



LEGAL UPDATE

LAW ON INVESTMENT 2020 APPROVED

On 17 June 2020, the National Assembly of Vietnam officially approved the new Law on Investment (**LoI 2020**) with 92.34% of the votes. The LoI 2020 was approved after multiple consultations with the public and discussions at the National Assembly meetings since its 1st draft was introduced early 2019. The LoI 2020 will come into effect on 1 January 2021.

The draft for the Law on Enterprises was also approved. As the laws were split before they were approved, we will highlight the important changes of the revised Law on Enterprises (**LoE 2020**) in a separate update.¹

In this update, we will set out the new key changes which have not been proposed under or which have been amended in comparison with the 3rd draft of the law amending and supplementing several articles of the Law on Investment and the Law on Enterprises (**3rd Draft**).²

1. Prohibited and Conditional Business Sectors

With regards to debt collection services, there were 2 contrary opinion streams when discussing the 3rd Draft. However, given the negative side of this type of business, the National Assembly decided to add debt collection services to the list of prohibited business sectors. Accordingly, any debt collection services contract signed before the effective date of the LoI 2020 shall terminate on the effective date of the LoI 2020 (i.e. 1 January 2020). Therefore, concerned parties should take note of this regulation to promptly carry out the liquidation of debt collection service contracts in accordance with the laws. Further to the changes proposed under the 3rd Draft, the LoI 2020 adds 1 business line to the list of conditional business sectors: clean water supply and removes 11 business lines from the list of conditional business sectors. The reason clean water supply was added, is as it is considered necessary to ensure social security and health, especially

after the scandal over polluted water supply in Hanoi and Hoa Binh that happened last year.³ The abolition of the conditional business lines, such as for example, HIV testing services; tissue bank services; childbirth assistance, sperm preservation, embryo preservation services; infectious microorganism testing services; vaccination services; plastic surgery services are sub-lines of business line: medical examination and treatment services, is done with the intention to optimise the list of conditional business sectors as these business lines in fact were already covered by the description of another business line.

2. Investment Procedures

2.1 Law on Securities

Pursuant to the 3rd Draft, the Law on Securities shall prevail in governing the conditions and procedures for contributing capital, purchasing and selling shares in a public company, as well as the ownership ratio applicable to foreign investors in a public company. Of note, this regulation no longer exists in the LoI 2020, but is covered by the new Law on Securities 2019 which also will come into effect on 1 January 2021.⁴ The Law on Securities stipulates in particular that “*Foreign investors and foreign-invested economic organisations that participate in Vietnam’s securities market shall comply with regulations on foreign ownership ratio, investment conditions and procedures in accordance with the laws on securities and securities market.*”

2.2 Definition of Foreign Invested Enterprise

Under the LoI 2020, an economic organisation with foreign investment capital (**FIE**) shall comply with the same investment conditions as those applicable to foreign investors if more than 50% of its charter capital is held by:

- a. a foreign investor or investors;
- b. enterprise(s) under a. above; or

¹ Please read our update [Law on Enterprises 2020 Approved](#).

² Please read our update [Proposed Changes to Improve Investment Climate in Vietnam](#) for more information.

³ “PM asks Hoa Binh and Hanoi to tackle water pollution”, 16 October 2019, [SaigonTimes](#).

⁴ See for more information our update [2019 Law on Securities Expected To Develop Vietnam’s Securities Market](#).



c. a combination of foreign investor(s) and enterprise(s) under a.

The Loi 2020 amends the foreign ownership ratio for determining if an FIE needs to comply with the investment conditions applicable to foreign investors. This ratio is reduced from *at least 51%* to *more than 50%* in comparison with the current law and the 3rd Draft. This adjustment is to comply with international practices related to the spirit of the simple majority principle and consistent with the approach in the LoE 2020 on determining the ownership ratio in an enterprise⁵.

