

# LEGAL UPDATES

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## **1. Shortcomings in Law on Investment 2014 and relevant amendments in Law on Investment 2020**

### *Restriction on capital contributions to partnerships*

Vietnam has become an attractive investment destination for foreign investors. Thus, the Government creates chances for foreign investors entering Vietnam's market by contributing capital to business organizations, buying shares or capital contributions of business organizations. Point c Clause 2 of Article 25 of Law on Investment 2014 has restricted the right of foreign investors to purchase of capital contributions from general partners in partnerships. Whereas, Law on Enterprises 2014 allows general partners to transfer part of or all of his/her shares to another person/organization if other general partners agree, without any restriction relating to subjects that are allowed to purchase. It means that foreign investors can buy capital contributions of partnerships from general partners also. Law on Investment 2020 and Law on Enterprises 2020 keep these provisions unchanged. Therefore, this contradiction among legal documents still exists.

### *Application principles of Law on Investment*

Article 4 of Law on Investment 2014 was still ambiguous in the regulations on the governing scope and application principles (e.g., provisions on the solution if there are discrepancies in governing regulations between Law on Investment and any other laws) and only within a small range (i.e., on banned business lines, conditional business lines, or investment procedures).

Law on Investment 2020 regulates supplementary provisions in Clauses 3 and 4 of Article 4 to clearly define the scope of the regulation as well as the



applicable principles of Law on Investment and relevant laws to overcome the overlaps in governance and ensure consistency in legal system.

### *Debt collection services*

While the Law on Investment 2014 was in effect, debt collection services were listed as a conditional business line and transformed into various types of property assault, usury, pressure on debtors leading to a violent business. All of these bring insecurity of social order and bad consequences. Such as, the case of Pho Hoa Pasteur, which was splashed with paint and shrimp paste caused tarnish, insecure order, damages to property as well as reputation of the victim.

For that reason, in Law on Investment 2020, debt collection services are removed from the conditional business lines, and officially listed as a banned business line (Point h Clause 1 of Article 6). Transitional provisions on debt collection service contracts signed before the effective date of Law on Investment 2020 (i.e., 01<sup>st</sup> January 2021), contractual parties to such contract may liquidate the contract in accordance with the civil law and provisions of other relevant laws (Article 77).

With the mindset “ban it if it is hard to control”, the legislator has officially banned debt collection services. However, based on the principle of supply and demand of the market, some lawyers believe that it should not be banned because it may lead to other negative consequences and hard to be implemented in practice. A typical example is the case of karaoke and massage services which have been banned, but after being included in the list of conditional businesses, it helped generate a great amount of revenue to the State’s budget and increase a large number of jobs for people.





### *Extension of project schedule*

Under Law on Investment 2014, the application of total length of extension of the investment period is not consistent between regulation and practice. More specific, in Clause 3 of Article 46 of Law on Investment 2014 that the extension of project schedule must not exceed 24 months. However, in the reality, land acquisition, compensation, and clearance procedure could take much longer than the expected timeline depending on specific situations (e.g., the slow disbursement in case of ground clearance, compensation or the slow relocation in case of resettlement. Hence, the total length of extension (24 months) in the investment project is not sufficient in some cases.

Nevertheless, to resolve this issue, Law on Investment 2020 removes the provision regarding the extension of investment period. This provision is no longer enforceable, but somehow it still is stipulated in the new law under other provisions. In specific, Point d Clause 3 and Clause 4 of Article 41 regulates that investors shall extend the schedule of investment projects, but they are not permitted to extend beyond 24 months as compared to the implementation schedule prescribed in the initial investment policy approval. However, there are still exceptions stipulated in Points a to e of Clause 4 of Article 41, the investors are permitted to extend the implementation schedule over 24 months in these cases.

## **2. Other remarkable updates in Law on Investment 2020**

### *Extending the governing scope of "foreign-invested economic organizations" (Article 23)*

Under Law on Investment 2014, charter capital ratio plays a crucial role in determining the conditions applied to foreign-invested economic



organizations conducting investment activities in Vietnam. Article 23 stipulates the circumstances where foreign-invested economic organizations shall be treated as foreign investors. According to this provision in the Law on Investment 2014, it is noteworthy that foreign-invested economic organizations having more than 50% and less than 51% of its capital charter held by foreign investors and/or foreign majority companies<sup>1</sup> can still be treated as local investors.

Whereas, in line with the Law on Investment 2020, the threshold for being considered as foreign investors has decreased (from “51% or more charter capital” to “more than 50% charter capital”).

More concretely, the definition of foreign invested economic organizations based on charter capital ratio:

- more than 50% of the charter capital is held by foreign investors;
- more than 50% of the charter capital is held by foreign majority companies;
- more than 50% of the charter capital is held by foreign investors and foreign majority companies.

As a consequence, there will be more foreign-invested economic organizations carrying out investment activities in Vietnam treated as foreign investors and these organizations must comply with stricter investment conditions than those applicable to local investors specified in the Law on Investment 2020.

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<sup>1</sup> foreign-invested economic organizations with 51% or more of their charter capital is held by.



