

ALERT ON LAW ON ENTERPRISES AND LAW ON INVESTMENT 2020

Update the notable contents of
the Law on Enterprises
No. 59/2020/QH14 and Law on
Investment No. 61/2020/QH14

29 July 2020



What's new?

- On 17 June 2020, the National Assembly ratified the **Law on Enterprises No. 59/2020/QH14** ("Law on Enterprises 2020") and **Law on Investment No. 61/2020/QH14** ("Law on Investment 2020") with new changes that set out favorable conditions for enterprises at the market entry stage, as well as investment and business operation in general.
- The Law on Enterprises 2020 and Law on Investment 2020 **will take effect from 01 January 2021** (except for some points in the Law on Investment 2020), and **replace** the current Law on Enterprises No. 68/2014/QH13, Law on Investment No. 67/2014/QH13.

Notable changes

Law on Enterprises 2020 has 218 articles and 10 chapters, with some notable changes as follows:

1. Clarify and abolish some administrative procedures such as the process of enterprise registration on electronic portal, abolish the procedures for seal sample notification and reports on changes of enterprise manager's information;
2. Clarify some points on corporate governance of limited liability company and joint stock company (legal representative, time limit for capital contribution in form of assets, rights of ordinary shareholders, board of supervisors);
3. Introduce a definition of non-voting depositary receipt and regulation on bond issuance;
4. Expand the definition of state owned enterprise;
5. Separate regulations for business households;
6. Enterprise restructuring.

Law on Investment 2020 has 77 articles, 07 chapters and 04 appendixes, with some major changes as follows:

1. Simplify administrative procedures such as buying shares, capital contribution, the ownership threshold of foreign investors;
2. Procedures for investment project implementation: investment project adjustment, extension, capital assessment, termination of investment projects;
3. Amend the power of authority to approve investment policy;
4. Amend the list of conditional/prohibited business lines/sectors;
5. Investment incentive (supplement forms of incentives, beneficiaries, business lines, special incentives and supports for investment projects).

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Law on Enterprises 2020

1. Administrative procedures

Enterprise registration via electronic portal (Article 26)

- Guidance on enterprise registration via electronic portal is more detailed. Accordingly business owners may apply for online enterprise registration with soft-copy of dossiers (no more submission of hard-copy dossiers as currently required).

The company seal (Article 43)

- Law on Enterprises 2020 provides guidelines on the use of company seal under the form of digital signature according to the Law on electronic transactions, and abolishes the requirement on notification of seal samples before official use.
- The enterprise shall decide itself on the seal type, quantity, form and content of the seal of the enterprise, branch, representative office and other units.

2. Corporate governance of limited liability company and joint stock company

Legal representative of the enterprise (Article 12)

- If the scope of rights and obligations of each legal representative are not specified in the company's charter, then each legal representative of the company is a lawful representative of the enterprise towards third parties, and is jointly liable for damages caused to the enterprise in accordance with the civil law and other relevant laws.

Capital contribution in form of assets (Articles 47, 75, 113)

- The term of capital contribution in form of assets will not include the time for transporting, importing the assets or performing administrative procedures to transfer ownership of the assets.

Rights of ordinary shareholders (Article 115)

- Requirement of minimum percentage of shared ownership is reduced from 10% to 5% while the requirement for the continuous ownership period of shares is removed for shareholders and groups of shareholders in exercising a number of important rights such as accessing corporate information, and the convening of the General Meeting of Shareholders.

Corporate governance structure (Articles 54, 79, 137)

- Establishment of the Board of Supervisors for limited liability companies is no longer required, except for one-member limited liability companies owned by a state owned enterprise, and limited liability companies with two or more members which are a state owned enterprise or subsidiary of a state owned enterprise.

3. Capital mobilization

Types of shares (Article 114)

- The Law on Enterprises officially introduces the concept of non-voting depositary receipt, which are eligible to benefits and obligations corresponding to ordinary shares, except voting rights.

Bond issuance (Articles 46, 74, 128, 129)

- Limited liability company is officially included in the list of enterprises entitled to bond issuance under the provisions of the Law on Enterprises and relevant laws.
- The law also supplements the regulations on the private placement of bonds applicable to non-public joint stock companies.

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Law on Enterprises 2020 (cont'd)

4. State owned enterprises

Definition of state owned enterprise (Article 4, Article 88)

- State-owned enterprise is defined as an enterprise where the State holds more than 50% of either charter capital or total number of voting shares.

5. Household business

Registration and operation (Article 217)

- Household business is not governed under the Law on Enterprises. The Government will further specify the registration and operation of household business in separate regulation.

6. Enterprise restructuring

Reference to Competition Law (Articles 200, 201)

- Instead of specifying the circumstances in which an enterprise is prohibited from or required to notify in prior to conducting a merger or acquisition, the Law on Enterprises 2020 refers to the Law on Competition, whereby the merged company must ensure full compliance with the provisions of the Law on Competition.

Conversion of private enterprise (Article 205)

- Conversion of private enterprise into a joint stock company or partnership is now allowed.

Right and obligation of enterprise after restructuring (Article 198 - 205)

- The Law emphasizes the inheritance of all legal obligations, rights and interests for new companies, separated companies, consolidated company, and acquiring company, converted company according to the company's decision and regulations upon restructuring.

