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June 2020

Some noteworthy novelties of the Law on Investment 2020

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Some noteworthy novelties of the Law on Investment 2020

On June 17, 2020, the National Assembly voted to approve the amended Law on Investment project (the "LOI 2020") with 7 chapters, 77 articles and 4 attached appendices. The LOI 2020 will take effect on January 1, 2021 and replace the Law on Investment No. 67/2014/QH14, the Law No. 03/2016/QH14 amending and supplementing Article 6 and Annex 4 on the list of business lines subject to conditional business investment and has some notable novelties:

1. Subjects of application

The Law on Investment 2020 adds that the subjects of application are agencies related to business investment activities, specifically, *"this Law applies to investors, agencies, organizations and individuals related to business investment activities"*.

2. Adding some fresh definitions

Compared to the Law on Investment 2014, the LOI 2020 adds a number of fresh definitions such as approval of investment policies, national database on investment, innovative start-up investment projects, and business investment conditions, market access conditions for foreign investors, offshore investment activities. In addition, the Investment Capital is defined more clearly by the LOI 2020 than the Law on Investment 2014, specifically, *"Investment capital is money and other assets in accordance with civil law and international treaties to which the Socialist Republic of Vietnam is a member to carry out business investment activities."*

3. Additional provisions on policies on business investment

Business investment activities detrimental to national defense and security of investors will be suspended, stopped or terminated, whether investors directly invest in or buy capital contributions or shares in the business operating in Vietnam.

4. Prohibiting the business line of "Debt collection services"

- In the LOI 2020, debt collection service business has been removed from the list of industries and trades subject to conditional business investment, which was officially transferred to the list of industries and trades banned from business investment.
- According to the transitional provisions of the LOI 2020, the transaction of providing debt collection services before the effective date of this Law (January 01, 2021) will cease to be effective on the effective date of this Law and the parties participating in such a transaction may carry out activities to liquidate debt collection transaction in accordance with civil law and relevant laws.

5. Regarding business lines subject to conditional business investment

- The LOI 2020 removes 22 industries and trades of conditional business investment including service of commercial arbitration organizations; trade assessment services; franchising; logistic service business; business of services for training, fostering knowledge about real estate brokerage, operating real estate trading floors; business of services for training, fostering professional knowledge about, management skills of, operating condominium apartments, etc
- Besides, the LOI 2020 adds a number of conditional business lines such as tobacco detoxication services, HIV/AIDS treatment, care for the elderly, disabled people, children, trading in clean water (daily living water), architectural services, imported newspaper distribution service, registration of fishing ships, training and fostering crew members of fishing ships, etc

Some noteworthy novelties of the Law on Investment 2020

6. Foreign investors eligible for application of market access conditions

- Foreign investors are eligible for application of market access conditions as prescribed for domestic investors, except for the business lines in the list of business lines of restricted access for foreign investors such as (i) business lines not yet allowed in the market; (ii) business lines allowed in the market with conditions.
- Conditions for accessing the market for foreign investors prescribed in the list of business lines of restricted access for foreign investors include: (i) Conditions on ownership percentage of charter capital by foreign investors in economic organizations; (ii) Conditions on the form of investment; (iii) Conditions on investment scope; (iv) Conditions on the capacity of investors and partners participating in investment activities; (v) Other conditions prescribed in laws, resolutions of the National Assembly, ordinances, resolutions of the National Assembly Standing Committee, decrees and international treaties.

7. Regarding incentives and investment aids

- Regarding the application of investment incentives, the LOI 2020 adds the case of *"Quick depreciation, increasing the deductible expenses when calculating taxable income"*.
- Regarding the subjects entitled to investment incentives, the LOI 2020 supplements a number of projects such as those of employing disabled laborers in accordance with the law on people with disabilities; investing and trading in product distribution chains of small and medium-sized businesses; those on innovative start-up investment, innovation centers, etc. Investment incentives are applied for a limited period of time, based on the investor's project implementation results. Investment projects that meet the conditions for enjoying investment incentives are entitled to the highest investment incentive level.
- Regarding the business lines eligible for investment incentives: To supplement the business line of *"producing goods and providing services to create or participate in value chains and industry clusters"*.

