



Law on Investment and Law on Enterprises 2014

AmCham Breakfast | 31 March 2015

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Law on Investment 2014

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Law on Enterprises 2014

New dual core laws to do business in Vietnam:

- Law on Investment № 67/2014/QH13 passed by National Assembly on 26 November 2014 (the “**LOI 2014**”)
- Law on Enterprises № 68/2014/QH13 passed by National Assembly on 26 November 2014 (the “**LOE 2014**”)
 - *Replacing the current Investment Law and Enterprise Law enacted in 2005.*
 - *Effective from 1 July 2015*

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Law on Investment 2014 (LOI)

Business Sectors/Activities:

- Concrete lists for conditional business activities and prohibited business activities as compared to open-ended lists for conditional sectors and prohibited activities in the Law on Investment 2005
- 267 activities are listed as conditional business activities
- Six sectors/activities for which business investment activities are prohibited (Article 6 of the LOI 2014).

Investment Procedure:

- Procedures for implementation different types of investment project in Vietnam:
 - i. establishment of a new entity for an investment project;
 - ii. investment under public-private partnership;
 - iii. investment under business cooperation contract;
 - iv. capital contribution, purchase of shares or contributed capital in an economic entity.
- Several changes introduced such removal of investment registration and investment appraisal procedures, clearer definition of foreign investor, the ownership ratio will decide the licensing procedures for investment projects of foreign investors etc.

Definition of foreign investor:

- Foreign investor is any foreign individual having foreign nationality or entity established in accordance with the foreign law
- Enterprises should follow conditions and investment procedures applicable for foreign investors when 51% or more of its charter capital is held by a foreign investor(s) and/or foreign invested company foreign invested company having 51% or more foreign owned charter capital
- Enterprises with foreign owned capital other than those mentioned above should follow the investment procedures in accordance with regulations applicable to domestic investors

Establishment of new entity for an investment project:

- Step 1 – application for an investment registration certificate (regulatory timeline: 5 working days after the date of receipt of written decision on the investment policy if the investment project requires a written decision on the investment policy; 15 days from the date of receipt complete and valid application for IRC)
- Step 2 – application for enterprise registration certificate (regulatory timeline: 3 working days from the date of receipt of complete application dossier)

Capital contribution, purchase of shares or contributed capital in an economic entity :

- Forms:
 - i. purchase of shares issued for the first time or additionally issued of joint stock companies;
 - ii. capital contribution to limited liability company, partnership companies; or
 - iii. capital contribution to other economic entities not falling under (i) and (ii).

- Foreign investors making investment by contributing capital, purchasing shares or contributed capital must register their investment with the local Department of Planning and Investment if (1) foreign investors contribute capital, purchase shares or contributed capital in economic entities in conditional business activities applicable for foreign investors; (2) capital contribution, purchase of shares or contributed capital results in 51% or more ownership of charter capital of certain economic entities in the targeted economic entities (regulatory timeline: 15 days after the date of receipt of complete and valid application dossier)

Offshore Investment:

The LOE 2014 provides provisions on matters/formalities relating to offshore investment:

- Forms of offshore investment
- Procedures for obtaining offshore investment certificate
- Foreign exchange control

- Decree(s) providing guidance on the implementation are yet to be promulgated.
- Possible different interpretation of the new laws between different Vietnamese administrations or between central and local governments
- The LOI 2014 removes some concepts but such concepts are still referred in some important legal instruments when doing business in Vietnam (such as Vietnam's Commitments to the WTO and some other laws)
- The IC and the ERC: what would be the situation of companies which have the IC serving concurrently the enterprise registration certificate?

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Law on Enterprises 2014 (LOE)

Scope of business activities:

- LOE 2005: in principal enterprises can only do the registered activities in Enterprise Registration Certificate or Investment Certificate
- LOE 2014:
 - *“enterprise are free to conduct lines of business which are not prohibited by laws” (Article 7.1)*
 - *“enterprise must satisfy conditions prior to conduct conditional activities” (Article 8.1)*

Prohibited and conditional business activities are consistent with the LOI 2014:

- **Prohibited activities:**

Illegal narcotics, chemicals and minerals as listed in Annex 2 of the LOI 2014 , prostitution, restricted plants and animals as listed in Annex 3 of the LOI 2014, human trafficking, human tissues, human parts and human cloning.

- **Conditional activities:**

List of 267 conditional activities as listed in Annex 4 of LOI 2014

Enterprise Registration Certificate (“ERC”):

- the specification of business lines in the ERC is no longer required
- regulatory timeframe: 3 working days (under the LOE 2005: 5 working days)
- ERC can be amended based on a court’s judgment or arbitration award (a request must be filed to licensing authorities with 15 working days from the effective date of the Court’s judgment or arbitration award)
- licensing authorities must issue an amended ERC, or reply with 3 working days

Corporate Seal:

- Enterprise may determine the number, form and content of its corporate seal
- Prior to the use of corporate seal, the enterprise is required to notify the sample of its corporate to the licensing authority

Legal representative:

- Enterprise may appoint more than one legal representative
- One of its legal representatives must reside in Vietnam

Authorized representative :

- Limited liability company: corporate member holding from 35% charter capital may appoint maximum 3 authorized representatives
- Joint-stock company: corporate member holding from 10% of total ordinary shares may appoint maximum 3 authorized representatives

Charter capital (limited liability company):

- One-member limited liability company may reduce charter capital
- Two circumstances of capital decrease: (i) redemption a part of the charter capital in case the enterprise has been operating continuously 2 years; and the enterprise must ensure payment of the enterprise's debts and other financial obligations; and (ii) the owner fails to contribute charter capital as committed.

Charter capital (joint-stock company)

- Is the total value of all kind of shares sold out
- At time of registering ERC: value of share registered to purchase and registered in the company charter

Regulatory time-limit to contribute capital :

- One-member limited company and limited company: 90 days from registration date instead of 36 months provided in the LOE 2005
- Exception: limited company registered before 1 July 2015 (Art.212) is permitted to follow capital contribution schedule as regulated in its charter

Unpaid capital of members of limited company :

LOE 2005

- One or more member can contribute the unpaid amount in full
- Capital is raised from other members
- The remaining members to contribute in proportion to their respective ownership percentage

LOE 2014

- To be offer for sale as decided by the member council

Share transfer of a joint-stock company:

Under the LOE 2005:

- Lock-off period: any transfer of ordinary shares of founding shareholders to a third party within 3 years from the enterprise registration date shall be approved by the general shareholders meeting.

Under LOE 2014:

- Lock-off period is only applied to the first transfer of ordinary shares transfer of founding shareholder.

Corporate governance:

Shareholder decisions	Old law	New law
Quorum (first attempt, second attempt)	65%, 51% 0%	51%, 33% 0%
Standard decisions at meeting	65%	51%
Important decisions at meeting	75%	65%
Decisions in writing	75%	51%
Election of Board members	Cumulative voting	Cumulative voting

But to benefit from lower % thresholds the **charter will need to be amended!**

Ranking of ease in doing business 2015

Jurisdiction	Ease of Doing Business Rank in 2015	Ranking Development As Compared to 2014
Singapore	1	—
Malaysia	18	↑
Thailand	26	↑
Vietnam	78	↓
Philippines	95	↓
Brunei Darussalam	101	↓
Indonesia	114	↑
Cambodia	135	↑
Lao PDR	148	↓
Timor-Leste	172	↑
Myanmar	177	↑

Source: [Doing Business 2015 Fact Sheet: East Asia and the Pacific](#)

Thank you!



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