



ClientMemo

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Vietnam: Key Changes under the New Enterprise Law

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 replace the 2005 Law on Investment (the **2005 LOI**) and the 2005 Law on Enterprises (the **2005 LOE**) respectively as from 1 July 2015.

In this Client Memo, we look at some key changes introduced by the 2014 LOE. They cover subjects ranging from new rules of business rights, enterprise registration certificates for management of organizations, reorganization and related operations of enterprises with a focus on the two major corporate vehicles: a limited liability company (**LLC**) and a joint stock company (**JSC**). For key changes under the 2014 LOI, please see in 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 New Enterprise Law

No.	Issues	Under the 2005 LOE	Under the 2014 LOE
A -- General Provisions			
1.	Business rights and business registration	<p>Enterprises have the right to conduct business activities which are not prohibited by law.</p> <p>However they must conduct business strictly under the registered business lines as recorded in the enterprise registration certificate (ERC) granted by the licensing authority. This means <i>'registration first, business later'</i>.</p>	<p>Enterprises are <i>free</i> to conduct business activities which are not prohibited by laws.</p> <p>It is noted that the business lines of enterprises are only stated in the application file for enterprise registration, but not in the ERC. This may be interpreted to mean that the enterprise is allowed to implement a new business activity (not falling within the list of prohibited or conditional business lines), before a notice is served to the authority. This means <i>'business first, registration (notice) later'</i>.</p>
2.	ERC contents, registration vs notification procedure	<p>The ERC states various registration information of an enterprise, including business lines, details of owners or member/shareholders, branches, representative offices and business units.</p> <p>Any changes to the ERC must be registered with the licensing authority within the required time frame, and be reflected in an amended ERC which may be obtained within 5 working days.</p>	<p>The ERC just contains 4 contents:</p> <ul style="list-style-type: none"> • Enterprise name and code number; • Head office address; • Charter capital; and • Name and certain information of enterprise's legal representative, partners in a partnership, owner of a private enterprise, members in an LLC. <p>A registration procedure is only required for changes of the ERC contents, and takes only 3 working days to obtain a new ERC or its amendment.</p> <p>For changes of certain other material information, including business lines, founding shareholders (or foreign shareholders) of non-listed companies, etc., that is not stated in the ERC, it is only required to submit, within 10 days from the date of the changes, a relevant notice to notify the licensing authority of such changes which are to be updated on the National Informative Gate of Enterprise</p>

No.	Issues	Under the 2005 LOE	Under the 2014 LOE
			<p>Registration Data (NIGERD).</p> <p>As a note, the investment certificate granted to a foreign-invested economic organization (FIEO) no longer serves as an ERC. Please further look at our Client Memo (August 2015) for the investment registration requirement and key changes under the 2014 LOI.</p>
3.	Reporting obligation for changes to enterprise's managers	Not provided.	<p>An enterprise must make a report to the business registration office within 05 days from the date of change of any information (name, contact address, ID or passport number) of any of the following persons:</p> <p>(a) A member of the board of management of a JSC;</p> <p>(b) A member of the board of control (inspection committee) or any inspector;</p> <p>(c) Director or General Director (GD).</p>
4.	Definition of "ownership ratio of a foreign investor"	Not provided.	<p>Under the 2014 LOE, '<i>share or capital contribution ownership ratio of a foreign investor</i>' means the aggregate ownership ratio of voting shares (capital) by all foreign investors in a Vietnamese enterprise.</p> <p>The above term is defined, but not used anywhere in the 2014 LOE. Pending a decree guiding the implementation of the 2014 LOE and the 2014 LOI, it is likely that this term is designed to interpret the 'charter capital' regulated in Article 23.1 of the 2014 LOI for the case where an FIEO is subject to conditions applicable to foreign investors. Please look at our Client Memo on key changes under the 2014 LOI, section '<i>The 51% test (foreign vs domestic investor)</i>'.</p>
5.	Definition of State-owned enterprise and information	A State owned enterprise (SOE) means an enterprise in which the State holds more than 50% of the	<p>SOE means an enterprise in which the State holds 100% of the charter capital.</p> <p>The 2014 LOE requires the SOEs to conduct periodical and extraordinary</p>

