



NEW INVESTMENT DECREE TAKING EFFECT – RECALIBRATING INVESTMENT

VAIBHAV SAXENA, VILAF

Decree No. 96/2026/NĐ-CP, issued on 31 March 2026, is not simply an implementing decree to the Law on Investment 2025. It is a **system-level recalibration of how investment is admitted, structured and supervised in Vietnam.**

The Decree replaces Decree No. 31/2021/NĐ-CP and moves Vietnam decisively toward a **rules-based, data-driven and enforcement-oriented regime.** The significance of this shift is not limited to regulatory clarity. It fundamentally alters how investors must approach entry, structuring and execution.

At a practical level, the Decree changes three things simultaneously: first, it compresses procedural flexibility and shifts risk to the initial filing; second, it consolidates and formalises the foreign investment negative list framework; and third, it increases regulatory enforceability, particularly in relation to misstatements, ownership structures and sector compliance.

The Structural Shift – From Negotiated Process to Deterministic System

Under the previous regime, investment approvals in Vietnam operated through a hybrid model. While legal rules existed, their application depended heavily on administrative engagement. Investors could clarify, adjust and negotiate aspects of their applications through iterative submissions. This flexibility was often essential to closing complex transactions but also

created unpredictability.

Decree 96 materially reduces this dynamic. The regulatory model now assumes that **the legality of an investment can be assessed primarily from the dossier as submitted**, rather than through dialogue with the authority. Requests for supplementation are limited and must be grounded in identified deficiencies.

This change is subtle in drafting but profound in effect. It means that the **centre of gravity of the approval process shifts away from the authority and toward the investor's preparation phase**. In other words, the regulatory process begins before submission, not after.

For sponsors and transaction counsel, this requires a change in approach. Legal, financial and technical work streams can no longer be sequential. They must be synchronised prior to filing, because inconsistencies will not be easily cured through process.

Digitalisation and the Rise of Data Integrity as a Legal Requirement

The formal integration of the National Investment Information System into the approval process represents a deeper transformation than administrative efficiency alone. The Decree effectively converts **data consistency into a legal requirement**.

Authorities are expected to rely on information already available within state databases. This creates a system where discrepancies between enterprise registration, tax records, land data and investment filings become visible and material.

Previously, such inconsistencies could often be explained or corrected during the review process. Under Decree 96, they may result in delay or rejection because the system is designed to minimise re-submission and re-verification.

For investors, this introduces a new category of diligence. Transaction readiness now requires not only document accuracy but also **alignment of all data points across government systems**. This is particularly relevant in acquisitions of existing Vietnamese entities, where legacy inconsistencies may not have been material under the previous regime but may now surface as regulatory obstacles.

Procedural Discipline and Its Transactional Consequences

The introduction of a more structured supplementation mechanism and the requirement for reasoned decisions significantly increase procedural transparency. However, the more important effect is the compression of timelines within which issues can be addressed.

This has immediate consequences for deal execution. In a greenfield investment, the investor must ensure that all assumptions underlying the project—land status, technical approvals, corporate structure and financing—are internally consistent before submission. In an M&A context, the implications are even more pronounced. A buyer can no longer rely on post-signing regularisation of licensing or scope issues to the same extent as before. Instead, regulatory diligence becomes a gating item for signing rather than a condition to closing.

The requirement for early publication of project information also introduces a competitive dimension. In sectors such as energy, infrastructure or large-scale real estate, early disclosure may affect bidding dynamics or market positioning.

Conditional Business Lines – From Static Lists to Managed System

The Decree retains the framework of conditional business lines but alters how they function in practice. By requiring centralised publication and periodic review, it transforms what was previously a static list into a **managed regulatory system**.

This has two implications. First, investors have greater visibility into applicable conditions at any given time. Second, those conditions are more likely to evolve in response to policy changes. The regulatory environment therefore becomes more transparent but also more dynamic.

For long-term projects, particularly in regulated sectors, this introduces a need for **ongoing regulatory monitoring**, not merely compliance at entry.

Foreign Investment Market Access – How the Framework Actually Operates

Annex I of the Decree provides the formal structure for foreign investment restrictions. It distinguishes between sectors that are not open and those that are open subject to conditions.

However, the practical operation of this framework is more complex than a simple negative list. Annex I does not, by itself, define all applicable conditions. Instead, it operates as a gateway that must be read together with sectoral legislation and international treaty commitments.

For example, a sector classified as “conditional” in Annex I may derive its actual ownership limits from a sector-specific law, from Vietnam’s WTO commitments, or from a bilateral or multilateral agreement such as CPTPP or EVFTA. The Decree does not replace these instruments; it organises how they apply.

This means that market access analysis under Decree 96 is inherently multi-layered. A legally accurate assessment requires simultaneous consideration of the Annex, domestic law and treaty commitments. Treating the Annex as a complete code would be a material error.

Ownership Structuring – Where Deals Succeed or Fail

One of the most practical consequences of the Decree lies in how ownership structures are assessed. While the Decree clarifies certain principles, it does not create a universal rule. Instead, it reinforces the idea that **the most restrictive applicable framework governs**.