In addition, the LOI 2020 allows the Government to decide the application of special investment incentives and aids to encourage the development of a number of investment projects with significant socio-economic impacts such as:

- Investment projects on establishment or expansion of research and development (R&D) centers and innovation centers with a total investment capital of VND 6,000 billion or more; National innovation centers established under the decision of the Prime Minister.
- Investment projects in the business lines eligible for special investment incentives with an investment capital of VND 30,000 billion or more and disbursing at least VND 10,000 billion within a period of 03 years.
- Other investment projects have great socio-economic impacts as decided by the Prime Minister.
- The duration and level of application of special investment incentives must not exceed 50% of the highest incentive level as prescribed by law.

8. Contributing capital, buying shares, buying capital portions of foreign investors

- Regarding the conditions for contributing capital, purchasing capital portions: capital contribution, purchase of shares or capital portions by foreign investors must meet the following conditions: (i) Conditions on market access for foreign investors; (ii) Provisions on assurance of national defense and security; (iii) Land laws on the conditions for receiving land use rights and conditions on land use on coastal, border islands, communes, wards and towns.
- Regarding investment procedures in the form of capital contribution, purchasing share or capital portions
 - Investors contributing capital, buying shares, buying capital portions in economic organizations must meet the conditions and carry out procedures for changing members and shareholders according to the law corresponding to each type of economic organizations.
 - Conditions, ownership ratio of foreign investors and procedures for purchasing or selling shares, purchasing capital portions, and securities trading by securities business organizations, investment funds, securities investment companies, transaction listing and registering companies, public companies will comply with the law on securities. Where the law on securities does not provide for the procedures, conditions, and ownership percentage by foreign investors, the law on investment will apply.
 - In addition, foreign investors must carry out the procedures for registering capital contribution, share purchase, purchase of capital portions in an economic organization before changing members or shareholders.



Some noteworthy novelties of the Law on Investment 2020

9. Approval of investment policy

The LOI 2020, which approves the investment policy, issued by a competent state agency, can immediately identify the investor of the project or only determine the form of investor selection. Accordingly, for projects using land and the selection of investors for projects that must be conducted in the form of auction of land use rights under the land law or bidding according to the law on bidding, the approval of investment policy will be issued before implementing investor selection procedures (Articles 29.2 and 33.2).

10. Choosing investors to implement the project

The LOI 2020 clarifies the principles and conditions to apply each form of investor selection to implement projects using land, including: (i) Auction of land use rights in accordance with the land law; (ii) Bidding to select investors in accordance with the law on bidding; (iii) Approving investors and investment policy pursuant to the Law on Investment.

11. Competence to approve investment policies

- For the approval of the Prime Minister's investment policy, the LOI 2020 supplements some of the following projects:
 - ✓ New construction investment projects: airports; runways of airports and airfields; passenger terminal international airport; passenger terminals of international airports; cargo terminals of airports with an annual capacity of 1 million tons or more.
 - ✓ Investment projects to build new ports and harbors belonging to special seaports; investment in the construction of new ports and wharves with investment capital of VND 2,300 billion or more belonging to class-I seaports.
 - ✓ Residential construction projects (for sale, lease, lease-purchase), urban areas with land use scale of 50 ha or more or less than 50 ha but with a population of 15,000 or more therein; or having a land use scale of 100 ha or more or less than 100 ha but having a population of 10,000 or more in a non-urban area; or investment projects irrespective of the size of land surface and population within the protection scope of any relics recognized by competent authorities as national or special national heritage.
 - ✓ Projects with investment capital of VND 10,000 billion or more.
 - ✓ Investment projects concurrently under the authority to approve investment policies by two or more provincial People's Committees.



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- For the approval of investment policy of the provincial People's Committee, the LOI 2020 supplements some of the following projects:
 - ✓ Investment projects that require the State to allocate, lease land and permit any change of land use purpose; except for land allocation, land lease, change of land use purpose of households and individuals not subject to approval of provincial-level People's Committees in accordance with the land law.
 - ✓ Investment projects in construction of houses (for sale, for lease, for lease-purchase), urban areas with a land use scale of under 50 hectares and a population of less than 15,000 people therein; or having a land use scale of less than 100 ha and a population of less than 10,000 people in areas outside urban areas; or irrespective of the size of land area and population but in a restricted development area or historic inner city (defined in the planning projects) of the special grade urban area.
 - ✓ Investment project in construction and business of golf courses.
 - ✓ Investment projects of foreign investors and foreign-invested economic organizations carried out in coastal, border islands, communes, wards, towns and other areas affecting national defense and security.



