registered at the BRO where the enterprise is registered. (Foreign organizations and non-resident foreign individuals remain excluded from founding a domestic enterprise.)
- With respect to the right of foreigners to participate in management, it is now expressly stipulated that foreign organizations and non-resident foreign individuals contributing capital to, or purchasing shares in, a domestic enterprise will have the right to:
 - authorize a Vietnamese citizen to act as a member of the members' council corresponding to their share of equity, in the case of a limited liability company; or
 - nominate a person (*not restricted to Vietnamese citizen*) to the board of management, in the case of a shareholding company,in accordance with the provisions of law or the charter of the company.

This is a welcome clarification of the right of non-resident and corporate foreign shareholders to participate in management of domestic shareholding companies.

Under the Law on Enterprises, any shareholder or group of shareholders owning more than 10% (or a smaller percentage if so stipulated in the charter of the company) of ordinary shares for a consecutive period of 6 months or more ("major shareholder") has the right to nominate candidates to the board. However, under Decision 36-2003-QD-TTg of the Government dated 11 March 2003 on Capital Contribution and Purchase of Shares by Foreign Investors in Vietnamese Enterprises, only foreign shareholders being resident individuals and overseas Vietnamese may participate personally in management of Vietnamese shareholding companies. Where did that leave major shareholders being foreign organizations or non-resident foreign individuals - could they exercise their right to nominate candidates to the board of management?

Now, Decree 125 clarifies that major non-resident and corporate foreign shareholders may exercise their right to nominate board members. And that their nomination is not expressly restricted to Vietnamese citizens (as it is in the case of limited liability companies). This is significant for the growth of major overseas investment in the private sector in Vietnam, which has to date been stymied by the inability to ensure competent company management.

However, who may be the board nominee of a major non-resident or corporate foreign shareholder remains restricted by law (and the charter of the shareholding company). Currently, under the Law on Enterprises and Decision 36, the only foreigners who may participate personally in management are resident foreign individuals and overseas Vietnamese. So, although Decree 125 clarifies on one hand, it perpetuates the restriction on who may be the nominee of a non-resident or corporate foreign shareholder by the other hand.

This restriction remains a disincentive to major share purchases by non-resident and corporate foreign shareholders - by limiting their choice of board members (to resident foreign individuals and overseas Vietnamese, or Vietnamese citizens), their rights as major shareholders are significantly diluted. Indeed, this restriction should remain of concern to all shareholders - foreign and Vietnamese, minor and major shareholders alike - as it limits the access of domestic shareholding companies to the full range of foreign management expertise available.

- Shareholding capital of founding shareholders must be fully paid up immediately after issuance of a business registration certificate. It is now expressly stipulated that founding shareholders will be liable for debts and other financial obligations of the company within the value of their share of equity in the company *as recorded in the register of founding shareholders registered at the BRO*.
- Detailed guidelines are now provided for the exercise of the rights of major shareholders. Of note, the right of major shareholders to nominate board members (or members of the inspection committee) is subject to the decision of the General Meeting of Shareholders on the *number* of members the major shareholder is entitled to nominate. Curiously, it is now provided that, where the number of candidates nominated by a major shareholder is less than the requisite number decided by the General Meeting of Shareholders, the remaining number will be nominated by the board, the inspection committee and other shareholders - not by the major shareholder.
- Public declarations of the following related interests of members and management personnel of limited liability companies and shareholding companies are now compulsory:
 - Any enterprise (including its name, head office address and number of business registration certificate) in which they own equity or shares, and the ratio of such equity or shareholding and the time when they acquired ownership thereof;
 - Any enterprise (including its name, head office address, number of business registration certificate, and the business lines of the enterprise) owned by their spouse, natural child or adopted child;
 - Any enterprise (including its name, head office address, number of business registration certificate and the business lines of the enterprise) in which their spouse, natural child or adopted child owns above forty (40) per cent of the charter capital.

Changes to declared information must be made within 7 days of such change. A hard copy of the above declarations must be archived at the head office of the enterprise. This reform responds to the call for greater transparency in Vietnam's corporate environment.

- Specific guidelines on a number of rights and obligations of members of limited liability companies have been added. Of note, it is now expressly provided that, if a limited liability company has one member owning more than 65% of the charter capital of the company, then the charter of the company must prescribe a percentage less than 35% of the charter capital which the minority members or group of members must own in order to have the right to convene a meeting of the members' council to resolve issues within the council's authority.
- "Trading in marriage broking services with a foreign element" has now been added to the list of prohibited lines of business.
- With respect to conditional lines of business, it is now expressly stipulated that the founder of an enterprise and the legal representative of the enterprise are responsible for strict implementation of all business conditions in accordance with regulations and that board members (in the case of a shareholding company) and partners (in the case of a partnership) etc will be jointly liable for any business operations carried on without having satisfied all conditions.
- With respect to lines of business which are subject to legal capital requirements, it is now expressly stipulated that board members (in the case of a shareholding company) and partners (in the case of a partnership) etc are jointly liable for the truthfulness and accuracy of the certified amount of capital at the time of establishment of the enterprise and throughout the course of business operations of the enterprise.

- Lines of business which require practising certificates now also include:
 - manufacture, processing, bottling, packaging, purchase and sale of plant protection agents;
 - business of design services for transportation facilities;
 - purchase and sale of relics, antiques and national treasures.

It is now expressly stipulated that persons with a practising certificate may only be registered in the business registration file of *one* business establishment and they are responsible for observance of the regulations relating to their profession and professional ethics during the business operations of that establishment.

- A list of the following entities prohibited from establishing an enterprise throughout the country will now be prepared, updated periodically, and circulated to BROs:
 - persons subject to criminal prosecution or in the process of serving prison sentences or having their practising rights revoked by a court for having committed smuggling, producing fake goods, trading in fake goods, conducting illegal business, tax evasion, defrauding clients and other offences as provided for by law;
 - the owner of a private enterprise, an unlimited liability partner of a partnership, the director (general director), chairman and members of the board or members' council of an enterprise which has been declared bankrupt (such individuals may not establish an enterprise or act as manager of an enterprise for 1-3 years from the date of declaration of bankruptcy of the enterprise, except as provided for in the Law on Business Bankruptcy).

