

NEW REGULATIONS IN DECREE PROVIDING DETAILS AND GUIDELINES FOR THE LAW ON INVESTMENT

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Serving the purpose of guiding and concretizing new points of the Law on Investment 2020 which is considered to have solved several entangled investment-related issues, on March 26, 2021 Decree No. 31/2021/ND-CP providing details and guidelines for implementation of some articles of the Law on Investment (**Decree 31**) was issued. This Decree took effect from the date of promulgation and has some prominent contents as follows:

Firstly, the Decree for the first time addresses the mechanism to resolve investors' grievances and prevent State-investors disputes. Accordingly, investors shall have the right to reflect their grievances related to the application and enforcement of law on investment; to lodge complaints, make denunciation, initiate administrative lawsuits when there are grounds to believe that illegal elements exist, infringe upon their legitimate rights and interests. Competent state agencies shall have the responsibility to settle grievances; to promptly notify the Ministry of Planning and Investment, the Ministry of Justice, the Ministry of Foreign Affairs, coordinate for timely settlement when the grievances, complaints, denunciations and lawsuits may lead to international investment disputes; to coordinate in settling arising international investment disputes in accordance with the laws.

Secondly, the Decree provides the list of business lines with limited market access by foreign investors, specifically as follows:

- To officially promulgate the list of business lines with limited market access by foreign investors (Appendix I of Decree 31), containing: (i) business lines not yet permitted for market access (25 business lines); and (ii) business lines permitted for market access with conditions (59 business lines). Simultaneously, the list of conditions for market access will be reviewed, gathered and publicized on the National Investment Portal;

- Principle of application: foreign investors (i) are not allowed to make investment in business lines not yet permitted for market access; (ii) must qualify the required market access conditions in conditional market access business lines; and (iii) shall be treated equally in market access as domestic investors except for the business lines specified in Appendix I of Decree 31.

Thirdly, Decree 31 introduces detailed provisions on the subject of application, procedures for investment project adjustment in circumstances arising during effective period of the Law on Investment 2014 but not yet recognized and specifically guided in legal normative documents, making it difficult for both investors and state agencies, such as: (i) adjustment of investment projects in case where investors receive transfer of such projects as collateral; (ii) adjustment of investment projects in case of investment project division, separation or merger; (iii) adjustment of investment projects in case of using land use right or land-attached assets under the investment projects to make capital contribution; and (iv) adjustment of investment projects in case of using land use right or land-attached assets under the investment projects for business cooperation.

Fourthly, Decree 31 provides guidelines for application of the Law on Investment 2020's new provisions on suspension of investment projects. In the event where investors make decisions on investment project shutdown, the total downtime shall not exceed 12 months. Investors shall notify the Investment Registration Agency under Form A.I.13 Circular 03/2021/TT-BKHDT providing the form of documents and reports related to investment activities in Viet Nam, offshore investment from Viet Nam and investment promotion (**Circular 03**) within 05 business days from the date of the decision on project shutdown. The Investment Registration Agency will then receive and notify the investment project suspension to relevant agencies under Form A.II.14 prescribed under Circular 03.

Comments and recommendations

Firstly, the mechanism of investors' grievance resolution and State-investor dispute prevention under Decree 31 has clearly bound the responsibilities of the Ministry of Planning and Investment as well as other competent Ministries and state agencies in improving the efficiency in resolving investors' grievances. Whereby, investment activities in Viet Nam will be ensured to be conducted smoothly.

Secondly, the promulgation of the application principle and publication of the list of business lines with limited market access by foreign investors will unravel one of the gravest problems of foreign investors when entering into Vietnamese market – researching investment conditions in each field, which are currently regulated scatteredly in many specialized legal documents.

Thirdly, the supplement of detailed provisions on investment project adjustment order and procedures which have not yet been specifically guided have removed problems encountered by investors and state agencies, minimized time and compliance cost as well as granted more opportunities for investors to implement M&A transactions in more diversified forms.

In addition to the listed contents, investors should pay attention to review and understand new and notable points of Decree 31 such as: implementation of online investment procedures, extension of subjects of investment incentives, determination of areas eligible for investment incentives, as well as certain contents of by-law documents relative to investment amended and supplemented in Chapter IX of Decree 31 (on determination of investment projects using land, regulations on exemption or reduction of land rent, etc.) to apply in business investment process.

