



LEADCO – VIETNAM LEGAL COUNSELLORS

LEADCO – VIETNAM LEGAL COUNSELLORS

MONTHLY REPORT



ISSUE NO. 1109



Banking & Finance
Taxation
Land
Labor
Others

LEGAL UPDATE – NOVEMBER 2009

CONTACT

Pacific Place, Suite 404, 83B Ly Thuong
Kiet
Hoan Kim District, Hanoi, Vietnam
T + 84.4.3942.5633 –
F + 84.4.3942.5632
info@leadcolawyers.com

www.leadcolawyers.com

RECENT NEWS

Circular No. 210/2009/TT-BTC of Ministry of Finance guiding the application of International Accounting Standards on financial reports and information explanation for financial Instruments.

Decree No. 88/ND-CP of the Government on issuance of certificates of land use rights, certificate of home ownership and certificates of other assets attached to the land


Decree No. 98/2009/ND-CP of the Government providing region-based minimum wage rates for foreign invested enterprises, foreign bodies and organizations, international organizations and foreign individuals in Vietnam.

FINANCE - BANKING

Documents	Main contents
<p><i>Circular No. 210/2009/TT-BTC of the Ministry of Finance guiding the application of International Accounting Standards on financial reports and information explanation for financial instruments. Issued on: 06/11/2009. Effected on: 21/12/2009</i></p>	<p>Circular 210/2009/TT-BTC provides the guidance on application of International Accounting Standards in respect of financial reports and information presentation for financial instruments and applies to all business establishments in all economic fields with all sectors in Vietnam having transactions related to the financial instruments.</p> <p>The Circular provides guidance on application of International Accounting Standard No. 32 (IAS 32) in respect of presentation of principles to financial instruments on financial reports and guidance on application of International Financial Report Standards No. 07 (IFRS07). The purpose of this Circular is to give a guidance on explanation of financial instruments in order to help users of financial reports evaluate the effect of such financial instruments on financial situation and business result of business establishments; assessment on nature as well as scope of risk caused by financial instruments and risk management methods of business establishments.</p> <p>This Circular is applied to present and explain the financial instruments on financial reports from 2011 onward.</p>

TAXATION

Documents	Main contents
<p style="text-align: center;">Circular No. 205/2009/TT-BTC of the Ministry of Finance providing guideline on procedures for refund of Value Added Tax on equipments, machineries, specialized transportation vehicles, construction materials, semi-product materials being in technology lines which have not yet been locally produced and in need of importing to form fixed assets of enterprises</p> <p style="text-align: center;">Issued on: 26/10/2009 Effected on: 10/12/2009</p>	<p>Subjects to be refunded with Value Added Tax under this Circular are newly established business establishments from registered investment projects under investment period and have not yet entered into operation; or operating business establishments do have the investment projects of newly established production establishments located in provinces, centrally-run cities apart from provinces, centrally-run cities on which the headquarters of such business establishments are located, under investment period, have not yet entered into operation and have not applied for tax registration; such business establishments must be those which carry out importation of equipments, machineries, specialized transportation vehicles, construction materials, semi-product materials being in technology lines which have not yet been locally produced and in need of importing to form fixed assets and have to meet the following conditions:</p> <ul style="list-style-type: none"> - Business establishments have to register to pay Value Added Tax according to tax deduction method, having their certificates of business registration or investment certificates (practicing licenses) registered; having official seal under the laws, carrying out the storage of accounting records, documents in accordance with law on accounting; having a deposit account in a bank in conformity with the tax code of such business establishments; - Having payable Value Added Tax at import stage over equipments, machineries, specialized transportation vehicles, construction materials, semi-product materials being in technology lines which have not yet been locally produced and in need of importing to form fixed assets valued at 200 million Vietnam Dong (VND) or more.


- 
- The investment projects must belong to important projects examined and approved with regard to investment policies by the National Assembly or investment projects falling into group A stipulated in Article 2 of Decree 12/2009/ND-CP dated 12 February 2009 of the Government on management of work construction investment projects.
 - Investment projects on production and trading on goods and services subject to Value Added Tax only; or investment projects on production and trading on goods and services subject to Value Added Tax and production and trading on goods and services subject to Value Added Tax at the same time.

