

Vietnam's new law on investment 2020.

Written on July 30, 2020.

The Law of Investment 2020 ("LOI 2020") was approved by the National Assembly of Vietnam on 17 June 2020, and takes effect **from 1 January 2021**, replacing and supplementing the Law on Investment 2014 ("LOI 2014").

The LOI 2020 regulates activities related to business investment into Vietnam, and investment activities from Vietnam to other countries. This new law aims to simplify administrative procedures and conditional business lines, synchronise with international commitments in investment activities of which Vietnam is a member, and to better facilitate investment activities into Vietnam.

Significant changes arising from the Law on Investment 2020 include:

1. Changes to market access for foreign investors, introducing the "negative list" approach

The new LOI has introduced the approach that foreign investors are entitled to access Vietnam in the same manner as local investors, except for the list of restricted business sectors (being referred to as the "Negative List" approach).

The restricted business sectors can be either Prohibited Business Lines, which foreign investors cannot yet access, and Conditional Business Lines, for which the market access for foreign investors is subject to conditions.

The Conditional Business Lines list will detail, for each business sector, conditions on,

- The ownership percentage of charter capital by foreign investors
- The form of investment

- Investment scope
- The capacity of investors and partners participating in investment activities
- Other specific conditions prescribed in laws

Foreign investors must also satisfy any relevant requirements for a business sector that any investors must satisfy (regardless of ownership), which can include permits, certificates and practice certificates.

2. Changes to ownership ratios for foreign investors

The threshold for the definition of a foreign invested company has been reduced from “51% or more” under the old law to “more than 50%” under the LOI 2020.

Accordingly, an entity must satisfy the conditions and follow the investment procedures of foreign investors when seeking to establish, contribute capital or buy shares where more 50% of the charter capital of such entities are held by foreign investors (the “FDI company”), or if more than 50% of the charter capital is held by a FDI company.

3. Amending the list of prohibited business lines

The LOI 2020 has added two business lines to the list of Prohibited Business Lines: firecracker businesses, and debt collection services. As a result, the list of Prohibited Business Lines per the LOI 2020 is 8, but this is subject to further additions via additional releases.

Under the LOI 2014, debt collection services were on the list of conditional business lines. Therefore, debt collection contracts which are signed before 1 January 2021 will be terminated when the LOI 2020 comes into effect. Parties to contracts need to liquidate these contracts in accordance with the civil law and other relevant laws.

In addition, the activities of human trafficking and trading in human tissues and body parts in the 2014 LOI has been expanded to include human trafficking, and trading in human tissues, body parts, human corpses and fetuses.

4. Amending the list of conditional business lines

The LOI 2020 maintains an initial list of Conditional Business Lines of which a number of business lines have been removed and added, reducing the number of Conditional

Business Lines to 227 under the LOI 2020 in comparison to 243 under the LOI 2014. However, there are further business lines to be added to this list by Government Decree, for which the authorities have released a Draft Decree for comment, and as a result the full list of Conditional Business Lines is not fixed nor finalised.

5. Amendments to real estate trading requirements

The LOI 2020 removes the current business requirement related to Real Estate Trading, where a company must have a minimum legal capital of VND 20 billion to register the activity. Investors will be no longer required to meet specific minimum capital requirements to undertake these activities.

6. Additional investment incentives and changes to existing incentives

Adding a new form of investment incentive is “Rapid depreciation, increase of deductible expenses when calculating taxable income”. This brings the number of investment incentives in Vietnam to four, focusing on incentives related to corporate income tax, import tax, and costs related to land use.

Following LOI 2020, more projects are added to the list of beneficiaries of investment incentives which are:

1. Projects employing people with disabilities in accordance with the law on people with disabilities
2. Projects with technology transfer on the list of technologies encouraged for transfer under the law on technology transfer; technology incubator or science and technology business incubator in accordance with regulations of law on high technology and law on science and technology; enterprises producing and supplying technologies, equipment, products and services serving the requirements of environmental protection in accordance with the law on environmental protection
3. Projects for creative start-up, innovation centers, research and development centers
4. Investment in and distribution of product chains of small and medium-sized enterprises; business investment in technical facilities supporting small and medium-sized enterprises, incubators of small and medium-sized enterprises; business investment in a working area to support small and medium-sized enterprises in their creative start-ups in accordance with the law on supporting small and medium-sized enterprises

In addition, the new law adds more conditions for the project incentives in which the capital is VND 6,000 billion or more, where it must disburse a minimum of VND 6,000 billion within 3 years from the date of being granted the first Investment Registration Certificate or decision on investment policies is issued. Following the new law, the

project should also “have a total turnover of at least ten trillion dong per year no later than three years from the first year when a turnover is generated or employ over three thousand employees”.

7. Clarity on M&A approval requirements

The LOI 2020 has clarified situations where preliminary M&A approvals are required. These are:

- Any increase in foreign ownership ratios of a target company that has business lines included in the list restricted business lines
- Increases to foreign ownership ratios in a target company from 50% or less to more than 50%
- Increases to foreign ownership ratios in a target company where foreign ownership is already greater than 50%
- Capital contribution or acquisition of a target company, which holds land use rights for land located within national security areas, including islands, border and coastal areas

8. Extension of operations for expiring projects

The LOI 2014 sets a maximum term for an investment project of 50 years, with some cases permitting a maximum period of 70 years, but there is no specific regulation on extending the project once this period expires.

The LOI 2020 clarifies that investors can apply to extend the operational duration of the project in accordance with the maximum permitted for initial applications. However, two cases exist where they are not permitted to be extended, where:

1. Investment projects use outdated technology, potentially causing environmental pollution, or are resource intensive;
2. Investment projects in cases where the investors must transfer without compensation of assets to the Vietnamese State or Vietnamese parties.

9. Removing public private partnerships (PPP) from the law on investment

According to the LOI 2020, investing through PPP contracts is no longer regulated by the Law on Investment, but instead is regulated by a specific PPP Law.