2.3 M&A Approval

Under the Loi 2020, the requirement of obtaining an M&A approval when contributing capital, acquiring shares or capital contribution in economic organisations in Vietnam, applies in the following circumstances:

- An increase of foreign ownership ratio in the target economic organisation operating in business sectors listed in the list of conditional market access business sector applicable to foreign investors;
- The capital contribution or acquisition of shares or acquisition of capital contribution results in the fact that
 - the (deemed) foreign investor holds more than 50% of the charter capital of the target economic organisation, including an increase of foreign ownership ratio from less than or equal to 50%, to more than 50% of its charter capital; or
 - an increase of foreign ownership ratio in the target economic organisation where foreign ownership ratio is currently more than 50% of the charter capital;
- The target economic organisation has a certificate of land use right on an island; areas of a commune, ward and township adjacent to the border of a country or the sea; or other areas having an impact on national security and defence.

Most amendments were also proposed under the 3rd Draft. However, in the Loi 2020 the foreign ownership ratio will be consistent with the definition mentioned in paragraph 2.2.

3. Investment Incentives

3.1 Forms

The Loi 2020 introduces new forms of investment incentives, including application of accelerated depreciation, increasing the level of deductible expenses when calculating taxable income and other incentives in accordance with the Law on Corporate Income Tax (**Law on CIT**). This will create a more favourable investment climate.

3.2 Extraordinary Investment Incentives

The Loi 2020 stipulates an exceptional incentive regime for the projects which are considered as having significant socio-economic impact, such as:

- New establishment of R&D or innovation centres with a total investment capital of at least VND3,000 billion (~USD128,205,128) and a minimum capital amount of VND1,000 billion (~USD42,735,043) being disbursed within 3 years from the issuance date of the Investment Registration Certificate (**IRC**) or the approval date of the investment policy (including expansion of an existing investment project); new establishment of national innovation centres under the Prime Minister's decisions (including expansion of an existing investment project);
- Investment projects in business lines eligible for extraordinary investment incentives having a total investment capital of at least VND30,000 billion (~USD1,282,051,282) and a minimum capital amount of VND10,000 billion (~USD427,350,427) being disbursed within 3 years from the issuance date of IRC or the approval date of investment policy.

In the 3rd draft Loi, the Government would decide the level of the extraordinary incentives and the period for application of these. In particular, the extraordinary incentives shall not exceed 50% of the highest level of the incentive policy in accordance with the law and the period for application of such incentives shall not exceed 50% of the highest level of the period for application of investment incentives in accordance with the law or exceed the project implementation period. The Loi 2020 sets no ceiling on extraordinary incentives policies, but only refers to the Law on CIT and Land Law. Accordingly, the Loi 2020 supplements

⁵ Please see our update [Law on Enterprises 2020 Approved](#) for more information.



some provisions to the Law on CIT applicable to investment projects as prescribed earlier in this section.

This provision on extraordinary investment incentives is new in comparison with the current law and is expected to attract more foreign investment in Vietnam.

4. Periodical Reporting Regime of Investment Activities

The Loi 2020 abrogates the requirements on monthly reporting to the investment registration authority and statistic authority in relation to the implementation status of an investment project. As such, investors and economic organisations implementing investment projects in Vietnam shall only report on a quarterly and annual basis, which helps reducing administrative procedures, saving time and costs as well.

5. Amendment of the Law on Real Estate Business

To ensure the consistent and effective implementation of the regulations related to investment, the Loi 2020 supplements some provisions on amendments and additions to other relevant laws. Most notably, the provision on conditions applicable to organisations and individuals engaged in the real estate business, which is amended under the Loi 2020 as follows: *“Any organisation or individual engaged in real estate business must establish an enterprise or cooperative (hereinafter referred to as enterprise), except for the cases stipulated in clause 2 of this article”*. It appears that the Loi 2020 abolishes the condition on legal capital (i.e. VND20 billion or ~USD854,700). This is expected to encourage investments in real estate projects and will have a positive impact on the real estate sector, especially as the threshold of VND20 billion would be a large sum for small scale projects.

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