

Changes to the Law on Investment

At a glance...

On 17 June, the National Assembly passed the amended Law on Investment (new LOI) which will be generally effective from 1 January 2021 (although certain provisions will kick in from this September) and replace the existing 2014 LOI.

In detail...

Key changes include:

1. Changes to the list of prohibited and conditional business sectors - applicable to both domestic and foreign investors

Debt collection is added to the list of prohibited business activities.

Currently, the list of conditional business sectors (where investors must satisfy various conditions for conducting such activities) comprises nearly 270 items. Under the new LOI, several items in this list are amended, combined, removed or added (which results in the list shortening to 227 items), such as:

- 'Commercial arbitration services', 'franchising' and 'logistics services', among others, are removed from the current list and therefore will no longer be conditional business sectors.
- 'Energy auditing', 'architectural services', 'internet domain name registration and maintenance services', 'data center services', 'electronic identification and authentication services', 'imported press distribution services', 'trading civil cryptographic products and services', 'fishing vessel registration', and 'fishing vessel crew training', among others, are now made conditional business sectors.

Besides said conditions, foreign investors are additionally subject to various market access conditions/restrictions, as discussed below.

2. Market access conditions applicable to foreign investors

The new LOI introduces the concept of "market access conditions applicable to foreign investors". Such conditions will be based on: (i) % foreign ownership, (ii) form of investment, (iii) scope of business activities, (iv) capability of investor(s), and (v) other conditions as prescribed in the relevant laws and international treaties to which Vietnam is a party.

The government will provide guidance on this matter.

3. New foreign ownership threshold for the purpose of investment procedures

Article 23 of the current LOI stipulates that a company must carry out the investment procedures applicable to foreign investors for the establishment, capital contribution, purchase of shares/equity, or investment under a BCC, if:-

- 51% or more of its charter capital is held by foreign investor(s) [F1];
- 51% or more of its charter capital is held by F1 [F2]; or
- 51% or more of its charter capital is held by both foreign investor(s) and F1 [F2'].

Under the new LOI, this 51% threshold is replaced with "more than 50%".

In detail...

4. Simplification of M&A procedures

The new LOI provides a welcome change by abolishing the registration requirement if an M&A transaction does not result in an increase of the % foreign ownership of the target company.

Accordingly, and due to the new foreign ownership threshold mentioned at Point 3 above, only M&A transactions where the foreign ownership of the target company is increased or where the foreign investors (including F1, F2, F2') will hold more than 50% (rather than 51% currently) of the target company will be subject to registration/approval.

5. Investment approval-in-principle

The National Assembly's authority to grant approvals-in-principle for investment remains unchanged. The new LOI updates and adds categories of investment which are under the authority of the Prime Minister and provincial People's Committees, e.g., eliminating the production of cigarettes or projects with investment capital of VND5tn or more from the list subject to the Prime Minister's approval, while golf courses are devolved to provincial People's Committees.

6. Investment incentives

The new LOI adds several new projects and business sectors to the list of those entitled to investment incentives, such as: start-up investment projects, innovative renovation/R&D centers, investment activities to support SMEs, construction of social residential housing and tertiary education.

With respect to incentives based on investment size, to align with the Law on Corporate Income Tax, the new LOI adds various conditions for projects with total capital of VND6tn and above, disbursed within three years of being licensed. In particular, such projects must meet either of the following criteria: have a minimum annual revenue of VND10tn within three years from the first year of generating revenue or headcount of more than 3000.

The new LOI also introduces the government's offer of special investment incentives and support for investment projects with large socio-economic impact as well as criteria to determine such projects.

7. Escrow deposit obligation guarantee

A bank guarantee on the obligation to provide an escrow deposit is added (besides the escrow deposit itself as currently stipulated) as a new form of security for the performance of investment projects where the government allocates land, leases out land or permits conversion of the land usage purpose.

Contact us

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