

## Viet Nam LAW ON INVESTMENT (2020)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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# LAW ON INVESTMENT

Pursuant to the Constitution of the Socialist Republic of Vietnam;  
The National Assembly promulgates the Law on Investment.

## Chapter I GENERAL PROVISIONS

### Article 1. Scope of regulation

This Law prescribes business investment activities in Vietnam and offshore business investment activities from Vietnam.

### Article 2. Subjects of application

This Law applies to investors and agencies, organizations and individuals involved in business investment activities.

### Article 3. Interpretation of terms

In this Law, the terms below are construed as follows:

1. Approval of investment policy means a competent state agency's approval of the objectives, site, scope, and implementation schedule and duration of an investment project; investor or form of investor selection and special mechanisms and policies (if any) to implement the project.
2. Investment registration agency means a state agency competent to grant, modify and revoke investment registration certificates.
3. National database on investment means a collection of data on investment projects nationwide which is linked with databases of related agencies.
4. Investment project means a set of proposals on using medium- or long-term capital to conduct business investment activities in a specific geographical area within a specified period of time.
5. Expanded investment project means an investment project to develop an operating investment project by expanding its scope, raising its capacity, renewing technologies, reducing pollution or improving the environment.
6. New investment project means an investment project which is implemented for the first time or an investment project which is independent from operating business investment projects.
7. Innovative startup investment project means an investment project to realize an idea on the basis of exploiting new intellectual assets, technologies or business models and is capable of growing fast.
8. Business investment means investors' use of investment capital to carry out business activities.
9. Business investment conditions means conditions which individuals and organizations must satisfy when carrying out business investment activities in sectors and trades subject to conditional business investment.
10. Market access conditions applicable to foreign investors means conditions which foreign investors must satisfy in order to invest in sectors and trades on the List of sectors and trades in which foreign investors are subject to market access restrictions specified in Clause 2, Article 9 of this Law.
11. Investment registration certificate means a paper document or an electronic document acknowledging information on an investment project registered by an investor.
12. National investment information systems means professional information systems used to monitor, assess and analyze the situation of investment nationwide to serve state management work and support investors in carrying out business investment activities.
13. Offshore investment activities means investors' transfer of investment capital abroad from Vietnam and use of profits earned from such investment capital sources to carry out business investment activities in foreign countries.
14. Business cooperation contract (BCC) means a contract signed between investors for business cooperation or profit or product distribution in accordance with law without establishing an economic organization.
15. Export processing zone means an industrial park specialized in producing exports and providing services for export production and export activities.
16. Industrial park means an area which has a delimited geographical boundary and is specialized in producing industrial goods and providing services for industrial production.
17. Economic zone means an area which has a delimited geographical boundary, consists of various functional sub-zones and is established for the purposes of investment attraction, socio-economic

development and national defense and security safeguarding.

18. Investor means an organization or individual carrying out business investment activities. Investors include domestic investors, foreign investors and foreign-invested economic organizations.

19. Foreign investor means a foreign national or an organization established under a foreign law that carries out business investment activities in Vietnam.

20. Domestic investor means a Vietnamese national or an economic organization without any members or shareholders being foreign investors.

21. Economic organization means an organization established and operating under Vietnam's law. Economic organizations include enterprises, cooperatives, unions of cooperatives and other organizations which carry out business investment activities.

22. Foreign-invested economic organization means an economic organization having members or shareholders being foreign investors.

23. Investment capital means money and other assets as defined by the civil law and treaties to which the Socialist Republic of Vietnam is a contracting party which are used to carry out business investment activities.

## **Article 4. Application of the Law on Investment and relevant laws**

1. Business investment activities in Vietnam's territory must comply with the Law on Investment and other relevant laws.

2. If there are any different provisions between the Law on Investment and other laws promulgated before the effective date of the Law on Investment regarding sectors and trades banned from business investment or sectors and trades subject to conditional business investment, the provisions of the Law on Investment shall prevail.

Provisions on names of sectors and trades banned from business investment and sectors and trades subject to conditional business investment in other laws must be consistent with Article 6 of and Appendixes to the Law on Investment.