No.	Issues	Under the 2005 LOE	Under the 2014 LOE
	disclosure obligation	<p>charter capital.</p> <p>Under the 2005 LOE, all SOEs must be converted into an LLC or JSC, but it contains no special requirement of information disclosure for the SOEs.</p>	disclosure of various information, as detailed in Article 108 & 109 of the 2014 LOE. The GD or the chairman of Members' Council of an SOE may be dismissed if they do not meet the business target in the approved business plan.
6.	Legal Representative of the enterprise	An enterprise shall have only one legal representative.	<p>One of the key changes introduced in the 2014 LOE is the entitlement of the LLC and JSC to have more than one legal representative. The specific number, managerial positions and rights and obligations of the legal representative(s) must be specified in the charter of the enterprise.</p> <p>The enterprise must ensure that there is always at least one legal representative residing in Vietnam.</p>
7.	Enterprise seal	An enterprise may have only one seal, which must be in a specific form with specific content as stipulated by law and issued by the local police department.	The 2014 LOE provides more flexibility in relation to the number of seals that an enterprise may have as well as the contents of such seals. In particular, an enterprise has the right to decide on the form, number and contents of its seal.
8.	Company reorganization: consolidation or merger	Only enterprises having the same corporate form may be consolidated or merged.	Enterprises of any type of corporate forms may be consolidated into a new enterprise or merged into another enterprise.
B -- Key changes in relation to LLC			
9.	Shorter time line for capital contribution of LLCs	Charter capital contributions to an LLC may be paid in full within 36 months from the date of issuance of the ERC.	<p>Charter capital contributions to an LLC must be paid in full within 90 days from the date of issuance of the ERC.</p> <p>If the charter capital has not been fully contributed, the enterprise must register adjustment of its charter capital within 60 days (in case of a multi-member LLC) or 30 days (in case of a one-member LLC), upon expiry of the deadline for capital</p>

No.	Issues	Under the 2005 LOE	Under the 2014 LOE
			contribution.
10.	Lower quorum and voting thresholds for multi-member LLC	<p>The quorum of the first convened meeting of the Members' Council is 75% of the charter capital of the enterprise.</p> <p>The voting threshold for passing a resolution of the Members' Council by way of collection of written opinions is at least 75% of the charter capital of the enterprise.</p>	<p>The quorum of the first convened meeting of the Members' Council is reduced from 75% to 65% of the charter capital.</p> <p>A resolution of the Members' Council shall be passed by way of collection of written opinions if it is agreed by members holding at least 65% of the charter capital of the enterprise.</p>
C -- Key changes in relation to JSC			
11.	Organizational and managerial structure	<p>The required management structure of the JSC includes:</p> <ul style="list-style-type: none"> • General Meeting of Shareholders (GMS) • Board of Management (BOM) • Director or GD • Board of Control (BOC), unless the JSC has less than 11 shareholders and no corporate shareholder who owns 50% shares or more. At least one member of the BOC must be an accountant or auditor. 	<p>A JSC may have more flexibility in managerial structure by selecting one from the following:</p> <p><u>Model 1:</u></p> <p>The same as under the 2005 LOE (however the head of the BOC must be a professional accountant or auditor and must work full-time in the company);</p> <p><u>Model 2:</u></p> <ul style="list-style-type: none"> • GMS • BOM in which at least 20% members must be independent members (not yet defined) • Director or GD • Internal auditing committee under the BOM.
12.	Quorum for meeting of the GMS is reduced	A JSC can conduct GMS with 65% quorum for the first meeting and 51% quorum for the second meeting.	The quorum of the first convened GMS is 51% and of the second meeting is 33% of the total number of voting slips.
13.	Lower voting thresholds for a GMS resolution	<p>The voting threshold for passing a resolution of the GMS is:</p> <ul style="list-style-type: none"> • 75% for important 	<p>The voting threshold for GMS to pass resolutions is reduced to:</p> <ul style="list-style-type: none"> • 65% for certain specific matters; and • 51% for general matters.

No.	Issues	Under the 2005 LOE	Under the 2014 LOE
		matters; and <ul style="list-style-type: none"> • 65% for general matters. 	
14.	Abolition of restriction to GD of a JSC	A director/ GD of a JSC cannot be GD / director of other companies at the same time.	The GD of a JSC is no longer prohibited from holding the position of GD / director in other companies.
15.	Required notification for changes of founding shareholders and shareholders being foreign investor	JSC is required to notify the licensing authority of any change in the ownership of major shareholders having 5% or more of the total shares.	Unlisted JSC must notify the licensing authority if there is: <ul style="list-style-type: none"> • any change of founding shareholder and ownership of foreign shareholder within 10 days from the date of such change; and • any change in certain information about the foreign shareholders including name, citizenship, passport number and registered address within 3 days from the date of such change.

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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.

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