The Ministry of Planning and Investment is the focal body for this task.

Decree 125 is expected to become effective as of mid-June 2004.

1.3 Foreign Construction Contractors

Decision 87-2004-QD-TTg of the Government dated 19 May 2004 issuing Regulations on Management of Operations of Foreign Contractors in the Construction Sector in Vietnam

In anticipation of the new Law on Construction (which becomes effective as of 1 July 2004) and in light of the revised foreign investment regulations (amended in March 2003) and the revised tendering regulations (amended in July 2003), the Government has now issued new regulations on management of foreign construction contractors in Vietnam.

The new regulations govern the operations of foreign contractors - organizations or individuals; head contractors, general contractors, contractors in partnership or sub-contractors - in the sectors of construction consultancy, supply of technological materials and equipment where that forms part of technical services relating to construction works, and execution of construction works.

As previously, a foreign contractor must be issued with a contractor's permit in order to be permitted to operate in Vietnam. Contractor's permits remain specific to the construction contract being performed.

Conditions for issuance of a contractor's permit are as follows:

- Where tendering is mandatory:
 - The foreign contractor must be the successful tenderer or appointed tenderer; and
 - There must be a contract assigning the contract work to the foreign contractor.
- Where tendering is not mandatory:
 - The foreign contractor must have full capacity for the contract work in accordance with the law of Vietnam (in addition to the above conditions).
- In all cases:
 - A foreign contractor must have a partnership with a Vietnamese contractor or must engage a Vietnamese sub-contractor (unless exempted by the Prime Minister or under Vietnamese law); and
 - A foreign contractor must undertake to implement fully the provisions of the law of Vietnam relating to conduct of the contract work in Vietnam (in addition to the above conditions).

The contents of the application file for a contractor's permit are prescribed in the new regulations and include:

- Standard form application (issued by the Ministry of Construction);
- Official letter on results of tendering, decision on appointment of a contractor or legal contract assigning the contract work to the contractor (copy);
- Operating license and practising certificate in the country of nationality of the contractor (copy);
- Overall report on operational experience relevant to the contract work assigned and audited financial statements for the last 3 years (applicable in cases where tendering is not mandatory);
- Contract of partnership with Vietnamese contractor or undertaking to engage a Vietnamese sub-contractor to perform the contract work assigned (already in the tender bid or file containing the offer to act as contractor).

The time-limit for consideration of an application is 20 working days from receipt. A fee is payable for issuance of a permit.

The Ministry of Construction issues contractor's permits where a foreign contractor receives a tender package belonging to a Group A project. The local Department of Construction issues contractor's permits where a foreign contractor receives a tender package belonging to a Group B or C project in the locality.

A contractor's permit expires in the following circumstances: upon completion of contract; or when the contract is no longer effective because the operations of the foreign contractor have been suspended, or the foreign contractor has been dissolved or declared bankrupt, or for some other reason under the law of Vietnam or the law of the country of nationality of the contractor.

In the case of a partnership between one or more foreign contractor and a Vietnamese contractor, there must be a contract of partnership in order to submit a joint tender and together perform a contract in Vietnam. The contract of partnership must clearly specify the general obligations and also the particular obligations of each

contractor participating in the partnership with respect to the work of the contract, and must also specify which contractor is the entity in charge of the partnership.

After issuance of a permit, a foreign contractor may establish (and must register) an operating office in the locality of the construction works to which the permit relates for the purpose of carrying out the tasks of the contract work. The operating office may only exist for the duration of implementation of the contract and must be dissolved when the contract is liquidated.

A foreign contractor may recruit and employ Vietnamese and foreign employees (in accordance with the labour laws of Vietnam). Managers, technical experts and highly skilled persons may only be brought to Vietnam if Vietnamese candidates are not available to undertake those tasks. Foreign employees must comply with the laws of Vietnam on entry and exit, on registration of temporary or permanent residence, and on registration for a work permit.

A foreign contractor may import materials, machinery and equipment required to perform the contract work. The temporary import for re-export of materials, machinery and equipment for execution of construction works and the list of raw materials, fuel, materials, and both entire and synchronous equipment for the contract works must be registered.

A foreign contractor must do the following:

- Register its address, its communication facilities, its transaction bank account and place where such account is opened by its operating office, and its representative for contract performance at the relevant agency in accordance with the regulations of the people's committee of the province where the assigned project work is located (this information must also be reported to the Ministry of Construction, the Ministry of Police, the Ministry of Finance, the Ministry of Trade, the State Bank of Vietnam and the relevant provincial or municipal people's committee);
- Register the seal of the operating office with the police in the province or city where the construction works are located (the seal may only be used in performance of the contract to which the permit relates); and return the seal upon termination of the contract;
- Register for tax payment in Vietnam; implement the accounting regime, open a bank account and make payments in accordance with guidelines of the Ministry of Finance and the State Bank of Vietnam in order to service business operations under the contract;
- Perform the contract of partnership signed with a Vietnamese contractor or implement its undertaking to engage a Vietnamese sub-contractor as specified in the tender bid or offer to act as contractor;
- Purchase insurance in accordance with the law of Vietnam for the contractor's works, comprising professional indemnity insurance in the case of construction consultancy; insurance of property and goods in the case of a contract for procurement; all types of insurance in the case of a contractor for execution of construction works;
- Register quality of imported materials and equipment which are supplied pursuant to the contract work received; register safety of equipment for execution of construction works and transport vehicles relevant to business operations of the foreign contractor in accordance with the law of Vietnam;
- Comply with the regulations on standards and criteria for management of quality of construction works and environmental protection as well as other relevant provisions of the law of Vietnam;
- Implement the reporting regime specified in the provisions of the contractor's permit.