LAND

Documents	Main contents
<p>Decree No. 88/2009/ND-CP of the Government on issuance of Certificates of land use rights, home ownership and ownership of other assets attached to the land</p> <p>Issued on: 19/10/2009 Effected on: 10/12/2009</p>	<p>According to this Decree, a certificate shall be granted to persons who have the land use rights, home ownership and ownership of other assets attached to the land in each land plot. Where a land user using many agricultural land plots for annual tree planting, lands for forestry, lands for aquaculture and salt productions located in a same commune, a ward, and a town requests to be granted a common certificate for his all land plots, such request shall be satisfied. Where a land plot is used by many land users, homeowners, owners of other assets attached to the land, the certificate shall be separately granted to each land user, homeowner, owner of other assets attached to such land.</p> <p>Land users, owners of assets attached to the land are domestic organizations, religious establishments, foreign organizations, foreign individuals, overseas Vietnamese who carry out an investment project shall submit application dossiers and receive certificates at Land Registration Office under the Department of Natural Resources and Environment; land users, owners of other assets attached to the land who are households, individuals, overseas Vietnamese shall be allowed to own a house in Vietnam; population communities at ward level shall submit application dossiers and receive certificates at Land Registration Office under Division of Natural Resources and Environment at district level; land users, owners of other assets attached to the land who are households, individuals, overseas Vietnamese shall be allowed to own a house in Vietnam, population communities at</p>

	<p>communes, or small towns shall submit application dossiers and receive certificates at Land Registration Office at district level or the People's Committee of a commune or small town where the land or assets attached to the land is located.</p> <p>Regarding the time-limit for issuing a certificate, the decree provides: no more than 50 working days in case of issuance to the certificates of land use rights for the first time and no more than 30 working days in cases of issuance to new certificates together with request for additionally certifying rights to own assets attached to the land and no more than 20 working days applicable to other circumstances under which an issuance is made for the replacement of certificates.</p> <p>This Decree shall take effect as from 10/12/2009. It also repeals the regulations on issuance of land use rights certificates, home ownership and ownership of assets attached to the land as stipulated in other relevant documents.</p>
<p><i>Decree No. 105/2009/ND-CP of the Government providing sanctions for land-related administrative violations</i></p> <p><i>Issued on: 11/11/2009</i></p> <p><i>Effected on: 01/01/2010</i></p>	<p>The Decree details the administrative violations in the domain of land use including: use of land for improper purposes, encroachment and appropriation of land; destruction of land, prevention of land use of others; assignment, conversion, lease, sub-lease, inheritance, donation of land use rights or mortgage, guarantee, capital contribution under the form of land use rights which do not comply with administrative procedures and in accordance with the regulations of the laws on land; take the land use rights transfer without meeting the conditions for such transaction as defined by the land law; do not carry out the registration of initial land use rights; do not carry out registration in respect of change on land use rights; or carry out the registration with improper type of land, do not carry out the</p>

	<p>registration for conversion of land use purposes, do not carry out the registration of extension to land use...</p> <p>The forms of sanctions to administrative violations on land comprise: warnings, fines; extra penalties includes: seizing the exhibits, facilities for administrative violations, revoking the licenses, or land price evaluation certificates; prohibiting performance of consultancy of land use planning and plans.</p> <p>The time-limit to make a decision for sanctioning an administrative violation in the domain of land is 2 years from the date on which a violation is carried out. If such time-limit is expired, the competent authorities shall not have a right to make a decision for sanctioning the violations; instead, they shall apply some measures for remedies.</p> <p>This Decree replaces Decree No. 182/2004/ND-CP dated 29 October 2004 of the Government on sanctioning administrative violations in the land domain.</p>
<p><i>Circular No. 17/2009/TT-BTNMT of the Ministry of Natural Resources and Environment detailing the Certificates of land use rights, home ownership and ownership of other asset attached to the land</i></p> <p><i>Issued on: 21/10/2009</i></p> <p><i>Effected on: 10/12/2009</i></p>	<p>Circular No. 17/2009/TT-BTNMT provides the regulations on uniform of Certificates of land use rights, home ownership and ownership of other assets attached to the land (collectively called “Certificate”)</p> <p>In the case where the area of a land plot belongs to many communes, wards, towns, each part of such land plot which locates in a commune administration unit shall be considered as an independent land plot with a specific code recorded under the cadastral map of commune, ward and town in which each part of the land is actually located.</p> <p>In the case where a land user is not concurrently the owner of assets attached to the land, the cadastral data of the land shall in turn record the land user’s information and owners of assets attached to the land.</p>



