

The Law On Investment 2020

On 17 June 2020, the Vietnamese National Assembly adopted the Law on Investment No. 61/2020/QH14 (“**LOI 2020**”), replacing the currently effective Law on Investment No. 67/2014/QH13 dated 26 November 2014 (“**LOI 2014**”). The LOI 2020 shall take effect on 01 January 2021. Notable changes are as follows:

1. **Banning Investment in Debt Collection Services**

Debt collection services have been categorised as a business in which investment is prohibited.

2. **Supplementing and Amending the List of Conditional Business Lines**

The LOI 2020 abolishes several conditional business lines currently included in the LOI 2014. Notable abolished business lines are as follows:

- (a) Service activities of commercial arbitration organisations
- (b) Franchise services
- (c) Logistic services
- (d) Service of ship agents
- (e) Services of training and retraining knowledge on real estate brokerage, operating real estate trading floors
- (f) Cosmetic surgery services

But the LOI 2020 also supplements some business lines which will be considered “conditional”:

- (a) Services of voluntary drug rehabilitation, smoking cessation, HIV / AIDS treatment, caring for the elderly, people with disabilities and children
- (b) Supplying clean water (daily-life water)
- (c) Architectural services
- (d) Services of imported press release
- (e) Services of training seafarers, organising the recruitment and supply of seafarers.

The full list of conditional business lines is specified in Appendix IV of the LOI 2020.

3. Detailing Regulations on Business Lines and Conditions Applied to Foreign Investors to Access to the Vietnamese Market

The LOI 2020 provides that a list of business lines in which foreign investment is conditional shall be published by the Government. The list will contain (i) business lines in which foreign investment has not been allowed and (ii) business lines in which foreign investment is conditional. Conditions applied to foreign investment may include:

- (a) the ownership rate of charter capital by foreign investors in a business organisation;
- (b) the form of investment;
- (c) the scope of investment activities;
- (d) the capacity of foreign investors; partners participating in the implementation of investment activities; and
- (e) other conditions in accordance with the laws, resolutions of the National Assembly, ordinances, resolutions of the National Assembly Standing Committee, decrees of the Government, and international treaties which Vietnam is a member.

The conditions applied to foreign investment are not entirely new with foreign investors. However, the LOI 2020 provides greater detail on such investments.

4. Exemption from Investment Registration Certificate for Certain Projects

Under the current LOI 2014, prior to establishing an economic organisation (e.g., enterprise), a foreign investor must have an investment project and obtain an Investment Registration Certificate.

This requirement remains the same in the LOI 2020, except that this requirement will not be apply to small and medium-sized start-ups or start-up investment funds in accordance with the Law on Supporting Small and Medium-Sized Enterprises.

5. Expanding Cases where Investment Incentives and Support are Applicable

The LOI 2020 expands the subjects eligible for investment incentives as follows:

- (a) High-tech enterprises, science and technology enterprises, science and technology organisations; projects with transferred technology on the list of technologies encouraged for transfer in accordance with the laws on technology; technology incubators, incubators of science and technology enterprises in accordance with the laws on high technology, the laws on science and technology; enterprises which manufacture, supply technology, equipment, products and services serving the

requirements of environmental protection in accordance with the law on environmental protection;

- (b) Investment projects for creative start-ups, innovation centres, R&D centres;
- (c) Investing and trading in product distribution chains of SMEs; investing and trading in technical facilities supporting SMEs, incubators which foster SMEs; investing and trading in a working areas to support SMEs in their creative start-ups in accordance with the Law on Supporting Small and Medium-Sized Enterprises.

6. Supplementing Provisions on Special Investment Incentives and Support

The LOI 2020 supplements provisions on special investment incentives and support. Particularly, a number of investment projects which have great socio-economic impact will be given special investment incentives and supports as follows:

- (a) Investment projects on establishment or expansion of innovation centres or R&D centres with a total investment capital of VND 3,000 billion or more and which disburses at least VND 1,000 billion within a period of 03 years from the date of being granted the Investment Registration Certificate or Investment Policy Approval; or national innovation centres established under the decision of the Prime Minister
- (b) Investment projects in industries and trades eligible for special investment incentives with an investment capital of VND 30,000 billion or more and which disburses at least VND 10,000 billion within a period of 03 years from the date of being granted the Investment Registration Certificate or Investment Policy Approval.