Upon completion of contract works, a foreign contractor must formulate a file on completion of the works; provide a warranty; conduct accounting finalization for imported materials and equipment; deal with any excess materials and equipment in a contract for execution of works in accordance with the laws on import-export; and liquidate the contract. At the same time, the relevant State administrative offices must be notified of completion of the contract.

The new regulations also stipulates the responsibilities of the investor or project owner to assist and supervise foreign contractors.

Various State bodies are responsible for administration of foreign contractors in Vietnam, including Ministry of Finance (taxes, accounting reports, insurance premiums, etc), Ministry of Police (seals, registration of residence, social order and safety, fire and explosion fighting and prevention), Ministry of Trade (import-

export), Ministry of Labour, War Invalids and Social Affairs (recruitment and employment, registration of safety of equipment), Ministry of Planning and Investment (database of foreign contractors operating in Vietnam in accordance with the laws on tendering), and provincial and municipal people's committees (registration of operating offices, representatives of contractors and operations of foreign contractors in their localities).

The Ministry of Construction will co-ordinate regular inspections of any foreign contractor in Vietnam (not more than once per year). Irregular inspections will be conducted where there are indications that a foreign contractor has breached the law of Vietnam.

If a foreign contractor breaches the new regulations or other provisions of the law of Vietnam, depending on the seriousness of the breach:

- The work it is conducting in Vietnam may be suspended;
- It may be subject to an administrative penalty;
- Its contractor's permit may be revoked and its right to participate in contracts in Vietnam may be suspended for a specific period or indefinitely;
- If loss and damage is caused, compensation must be paid in accordance with law.

Decision 87 is expected to become effective as of mid-June 2004.

Regrettably, Decision 87 does not specify the prior legislation that it repeals - it only repeals "prior inconsistent provisions" without identifying them. It is presumed that Decision 87 prevails over the provisions of *Section III - Management of Foreign Contractors Undertaking Construction Consultancy or Construction of Works in Vietnam* of Circular 16-2000-TT-BXD of the Ministry of Construction dated 11 December 2000 Providing Guidelines for Management of Foreign Invested Construction Activities and Management of Foreign Contractors Signing Construction Contracts and Providing Construction Consultancy for Construction of Works in Vietnam (if not also other provisions of Circular 16).

1.4 Land Compensation and Clearance

Decision 119-2004-QD-UB of the People's Committee of Ho Chi Minh City dated 28 April 2004 issuing Provisional Regulations on Order, Procedures and Organization of Implementation of the Work of Compensation, Assistance for Loss and Resettlement in Investment Projects with 100% Foreign Owned Capital within the Ho Chi Minh City Area

Following Decree 22-1998-ND-CP of the Government dated 24 April 1998 on compensation for loss when the State recovers land for use for defence and security purposes or in the "national or public interest" (which has been interpreted to include recovery of land for State/private investment projects) and implementing Circular 145-1998-TT-BTC of the Ministry of Finance dated 4 November 1998, the People's Committee of Ho Chi Minh City ("PC") has recently provided specific guidelines to projects with 100% foreign owned capital in Ho Chi Minh City with respect to:

- Legal basis for payment of compensation and conduct of site clearance;
- Establishment of compensation councils for compensation for loss and site clearance ("Compensation Council");
- Formulation, evaluation and approval of the plan for compensation, assistance for loss and resettlement ("Compensation Plan");
- Consideration and approval of estimated budget of costs for compensation and expenses for servicing the work of compensation and site clearance;
- Consideration and approval of estimated budget of costs of technical infrastructure works;
- Organizing commencement of work of compensation and resettlement;
- Resolution of complaints and denunciations; and
- Effectiveness of the Compensation Plan.

Of note:

- The work of compensation and site clearance can only be undertaken when there is a decision on recovery of land from a competent State agency, unless approved by the PC on a case-by-case basis.
- A Compensation Council must be established at the district level for each project. The Compensation Council is required to operate up until completion of payment of compensation, resettlement, site clearance and handover of land to the project investor.
- The Compensation Council is required to prepare a Compensation Plan. The Compensation Plan must be *evaluated* by the municipal committee for evaluation of compensation and site clearance, and then *approved* by the PC.
- The project investor is responsible for paying all costs for compensation, site clearance and resettlement in accordance with the approved Compensation Plan. However, these costs are unlikely to be fixed. The approved Compensation Plan will most likely (in accordance with past practice) stipulate only a budgeted or estimated price.
- The district people's committee "in co-ordination with" the project investor are responsible to construct a resettlement area, or to acquire residential housing and residential land in order to re-arrange residential households which satisfy the conditions for resettlement. The price of land or apartments for residential households is not decided by the project investor, but by a competent agency, or by the Compensation Council in accordance with a plan approved by a competent agency (not the approval Compensation Plan).
- Any person whose land is recovered is required to comply fully with the regulations of the competent State agency on handover of land and site clearance. If such person fails to properly comply with the regulations, then coercive measures may be applied to force such person to move, so that the site will be cleared in accordance with the schedule of the project.
- The time-limit for implementing a Compensation Plan is generally not permitted to exceed 12 months from the date the Compensation Plan is approved. If at the expiry of the 12 months period, the reason

for any delay is not the fault of the person whose land is recovered, then the PC may "reconsider" the Compensation Plan. So while there is a limit on the period of the time within which the project investor and district authorities are supposed to implement the Compensation Plan, there is no guarantee by the PC that the Compensation Plan will be implemented in any particular time frame, or even expediently. This is likely to remain a major concern for investors in projects involving uncleared land in Vietnam, who continue to face significant delays and uncertainties with regard to compensation and clearance procedures.