In practice, this affects several common structuring approaches. Multi-sector companies must be analysed against the strictest sector in which they operate. Multi-investor structures require careful consideration of how ownership is aggregated. Listed entities remain subject to securities regulations, which may impose additional constraints.

The Decree therefore narrows the space for aggressive structuring. It does not prohibit sophisticated arrangements, but it makes them more transparent and, in some cases, more difficult to sustain if they rely on gaps between legal regimes.

M&A Versus Greenfield – A Critical Distinction

A key point that emerges from the Decree, and which is often underestimated, is the difference between new investment and acquisition of existing businesses.

Greenfield projects are assessed entirely under current law. By contrast, acquisitions may benefit from existing regulatory status, but only to a limited extent. The Decree's approach to transitional protection means that while ongoing operations may continue under prior conditions, changes in ownership, expansion of business scope or restructuring may trigger application of new rules.

This distinction is critical in practice. It means that the regulatory position of a target company cannot be assumed to carry over unchanged post-acquisition. Investors must assess not only the current compliance status but also how the transaction itself alters that status.

Transitional Protection – What It Really Protects

The Decree provides for continuity of certain existing rights, but this protection is narrower than it may appear. It is designed to preserve stability for ongoing operations, not to lock in regulatory conditions indefinitely.

Where an investor expands into new sectors, undertakes a new project or materially restructures its operations, the new regulatory framework may apply.

This creates a distinction between **continuation and transformation**. Transactions that fall into the latter category require full reassessment under current law.

Enforcement – The Most Underrated Change

The strengthening of enforcement powers under Decree 96 is one of its most important, and often underestimated, features. Authorities are expressly empowered to take action where approvals are based on inaccurate or non-compliant dossiers.

This has significant implications for legacy structures. Arrangements that may have been tolerated or overlooked under the previous regime—such as inconsistencies in licensing scope, informal nominee structures or incomplete documentation—are more likely to be scrutinised.

For acquirers, this means that regulatory diligence must go beyond formal compliance. It must identify **structural vulnerabilities** that could be exposed under a stricter enforcement environment.

National Security Considerations – Where Sensitivity Arises in Practice

Decree introduces a structured basis for identifying areas relevant to national defence and security.

While the provisions are framed in general terms, their practical impact is sector-specific. Projects involving coastal land, border regions, energy infrastructure or large-scale industrial development are more likely to trigger additional consultation requirements. This does not necessarily prevent investment, but it introduces an additional layer of review that must be factored into timelines and risk assessment.

Annex – Proper Interpretation for Transactions

Annex I and Annex II are central to the Decree but must be used with precision.

Annex I provides the structural classification of sectors from a market access perspective. Annex II provides further detail on applicable conditions. However, neither annex is exhaustive in itself. Both must be read together with sector-specific legislation and international commitments.

The matrices below are therefore presented as **illustrative and non-exhaustive analytical tools**. They intend to assist in initial screening but do not replace the need for a full legal analysis based on all applicable sources.

Annex I (Illustrative Matrix – Market Access Classification)

Sector Category	Nature of Activity	Market Access Character
Defence and security	Activities linked to sovereign functions and national security	Not open
Media and publishing	News and information dissemination	Not fully open or strictly restricted
Telecommunications	Network infrastructure and services	Conditional
Transport and logistics	Aviation, maritime and related services	Conditional
Energy and utilities	Power generation and infrastructure	Conditional or restricted
Real estate	Land development and property-related activities	Conditional
Financial services	Banking, insurance, securities	Conditional
Education and healthcare	Social service sectors	Conditional
Natural resources	Mining and extraction	Conditional

Distribution and trade	Wholesale and retail activities	Conditional
Professional services	Legal, accounting and consulting	Conditional

Annex II (Illustrative Matrix – Regulatory Conditions)

Sector	Typical Condition Type	Primary Legal Source
Telecommunications	Ownership limits, licensing	Telecom law and treaties
Banking	Ownership caps, prudential rules	Banking law
Aviation	Ownership and control requirements	Aviation law
Real estate	Land use and project approvals	Land law
Education	Licensing and programme approval	Education law
Energy	Planning and sector approvals	Energy regulations
Retail	Licensing and economic needs test	Trade regulations
Logistics	Licensing and treaty-based conditions	Transport law

Final Observations

Decree 96 does not simply refine Vietnam’s investment regime; it changes how that regime operates in practice. It reduces reliance on administrative discretion, increases transparency, and strengthens enforcement, while maintaining flexibility through its interaction with sectoral laws and international commitments.

For investors, the key message is not that the rules have become more restrictive in substance, but that they have become more **precise, visible and enforceable**. Success under this framework will depend on preparation, alignment of legal and commercial structures, and a clear understanding of how multiple regulatory layers interact.

FOR MORE INFORMATION PLEASE CONTACT:



Vaibhav Saxena
Senior Foreign Counsel
vaibhav.saxena@vilaf.com.vn

Disclaimer: The information contained in this article is for general informational purposes only and does not constitute legal advice or a legal opinion. Readers should not act or rely on any information herein without seeking professional legal advice specific to their circumstances. The views expressed are those of the authors and may not reflect any official views of VILAF.