Client Alert
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VIETNAM INTERNATIONAL LAW FIRM

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VIETNAM NEW LAW ON INVESTMENT

Vietnam continues to develop and update the legal framework and investment to encourage the investment activities in Vietnam. This briefing focuses on the important changes under the Law on Investment 2020 (the "**New Law**"), which will take effect from 01 January 2021.

Key New Issues

- Negative-list approach for market access conditions for foreign investors
- New sectors entitled to investment incentives
- New special investment incentives schemes
- New criteria for determination of Foreign Investor Equivalent
- Changes in requirements for M&A Approvals
- Clarifications for investor selection procedures
- In-principle approval for investment projects
- Protection to national defense and security

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Market access conditions for foreign investors

The New Law applies a "negative-list" market access restrictions for foreign investors. Outside of this list, foreign investors are entitled to the same market access conditions as applicable to domestic investors. The "negative-list" market will be provided under the Decree of the Government.

New investment incentives

The New Law introduces new business sectors that are entitled to investment incentives in addition to those carried over from Law on Investment 2014. These new sectors include, among others, innovative start-up projects, college education, research and development centers. Accelerated depreciation and increase in deductible expenses upon calculation of taxable income were added as new investment incentive forms.

Special investment incentives and supports

The Government can decide to apply special incentives and supports to encourage projects that have large socio-economic impacts, in particular:

i. Investment project of establishing R&D centers with minimum capital of VND3,000 billion and disbursing at least VND1,000 billion within 03 years from the issuance date of the investment registration certificate or in-principal approval;

ii. Investment project of establishing the national innovative center under a decision of the Prime Minister; and

iii. Investment projects under the list of especially encouraged sectors, having a minimum capital of VND30,000 billion and disbursing at least VND10,000 billion within 03 years from the issuance date of the investment registration certificate or in-principal approval.

Change in criteria for determination of Foreign Investor Equivalent

Under the New Law, the condition for an economic organization to be subject to regulations applicable to foreign investors ("**Foreign Investor Equivalent**") is reduced from "at least 51%" to "more than 50%" threshold of charter capital contribution.

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Changes in requirements for M&A Approval

Under the New Law, a foreign investor is required to implement for obtaining the approval for M&A transaction ("**M&A Approval**") if the acquisition leads to (i) an *increase* in foreign ownership in a company engaging in business lines with market access conditions, (ii) an *increase* in foreign ownership in a company from 50% or less to more than 50% of charter capital, or (iii) a further *increase* in foreign ownership if it has been more than 50%. Besides, a new case when M&A Approval required is the acquisition of a company which has a land use right certificate on an island, a coastal or border commune, ward or town or in another area which affects national defence and security.

Selection of investors

The New Law introduces a new provision in order to clarify the principles and conditions for selection of investors that implement projects. Selection methods is conducted by any of the following methods :

i. Auction of land use right is implemented in accordance with the law on land;

ii. Tendering for selection of investor is implemented in accordance with the law on tendering; and

iii. Approval of the investor.

The steps for selection of investor would be as follows:

The cases (i) and (ii) above are subject to 2 following steps:

i. **Step 1**: In-principle approval for investment.

ii. **Step 2:** Auction of land use right or tendering for selection of investor.

If only one person registers to participate in the auction or if the auction is unsuccessful, or if only one investor registers to participate in the tendering, the authority shall conduct procedures to approve an investor if such investor satisfies the conditions prescribed in relevant law.

The case (iii) is subject to Step 1 above.

In-principle approval for investment projects

The New Law clarifies some criteria are provided to determine whether an investor must conduct procedures for in-principle approval amendments, particularly when, among others:

i. The land area is changed by more than 10% or more than 30 hectares;

ii. The total investment capital is changed by 20% or more, resulting in the change in scale of project; or

iii. The implementation schedule of the investment project is extended resulting in the total duration of the investment project extended more than 12 months beyond the initial in-principle approval.

However, the New Law prohibits extension of implementation schedule of the investment project by more than 24 months, except in cases of force majeure, delay in land allocation by the State, changes in planning by a regulatory agency, changes in investment objectives, or changes in total investment capital by 20% or more resulting in the change in the scale of the project.

Protection to national defense and security

Under the New Law, the investment registration authorities are permitted to terminate a project in whole or in part if the investor is found to conduct the investment activities on the basis of a false civil transaction. Besides, the Prime Minister is permitted to suspend a project in whole or in part if implementation of the project infringes upon or threats to infringe upon national defense or security. If the investor is incapable of remedying the situation to continue investment after suspension, the project may be terminated.

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