Part 2 Features

2.1 Property Funds and Property Fund Management Companies in Vietnam

A property fund management company may look something like a holding company in foreign jurisdictions. It is new in Vietnam. There are no specific laws governing property funds that are established to invest in property developments in Vietnam, or companies that manage them, but the law does regulate some comparable forms of investment. In this article, we look into some related business forms under various Vietnamese laws. We have also reviewed the draft of a decree (yet to be issued) in relation to "land funds" in Vietnam.

"Holding company" in property projects

*Law on State Owned Enterprises*¹: The Law on State Owned Enterprises does not specifically regulate "holding companies", but Sections V.2 and 3 of this Law introduce a model of company which is called "mother" company. This form of company is similar to a holding company. Under the Law on State Owned Enterprises, the "mother" company must be a State owned company which, upon obtaining an approval from the relevant State authority, can invest in other companies. Therefore, the establishment of a "mother" company to engage in property companies in Vietnam might be possible. But, as noted above, only State owned companies may operate as "mother" companies. Recently, the Government has allowed Saigon Real Estate Corporation to convert into a "mother" company.

*Enterprise Law*²: The Enterprise Law regulates, among other things, the establishment of companies by Vietnamese citizens and overseas Vietnamese. Under this Law, there are 4 types of company: (i) limited liability company, (ii) shareholding company, (iii) partnership, and (iv) private company. There is no specific regulation on holding companies. However, the fact that a Vietnamese citizen or organization (including overseas Vietnamese) can contribute capital to 4 types of company³ above indicates that a form of "holding" company might be possible. Notably, Refrigeration Electrical Engineering Corp, a shareholding company operating under the Enterprise Law, has proposed to set up a "property operating and management company". There is no legal framework for this proposal. But if this proposal is approved, at least on a pilot basis, such company will really look like a property fund management company. As noted above, however, only Vietnamese citizens/organizations or overseas Vietnamese can establish a local company under the Enterprise Law. Foreigners can invest in a local company by contributing up to 30% of the company's charter capital provided that the local company engages in the business sectors in which foreigners are allowed to invest in local companies⁴. Currently, foreigners are not allowed to invest in local companies that engage in the property sector.

*Law on Foreign Investment in Vietnam*⁵: The Law on Foreign Investment does not contemplate the form of holding companies. In addition, foreign direct investments in Vietnam are licensed on a project-specific basis. Some foreign investors have raised the issue of "holding company" in Vietnam to the Ministry of Planning and Investment. However, there has not yet been an official response.

1 The Law on State Owned Enterprises was issued on 26 November 2003.

2 The Enterprise Law was issued on 12 June 1999.

3 Article 10 of the Enterprise Law.

4 Decision 36 of the Prime Minister dated 11 March 2003.

5 The Law on Foreign Investment in Vietnam was issued on 12 November 1996 and amended on 9 June 2000.

Securities investment fund

*Decree 144 on Securities and Securities Market*⁶ allows the establishment of "securities investment funds" and "fund management companies" involving foreigners. Article 101 of Decree 144 states that foreign securities trading organizations are allowed to contribute capital into and buy shares of domestic companies and to co-operate with domestic companies to establish a securities joint venture company or fund management company. Such establishment must be licensed by the State Securities Commission ("SSC"). Securities investment funds may invest in shareholding companies listed on the stock market.

VietFund Management company is the first such fund management company to be licensed by SSC. It is a joint venture company between Sacombank (70% capital) and Dragon Capital (30% capital). It manages VietFund.

Currently, there is no real estate company listed on the Vietnamese stock market. But when a real estate market develops fully in Vietnam and property companies are listed on the stock market, this may prompt the authorities to allow property funds and property fund management companies to be established.

In the meantime, it may be possible to establish a fund to invest in multiple sectors, including the property sector.

Land fund and land fund development organization

The *Land Law*⁷ contains several provisions on land funds. Most significant are Articles 41 and 63. Article 41 states that the State will decide to recover land and allocate the recovered land to (i) a land fund development organization set up by the people's committee of provinces/central cities (if the recovered land is in urban areas) or (ii) the people's committee of a commune (if the recovered land is in rural areas) for management. Such organization belongs to the State. Article 63 mentions the management of land in the development of the real estate market. Accordingly, the State will organize the registration of land fund development activities.

Under the current draft decree implementing the Land Law, a land fund development organization is authorized to carry out the following activities:

- Manage the land which has been recovered;
- Receive the transfer of land use rights;
- Conduct the land clearance and compensation for relocation in accordance with a land recovery decision;
- Introduce the recovered land as investment location to investors;
- Organize auctions of land use rights.

Clearly, "land funds" and "land fund development organizations" stated in land regulations are different from "property funds" and "property fund management companies" as discussed above.

6 Decree 144 on Securities and Securities Market was issued on 28 November 2003.

7 The Land Law was issued on 26 November 2003 and will become effective on 1 July 2004.

2.2 Labour Recruitment Checklist

Here is a checklist of legal matters that foreign invested enterprises should consider when recruiting staff in Vietnam:

Vietnamese Employees	Notes
1. Publish a prior announcement on mass media of requirements to recruit Vietnamese employees	<p>Announcement (at least 7 days prior to receipt of job applications) to include: (i) trade or profession; (ii) job description; (iii) qualifications required; (iv) number of employees to be recruited; (v) duration of labour contracts; (vi) salary levels; (vii) working conditions; and (viii) "other necessary requirements stipulated by the enterprise."</p> <p><i>In practice, this requirement does not appear to be rigorously followed by employers nor enforced by authorities.</i></p>
2. Sign labour contracts with each Vietnamese employee	<p>Types of labour contract:</p> <ul style="list-style-type: none"> - seasonal labour contract, for jobs with duration of less than 12 months; - definite term labour contract, for jobs with duration of from 12 to 36 months; - indefinite term labour contract, for jobs for which a duration cannot be fixed or those with a duration of more than 36 months. <p><i>Employer cannot sign more than one extension of a definite term labour contract.</i></p> <p><i>A seasonal or definite term labour contract cannot be signed for a permanent position.</i></p>
3. Apply for labour book, wage book and social insurance book for each Vietnamese employee	<p>The DOLISA will issue the labour book. The Social Insurance Agency will issue the social insurance book.</p> <p><i>In practice, wage books do not exist.</i></p>
4. Pay social and health insurance contributions on behalf of Vietnamese employees	<p>Employer is required to make a social insurance contribution equal to 15% of the employee's salary and the employee makes 5% contribution.</p> <p>Employer is required to make a health insurance contribution equal to 3% of the employee's salary and the employee makes 1% contribution.</p>