### *Updating List of Conditional Business Lines*

The number of conditional business lines decreases from 243 to 227 under Law on Investment 2020. Specifically, certain business lines such as arbitration services, franchising, logistics services, provision of training in real estate brokerage and property exchange operation, vaccination services are removed from the list. Instead, the provision of clean water (domestic water), data center services, electronic identification, authentication services, import press distribution services, fishing vessel registry, and training crew members of fishing ships are supplemented to the list.

### *Promulgating new regulations on business lines restricted to foreign investors and market access conditions*

Law on Investment 2020 introduces the List of business lines restricted to foreign investors. According to this, foreign investors and domestic investors are fundamentally entitled to the same market access conditions for any sectors not included in the list of sectors in which foreign investors are restricted from accessing. The Government may publish the list of business lines restricted to foreign investors, namely business lines not allowed in market access, and business lines allowed in market with conditions.

### *Amending provisions relevant to M&A Approval*

Law on Investment 2020 stipulates cases where foreign investors must obtain M&A approval from the competent authority to be eligible for making a capital contribution or acquiring equity in the target company (“**M&A Approval**”). M&A Approval is required for the transaction resulting in increasing of foreign ownership in the target company:



- operating conditional business lines;
- resulting in over 50% of the charter capital owned by foreign investors or foreign-invested economic organizations;
- where ownership ratio of the foreign investors is more than 50% of the charter capital.

Besides, under Law on Investment 2020, foreign investors must obtain M&A Approval if the target company has land use right certificates on islands, border communes, wards or coastal areas or other areas with their sharing features having an effect on national security. This requirement is aiming at balancing between national security and investment attraction for socio-economic development, especially in coastal and remote areas.

### *Requesting about IRC have been removed for Start-up*

According to the new law, foreign investors who co-ordinated with start-up to innovate a small and medium-sized or investment fund do not have to have neither an investment project nor Investment Registration Certificate (**IRC**). This new regulation can be considered as a measure to promote innovative startup investment markets in Vietnam.

### *Supplementing regulations on selection of investors*

A new provision is introduced in the currently validated law to make clear the basic ideas and frameworks for selecting project-implementing investors. How the selection is carried out is regulated by either of the methods below:

- By the auction of land use right in accordance with the land law;
- By tendering for investor in accordance with the tendering law; and
- By approval.



### 3. Relevant updates on investment activities and temporary guiding documents of Law on Investment 2020

#### *Foreign ownership limitation regulated in Decree 155/2020/ND-CP dated 31<sup>st</sup> December 2020 of the Government guiding Law on Securities*

Foreign ownership limit of 50% for a public company engaging in business lines restricted to foreign investors which shall be regulated in another decree guiding the new Law on Investment (for non-restricted lines, there is no limit promulgated in Decree 155/2020/ND-CP). However, shareholders of a public company may set out a lower foreign ownership limit in its charter.

Limit on foreign ownership on bonds is not imposed in Decree 155/2020/ND-CP.

#### *Official Letter 8909/BKHDT-PC dated 31<sup>st</sup> December 2020 and Official Letter 324/BKHDT-PC dated 20<sup>th</sup> January 2021 of the Ministry of Planning and Investment guiding the implementation of Law on Investment 2020*

##### ❖ *Official Letter 8909/BKHDT-PC*

This Official Letter governs the receipt and processing of dossiers and procedures according to the provisions of Law on Investment 2020, including:

- Documents on implementing investment procedures;
- Procedures for issuance of an IRC;
- Procedures of investment in the form of contributing capital to business organizations, buying shares or capital contributions of business organizations;
- Templates for implementing investment procedures;





- Business restricted sectors and market access conditions applicable to foreign investors;
- Consideration on conditions to protect national defense and security.

Provisions on the settlement of investment project dossiers received before the effective date of Law on Investment 2020. Particularly, valid dossiers received under the provisions of Law on Investment 2014, Decree No. 118/2015/ND-CP and the timeline for settlement of which have expired, may continue to be processed according to regulations of Law on Investment 2014. However, for the dossier has a duration of settlement after 01 January 2021, the investment registration authorities shall guide investors to supplement or amend the submitted documents in accordance with Law on Investment 2020.

#### ❖ *Official Letter 324/BKHDT-PC*

New templates for implementing the investment process are promulgated in this legal document.



## DOCUMENTS ISSUED IN JANUARY 2021

DATE OF ISSUE	NO.	NAME OF DOCUMENT	ISSUED BY	MAIN CONTENTS
04/01/2021	01/2021/ND-CP	Decree	Government	Stipulating enterprise registration.
15/01/2021	03/2021/ND-CP	Decree	Government	Regulating compulsory insurance for motor vehicle owner's civil liability.
22/01/2021	04/2021/ND-CP	Decree	Government	Promulgating administrative penalties in education sector.
15/01/2021	04/2021/TT-BTC	Circular	Minister of Finance	Guiding Decision No.03/2021/ND-CP regulating compulsory insurance for motor vehicle owner's civil liability issued by Minister of Finance.
14/01/2021	47/QĐ-KTNN	Decision	State Audit	Guiding the process for auditing state-funded investment and construction projects.