3. If there are any different provisions between the Law on Investment and other laws promulgated before the effective date of the Law on Investment regarding the order and procedures for business investment or investment guarantees, the provisions of the Law on Investment shall prevail, except the following cases:

a) The investment, management and use of the State's investment capital at enterprises, which must comply with the Law on Management and Use of State Capital Invested in Production and Business at Enterprises;

b) The competence, order and procedures for public investment and the management and use of public investment funds, which must comply with the Law on Public Investment;

c) The competence, order and procedures for investment and implementation of projects; the law governing project contracts; investment guarantees and mechanism for management of state capital applied directly to investment projects in the form of public-private partnership, which must comply with the Law on Investment in the Form of Public-Private Partnership;

d) The implementation of construction investment projects, housing projects and urban center projects, which must comply with the Law on Construction, Housing Law and Law on Real Estate Business after obtaining approval of investment policy or approval of adjustment of investment policy from competent agencies in accordance with the Law on Investment;

dd) The competence, order, procedures and conditions for business investment prescribed in the Law on Credit Institutions, Law on Insurance Business and Petroleum Law;

e) The competence, order, procedures and conditions for business investment and securities- and securities market-related activities in the Vietnamese securities market, which must comply with the Law on Securities.

4. When necessary to include in another law promulgated after the effective date of the Law on Investment particular provisions on investment which are different from the provisions of the Law on Investment, contents required or not required to comply with the provisions of the Law on Investment and contents required to comply with the provisions of that law shall be specified.

5. For a contract to which at least one party is a foreign investor or an economic organization specified in Clause 1, Article 23 of the Law on Investment, the parties may agree in the contract on the application of foreign laws or international investment practices, provided such agreement is not contrary to Vietnam's law.

## **Article 5. Business investment policies**

1. Investors are entitled to carry out business investment activities in the sectors and trades that are not banned by this Law. For sectors and trade subject to conditional business investment, investors must satisfy the business investment conditions prescribed by law.

2. Investors may decide by themselves on and shall be accountable for business investment activities in accordance with this Law and other relevant laws; and are entitled to access and use credit capital

sources and support funds and use land and other natural resources in accordance with law.

3. Investors' business investment activities shall be suspended, halted or terminated if such activities cause harms or threaten to cause harms to national defense or security.
4. The State shall recognize and protect investors' ownership of property, investment capital, incomes and other lawful rights and interests.
5. The State shall treat investors equally; adopt policies to encourage and create favorable conditions for investors to carry out business investment activities for sustainable economic development.
6. The State shall respect and implement treaties on investment to which the Socialist Republic of Vietnam is a contracting party.

## **Article 6. Sectors and trades banned from business investment**

1. The following business investment activities shall be prohibited:
  - a) Trade in narcotic substances specified in Appendix I to this Law;
  - b) Trade in chemicals and minerals specified in Appendix II to this Law;
  - c) Trade in specimens of wild fauna and flora species specified in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which are exploited from the nature; specimens of endangered, precious and rare forest fauna and flora species and aquatic species of Group I specified in Appendix III to this Law, which are exploited from the nature;
  - d) Prostitution;
  - dd) Trafficking in humans or human tissues, corpses, organs or fetuses;
  - e/ Business activities related to human cloning;
  - g) Trade in firecrackers;
  - h) Provision of debt collection services.
2. The production and use of the products specified at Points a, b and c, Clause 1 of this Article in analysis, testing, scientific research, healthcare, pharmaceutical production, criminal investigation, and national defense and security safeguarding must comply with the Government's regulations.

## **Article 7. Sectors and trades subject to conditional business investment**

1. Sectors and trades subject to conditional business investment are sectors and trades in which business investment activities must meet certain essential conditions for the reason of national defense and security, social order and safety, social ethics or community well-being.
2. The list of sectors and trades subject to conditional business investment is provided in Appendix IV to this Law.
3. Conditions for business investment in the sectors and trades specified in Clause 2 of this Article are prescribed in laws or resolutions of the National Assembly, ordinances or resolutions of the Standing Committee of the National Assembly, decrees of the Government, and treaties to which the Socialist Republic of Vietnam is a contracting party. Ministries, ministerial-level agencies, People's Councils and People's Committees of all levels and other agencies, organizations and individuals may not issue regulations on business investment conditions.
4. Business investment conditions shall be prescribed in conformity with Clause 1 of this Article and must ensure publicity, transparency and objectivity, and save time and compliance costs for investors.
5. Provisions on a business investment condition must include the following contents:
  - a) Subjects and scope of application of the business investment condition;
  - b) Form of application of the business investment condition;
  - c) Contents of the business investment condition;
  - d) Dossier, order and administrative procedure for compliance with the business investment condition (if any);
  - dd) State management agency and agency competent to settle the administrative procedure for the business investment condition;
  - e) Validity duration of the license, certificate, or another document of certification or approval (if any).
6. Business investment conditions shall be applied in the following forms:
  - a) License;
  - b) Certificate (giay chung nhan);
  - c) Certificate of eligibility (chung chi);
  - d) Written certification or approval;
  - dd) Other requirements that individuals and economic organizations must meet in order to carry out business investment activities without having to obtain written certification of competent agencies.
7. Sectors and trades subject to conditional business investment and business investment conditions applicable to such sectors and trades shall be published on the National Business Registration Portal.
8. The Government shall stipulate in detail the announcement and control of business investment conditions.

