

Enterprise registration in Vietnam – IPRs contributed as capital and IPRs as part of an enterprise name



By Nguyen Hai Yen

Similar to the former 2005 Law on Enterprises, the new Law on Enterprises No. 68/2014/QH13 dated November 26, 2014 (New LOE 2014) allows the contribution of intellectual property rights (IPRs) to count as capital of an enterprise.

Yet Articles 35 and 37 of the New LOE further clarify that the IPRs contributed as capital upon the enterprise establishment must be valued by all members, founding shareholders on an agreed basis, or in case it is valued by a professional price evaluation organisation, the valued price shall be approved by a majority of members or founding shareholders. For IPRs contributed as capital during the course of the enterprise operation, it shall be valued on the basis of agreement between the owner or the members' council in the case of a limited liability company or partnership or the board of management in the case of a shareholding company on the one hand and the person contributing capital contribution on the other hand, or where it is valued by a professional price evaluation organisation, the valued price shall be accepted by the enterprise and the person contributing capital contribution. In principle, if the IPRs (assets contributed as capital) are valued at more than their actual value, the relevant persons of enterprise approving such the valued price shall be obliged to further jointly contribute capital for the different amount between valued/accepted price and actual price of the IPRs.

IPRs contributed as capital may comprise copyright, copyright-related rights, industrial property rights, rights to plant varieties and other intellectual property rights in accordance with Law on Intellectual Property No. 50/2005/QH11, dated November 29, 2005, as amended by Law No. 36/2009/QH12, dated June 19, 2009 (IP Law), and only the legal owners of the IPRs are permitted to contribute such rights as capital of an enterprise. The recordal procedure of assignment of ownership for

patent rights, industrial design rights, integrated circuit layout designs rights, trademark rights, geographical indications, plant variety rights, and the making of minutes on contribution of IPRs as capital is required for IP objects for which the registration of rights ownership is not required.

Regarding enterprise names, Decree No. 78/2015/ND-CP, dated September 14, 2015, on enterprise registration (Decree 78) provides that the use of protected trade names, trademarks, geographic indications to constitute the enterprise individual names without the consent from the owners thereof is prohibited.

The basis for considering whether an enterprise name infringes IPRs of another person shall be in accordance with the IP Law. An

enterprise name which infringes IPRs of another person shall be changed at the request of the licensing authority that, in turn, has been informed of such infringement by the IPRs owner. As regulated, the time limit for such enterprise to change its name is two months as from the requesting date by the licensing authority, and otherwise, the enterprise will be handled by the competent authorities in accordance with the IP Law. The business registration certificate of an enterprise with the name in infringement of IPRs of another person may be revoked by the licensing authority in case where it does not implement the change of its name or removal of infringing

elements from its name under the decision on administrative sanction issued by the competent authorities.

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