



ClientMemo

August 2015

www.indochinecounsel.com

Vietnam: Key Changes under the New Law on Investment

Dear All,

On 26 November 2014 the National Assembly of Vietnam adopted two new laws of great importance to investors: the new Law on Investment No. 67/2014/QH13 (the **2014 LOI**) and the Law on Enterprises No. 68/2014/QH13 (the **2014 LOE**) which will take effect from 1 July 2015 and replace the 2005 Law on Investment (the **2005 LOI**) and the 2005 Law on Enterprises (the **2005 LOE**) respectively.

In this Client Memo, we look at some key changes introduced by the 2014 LOI. They cover subjects ranging from new guidance on foreign investment conditions to licensing procedures for investment projects and M&A activities by the foreign investors. For the key changes under the 2014 LOE, please see our separate client memo for this new law.

We hope you find this Client Memo and its general information helpful. Should you require specific advice or legal assistance regarding any subject matter covered herein, please contact our professionals or offices as listed on the last page of this Client Memo.

Kind regards,
Dang The Duc
Managing Partner

Key changes under the 2014 LOI

No.	Issues	Under the 2005 LOI	Under the 2014 LOI
1.	Clearer definition of foreign investor	Foreign investor includes any foreign organization or individual using capital in order to carry out an investment activity in Vietnam	Foreign investor means any individual with foreign nationality or organization established under foreign law conducting business investment activities in Vietnam.
2.	The 51% test (foreign vs domestic investors)	<p>Under the 2005 LOI, the same investment conditions which are applicable to domestic investors shall be applied to foreign investors where Vietnamese investors hold 51% or more of the charter capital of an enterprise.</p> <p>However this general rule is differently interpreted by the authorities and in practice may not be applicable to conditional investment sectors (e.g., trading, and sectors falling under the WTO Commitments¹). Some authorities may treat an enterprise engaged in conditional investment sectors with even 1% foreign ownership as a foreign-invested enterprise (FOE)² which is subject to foreign investment conditions (FIC) applicable to foreign investors.</p>	<p>The 2014 LOI removes the concept of FOE and introduces the concept of a 'foreign invested economic organization' (FIEO) which is defined as an economic organization with a foreign investor being a member or shareholder.</p> <p>Under Article 23.1 of the 2015 LOI, an FIEO will [only] be subject to the same conditions and investment procedures applicable to foreign investors if:</p> <ul style="list-style-type: none"> (a) 51% or more of its charter capital is held by foreign investors; (b) 51% or more of its charter capital is held by an enterprise under Item (a) above; or (c) 51% or more of its charter capital is held by foreign investors and enterprises under Item (a) above. <p>Article 23.1 offers a chance to utilize a multi-layer ownership structure of subsidiaries in Vietnam to step in sectors where foreign investment is restricted.</p>

¹ Commitments Vietnam made upon its accession to the WTO, effective as of 11 January 2007.

² Under the 2005 LOI, an FOE is defined as any enterprise established by a foreign investor in order to conduct investment activities in Vietnam; or a Vietnamese enterprise in which a foreign investor purchases shares, [with which it] merges or which it acquires.

No.	Issues	Under the 2005 LOI	Under the 2014 LOI
3.	Relaxation of the licensing requirements	<p>Under the 2005 LOI, foreign investment projects and certain domestic projects (depending on investment capital and investment sector) must obtain an investment certificate (IC).</p> <p>For an FOE, it is required to obtain an IC which also serves as an enterprise registration certificate (ERC) granted to local company.</p> <p>However the obtaining of an IC may take several months or more, as it may undergo very time-consuming procedures.</p>	<p>Under the 2014 LOI, an IC is replaced by an investment registration certificate (IRC) which is only required for the project of foreign investors or FIEOs prescribed in Article 23.1 of the 2014 LOI, and may be obtained within 15 days only, or in case of certain strategic or mega projects which have obtained a required investment policy, 5 working days. Then, the investor may register and quickly obtain an ERC as a 'birth certificate of enterprise' for establishment of the FIEO.</p> <p>Of note, the M&A activities are not required to obtain an IRC, but registered with the local department of planning and investment if (a) the target operates in a conditional investment sector applicable to foreign investors; or (b) as a consequence, the foreign investors or FIEOs prescribed in Article 23.1 of the 2014 LOI hold 51% or more of charter capital of the target.</p> <p>The 2014 LOI also streamlines procedures for investment projects using the State land which require an investment policy from the provincial People's Committees. Under the 2014 LOI, the investment policy is granted within 35 days and such procedure may be made concurrently with land introduction and appraisal of the need for land use.</p>
4.	Classification of investment forms	<p>The 2005 LOI divided all forms of investment into 2 groups: direct & indirect investment.</p> <p>Direct investment included:</p> <ul style="list-style-type: none"> • establishment of a company; • acquisition of shares in an existing company in Vietnam and 	<p>The 2014 LOI provides the following investment forms which are no longer grouped under direct or indirect investment:</p> <ul style="list-style-type: none"> • to establish an economic organization (EO) to develop a project; • to contribute capital, purchase shares or capital contribution of an EO; and • to invest by way of a contractual arrangement, including: investment