## **Article 8. Amendment and supplementation of sectors and trades**

**banned from business investment, the List of sectors and trades subject to conditional business investment, and business investment conditions**

1. Based on socio-economic conditions and state management requirements in each period, the Government shall review the sectors and trades banned from business investment and the List of sectors and trades subject to conditional business investment and propose the National Assembly to amend and supplement Articles 6 and 7 of, and Appendices to, this Law according to fast-track procedures.
2. The amendment and supplementation of sectors and trades subject to conditional business investment or business investment conditions must comply with Clauses 1, 3, 4, 5 and 6, Article 7 of this Law.

**Article 9. Sectors, trades and market access conditions applicable to foreign investors**

1. Foreign investors are entitled to application of market access conditions like domestic investors, except the cases prescribed in Clause 2 of this Article.
2. Based on laws or resolutions of the National Assembly, ordinances or resolutions of the Standing Committee of the National Assembly, decrees of the Government, and treaties to which the Socialist Republic of Vietnam is a contracting party, the Government shall announce the List of sectors and trades in which foreign investors are subject to market access restrictions, including:
  - a) Sectors and trades in which market access by foreign investors are not yet permitted;
  - b) Sectors and trades in which foreign investors are subject to conditional market access.
3. The market access conditions applicable to foreign investors specified in the List of sectors and trades in which foreign investors are subject to market access restrictions include:
  - a) Charter capital holding rate of foreign investors in economic organizations;
  - b) Form of investment;
  - c) Scope of investment activities;
  - d) Capacity of investors; partners participating in investment activities;
  - dd) Other conditions specified in laws or resolutions of the National Assembly, ordinances or resolutions of the Standing Committee of the National Assembly, decrees of the Government, and treaties to which the Socialist Republic of Vietnam is a contracting party.
4. The Government shall detail this Article.

## **Chapter II**

# **INVESTMENT GUARANTEES**

**Article 10. Guarantee of property ownership**

1. Lawful assets of investors shall be neither nationalized nor confiscated by administrative measures.
2. In case the State compulsorily purchases or requisitions assets of investors for national defense or security reasons or in the national interest, in a state of emergency or in response to a national disaster, investors are entitled to payment or compensation in accordance with the law on compulsory purchase and requisition of property and other relevant laws.

**Article 11. Guarantee of business investment activities**

1. The State may not compel investors:
  - a) To prioritize purchasing and using domestic goods and services or to purchase goods and services from domestic goods producers or service providers;
  - b) To reach a certain rate of exported goods or services; to limit the quantity, value or types of goods and services exported or domestically produced or provided;
  - c) To import goods in a quantity or value corresponding to the quantity or value of exported goods or to balance foreign currencies by using export earnings to meet import demands;
  - d) To reach a certain localization rate for domestically produced goods;
  - dd) To reach a certain level or value in domestic research and development activities;
  - e) To supply goods or provide services at a specific place in the country or abroad;
  - g) To locate their head offices at places designated by competent state agencies.
2. Based on socio-economic development conditions and investment attraction demands in each period, the Prime Minister shall decide on application of state guarantees for implementation of investment projects subject to approval of investment policy by the National Assembly or Prime Minister and other important infrastructure development investment projects.

The Government shall detail this Clause.

## **Article 12. Guarantee of foreign investors' right to transfer assets abroad**

After fulfilling their financial obligations toward the Vietnamese State in accordance with law, foreign investors may transfer abroad:

1. Investment capital and investment liquidation proceeds;
2. Incomes from business investment activities;
3. Money and other assets under their lawful ownership.