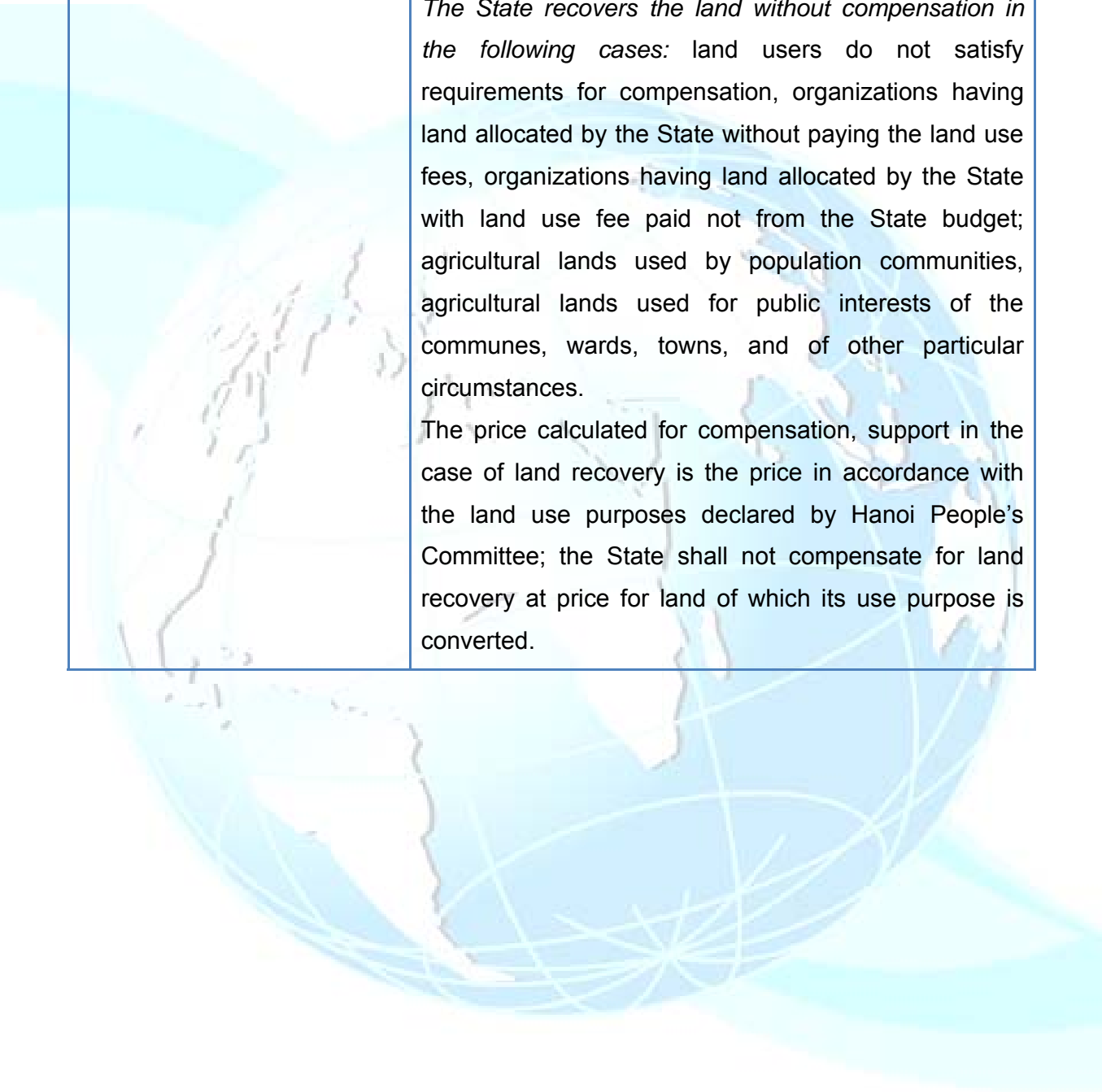
In the case where there are more than one persons using the same land and concurrently being the owners of assets attached to that land, the cadastral data of the land shall record in turn the names of all land users and together with ownership of assets attached to the land specified with a phrase “commonly using the land and owning the assets attached to the land”.