No.	Issues	Under the 2005 LOI	Under the 2014 LOI
		<p>participation in that company's management, or investment in mergers and acquisitions; and</p> <ul style="list-style-type: none"> investment in the contractual forms of a Business Cooperation Contract (<i>BCC</i>) with other investors; or a Build-Operation-Transfer contract (<i>BOT</i>), Build-Transfer-Operate (<i>BTO</i>) or Build-Transfer contract (<i>BT</i>) with the State body. <p>Indirect investment is where the investor purchases securities without participating directly in the management of the target company.</p>	<p>contract in the form of BCC and a public private partnership (<i>PPP</i>), i.e., a contract signed between a competent State agency and an investor or project enterprise to perform an investment project in accordance with the law.</p>
5.	Decrease of the prohibited and conditional business lines	<ul style="list-style-type: none"> There are 51 prohibited business lines which are provided not only in the 2005 LOI, but also in different laws and regulations. The number of conditional business lines was 386. 	<ul style="list-style-type: none"> Only 6 prohibited business lines. It is noted that some business lines prohibited under the 2005 LOI have been moved to the list of conditional business lines under the 2014 LOI. The number of conditional business lines is 267 (listed in Appendix 4 of the 2014 LOI).
6.	Investment incentives	Investment incentives apply to enterprises operating in specific industries (business sectors) or geographical areas.	<p>In addition to projects falling under those industries or geographical areas which are entitled to preferential treatment, the following projects are also entitled to investment incentives:</p> <ul style="list-style-type: none"> Investment projects of investment capital of VND6,000 billion or more, disbursed within three years from the date of issuance of either the IRC or

No.	Issues	Under the 2005 LOI	Under the 2014 LOI
			in-principle investment approvals; <ul style="list-style-type: none"> • Investment projects in rural areas employing 500 employees or more; and • Hi-tech enterprises, and scientific and technological enterprises or organizations.
7.	Deposit for project implementation	Not provided in the 2005 LOI.	A deposit of 1% - 3% of total investment capital is required as a guarantee for the project implementation where the investor is allocated or leased land by the State.
8.	Dispute settlement	Foreign investors and any FOEs can choose a foreign and/or international arbitration to resolve disputes between them and other investors relating to investment activities in Vietnam.	Foreign investors and FIEOs for which the investment conditions applicable to foreign investors are applied (i.e., FIEOs prescribed in Article 23.1 of the 2014 LOI as mentioned above), can choose foreign and/or international arbitration to resolve disputes between them and other investors relating to business investment activities.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 35 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Luu Xuan Vinh

Managing Associate
vinh.luu@indochinecounsel.com

Phan Anh Vu

Partner
vu.phan@indochinecounsel.com

Le Thi Hai Duong

Junior Associate
duong.le@indochinecounsel.com

Le Nguyen Huy Thuy

Partner
thuy.le@indochinecounsel.com

Pham Van Loi

Legal Assistant
loi.pham@indochinecounsel.com

To Xuan Tinh

Partner
tinh.to@indochinecounsel.com

Pham Thi Thanh Huyen

Associate
huyen.pham@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72 -74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +848 3823 9640
F +848 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +844 3795 5261
F +844 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

This Client Memo is designed to provide our clients and contacts with general information of the relevant topic for reference only, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

© 2015 Indochine Counsel. All Rights Reserved.