

NOTABLE CHANGES OF LAW ON INVESTMENT 2020

GIA KHANH

Inheriting the achievements as well as overcoming limitations of the Law on Investment 2014 after nearly 6 years of implementation, the Law on Investment 2020 was adopted by the National Assembly and came into force on January 01, 2021. In this Legal Newsletter, NHQuang&Associates will analyze a few outstanding new features of this Law.

Conditional business lines reduced to 227, debt collection services officially banned

Firstly, with the purpose of ensuring the right to free business of individuals and enterprises in conditional or non-prohibited fields, the Law on Investment 2020 has reduced the number of conditional business lines to 227, compared with 243 under the Law on Investment 2014, Law No. 03/2016/QH14 amending and supplementing Article 6 and Appendix 4 on the list of conditional business lines of the Law on Investment 2014.

Specifically, some removed conditional business lines that can be mentioned include: Services of commercial arbitration organizations; Franchising; Logistics; Electricity export and import.



According to the Ministry of Planning and Investment, the removed business lines are those not directly relative to or not proven to have direct effects on national security, safety, social ethics, or those that have already been governed by technical regulations and standards.

In addition, the Law on Investment 2020 supplements several conditional business lines such as: payment services without payment accounts of customers; insurance brokerage and insurance auxiliary services; data center services; architectural services. The supplementation of the conditional business lines, as explained by the Ministry of Planning and Investment, aims to provide compatible regulations with international treaties to which Viet Nam is a signatory, relevant legal documents or to ensure the social security and order.

Secondly, the Law on Investment 2020 categorizes the debt collection service as a prohibited business line. The de facto provision of this service is to blame for this prohibition, where several organizations and individuals fail to comply with the provisions of laws (previously, the conditions for debt collection services were specified in Decree 104/2007/ND-CP), negatively affecting the social order, security, and safety. Some even abuse the regulations to form gangs for extortion or usury. However, it is also said that such removal will largely impact the enterprises that conduct this business with full legal compliance as well as the enterprises that use debt collection services regularly to avoid the enormous expenses for pursuing a lawsuit claiming property at Courts.

Investment incentives significantly extended

The Law on Investment 2020 has remarkably broadened the scope of investment incentives through preferential mechanisms including incentive business lines, incentive forms, and incentive beneficiaries, specifically:

- *Expanding the list of business lines subject to investment incentives:* It focuses on important fields which contribute to the socio-economic development such as higher education, manufacture of products resulted from science and technology; manufacture of medical equipment; manufacture of goods and provision of services which create or participate in a value chain or industrial cluster; and so on. The supplement of such fields aims at improving the quality of investment projects, creating a driving force to attract new investment waves into Viet Nam. In the coming time, this regulation will help enterprises in the above-mentioned areas enjoy incentives in corporate income tax, land rent, etc. to effectively mitigate the impact of COVID-19, as well as enhance the competitiveness of small and medium enterprises.
- *Adding forms of investment incentives:* Besides the 3 available investment incentive forms listed in the Law on Investment 2014, the form of "accelerated depreciation, increasing the deductible expenses upon calculation of taxable income" has been added to the list of investment incentive forms.
- *Adding the group of projects treated with "special investment incentives":* Replacing the provision on "Expanding investment incentives" in the Law on Investment 2014, the Law on Investment 2020 enables the Government to decide the application of special incentives and supports to boost some investment projects that contribute large impacts to the socio-economic development, applicable to: innovation centers, research and development centers, projects in the business lines eligible for special incentives with large investment capital and high disbursement rate; national innovation center established under the Prime Minister's decision. In the case where it is necessary to encourage the growth of any particularly important investment project or special administrative-economic unit, the Government shall submit to the National Assembly to decide the application of investment incentives other than those specified in the Law on Investment 2020 and other laws. This regulation requisitely requires prompt guidance by competent authorities to instantly attract huge domestic and foreign investors' engagement in the implementation of key projects and projects with great impact on socio-economic development. Nevertheless, there has not been any specific guidance yet from the Government.

- *Adding beneficiaries of investment incentives:* Some can be mentioned as (i) Social housing investment projects; (ii) Projects employing disabled workers; (iii) Technology transfer projects; technology incubators, science and technology business incubators under laws on high technology, on science and technology; (iv) Projects of creative start-up, innovation centers, research and development centers, etc. These amendments are to create uniformity and consistency among the new Law and the Law on Corporate Income Tax, the Law on Persons with Disabilities and the Law on Support for Small and Medium Enterprises.

Opportunities for the mergers and acquisitions (M&A) market

One crucial new point of the Law on Investment 2020 relating to the investment activities via M&A is the provision on division and separation of investment projects. Clause 1, Article 41 of the new Law allows a project to be divided or separated into multiple projects. Thus, besides the traditional forms of capital contribution, share purchase, project transfer, investors now have more options to restructure their investment projects. Previously, if an enterprise implementing a project wants to restructure through enterprise division or separation, it must carry out the procedures for dividing the activities, rights, and

obligations of project implementation after restructuring. Meanwhile, it is too difficult to fulfill the procedure for adjusting the Investment Registration Certificate. A new door has been opened by Law on Investment 2020, which allows investors to carry out corporate division or separation procedures in parallel with dividing or separating respective investment projects. As such, the legal conditions and procedures for restructuring foreign-invested enterprises are clearer, as assessed. It is expected that the upcoming draft Decree guiding the Law on Investment 2020 will provide more specific instructions for the implementation of this regulation.

Furthermore, the Law on Investment 2020 has introduced a broader definition of "investment capital", accordingly, investment capital includes money and other assets under civil law and international treaties to which Viet Nam is a state party, which are used to conduct business investment activities. For foreign investors, such expansion of the "investment capital" scope has built up consistency in the regulations between domestic laws, international agreements, and practices. They now can diversify their investment forms, especially promoting non-cash investments.

Market access conditions for foreign investors

Market access conditions for foreign investors is a key new point of the Law on Investment 2020. Accordingly, foreign investors must satisfy these conditions to invest in the lines subject to the List of business lines restricted from market access for foreign investors in Clause 2, Article 9. The list contains: (i) business lines not yet permitted for market access; and (ii) business lines permitted for market access with conditions. As expected by the Ministry of Planning and Investment, the former includes the business lines that Vietnamese laws and international treaties on investment do not permit foreign investors to invest in or do business on; the business lines that affect national defense and security; and state monopoly business lines. The list of business lines permitted for market access with conditions includes those for which international

treaties and Vietnamese laws have regulations on treatment discrimination against foreign investors regarding market access conditions.

The brand-new regulations on market access conditions of foreign investors require them to satisfy certain criteria when setting a foothold into Vietnamese market through capital contribution, share purchase or economic organization establishment. This regulation is also a great support to investors since the conditions on investment restriction and market access shall be specified for each investment field.

From our point of view, the Law on Investment 2020 has opened the opportunities for investment activities in modern business lines with high growth prospects and necessary for the orientation of high-tech economic development in a sustainable manner, attracting foreign capital sources and extensively promoting domestic enterprises' advantages in implementing international trade commitments. Currently, there have been no specific instructions issued by the Government and competent agencies, the application of the new provisions is still limited. It is expected that in January 2021, a Decree guiding the implementation of the Law on Investment will be promulgated. As a participant in the research and development of the Law on Investment, NHQuang&Associates will update and analyze the upcoming guiding documents of the new Law to facilitate our corporate clients' efficient application of new regulations.