12. Cases of non-guarantee of investment project implementation

Investors do not have to pay deposits or have bank guarantee for deposit obligations to secure the project implementation in the following cases:

- Any investor who wins the land use right auction to execute an investment project is allocated land with land use levy or land lease fees remitted to the State in a one-off payment for the entire lease term.
- Any investor wins the bidding to execute any investment project using land.
- Investors are allocated or leased land by the State on the basis of serving as the transferees of investment projects that have made deposits or have completed capital contribution or capital mobilization according to the schedule specified in the registration certificates, the written approval of investment policies.
- Investors 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.
- Investors are non-business units gaining income, high-tech park development companies established under decisions of competent state agencies to implement investment projects in development of infrastructure of industrial parks, export processing zones, hi-tech zones and functional areas in economic zones.

13. Cases of non-extension or termination of investment project operations

- The Law on Investment 2020 supplements the provision on not extending the implementation of investment for projects using outdated technology, potentially causing environmental pollution, resource-intensive projects and transfer projects with condition on non- reimbursement.
- Supplementing the regulation on terminating investment projects in the case where they are subject land recovery due to non-continuous use of land or slow progress in land use according to the law on land; Investors do not deposit or have no guarantee of deposit obligations as prescribed by law for investment projects subject to collaterals to ensure execution of investment projects; Investors carry out investment activities on the basis of artificial civil transactions in accordance with the civil law.
- In addition, investors have their business and investment activities suspended, stopped or terminated if such activities are detrimental to national defense and security.

Some noteworthy novelties of the Law on Investment 2020

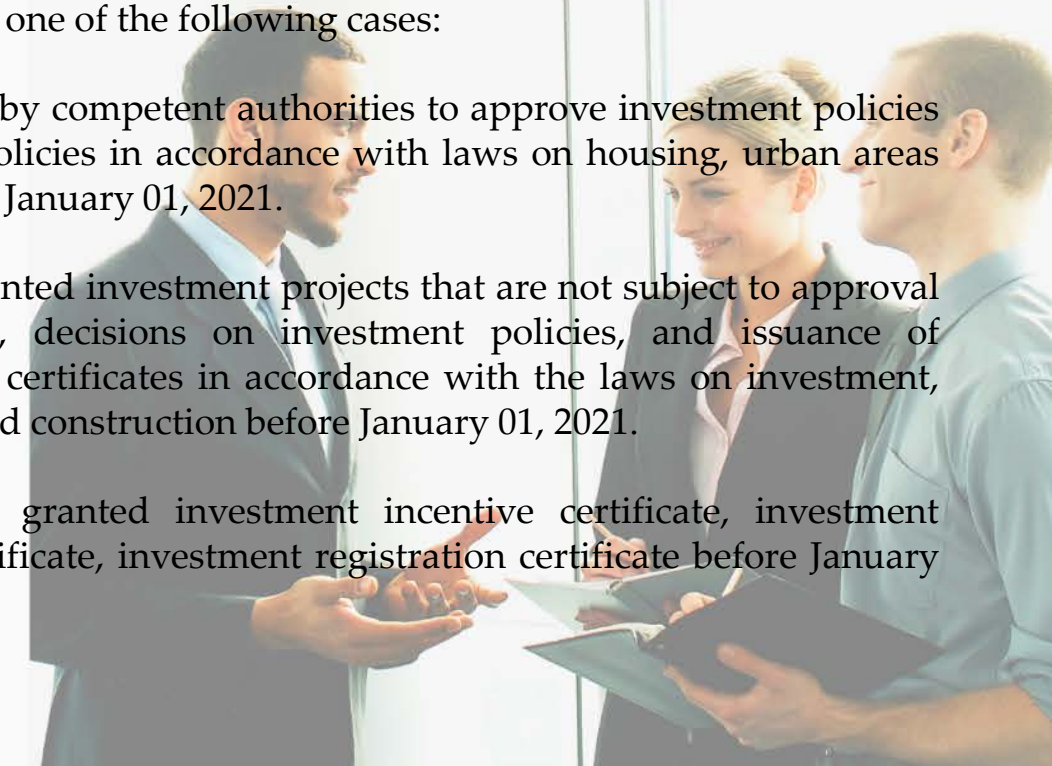
14. Supplementing the regulations on business lines banned from investment and conditional offshore investment