The level and duration of the special investment incentives would comply with the provisions of the Law on Enterprise Income Tax and the laws on land.

7. Supplementing Cases where Investment Projects Do Not Have to be Guaranteed

Under the current LOI 2014, investors must place an amount in escrow to guarantee the implementation of any project which involves land allocation or lease or which require change of land use purpose by the State. However, under LOI 2020, this requirement may be waived in certain cases:

- (a) Investors who win an auction of land use right to execute an investment project which is allocated land with land use levy or leased land with one-off rental payment for the entire lease term by the State
- (b) Investors who win a bid to execute the investment project which uses land
- (c) Investors that are allocated or leased land by the State on the basis of transferring investment projects that have made the escrow payment or completed capital

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contribution or capital mobilisation according to the schedule specified in the Investment Registration Certificate or Investment Policy Approval;

- (d) Investors that are allocated or leased land by the State to execute investment projects on the basis of receiving land use rights and properties attached to land of other land users.

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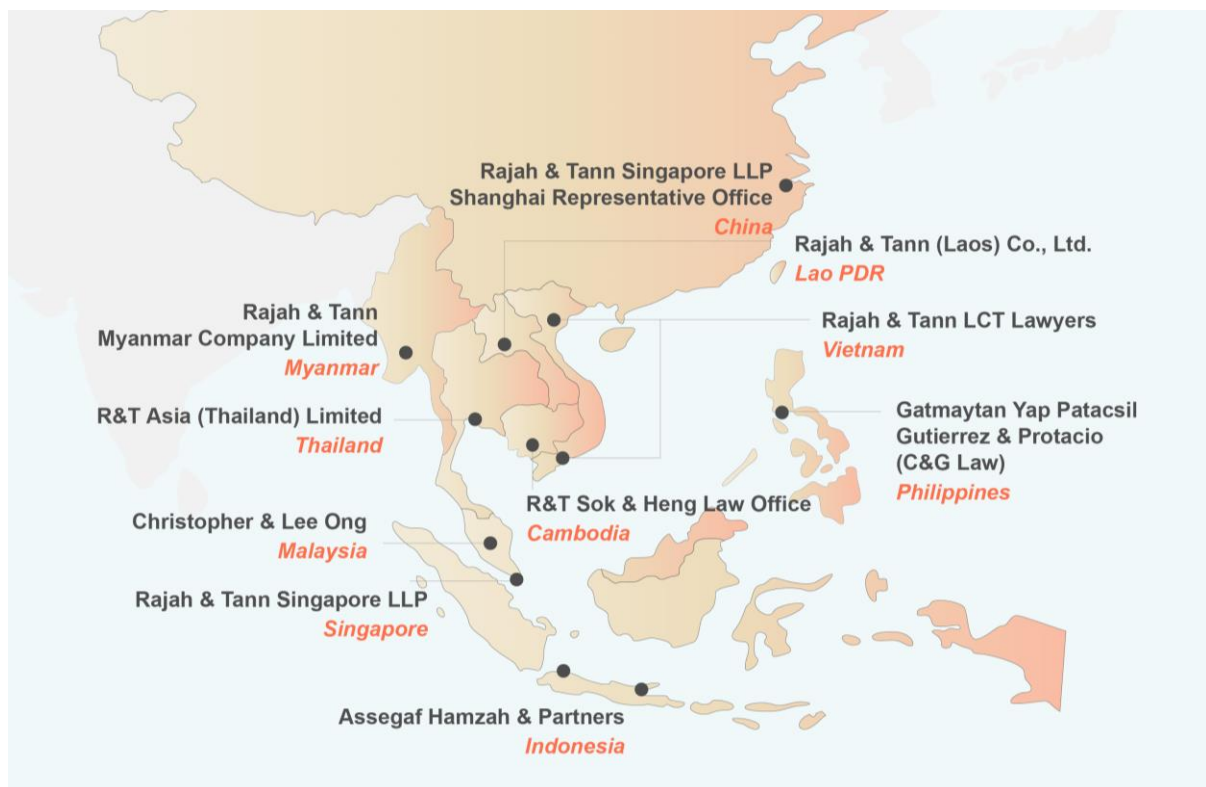
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