Foreign Employees	Notes
5. Publish a prior announcement on mass media of requirements to recruit foreign employees in 3 consecutive issues of a central or local daily newspaper	<p>Announcement must give full notice of the job requirements and of "the interests of the employee and of the employer during the process of recruitment, when working, and when ceasing work."</p> <p><i>In practice, this requirement does not appear to be rigorously followed by employers nor enforced by the authorities.</i></p>
6. Obtain work permits for foreign employees	<p>The following foreign employees are exempt from work permit requirement: (i) foreign employees entering Vietnam to work for less than 3 months and to resolve an "emergency situation"; (ii) board members, general director and deputy general director; (iii) head of representative or branch office; and (iv) foreign lawyer with certificate to practise as a lawyer in Vietnam.</p>
7. Sign labour contracts with foreign employees and forward copy to body which issued the work permit for each employee (no need to register)	<p>Written labour contract must be signed, except where the foreign employee is a secondee of an overseas party.</p> <p>The duration of the labour contract may not be longer than that of the work permit. The maximum duration of work permits is 3 years.</p>
8. Submit report in respect of foreign employees for whom work permit is not required	<p>Report must be submitted to the local DOLISA where employer's head office is located at least 7 days prior to the date of commencement of work by employee.</p> <p>Report must state the name, age, nationality, passport numbers, date of commencement and date of termination of work, and the work to be undertaken.</p>
Vietnamese and Foreign Employees	Notes
9. Register collective labour agreement	<p>Collective labour agreement is required where employer organization (including foreign invested enterprise) has a trade union or a provisional trade union executive committee.</p> <p>Article 153 of the <i>Labour Code</i> dated 23 June 1994 (as amended 2 April 2002) requires a trade union must be established in all foreign invested enterprises.</p>

10. Register internal labour rules	Enterprises employing 10 or more employees must have written internal labour regulations which must be registered with the DOLISA. In practice, such rules are prudent, if not necessary, in order to discipline, including terminate, staff without replying on employee – oriented labour laws.
11. Report changes in employment status	Changes in "labour usage" must be reported to the DOLISA.
12. Submit first 6 months report and annual report on status of, and demand for, employment	Prior to 5 July and 5 January each year, employers must provide a report on the status of their employment of workers and their requirements to recruit labour for the first six months of the year, followed by a report for the whole of the year. Reports are submitted to the DOLISA.
13. Confirm that personal income tax for employees has been paid	Where the labour contract signed with the employee provides that the employer will be responsible for paying personal income tax on the employee's behalf (ie where contract stipulates net salary).
14. Declare termination of employment of employees	Within 30 days from the date on which the employer organization ceases its operations, it must submit a report to the DOLISA on the termination of labour usage.

2.3 Anti-Dumping

Ordinance 20-2004-PL-UBTVQH11 Against Dumping of Imported Goods Into Vietnam was passed by the Standing Committee of the National Assembly on 29 April 2004.

Following Ordinance 40 on Prices dated 26 April 2002 and Ordinance 42 on Self-Protection in Import of Foreign Goods into Vietnam dated 25 May 2002, the new Ordinance 20 is the latest limb of Vietnam's developing legal framework to regulate imports in anticipation of the opening of its markets under the terms of the US-Vietnam Bilateral Trade Agreement and its accession to the World Trade Organization.

Ordinance 20 will become effective as of 1 October 2004. (Reportedly, the Ministry of Trade petitioned for Ordinance 20 to become effective as of 1 January 2005, but the National Assembly Chairman Nguyen Van An's recommendation of 1 October as the effective date prevailed.)

Aimed at limiting the adverse impact on domestic manufacturing industries caused by dumping of imported goods in Vietnam, Ordinance 20 prescribes the range of anti-dumping measures which may be applied and stipulates the procedures for investigations and application of such measures.

Goods imported into Vietnam will be deemed to be dumped when they are sold at a price lower than the "normal price". "Normal price" means the comparable price in normal commercial conditions of similar goods which are being sold on the local market of the exporting country or territory. "Similar goods" are goods with all the same features as the dumped goods or, if none, goods which have many basic features the same as the dumped goods. If there are no similar goods or an insignificant quantity of similar goods being sold on the local market of the exporting country or territory, the "normal price" will be either (i) the comparable price of similar goods being sold in normal commercial conditions on the market of a third country or (ii) the reasonable prime cost of goods plus other reasonable expenses and profits at a reasonable level, considered pursuant to each phase from manufacture to circulation on the market of the exporting country or territory or of a third country.

Anti-dumping measures include:

- Application of anti-dumping duty, ie an additional import duty;
- Requirement for an undertaking on measures to eliminate dumping to be given by the organization or individual manufacturing or exporting the dumped goods to Vietnam's State anti-dumping body or to domestic manufacturers if the State anti-dumping body so agrees.

The State anti-dumping body is to be established under the Ministry of Trade and will comprise an anti-dumping investigative body ("ADIB") and an anti-dumping council ("ADC"). The ADIB will conduct investigations, check anti-dumping cases and, where necessary, recommend the application of interim anti-dumping measures. The ADC, comprising a number of standing members and a number of other members appointed on a case-by-case basis, will decide (by majority) whether dumping is proven from the investigation conclusions of the ADIB and, if so, recommend that the Minister of Trade issue a decision on application of anti-dumping duty.