- The Law on Investment 2020 regulates the business lines banned from outward investment, including: (i) business lines prescribed in Article 6 of the Law on Investment 2020 and other relevant international treaties; (ii) business lines of technologies, products banned from export in accordance with the law on foreign trade management; (iii) Other business lines in accordance with the laws of the host country.
- Business lines subject to conditional offshore investment, including Banking, Insurance, Stocks, Journalism, Radio and Television, Real Estate Business.

15. Cases where investors do not have to follow procedures for approval of investment policies

According to the transitional provisions of the Law on Investment 2020, the investor is not required to carry out the procedures for approval of investment policies as prescribed in this Law for projects approved or permitted for implementation by competent state agencies in one of the following cases:

- Investors are approved by competent authorities to approve investment policies or decide investment policies in accordance with laws on housing, urban areas and construction before January 01, 2021.
- Investors have implemented investment projects that are not subject to approval of investment policies, decisions on investment policies, and issuance of investment registration certificates in accordance with the laws on investment, housing, urban areas and construction before January 01, 2021.
- Any project has been granted investment incentive certificate, investment license, investment certificate, investment registration certificate before January 01, 2021.



LEGAL ALERT

June 2020

The Law on Enterprises 2020: Remarkable changes

1. Redefining state enterprises
2. Enterprises are not required to notify the seal specimen before use
3. Adding another method of submitting business registration dossiers by post
4. Adding 02 prohibited acts
5. Adding subjects banned from establishing enterprises
6. Tightening the transfer of ownership of capital-contributing assets to a Company
7. Social enterprises must notify when ceasing fulfilling social objectives
8. Some amendments related to the two-member limited liability company
9. Some amendments related to One Member Limited Liability Company
10. Some amendments related to private enterprises
11. Some amendments related to any Joint Stock Company
12. Supplementing the case of suspension, suspension of operation, or termination of business

The Law on Enterprises 2020: Remarkable changes

On June 17, 2020, the National Assembly passed the amended EL project ("EL 2020") with 10 chapters and 218 articles. EL 2020 will take effect on 01/01/2021 and replace EL No. 68/2014/QH14.

Compared with EL 2014, EL 2020 has some novelties that enterprises should pay attention as follows:

1. Redefining state enterprises

According to EL 2020, State-owned enterprises include enterprises with more than 50% of charter capital held by the State, the total number of voting shares, instead of 100% of the charter capital as in EL 2014.

According to EL 2020, the concept of state-owned enterprises is based on the principle of dividing the types of state-owned enterprises according to different levels of ownership on the basis of Article 88 of EL 2020 such as: (i) State-owned enterprises holding 100% of charter capital; (ii) Enterprises in which the State holds more than 50% of charter capital or the total number of voting shares or more, except for enterprises with 100% of charter capital owned by the State. In particular, each type of enterprise has regulations on appropriate governance to improve governance effectiveness, publicity, transparency and accountability for explanation, ensuring equality with businesses of all other economic sectors.

2. Enterprises are not required to notify the seal specimen before use

According to EL 2014, before using the seal, the enterprise is obliged to notify the seal specimen to the business registration agency for public posting on the National Business Registration Portal.

However, EL 2020 does not require businesses to notify the seal specimen to the business registration authority. In addition, EL 2020 also supplements some regulations on enterprise stamps including stamps made at seal engraving facilities or in the form of digital signatures in accordance with the law on electronic transactions and digital signatures.

The enterprise is allowed to decide on the type of the stamp, the quantity, the form and the content of the stamp of the enterprise, its branches, representative offices and other units.

3. Adding another method of submitting business registration dossiers by post

According to EL 2020, in addition to submitting enterprise registration dossiers directly at the business registration office, the enterprise founder or his/her authorized person can also apply for enterprise registration via postal service or electronic network. Accordingly, an individual submits a dossier for enterprise registration through the account on the National Enterprise Registration Information System that is granted to him/her, the dossier for enterprise registration via electronic network has the legal value equivalent to the paper enterprise registration dossier.