In the case where there are more than one persons using the same land and many owners of assets attached to that land but the land users and owners of assets attached to the land are two different groups of subjects, the cadastral data of the land shall record in turn the names of all land users and the names of all owners of assets attached to the land. Information on each land user shall be recorded as “commonly having the use rights over the land”. Following the information on each owner of assets attached to the land, the data writes “commonly having the rights of ownership to assets attached to the land (specifying the form of lease, form of borrowing...of persons who have the rights to use lands)”.

The Circular also stipulates the disclosure of overseas Vietnamese and foreign individuals who are allowed to own one house in Vietnam. Accordingly, Land Registration Office shall be responsible for making the list of overseas Vietnamese and foreign individuals who purchase a house attached to the land use rights and have completely fulfilled the registration procedures for being issued the certificates of land use rights in order to submit to the Ministry of Construction and the Ministry of Natural Resources and Environment within five (05) working days from the date of handing over the Certificate to the grantees; the General Department of Land Administration shall be responsible for

	<p>summarizing, publicly disclosing the list of overseas Vietnamese and foreign organizations and individuals who purchase houses attached to the land use rights in Vietnam on the website of the Ministry of Natural Resources and Environment.</p> <p>This Circular repeals the Decision No. 08/2006/QĐ-BTNMT of the Minister of Ministry of Natural Resources and Environment dated 21 July 2006 promulgating regulations on land use right certificates; repeals point 2.2; point 2.6 (b), (c); point 2.9 point 2.11 item 2 part III of Circular No. 09/2007/TT-BTNMT; Form 03/DK, Form 04/DK, Form 14/DK, Form 15/DK promulgated together with Circular 09/2007/TT-BTNMT.</p>
<p><i>Circular No. 19/2009/TT-BTNMT of the Ministry of Natural Resources and Environment detailing planning, adjustment and evaluation of land use planning and plan</i> <i>Issued on: 02/11/2009</i> <i>Effected on: 17/12/ 2009</i></p>	<p>This Circular detailing the procedures, contents of establishment, adjustment and evaluation of land use planning and plan at the national level; of the provincial level and centrally-run cities; of the district, urban district, township, cities under the provincial level; of the level of commune, ward, town and announcement, storage of land use planning, plan recordings.</p> <p>Procedures, contents of land use planning and plan for the initial period (first 5 years) of land use planning period shall include the following steps: investigation, analysis, assessment of natural, economic, social conditions; evaluation of land use status and land use variation, result of performance of previous land use plan and establishment of land use status map; evaluation of land potentials and long term orientation on land use; establishment of plans on land use; evaluation on impact of land use plan to economy, society and environment; proposal of resolutions for performance of use land planning and plan...</p> <p>Procedures, contents of use land planning and plans for the ending period (last 5 years) of land use planning</p>

	<p>period shall include the following steps: investigation, collection of information and data; analysis, evaluation of performing result of initial land use plan; establishment of ending period land use plan; proposal of resolutions for performance of ending period land use plan...</p> <p>Circular No. 19/2009/TT-BTNMT replaces Circular No. 30/2004/TT-BTNMT of the Ministry of Natural Resources and Environment dated 01 November 2004 guiding establishment, adjustment and evaluation of land use plannings and plans.</p>
<p><i>Decision No. 108/2009/QD-UBND of Hanoi People's Committee promulgating regulations on compensation, support and resettlement when the State recovers the land located in the area of Hanoi</i></p> <p><i>Issued on: 29 September 2009</i></p> <p><i>Effected on: 01 October 2009</i></p>	<p>Decision No. 108/2009/QD-UBND provides principles in respect of land compensation. Specifically: the State shall make compensation to land users who satisfy conditions which are entitled to compensation; where the land users do not satisfy conditions for compensation, an assistance shall be made accordingly; a land user whose land is currently being used for a particular purpose shall be entitled to compensation with the value of land use rights calculated at the time of recovery decision in cases of land recovery carried out by the State.</p> <p><i>The State shall make compensation for land recovery in one of the followings cases: land users whose lands are recovered have already obtained certificates of land use rights, having decisions on land allocation issued by the competent State authorities in accordance with the land laws; households, individuals who have been using land stably without disputes certified by the People's Committee of communes, wards, district towns, holding one of other documents specified in this Decision; population communities have been using land with communal houses, temples, shrines, hermitages, worship halls, ancestral temples</i></p>



certified by the People's Committee at commune level where the land is located, certified for common use by the communities, being free from disputes; and organizations using land in particular cases...