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Law on Investment 2020

1. Administrative procedures

Establishment of economic organization (Article 22)

- Foreign investors are not required to have an investment project and follow the procedures for investment registration certificate issuance, before establishing small and medium-sized start-up enterprise or start-up investment funds.

Foreign ownership thresholds for economic organizations subject to the regulations on investment to foreign investors (Article 23)

- Economic organizations with foreign investors holding more than 50% of charter capital (instead of 51% and more as before) are required to meet the conditions and carry out investment procedures for foreign investors.

Procedures for capital contribution, purchase of shares or contributed capital by foreign investors (Article 26)

- Foreign investors must register for capital contribution, share purchase and capital contribution purchase if the transaction:
 - ✓ Increases the ownership of foreign investor in an economic organization operating in sectors with conditional market access; or
 - ✓ Increases the charter capital owned by foreign investor from 50% or below to over 50%, or in case foreign investor already owns more than 50% of charter capital prior to the capital transaction; or
 - ✓ Is in an economic organization granted land use right certificate in areas having national defense and security impacts.

2. Procedures for implementation of investment projects

Adjustments of investment projects (Article 41)

- The Law specifies the investor's right in adjustment of the objective, scale and content of investment project; merger, separation of investment project; change of investor; party or wholly transfer of investment project and other contents.
- Cases which requires modification of investment registration certificate and investment approval are also provided.
- The Law also clarifies cases where the investment schedule is allowed to be extended for more than 24 months.

Extension of investment project duration (Article 44)

- Upon expiry of the project term, if the investor would like to continue implementing the project (except for projects using outdated or potentially dangerous technologies causing environmental pollution, etc.), then the extension shall be considered but not exceeding the maximum time limit prescribed by the Law on Investment.

Assessment of investment capital (Article 45)

- Investment capital appraisal might be required in certain cases to determine tax liability determination.

Termination of investment projects (Article 48)

- Competent investment authorities are allowed to terminate wholly or partly an investment project if the investor carries out investment activities under counterfeit civil transactions, in accordance with civil law.

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Law on Investment 2020 (cont'd)

3. The authority to approve investment policy

The Prime Minister's authority to approve investment proposal (Article 31)

- The Prime Minister's approval is no longer required for investment project having VND 5,000 billion and above of capital, or project of oil and gas exploration and exploitation.
- The Law also supplements the Prime Minister's authority to approve an investment project that is concurrently subject to approval from two (02) provincial People's Committees or more.
- Additional and detailed guidance on certain types of investment project subject to the Prime Minister's approval is also provided, such as new construction investment projects related to airports and ports; housing investment projects (for sale, lease, lease purchase), urban area projects.

The provincial People's Committee authority to approve investment proposal (Article 32)

- Provincial-level People's Committee is mandated to approve investment proposal for golf project, housing investment projects (for sale, for rent, for lease-purchase), urban area projects which are not under the Prime Minister's authorization.

4. Business sectors

Prohibited business (Article 6)

- Debt collection service is included in prohibited business list.

Conditional business sector (Appendix IV)

- Law on Investment 2020 has 227 conditional business lines (reduced from 243 lines under the current Law on Investment);
- A number of business are removed from the list of conditional business sector such as franchising, logistic services, shipping agency services, etc.;
- Addition of some conditional business for State management purposes and ensuring consistency with relevant laws: trading of clean water, architecture services, imported press release, etc.

List of business sector and condition for market access for foreign investor (Article 9)

- The Government shall announce the List of business sectors with restricted market access for foreign investors, including (a) Sectors that have not been committed to the market access and (b) Sectors subject to market access condition. Except for these two lists, foreign investors are subject to the conditions of market access similar to domestic investors.
- Accordingly, market access condition will be based on the foreign investor's charter capital ownership, type of investment, scope of investment activities, capacity and other conditions.

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Law on Investment 2020 (cont'd)

5. Investment incentives

Forms of investment incentives (Article 15)

- New forms of investment incentive are introduced e.g. rapid depreciation, increasing deductible expenses when calculating taxable income.

Investment projects eligible to incentives (Article 15)

- List of investment projects eligible for incentives is amended to align with tax laws and other relevant laws such as, projects having VND 6,000 billion or more of investment scale, projects having transfer of encouraged technologies, innovative start-ups, centers for innovation and creation, etc.

Sectors eligible to investment incentives (Article 16)

- The number of investment and business sectors entitled to incentive is increased e.g. production of products formed from scientific and technological results in accordance with the provision of Law on science and technology; university education; manufacturing of medical equipment; production of goods and provision of services which create or join value chains and industry clusters.

Supplement special incentives and investment supports (Article 20, 75)

- The law introduces a mechanism which allows Government approval on special investment incentives and support to encourage the development of a number of investment projects with great socio-economic impacts, including:
 - Investment projects (including the expansion of such project) to establish innovation centers, research and development centers which have total investment capital of VND 3,000 billion or above and disburse at least VND 1,000 billion within 03 years from investment registration certificate issuance or investment approval; national innovation center established by decision of the Prime Minister; and
 - Investment projects in sectors subject to special investment incentives which have investment capital of VND 30,000 billion or above and disburse at least VND 10,000 billion within 03 years from the investment registration certificate issuance or investment approval.
- The Law on Investment 2020 also amend the incentive cap in Laws on Corporate Income Tax for such investment project with special support (i.e. reducing preferential tax rate, increasing duration of preferential tax rate, tax exemption and reduction). The specific incentive plan will be approved by the Prime Minister.



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