Anti-dumping measures will only be applied after an investigation concludes that:

- (i) *Imported goods have been dumped at a significant dumping margin*: The dumping margin will be significant where the difference between the normal market price of the imported goods and the cost of exporting such goods to Vietnam exceeds 2%;
- (ii) *The volume, quantity or value of dumped goods is significant*: The volume, quantity or value of dumped goods will be insignificant if the volume, quantity or value of goods dumped from any one country is less than 3% of the total volume, quantity or value of similar goods imported into Vietnam, unless the total volume, quantity or value of goods dumped from a number of countries exceeds 7% of the total volume, quantity or value of similar goods imported into Vietnam;
- (iii) *The dumping of such goods directly causes, or threatens to cause, significant loss to a domestic manufacturing industry*: "Significant loss to a domestic manufacturing industry" is defined as a significant reduction or inhibition of growth in the volume, prices, sales, profits, development speed of manufacturing, job creation, investment, and other indicators of a domestic manufacturing industry; or as a situation leading to difficulty in the formation of a domestic manufacturing industry. "Threat to

cause a significant loss to a domestic manufacturing industry" is defined as the imminent, clear and proven capacity that significant loss will be caused to a domestic manufacturing industry.

An anti-dumping investigation may be conducted on the initiative of the Minister of Trade (pursuant to an investigation decision) when there is clear evidence that dumping of goods is causing, or threatening to cause, significant loss to a domestic manufacturing industry. Or an anti-dumping investigation may be requested by the representative of a domestic manufacturing industry (following prescribed procedures). An organization or individual will be deemed to be the representative of a domestic manufacturing industry where (a) the volume, quantity or value of goods they manufacture or represent accounts for at least 25% of the total volume, quantity or value of similar goods of the domestic manufacturing industry, and (b) the volume, quantity or value of goods they manufacture or represent plus that of domestic manufacturers supporting the request for an investigation exceeds the volume, quantity or value of similar goods of domestic manufacturers opposing the request. If the request file is complete, the Minister of Trade must issue a decision to hold an investigation within 60 days of receipt of the file (in special undefined circumstances, this time-limit may be extended up to 90 days). Prior to issuance of an investigation decision, the ADIB must notify the competent authorities of the exporting country or territory of the anti-dumping laws of Vietnam. Within 15 days of the investigation decision, the ADIB must notify such decision to the applicant representative of a domestic manufacturing industry and to the manufacturers, exporters and competent authorities of the exporting country or territory, as well as any other parties concerned.

An anti-dumping investigation will investigate and determine what goods are being dumped into Vietnam and the dumping margin, what significant loss is caused or is threatened to be caused to a domestic manufacturing industry and what is the relationship between the dumping and that significant loss. All concerned parties are obliged to provide information and data as requested by the ADIB. If they fail to do so, the ADIB may issue its decision based on whatever information and data is available. Parties are entitled to request that information be kept confidential by the ADIB. Consultations may be held between the ADIB and the concerned parties, but attendance is not compulsory (Ordinance 20 provides for the interests of any party failing to attend to be protected). The duration of an investigation may not exceed 12 months (in special undefined cases, this may be extended by up to 6 months).

The ADIB must announce its preliminary conclusion on the matters under investigation within 90 days of an investigation decision (in special undefined cases, this may be extended by up to 60 days). Based on a preliminary conclusion of dumping, the Minister of Trade may issue a decision applying interim anti-dumping duty for up to 120 days (if requested by exporters of similar goods, this may be extended by another 60 days). The rate of interim anti-dumping duty must not exceed the dumping margin specified in the ADIB's preliminary conclusion. Payment of interim anti-dumping duty may be secured by a cash deposit or by other means. Alternatively, the Minister of Trade may accept an undertaking from the manufacturer or exporter of goods under investigation to adjust the selling price of the goods or to limit the volume, quantity or value of the goods. Any such undertaking must be publicly announced by the ADIB. If such undertaking resolves the loss, or threat of loss, to a domestic manufacturing industry, the anti-dumping investigation will be suspended. The parties providing such undertaking must periodically provide the ADIB with data and information proving implementation of the undertaking. Failure to implement the undertaking will result in continuance of the anti-dumping investigation or imposition of interim anti-dumping duty.

The Minister of Trade will issue a decision on termination of an investigation if the applicant requesting the investigation voluntarily withdraws its request file or if the ADIB's preliminary conclusion is that there is no dumping, the dumping margin is insignificant, the volume, quantity or value of goods dumped into Vietnam is insignificant, or there is no significant loss or threat thereof to a domestic manufacturing industry.

Upon conclusion of the investigation, the ADIB must announce its final conclusion. This final conclusion is subject to review by the ADC (but Ordinance 20 fails to prescribe the review procedures or time-limit). If no undertaking was given, upon a final conclusion of dumping by the ADIB and if so recommended by the ADC, the Minister of Trade will issue a decision to apply anti-dumping duty. The rate of anti-dumping duty must not exceed the dumping margin specified in the ADIB's final conclusion. Anti-dumping duty may be applied for up to 5 years (this period may be extended if a check by the Minister of Trade concludes that anti-dumping duty should continue to apply). Any decision on anti-dumping duty must be publicly announced.

Ordinance 20 provides for retrospective application of anti-dumping duty where the ADIB's final conclusion confirms there is significant loss or threat thereof to a domestic manufacturing industry and interim anti-dumping duty was applied in the period prior to the final conclusion. Anti-dumping duty may be backdated up to 90 days prior to the date of application of interim anti-dumping duty if the imported goods were dumped and the volume, quantity or value of the dumped goods increased suddenly causing loss which was difficult to remedy to a domestic manufacturing industry. If the final anti-dumping duty rate applied is higher than the interim anti-dumping duty rate, the difference between the two duties will not be collected. However, if the final anti-dumping duty rate applied is lower than the interim anti-dumping duty rate, the difference will be refunded.

