



December 2020

## VIETNAM NEW LAW ON ENTERPRISES

From 01 January 2021, several new laws will take effect in Vietnam, including Law on Enterprises 2020, Law on Investment 2020, Law on PPP 2020, and Law on Securities 2019, which will provide several changes to the legal framework and legal practice in Vietnam. This briefing focuses on the important changes under the Law on Enterprises 2020 (the “**New Law**”), in comparison with the Law on Enterprise 2014. A separate briefing will discuss changes under the new Law on Investment.

### Key New Issues

- Legal representatives of the company
- Simplification of administrative procedures
- Incorporation of the company
- Passing of resolution in a multi-member LLC
- Rights of group of minor shareholders
- Pre-emptive right of shareholders in private offering of shares

- New voting threshold of the General Meeting of Shareholders (“GMS”)
- New definition and requirements for State-owned enterprises

### ***Legal representatives of the company***

The New Law provides more specific regulations and requirements for legal representative of the company, especially in the case of a company having more than one (01) legal representative. In this case, if the charter of the company does not clearly stipulate the allocation of rights and obligations of each legal representative, then each legal representative will have full authority of the company before a third party. In addition, all legal representatives must be jointly liable for any losses and damages to the company in accordance with the laws.

### ***Simplification of administrative procedures***

Administrative procedures are generally reduced under the New Law, including the requirement on notice of change of information about managers of the company and notice of private share placement. Furthermore, the New Law also removes the requirement of notifying the company’s sample seal to the business registration office. In addition, there are also new provisions which expressly recognize the use of seal in the form of digital signature, as well as the method of enterprise registration via postal services or electronic communication network.

### ***Incorporation of the company***

Under the New Law, contracts signed by founders of the company before incorporation of such company are no longer transferred automatically to the company after incorporation. It is required that the contractual rights and obligations under the signed contract to be transferred to the company in accordance with the Civil Code, unless otherwise agreed in the contract.

In addition, the New Law also changes the time limit for capital contribution in a limited liability company (“LLC”) and a joint stock company (“JSC”), which is currently 90 days from the issuance date of the Enterprise Registration Certificate. From 01 January 2021, this period will not include the time required for cases of transporting or importing assets contributed as capital and conducting administrative procedures for conversion of ownership of assets.

### ***Passing of resolution in a multi-member LLC***

Regarding a multi-member LLC, the New Law allows a resolution or decision of the Members’ Council which is passed by 100% of the total amount of charter capital to be lawful and effective even if the sequence and procedures for passing such resolution or decision are not implemented properly in accordance with regulations. Under Law on Enterprises 2014, this concept is provided to JSC only.

### ***Rights of group of minor shareholders***

Under the New Law, a group of shareholders holding at least 5% of total ordinary shares of a JSC or a smaller percentage as set out in the charter is entitled to several rights which is only provided to a group of shareholders holding 10% or more of ordinary shares of the JSC for at least 6 months under Law on Enterprises 2014.

### ***Pre-emptive right of shareholders in private offering of shares***

The New Law provides existing shareholders in a JSC with the pre-emptive right in cases of private placement of shares by the company. In particular, the JSC is required to offer the shares issued by way of private placement to existing shareholders first, and third parties would only be entitled to subscribe the shares remaining after pre-emptive right has been exercised. This pre-emptive right can be transferred to a third party by the shareholders.

### ***New voting threshold of the GMS***

Under the New Law, quorum for a valid meeting of the GMS is more than 50% of total voting shares. And except for some special matters, the threshold for passing a resolution of GMS is more than 50% of attending votes. This percentage was changed from “51% or more” under the Law on Enterprises 2014.

### ***New definition and requirements for State-owned enterprises (“SOE”)***

Under Law on Enterprises 2014, a SOE is defined to be an enterprise wholly owned by the State. The New Law reduces this ownership requirement to “more than 50%”.

#### **FOR MORE INFORMATION PLEASE CONTACT:**



Bui Ngoc Anh  
Partner  
Hanoi Office  
(84-24) 3934 8530  
anh.bui@vilaf.com.vn

Tran Hoang Viet  
Associate  
Hanoi Office  
(84-24) 3934 8530  
viet.tran@vilaf.com.vn

Nguyen Duy Hieu  
Associate  
Hanoi Office  
(84-24) 3934 8530  
hieu.nguyen@vilaf.com.vn

Bui Khanh Nam  
Associate  
Hanoi Office  
(84-24) 3934 8530  
nam.bui@vilaf.com.vn

*VILAF cares about its clients. This client alert has been prepared for updating clients on recent legal development in Vietnam. The information presented in this client alert is not legal advice, is not to be acted on as such, may not be current and is subject to change without notice.*

VILAF is extremely responsive and were able to provide sound legal advice in a changing market. VILAF is “consistently considered one of the top firms in Vietnam.”  
(Chambers Asia)

VILAF is extensively knowledgeable, has expertise and is innovative in providing advice on legal issues of Vietnam in relation to infrastructure projects.  
(IFLR 1000)

VILAF produces highly sophisticated work and the excellent team holds its own against competitors.  
(Legal 500 Asia Pacific)