In addition, organizations and individuals may choose to use digital signatures in accordance with the law on electronic transactions or use business registration accounts to register enterprises via electronic networks.

4. Adding 02 prohibited acts

EL 2020 adds 02 prohibited acts against enterprises: (i) doing business on behalf of the enterprise when it is suspended and (ii) acts of sponsoring terrorism.



The Law on Enterprises 2020: Remarkable changes

5. Adding subjects banned from establishing enterprises

In addition to organizations and individuals that do not have the right to establish and manage enterprises in Vietnam as before, EL 2020 also adds another subject which is not allowed to establish and manage enterprises, being *organizations as commercial legal entities prohibited from doing business and operating in certain fields according to the Criminal Code*.

6. Tightening the transfer of ownership of capital-contributing assets to a Company

EL 2020 adds a number of provisions on transfer of ownership of capital-contributing assets as follows:

- For assets without ownership registration, when a member as a limited liability company, partnership or shareholder of a joint stock company makes capital contribution to the company through its account, it is not required to have written confirmation of the delivery and receipt of capital-contributing assets.
- The capital contribution is only considered to be completed when the legal ownership of the capital-contributing assets has been transferred to the company.
- The remittance of profits abroad by foreign investors must be made via accounts in accordance with the law on foreign exchange control, except for cases of payment in other non-cash forms.

7. Social enterprises must notify when ceasing fulfilling social objectives

Accordingly, EL 2020 supplements regulations on social enterprises when terminating the implementation of social and environmental objectives or not using profits for reinvestment, they must notify the competent authorities.

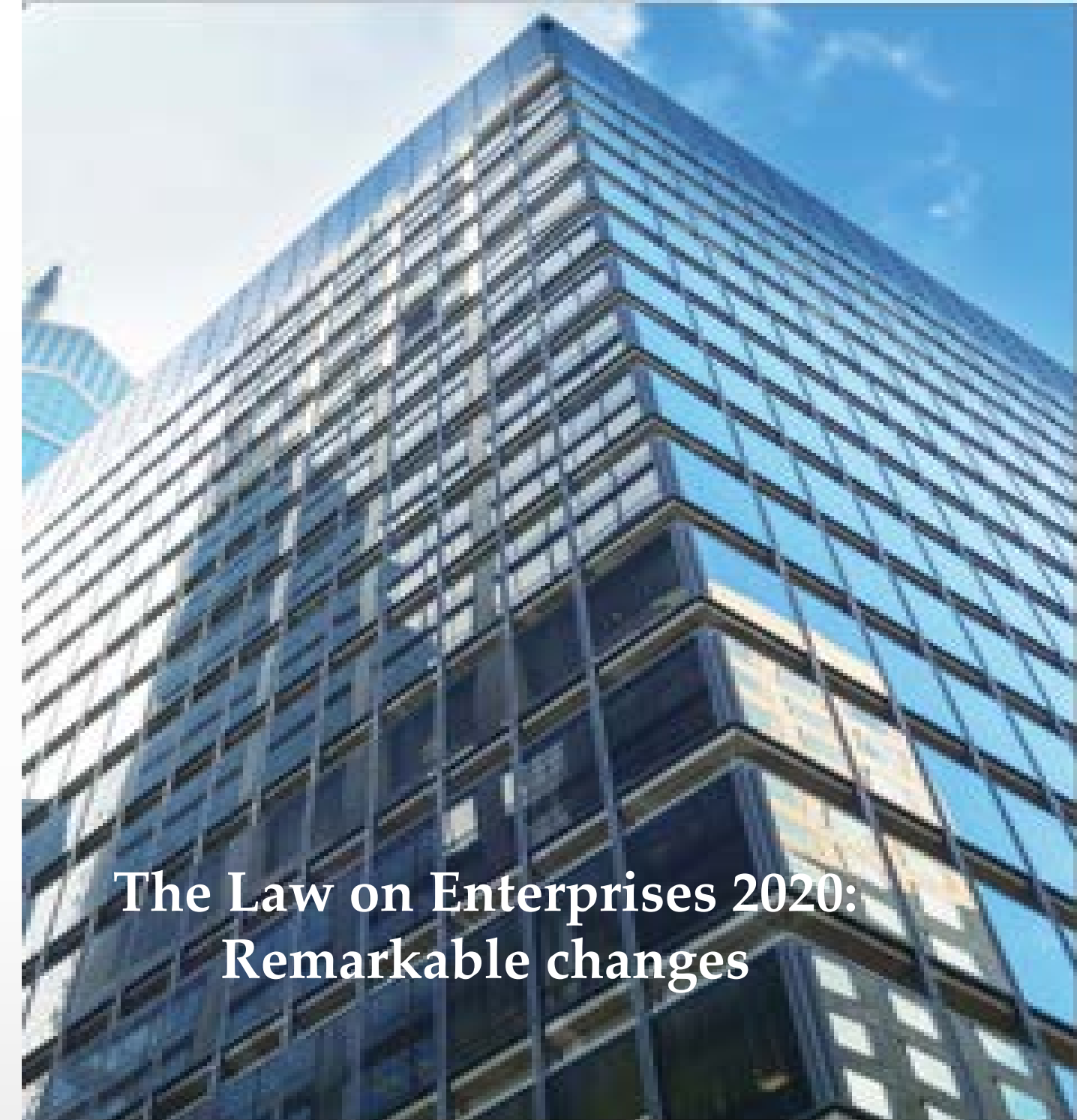
8. Some amendments related to the two-member limited liability company