If the Minister of Trade issues a final decision not to apply anti-dumping duty, any interim anti-dumping duty already collected or any items used to secure payment of interim anti-dumping duty will be refunded.

If a party concerned in an anti-dumping investigation so requests and the evidence provided by such party so merits, the Minister of Trade may conduct a check of the application of anti-dumping measures, but only after such measures have been applied for one year. A check may also be conducted on the initiative of the Minister of Trade, but only one year prior to expiry of the decision applying the anti-dumping measures. The check will be carried out by the ADIB (as per the procedures applicable to an investigation by the ADIB). The duration of a check of the application of anti-dumping measures must not exceed 12 months from the date of the decision to conduct the check. At the end of a check, the Minister of Trade will issue a decision to continue the applicability of anti-dumping measures, a decision adjusting the rate of anti-dumping duty commensurate with the result of the check, or a decision terminating the applicability of anti-dumping measures.

Any party concerned in an investigation or application of anti-dumping duty and disagreeing with a decision of the Minister of Trade will have the right to complain to the Minister within 60 days from the date of the Minister's decision applying anti-dumping duty. Any complaint must be resolved within 60 days (in special undefined circumstances, this may be extended by up to 60 days). If, upon expiry of this time-limit, the Minister of Trade has not issued a decision resolving a complaint or if the complainant disagrees with the decision of the Minister of Trade resolving the complaint, the complainant will have the right to institute court proceedings. Dispute resolution and dealing with breaches of Vietnam's anti-dumping laws will be implemented in accordance with Vietnamese law, unless an international treaty which Vietnam has signed or acceded to contains different provisions (in which case, such treaty will prevail).

Part 3 Did You Know?

3.1 National Assembly Update

Legislature IX of the National Assembly is currently in session (until mid-June). The following legislation has been passed:

- *Law on Amendment of and Addition to the Law on Credit Institutions:* Passed on 26 May. Effective as of 1 October 2004. As expected, 100% foreign owned banks will be permitted to be established in Vietnam. Also, foreign credit institutions will be permitted to contribute capital to and purchase shareholdings in credit institutions operating in Vietnam in accordance with Government regulations. The autonomy in loan decision-making granted to credit institutions in late 2002 will now be enshrined in the Law on Credit Institutions.
- *Law on Business Bankruptcy (Amended):* Passed on 26 May. Effective as of 15 October 2004. Replaces the 1993 Law on Business Bankruptcy.
- *Law on Inspections:* Passed on 26 May. Effective as of 1 October 2004.
- *Civil Procedure Code:* Passed on 27 May. Effective as of 1 January 2005.
- *Law on Inland Waterway Transportation:* Passed on 27 May.
- *Law on Amendment of and Addition to The Law on Protection, Care and Education of Children:* Effective as of 1 January 2005. Retains the definition of children as Vietnamese citizens under 16 years. The annual budget of the Ministry of Health and of provincial people's committees will include an item to cover costs of medical establishments which provide free health care to children under 6.

The National Assembly has now turned its attention to initial consideration and debate of the following draft laws:

- Law on Electricity
- Law on Competition (debated on 29 May)
- Law on Promulgation of Legal Documents of People's Councils and People's Committees (to be debated on 9 June)
- Law on National Security
- Law on Amendment of and Addition to the Law on Publications
- Law on Amendment of and Addition to the Law on Forest Protection and Development (to be debated on 14 June)

These will be re-drafted and re-submitted to the National Assembly for promulgation at its November 2004 Session.

3.2 Equitization - Latest Policy

Following our update on the latest equitization policy in Part 3.3 of the April 2004 issue of Vietnam Legal Update:

- The Government issued a decision on the pilot equitization of the following State owned corporations:
 - Vietnam Electronic - Informatics Corporation (under the Ministry of Industry);
 - Vietnam Export - Import and Construction Corporation (under the Ministry of Construction);
 - Trade and Construction Corporation (under the Ministry of Transport and Communications).Decision 84-2004-QD-TTg of the Government dated 13 May 2004 will be effective as of 4 June 2004.

- The Deputy Minister of Finance, Le Thi Bang Tam, has been reported as confirming that the Government's Decree 64 on Equitization of State Owned Enterprises would be amended (VNExpress 5 May 2004). The amended Decree 64 would introduce the following reforms:
 - State owned enterprises undergoing equitization may select the form of either land allocation or land lease under the Land Law. However, enterprises engaged in the trade, services and hotel sectors which have a business advantage being land position must convert upon equitization to the land allocation regime. In this latter case, the enterprise would determine the land value on the basis of actual market transfer via auction.
 - As the commercial name of many large State owned corporations is their biggest business advantage, international consultancy companies may be permitted to be engaged to determine the value of that business advantage.
 - To improve transparency and objectivity in valuation, auditing, securities or valuing companies will conduct valuations. The valuation company will be selected by tender. And the valuation results will need to be verified by the competent line body before announcement.
 - State owned enterprises with charter capital above VND20 billion having profitable production and business operations for a number of years prior to equitization must list on the securities market immediately after they make their initial share sale.

- The Director of the Ministry of Finance's Enterprise Finance Department, Mr. Hoang Nguyen Hoc, has reported that only 70 State owned enterprises were equitized in the first quarter of 2004 compared to this year's target of 1,770 (VNExpress 4 May 2004).

- The Ministry of Finance has recently issued the following legislation:
 - Circular 40-2004-TT-BTC dated 13 May 2004 providing guidelines for accounting when converting State owned enterprises into shareholding companies;
 - Circular 43-2004-TT-BTC dated 20 May 2004 providing guidelines for settling losses arising between the time of determination of the value of a State owned enterprise and the time of official conversion into a shareholding company.