The State recovers the land without compensation in the following cases: land users do not satisfy requirements for compensation, organizations having land allocated by the State without paying the land use fees, organizations having land allocated by the State with land use fee paid not from the State budget; agricultural lands used by population communities, agricultural lands used for public interests of the communes, wards, towns, and of other particular circumstances.

The price calculated for compensation, support in the case of land recovery is the price in accordance with the land use purposes declared by Hanoi People's Committee; the State shall not compensate for land recovery at price for land of which its use purpose is converted.

LABOR

Documents	Main contents
<p><i>Decree No. 97/2009/ND-CP of the Government providing region-based minimum wage rates for employees working for [Vietnamese] companies, enterprises, co-operatives, co-operative groups, farms, family households, individuals and other Vietnamese organizations which employ laborers Issued on: 30/10/2009 Effected on: 01/01/2010</i></p>	<p>The region-based minimum wage rates under this Decree shall apply to: companies established, organized, managed and operating under the Law on State Owned Enterprises; single-member limited liability companies of which the State owns 100% of their charter capital; enterprises established, organized and operating under the Law on Enterprises; co-operatives, co-operatives federation, co-operative groups, farms, family households, individuals and other Vietnamese organizations which employ laborers.</p> <p>The region-based minimum wage rates under this Decree includes: 980,000 VND/month, 880,000 VND/month, 810,000 VND/month applied to enterprises which are located in areas correlatively being as area I, II and III stipulated in this Decree. The Decree also provides that the minimum wage rate which is 7% higher than the region-based minimum wage rate shall be applied to skilled laborers who have passed the vocational training courses.</p> <p>This Decree repeals the Decree No. 110/2008/ND-CP of the Government dated 10 October 2008 providing region-based minimum wage rates for Vietnamese employees working in Vietnamese companies, enterprises, cooperatives, co-operative groups, farms, family households, individuals and other Vietnamese organizations which employ laborers.</p>
<p><i>Decree No. 98/2009/ND-CP of the Government providing region-based</i></p>	<p>The Decree provides the region-based minimum wage rates applied to pay laborers doing the simplest work in normal working conditions in foreign invested enterprises, foreign bodies and organizations, international organizations and foreign individuals in</p>

minimum wage rates for Vietnamese employees working for enterprises with foreign invested capital, foreign bodies and organizations, international organizations and foreign individuals in Vietnam

Issued on: 30/10/2009

Effectuated on: 01/01/2010

Vietnam. Specifically, the levels of: 1,340,000 VND/month, 1,190,000 VND/month, 1,040,000 VND/month, and 1,000,000 VND/month shall be applied correlatively to area I, II, III, IV stipulated in this Decree. The minimum wage rate which is 7% higher than the region-based minimum wage rate shall be applied to laborers who have passed the vocational training courses.

The Decree repeals Decree No. 111/2008/ND-CP of the Government dated 10 October 2008 providing minimum wage rates for Vietnamese employees working in foreign invested enterprises, foreign bodies and organizations, international organizations and foreign individuals in Vietnam.

NATURAL RESOURCES – ENVIRONMENT

Documents	Main contents
<p><i>Circular No. 22/2009/TT-BTNMT of the Ministry of Natural Resources and Environment providing regulations on exploration, gradation of reserves and resource of argillite-rock mines</i></p> <p><i>Issued on: 11/11/2009</i></p> <p><i>Effectuated on: 01/01/2010</i></p>	<p>Circular No. 22/2009/TT-BTNMT provides requirements on exploration, gradation of reserves and resources of argillite-rock mines, applied to the State administrative bodies on minerals, organizations carrying out basic geological investigation on mineral resources; organizations, individuals carrying out the survey, exploration, exploitation of minerals and other organizations and individuals relating to survey, exploration and exploitation of argillite-rock mines. (Argillite-rock is a type of rock established mainly by argillite-minerals including hydromica, caolinit, montmorilonit, palugorkit...), with their diameters no bigger than 0,01 mm).</p> <p>The Decree provides the detailed requirements on activities relating to argillite-rock mines such as assessment of minerals and their useful compositions attached, requirements on study on quality of argillite-rocks, requirements on study on hydrogeology and work-geology, requirements of assessment on pollution level and environment effects; requirement on study on technique conditions for mine exploitation, tasks of estimating the reserves and resources of argillite-rocks; requirement on highest level of reserves and rates of reserves of argillite-rocks...</p> <p>Circular 210/2009/TT-BTNMT replaces the norm of use; gradation of reserves of argillite-rock mines promulgated attached to the Decision No. 28/QDHD of the President of the Mineral Reserves Approval Council on 21 December 1978.</p>