- *A limited liability company with two or more members may issue shares to convert itself into a joint stock company*. The Company is also allowed to issue bonds in accordance with EL 2020 and related laws, the private bond placement must comply with Articles 128 and 129 of EL 2020.
- Members must contribute full capital to the company in the right type of assets as committed when registering to establish the enterprise within 90 days issuance of the enterprise registration certificate, excluding the time for transportation, import of capital-contributing assets, performance of administrative procedures to transfer the ownership of assets. During this period, the member has the rights and obligations corresponding to the committed capital contribution. Members of the company may only contribute capital to the company with a different type of assets from the committed ones if this is approved by more than 50% of the remaining members.
- The register of members may be in the form of paper documents and electronic data recording information on members' ownership of their capital contributions. The company must promptly update members in the register of members at the request of relevant members in accordance with the company charter.
- Regarding the handling of capital contributions: (i) where the company member as an individual is detained, serving imprisonment sentence or administrative measures at any compulsory detoxification establishments, or compulsory education institutions, then such member can authorize others to perform some or all of their rights and obligations at the company; (ii) where a company member is an individual banned from practicing certain occupations or jobs by the Court or the company member is a legal entity prohibited by the Court from doing business or operating in certain fields within the scope of business lines of the company, such member will not be allowed to practice or do the work that is banned in that company or the company will suspend or terminate the relevant business line according to the decision of the Court.
- The company must have at least one legal representative who holds one of the titles as Chairman of the Members' Council or Director or General Director. Unless otherwise prescribed by the company charter, the Chairman of the Members' Council is the company's legal representative.
- In case the presiding chairman and the minutes writer refuses to sign the meeting minutes, the meeting minutes of the Members' Council will be effective if signed by all other members of the Members' Council attending the meeting and contain full content as prescribed. The meeting minutes must clearly state that the presiding chairman and the minutes writer refuse to sign the meeting minutes. The signatories of the meeting minutes are jointly responsible for the accuracy and truthfulness of the meeting minutes of the Members' Council.
- Resolutions of the Members' Council passed with 100% of the total charter capital are lawful and effective even in cases where the sequence and procedures for passing such resolutions are not strictly followed.
- The Supervisory Board has 01 to 05 supervisors. The term of a Supervisor is no more than 05 years and may be reappointed with an unlimited number of terms. If the Supervisory Board has only 01 Supervisor, that Supervisor is also the Head of the Supervisory Board and must meet the criteria of the Head of the Supervisory Board.



