

News on Law on Enterprise, Investment Law 2020

On 17 June 2020, Enterprise Law 2020 No. 59/2020/QH14 was issued and the Law on Investment 2020 No. 61/2020/QH14 is passed by National Assembly.

Tax spotlights – 09/2020



Enterprise Law 2020

Enterprise Law 2020 No. 59/2020/QH14 was issued by the National Assembly on 17 June. Enterprise Law 2020 will take effect from 01 January 2021. Enterprise Law 2020 has some notable points as follows:

1. The online business registration (via the National Business Registration Portal with electronic dossiers) and the offline business registrations (using hard-copy dossiers) have the same validity. No more submission of hard-copy dossiers as currently required
2. The seals of company can be made in the form of both physical seal as currently and a digital signature in accordance with the Law on E-transactions
3. In case a company has more than one legal representatives, the rights and obligations of each legal representative should be specified under the company's charter. Otherwise, each of them have fully authority to represent the company before a third party and jointly liable for any damage caused to the company
4. In case capital contribution is in the form of assets, the time required for the transportation, import and completing legal procedures to transfer the ownership of such assets to the company shall be not counted as a part of the 90-day time limit
5. Minority shareholders, who own 5% or more (instead of 10% under the current Enterprise Law 2014) of the ordinary shares or a smaller ratio (in accordance with the company's charter), now have the right to access the information of business activities, to request convening a meeting of the General Meeting of Shareholders and etc.
6. Instead of specifying the circumstances in which a company is prohibited from or required to notify in prior to conducting a merger or acquisition, the Enterprise Law 2020 refers to the Competition Law for such compliance requirements
7. The timeframe of advance notification for the business suspension and the business resumption is shortened from 15 days to 03 working days prior happened date
8. State-owned enterprises shall include companies of which the State holds more than 50% of the charter capital or voting share, instead of 100% of the charter capital as prescribed in the Enterprise Law 2014

Investment Law 2020

On 17 June 2020, the National Assembly passed the Law on Investment 2020 No. 61/2020/QH14 which will take effect from 01 January 2021. The Law on Investment 2020 has some key changes as follows:

1. The concept of "Market entry conditions for foreign investors" is first introduced as a new approach to market entry for foreign investors. These are defined as the foreign ownership ratio in a company based on the company's charter capital; investment method; the scope of investment/operation; the investor's capacity and business partners
2. The foreign investors who incorporate a qualified small and medium-sized innovative startup or an innovative startup investment fund are neither required to have an investment project nor obtain an investment registration certificate
3. The foreign ownership threshold now decreases from "51%" to "50%" only. Such threshold is to determine a foreign investment that must meet the statutory conditions and follows the investment procedures applicable to foreign investors
4. Foreign investment must ensure the new additional conditions (i) not harm the national defense and security of Vietnam and (ii) comply with the conditions on the use of sea-islands, borderlands and coastal lands in accordance with the applicable land law
5. Foreign investors must obtain an M&A approval for its investment in a Vietnamese target company if the acquisition leads to (i) an increase in the ownership of foreign investor in the target company engaging in business lines with market entry restrictions for foreign investors or (ii) an increase in foreign ownership in the target company from less than or equal to 50% to more than 50% of the charter capital; or (iii) an increase of the foreign ownership in the target company, where foreign investors have already owned over 50% of the charter capital
6. M&A approval is required in respect of foreign investment in target companies if they utilize land located in sea-island, borderland, and coastal land areas or other areas that may affect national defense and security
7. "Debt collection business" is added to the list of prohibited business lines
8. Several sectors such as Franchising; Logistics services; Shipping agency services etc. are removed from the list of conditional business sectors
9. Water sanitization business (drinking water), architectural services, import press distribution services, etc. are now under the list of conditional business sectors
10. Several new projects and business sectors to the list of those entitled to investment incentives, such as innovative start-up projects, innovation center, a larger-size project with total capital of VND6,000 billion and above, etc.
11. A bank guarantee to provide an escrow deposit is added to ensure the implementation of investment projects for which the government allocates land, rent land or allow conversion of the land use purpose, with some exceptions in accordance with the prevailing regulations

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