

The Law On Enterprises 2020

On 17 June 2020, the Vietnamese National Assembly adopted the Law on Enterprises No. 59/2020/QH14 (“**LOE 2020**”), replacing the currently effective Law on Enterprises No. 68/2014/QH13 dated 26 November 2014 (“**LOE 2014**”). The LOE 2020 shall take effect on 01 January 2021. Notable changes are as follows:

1. Expansion of Scope of State-Owned Enterprises

Under the current LOE 2013, a state-owned company was defined as an enterprise of which 100% of its charter capital is held by the State. The LOE 2020 redefines this by now expanding the scope of state-owned companies to include enterprises in which the State holds over 50% of its charter capital or total voting shares. As state-owned enterprises are subject to a different set of rules regarding, for example, corporate governance, this may impact existing investors who have minority interests in such type of enterprises.

2. Responsibilities of Multiple Legal Representatives

The LOE 2020 provides greater detail on the treatment of multiple legal representatives in an enterprise. Similar to that envisaged in the LOE 2014, the company charter would detail the rights and obligations of each legal representative. However, the LOE 2020 now explicitly states that in the absence of such provision in the charter, each legal representative will have full authority before any third party, and all of the legal representatives will take joint responsibility for any damage caused to the company according to the civil laws and other relevant laws.

3. Elaboration of Private Placement Procedures

The LOE 2020 amends the conditions applicable for private placement of shares of a joint-stock company (save for public companies). Private placements are not to be placed on public communication and must be offered to no more than 100 investors (excluding professional stock investors) or shall only be offered to professional stock investors. In addition, this placement shall be conducted in accordance with the following:

- (a) The private placement plan must be ratified according to the LOE 2020;
- (b) The company shareholders may exercise their pre-emptive right to buy shares provided by the LOE 2020, save for amalgamations or mergers. Only in the case where they do not completely buy all the shares, the remaining shares shall be sold according to the private placement plan if the conditions of the sale is no more advantageous than those offered to the shareholders (unless approved otherwise by the General Meeting of Shareholders).

4. Abolishment of Control Board / Controller Requirement

A multi-member limited liability company is no longer required to establish a Control Board, save where such company is held by the State in accordance with the LOE 2020.

A single-member limited liability company is no longer required to have controller(s).

5. Seals

Enterprises are no longer required to register its seal. Enterprises also no longer need to notify the seal sample to the business registration authority through the National Business Registration Portal.

6. Capital Contribution Timeline

Regarding the current 90-day period for capital contribution upon enterprise establishment, the period for transportation or import of contributed assets or conducting administrative procedures for asset ownership transfer will not be counted in this timeline. In the interim period pending such contribution/transfer, the owner of the enterprise will, have the rights and obligations in proportion to his/her promised capital contribution.

7. Minority Shareholder Protection

The LOE 2020 provides greater minority shareholder protections. Any shareholder or group of shareholders that hold at least 5% of ordinary shares shall be have rights similar to shareholders or group of shareholders holding 10%, save only for the right to nominate candidates for the Board of Directors and the Control Board.

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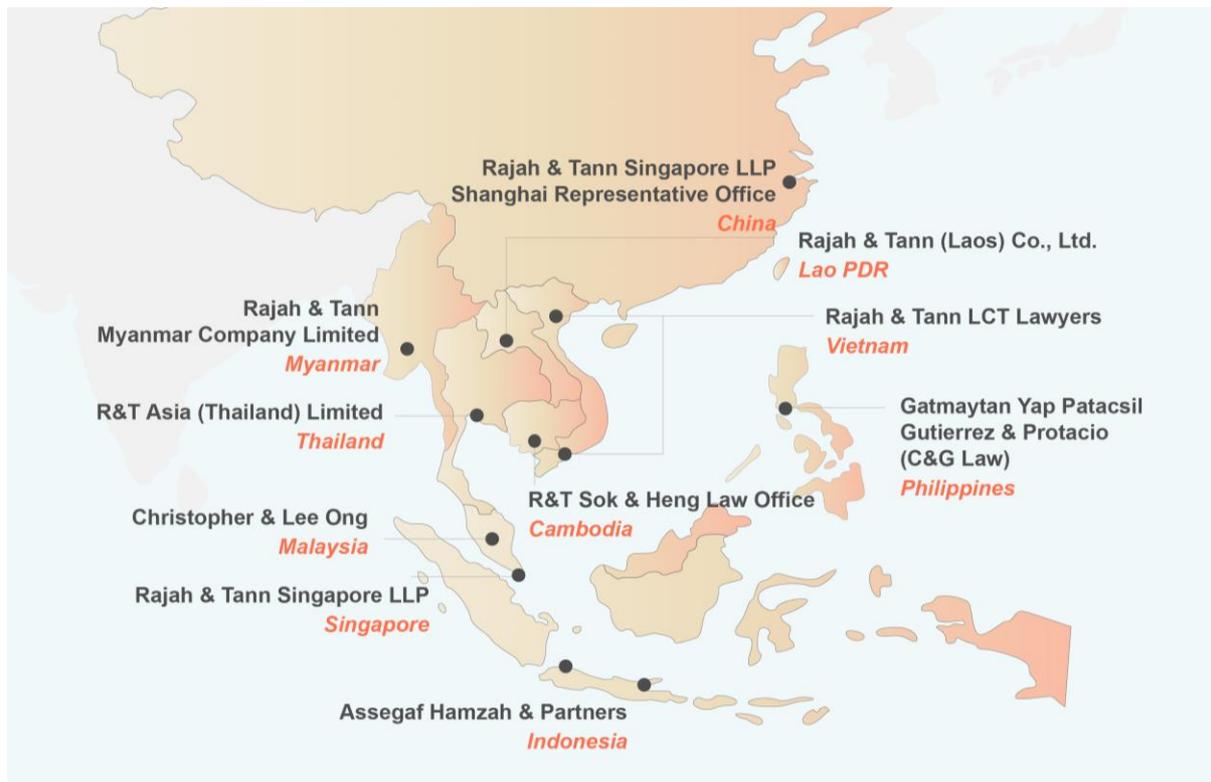
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