9. Some amendments related to One Member Limited Liability Company

- A one-member limited liability company may issue shares to convert into a joint stock company. The private bond placement complies with Articles 128 and 129 of EL and relevant laws.
- The company owner must contribute sufficient capital to establish the enterprise in the right type of assets as committed when registering the enterprise establishment within 90 days of being granted the enterprise registration certificate, excluding the time for transportation and import of assets as capital contribution, implementation of administrative procedures to transfer property ownership. During this period, the company owner has rights and obligations corresponding to the committed capital contribution.
- If the company owner is a missing individual, his capital contribution will be settled in accordance with the civil law. In case the company owner is an individual banned from practicing some definite occupations or jobs by the Court or the company owner is a legal entity prohibited by the Court from doing business or operating in certain fields within the scope of business lines of an enterprise, that individual is not allowed to practice or do some definite jobs at that company or the company suspends or terminates the relevant business lines under the Court's decision.
- One member limited liability company owned by an organization must have at least one legal representative holding one of such positions as Chairman of the Members' Council, the company president or the general director or director.
- Resolutions and decisions of the Members' Council are approved when more than 50% of the attending members agree or the number of attending members owns more than 50% of the total number of votes for approval. The amendment and supplement of the company charter, its reorganization, transfer of a part or the whole of its charter capital must be approved by at least 75% of the attending members or by the attending members holding 75% or more of the total votes. The resolution or decision of the Members' Council takes effect from the date of adoption or the date stated in that resolution, unless otherwise prescribed by the company charter.



The Law on Enterprises 2020: Remarkable changes

10. Some amendments related to private enterprises

EL 2020 supplements the provisions on exercising the rights of the owner of a private enterprise in some special cases such as: (i) the owner of a private enterprise is detained, serving a prison sentence, (ii) the owner of the private enterprise is deceased and an heir left, (iii) the owner of a private enterprise is deceased without an heir, (iv) the owner of the private enterprise is restricted on or loses civil act capacity, having difficulties in awareness, conduct control, (v) the owner of a private enterprise is prohibited by the Court from practicing certain occupations or jobs within its scope of business lines.



The Law on Enterprises 2020: Remarkable changes

11. Some amendments related to any Joint Stock Company

- A joint stock company has the right to issue shares, *bonds and other securities* of the company.
- In addition, if shareholders contribute capital in assets, the time for transportation, import and implementation of administrative procedures to transfer ownership of such assets will not be included in this capital contribution term.
- Ordinary shares used as the underlying asset to issue depository certificates without voting rights are called underlying ordinary shares. depository certificates without voting rights have economic benefits and obligations corresponding to underlying ordinary shares, except voting rights.
- Instead of having to own ordinary shares of 10% or more of the ordinary shares in a continuous period of at least 06 months as before, LOE 2020 stipulates that shareholders or groups of shareholders only need to own 5% the total number of ordinary shares or more or a smaller percentage stipulated in the company charter that has certain rights.
- Only organizations authorized by the Government and founding shareholders may hold voting preferential shares. Voting incentives of founding shareholders are valid for 3 years from the date the company is granted an enterprise registration certificate. Voting rights and time limit for voting preferences for voting preferential shares held by the Government authorized organization are specified in the company charter. After the time of voting preference, voting preferential shares are converted into ordinary shares.
- Shareholders who own voting preferential shares may transfer such shares to other persons in case of transfer according to the legally effective or inherited judgments or decisions of the Court.
- A joint stock company that is not a public company conducting private share placement must meet the conditions (i) not offering via mass media, (ii) offering to less than 100 investors, excluding professional securities investors or only offering to professional securities investors. The company by itself decides the plan to conduct private share placement, its shareholders exercise the priority to buy shares as prescribed (except for its merger and consolidation; if the purchase is not fully completed, the remaining shares will be sold to other people on less favorable terms than the conditions offered to shareholders. Foreign investors buying shares under private placement must carry out procedures for buying shares in accordance with the Investment Law.
- Some conditions need to be added for resolutions of the General Meeting of Shareholders to be passed. Accordingly, the resolution of the General Meeting of Shareholders on the content that adversely changes the rights and obligations of the shareholders holding preferred shares is only approved if such preferred shareholders attending the meeting hold from 75 % or more of that type of preferred shares agree in case of passing a resolution in the form of written comments.
- Supplementing new regulations on Auditing Committee. Accordingly, the audit committee is a specialized agency of the Board of Management. Auditing committee has 2 or more members. The Chairman of the Auditing Committee must be an independent member of the Board of Management. Other members of the Audit Committee must be non-executive members of the Board of Management.

