

NEW REGULATIONS OF THE DRAFT DECREE AMENDING DECREE 01/2021/ND-CP ON ENTERPRISE REGISTRATION

HONG NHUNG

After a period of implementation, Decree 01/2021/ND-CP on enterprise registration (**Decree 01**) has generated positive impacts on administrative procedure reform in the field of enterprise registration but also revealed certain shortcomings. Therefore, the Ministry of Planning and Investment is currently developing a draft to amend and supplement several provisions of Decree 01 (**Draft**) in order to tackle the drawbacks of this Decree and to continue promoting administrative procedure reform, thereby streamlining and perfecting the legal framework for enterprise registration. The following are some remarkable points of the Draft:

Supplementing regulations on the interconnection and sharing of business registration information

Based on the contents mentioned in Decree 122/2020/ND-CP, the Ministry of Planning and Investment has proposed adding the regulations on cooperation and interconnection in enterprise registration to the Draft. The interconnection and sharing of enterprise registration information help to minimize the repeated provision of information to various competent authorities, specifically as follows:

First, regarding the principles for interconnection and sharing of enterprise registration information: The cooperation and interconnection for information sharing are carried out based on the following principles:

- (i) Method of implementation: through digital data connection and sharing among information technology systems; and
- (ii) Scope of application: The interconnection and sharing of enterprise registration information are applied to certain procedures, including handling applications for registration of enterprises, branches, and representative offices; declaration of labor use; and issuance of unit code for social insurance engagement.

Second, regarding the obligations of enterprises in the process of interconnection and sharing of enterprise



registration information: When carrying out administrative procedures with labor authorities and social insurance agencies, enterprises, branches, and representative offices only need to provide their name, and the code of the enterprise, branch, or representative office. The obligation to provide copies of the Enterprise Registration Certificate, Branch Operational Registration Certificate, or Representative Office Operational Registration Certificate, as well as other enterprise registration information, which is shared by business registration authority through interconnection and sharing of enterprise registration information, will no longer be imposed on these entities.

Third, regarding the responsibilities of state management authorities in the process of interconnection and sharing of enterprise registration information: The business registration authority is the focal point for receiving and sharing/updating enterprise registration information. Social insurance agencies and labor authorities act as recipients of information shared by the business registration authority. For example, when there is a change in the registration information of an enterprise, a branch, or a representative office, the business registration authority shall share the information about the Enterprise Registration Certificate, Branch Operational Registration Certificate, or Representative Office Operational Registration Certificate with the relevant social insurance agency and labor authority.

Thus, in accordance with the Draft, the obligation to

notify, and update the enterprise registration information is transferred from enterprises to the business registration authority. This regulation is intended to simplify administrative procedures, reduce the time required for enterprises to complete procedures, and facilitate the inspection, auditing, and review processes by state management agencies.

Supplementing regulations on the legal status of branches, representative offices, and business locations of enterprises

The Draft supplements the provision on the legal status of branches, representative offices, and business locations in the National Business Registration Portal, including: (i) Temporarily suspending business; (ii) Not operating at the registered address; (iii) Having their licensed certificate revoked due to tax enforcement measures; (iv) Undergoing procedures for termination of operation; (v) Having ceased operation; and (vi) Operating. Such legal statuses are described in detail in the Draft so that both state management agencies and enterprises are fully aware of the legal status of branches, representative offices, and business locations.

This new regulation is to determine the operational status of branches, representative offices, and business locations according to the registration dossier and legal status of enterprises. This also makes the information related to the legal status of branches, representative offices, and business locations public and transparent, ensuring the accuracy and legal validity of information provided regarding their legal status. Simultaneously, this regulation also contributes to the consistency of statistical data between the business registration authority and the tax authority concerning state management.

Amending the content of the Application form for capital contribution, share or stake purchase of foreign investors

In accordance with the investment law, the registration dossier for capital contribution, share, or stake purchase submitted to the investment registration authority (**Dossier**) includes an application form that requires information on the “*estimated transaction value*” of the capital contribution, share, or stake purchase contract. However, under the Draft, this requirement has been replaced with a regulation that economic organizations with capital contribution, share, or stake purchase by foreign investors must clearly state the “*actual transaction value*” of the capital contribution, share, or stake purchase contract.

The proposal for such amendments is based on the following reasons:

- (i)** Being the result of the local viewpoints collected during the practical implementation of procedures;
- (ii)** Standardizing terminology to accurately reflect the substance of investment activities in the form of capital contribution, share, or stake purchase;
- (iii)** Synchronizing information updated by enterprises on the National Investment Information System when carrying out capital contributions, share purchases and ensuring clarity and convenience for state investment management;
- (iv)** Supporting the management of statistical data and reports, providing a basis for evaluating the actual cash flow of foreign investment in the form of capital contribution and share purchase out of the total foreign direct investments into Viet Nam.

Decree 01 has had positive impacts during the drastic administrative procedure reform of the Government. However, its shortcomings have been pointed out from the practice when enterprises face many difficulties when interacting with competent authorities and resolving the issues not yet guided by Decree 01, such as the interconnection and sharing of enterprise registration information; the legal status of branches, representative offices, and business locations, etc. Therefore, new regulations in the Draft towards specific amendment and supplement are expected to partially address the drawbacks of Decree 01, improve the management efficiency of competent authorities and support enterprises in implementing related procedures. Enterprises should study and update the progress of the Draft development to promptly access to the changes in relevant legal regulations.