3.3 Foreign Invested Shareholding Companies

Since our report in Part 3.3 of the March 2004 issue of Vietnam Legal Update, the deadline for submission of applications for selection to participate in the first round of pilot conversions of foreign invested enterprises into foreign invested shareholding companies has now passed. The Ministry of Planning and Investment has now forwarded 29 applications to the Prime Minister for his approval.

3.4 Administrative Penalties for Environmental Damage

In Part 3.7 of the March 2004 issue of Vietnam Legal Update we reviewed the obligations of land users with respect to environmental damage to land under, inter alia, Decree 26 of the Government dated 26 April 1996.

On 12 May 2004, the Government issued Decree 121-2004-ND-CP on Dealing with Administrative Offences in Environment Protection. Decree 121 replaces Decree 26 as of 7 June 2004.

Under Decree 121, the administrative penalties for environmental damage have generally increased. There are now 4 levels of administrative penalties in relation to damage to land as follows:

- (i) A warning or fine of VND100,000 - 500,000 may be imposed for any act of burying or discarding pollutants not in accordance with regulations on environmental protection;
- (ii) A fine of between VND5 - 15 million may be imposed for the act mentioned in (i) which causes pollution to land;
- (iii) A fine of between VND20 - 35 million may be imposed for the act mentioned in (ii) if the land pollutants contain harmful waste exceeding the permissible limit; and
- (iv) A fine of between VND60 - 70 million may be imposed for the act mentioned in (ii) if the land pollutants contain radioactive substances exceeding the permissible limit.

In addition, the offender must take measures to remediate the damaged land at its own cost.

In addition to the above administrative penalties with respect to environmental damage to land, Decree 121 sets out administrative penalties with respect to registration of environmental impact assessment report not in accordance with the relevant regulations; discharge of waste water, gas, dust, and solid wastes; noise and vibration, air pollution, etc.

Depending on the extent of the breach and damage caused, an offending individual or organization may be subject to warnings or pecuniary penalties and additional penalties (the lowest penalty is VND100,000 and the highest is not more than VND70 million).

A number of offences have been added in Decree 121, such as not registering environmental standards; importing waste material not in accordance with the relevant regulations, and burying or discharge environmental waste improperly.

For areas prone to pollution, such as in industrial zones, a pecuniary penalty of VND3 - 5 million may be applied to enterprises which do not register their environmental impact assessment report, if required to do so; and a pecuniary penalty between VND500,000 and VND10 million may be applied to enterprises that do not comply with contents stipulated in their environmental impact assessment reports.

Other offences like: releasing waste water, dirty gas, or solid substances in excess of the permitted environmental standards and polluting the air and water resources, may be subject to a pecuniary penalty higher than those stipulated in the previous provisions in Decree 26.

3.5 Customs Valuation

Under Decree 60-2002-ND-CP of the Government dated 6 June 2002, the dutiable value of goods imported into Vietnam is now determined in accordance with the principles of the agreement on Implementation of Article 7 of the General Agreement on Tariff and Trade - that is, customs valuation is now based on transaction pricing. Under Circular 118-2003-TT-BTC of the Ministry of Finance dated 8 December 2003, customs valuation based on transaction pricing has applied to imported goods of US and ASEAN origin as of 28 December 2003.

Now, under Official Letters 5326 and 5312 of the General Department of Taxation dated 19 May 2004, customs valuation based on transaction pricing applies to imported goods originating from Australia as of 1 May 2004 and to imported goods from a list of 31 countries, including New Zealand, Spain, Taiwan, Portugal, Hong Kong, Sweden, Mongolia, UK, Norway, Italia, Ukraine, Poland, Austria, Czech, Belgium, Estonia, Denmark, Lithuania, Finland, Latvia, France, Hungary, Greece, Slovakia, Holland, Slovenia, Ireland, Malta, Luxemburg, Cyprus and Germany, as of 6 May 2004.

3.6 Insurance Sector

The Ministry of Finance is currently drafting criteria for entry of new insurance companies into the insurance sector in Vietnam. The criteria are expected to follow the Chinese model and to be issued in June 2004.

According to "VoV", the Vietnam Insurance Company (Bao Viet), the Swiss re-insurer (Swiss Re) and the Vietnam Shipbuilding Industry Corporation (Vinashin) are negotiating the signing of Vietnam's largest insurance contracts for ships under construction. This type of insurance has gained prominence in Vietnam as the shipbuilding industry has begun to expand. In the latest incident, a fire occurred on the under-construction My Hung ship, killing 4 people and injuring 16 others - the ship's insurer Bao Viet paid out compensation worth more than VND200 million. In line with its development strategy up to 2010, Vinashin has increased its ship yard capability to building ships of up to 100,000 tons in capacity, to meet the country's demand for a sea-going fleet and export.

3.7 Copyright Protection at Borders

Copyright owners may register at customs offices for protection of their copyright at bordergates. Interministerial Circular 58-2003-TTLT-BVHTT-BTC of the Ministry of Culture and Information and the Ministry of Finance dated 17 October 2003 (which became effective as of 17 November 2003) entitles copyright owners to register for long-term protection of copyright or protection on a case-by-case basis. Customs offices are responsible for monitoring, identifying and inspecting consignments of goods (both imports and exports) which are suspected of infringing registered copyrights. Customs procedures will be suspended temporarily in respect any consignment suspected of copyright infringement, pending verification of the legal status of copyright in the goods. If a copyright infringement is verified, an administrative penalty will be imposed (expenses and damages may also be payable).

Of particular interest, copyright owners may assist customs offices in the task of copyright protection by:

- providing information relating to their registered copyrights and incoming/outgoing consignments;
- providing training courses for customs officers to recognize lawful copyright goods and copyright-infringing goods;
- providing financial support to customs offices for disposal/destruction of consignments of copyright-infringing goods.

Protection is not available for goods subject to copyright being humanitarian aid, temporary imports for re-export, goods in transit, and goods being gifts which are duty free.