12. Supplementing the case of suspension, suspension of operation, or termination of business

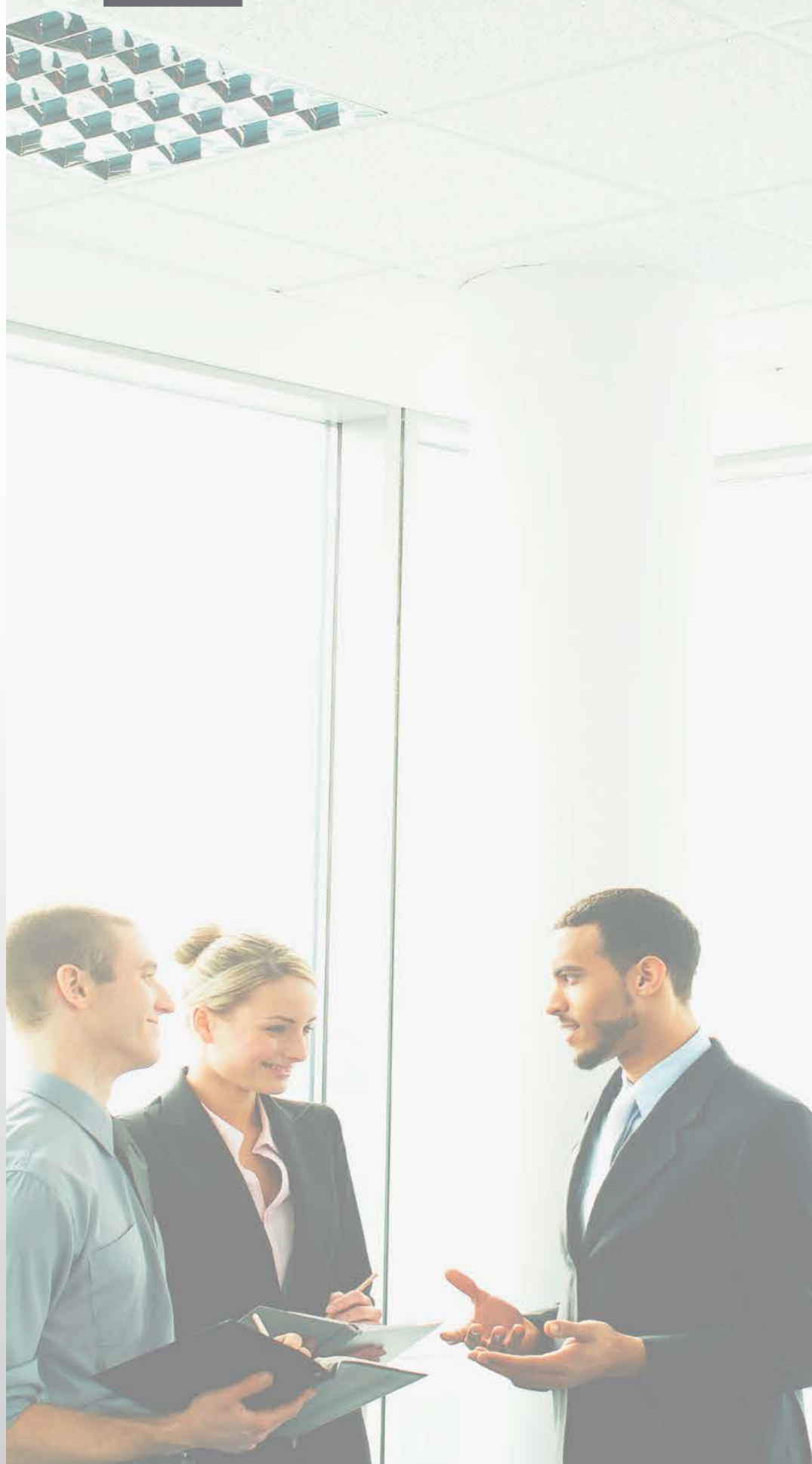
EL 2020 adds cases where business registration agencies and competent state agencies require enterprises to suspend, suspend operations or terminate business:

- Suspension or termination of business lines for conditional access to the market with respect to foreign investors upon detecting that the enterprise does not meet the corresponding conditions prescribed by law.
- Suspension of business at the request of relevant authorities in accordance with the laws on tax administration, environment and other laws;
- Suspension of operation, termination of business in some business lines or in some areas as decided by the Court.





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