CUSTOMS

Documents	Main contents
<p style="text-align: center;"><i>Decision No. 2238/QĐ-TCHQ of the General Department of Customs promulgating the Guide on procedures for handling of the administrative violations, solving complaint on administrative decisions relating to handling of the administrative violations in domain of customs and the Instruction to use the form of minutes, decisions on handling of administrative violations and coercing the implementation of administrative decisions in the domain of customs</i></p> <p style="text-align: center;"><i>Issued on: 10/11/2009</i></p> <p style="text-align: center;"><i>Effected on: 25/11/2009</i></p>	<p>The Decision provides that all administrative violations in the domain of customs shall be uniformly dealt in accordance with principles, procedures, formalities stipulated in the Ordinance of Handling of Administrative Violations and other amended/supplemented and guiding documents for its implementation which are relevant.</p> <p>The procedures for handling of administrative violations in the domain of customs include: simple handling which applies to minor violations. Specifically, the persons who have the jurisdiction for handling of violations shall make the decision on the spot in accordance with the forms of warnings or fines which are up to 200,000 VND. With regard to violations for which simple handling are not applied as above-mentioned, the minutes on the sanctions of violations shall be made and recorded in books for monitoring the violations in the domain of customs.</p> <p>The time-limit to make a decision on handling of an administrative violation is ten (10) days from the date on which the minutes on handling of that administrative violation is made, and 30 days applicable to complicated cases. In the case where it is necessary to extend time for verifying, collecting evidences to make sanctioning decisions, the time-limit shall be extended to 30 days.</p> <p>Settlement of complaint on administrative decisions relating to handling of administrative violations in customs domain shall include the following steps: receiving complaints, checking contents of complaints, verifying the complaints, suggesting the resolutions to complaints, making decisions on complaint settlements,</p>

	and announcement of result of settlements to complaints
--	---



TRANSPORT AND COMMUNICATIONS

Documents	Main contents
<p><i>Decree No. 104/2009/ND-CP of the Government promulgating list of dangerous goods and transportation of dangerous goods by the road traffic vehicles</i> <i>Issued on: 09/11/2009</i> <i>Effected on: 31/12/ 2009</i></p>	<p>Dangerous goods as defined in this Decree shall be classified into categories, groups together with codes specified by the United Nations and warning codes, including: explosives, explosive and industrial explosive materials, inflammable gas, unflammable, non-noxious gas, noxious gas; inflammable liquids and high deoxidized liquid explosives, inflammable substances, self-reactant substances, high deoxidized solid explosives; oxidants, oxide-organic substances, noxious substances, infecting substances, radioactive substances, eroded substances, other noxious substances and goods.</p> <p>Transportation of dangerous goods as defined above must strictly comply with following provisions: the drivers of vehicles must be trained and obtained certificates on transportation of dangerous goods that they are responsible for transportation; the storekeepers, escorts must be trained on keeping and storage of dangerous goods that they are responsible for; the transportation vehicles of dangerous goods must be quipped with qualified specialized devices and stuck with dangerous stickers of such categories, group of goods.</p> <p>The Decision also provides the specific responsibilities of deliverers, transporters during the transportation of dangerous goods.</p> <p>The Ministry of Public Security, the Ministry of Science and Technology, the Ministry of Health, the Ministry of Agriculture and Rural Development have authority to grant certificates of transportation of dangerous goods with each kind of goods respectively. The term of transportation certificate is granted in accordance with</p>

	each shipment of goods or a particular duration with no more than 12 months.
--	--



DISCLAIMER

This legal update is a guide offered by Leadco – Vietnam Legal Counsellors to provide information for the business and investment environment in Vietnam. The information and quotations in this legal update are of generic in nature and not intended to provide as a substitute for professional legal advices. In no event shall Leadco be liable for any cost or direct, indirect, special, incidental or consequential damages arising out of or in connection with the use of this legal update.

For further information relating to this legal update mentioned in this issue, please do not hesitate to contact Leadco – Vietnam Legal Counsellors at: info@leadcolawyers.com or visit our website: www.leadcolawyers.com

Leadco – Vietnam Legal Counsellors