## **Article 13. Guarantee of business investment in case of change of law**

1. In case a new legal document introduces new investment incentives or investment incentives higher than those currently applied to investors, investors may enjoy investment incentives according to provisions of the new legal document for the remaining incentive period of their projects, except special investment incentives for the investment projects specified at Point a, Clause 5, Article 20 of this Law.
2. In case a new legal document introduces investment incentives lower than those currently applied to investors, investors may continue enjoying the previous investment incentives for the remaining incentive period of their projects.
3. The provision of Clause 2 of this Article shall not apply to cases of change of law for the reason of national defense and security, social order and safety, social ethics, community well-being or environmental protection.
4. Cases in which investors are not permitted to continue enjoying investment incentives according to Clause 3 of this Article shall be considered and settled by one or some of the following measures:
  - a) Deducting the actual damage suffered by investors from their taxable incomes;
  - b) Adjusting operational objectives of investment projects;
  - c) Supporting investors to remedy damage.
5. For the investment guarantee measures specified in Clause 4 of this Article, investors shall file written requests within 3 years from the effective date of the new legal document.

## **Article 14. Settlement of disputes in business investment activities**

1. Disputes over business investment activities in Vietnam shall be settled through negotiation and conciliation. In case negotiation and conciliation fail, disputes shall be settled by an arbitration or a court according to Clauses 2, 3 and 4 of this Article.
2. Disputes over business investment activities in Vietnam's territory between domestic investors and foreign-invested economic organizations or between domestic investors or foreign-invested economic organizations and competent state agencies shall be settled by a Vietnamese arbitration or court, except the cases specified in Clause 3 of this Article.
3. Disputes among investors of whom at least one party is a foreign investor or an economic organization specified at Point a, b or c, Clause 1, Article 23 of this Law may be settled by one of the following agencies and organizations:
  - a) Vietnamese court;
  - b) Vietnamese arbitration;
  - c) Foreign arbitration;
  - d) International arbitration;
  - dd) Arbitration set up by disputing parties as agreed.
4. Disputes over business investment activities in Vietnam's territory between foreign investors and competent state agencies shall be settled by a Vietnamese arbitration or court, unless otherwise agreed in contracts or provided by a treaty to which the Socialist Republic of Vietnam is a contracting party.

# **Chapter III**

# **INVESTMENT INCENTIVES AND SUPPORTS**

## **Article 15. Forms of, and subjects eligible for, investment incentives**

1. Forms of investment incentives include:
  - a) Enterprise income tax incentives, including application of enterprise income tax rates lower than ordinary tax rates for a definite period of time or for the whole implementation duration of investment projects; exemption from or reduction of enterprise income tax and other incentives in accordance with the law on enterprise income tax;
  - b) Exemption from import duty on goods imported to create fixed assets; and materials, supplies and components imported for production in accordance with the law on import duty and export duty;
  - c) Exemption from or reduction of land use levy, land rental or land use tax;
  - d) Accelerated depreciation, or increase of deductible expenses when calculating taxable incomes.
2. Subjects eligible for investment incentives include:

**2. Subjects eligible for investment incentives include.**

- a) Investment projects in the sectors and trades eligible for investment incentives specified in Clause 1, Article 16 of this Law;
- b) Investment projects in the geographical areas eligible for investment incentives specified in Clause 2, Article 16 of this Law;
- c) Investment projects capitalized at VND 6 trillion or more, having disbursed at least VND 6 trillion in 3 years after obtaining an investment registration certificate or approval of investment policy, and at the same time meeting one of the following criteria: earning a total turnover of at least VND 10 trillion in each year after 3 years from the year of generating incomes or employing more than 3,000 workers;
- d) Social housing investment projects; rural investment projects employing at least 500 workers; and investment projects employing workers with disabilities in accordance with the law on people with disabilities;
- dd) Hi-tech enterprises, science and technology enterprises, and science and technology organizations; projects involving transfer of technologies on the List of technologies encouraged for transfer in accordance with the law on technology transfer; technology incubators and science and technology enterprise incubators in accordance with the law on high technologies and the law on science and technology; and enterprises producing and supplying technologies, equipment, products and services serving environmental protection requirements in accordance with the law on environmental protection;
- e) Innovative startup investment projects, innovation centers, and research and development centers;
- g) Business investment in distribution chains for products of small- and medium-sized enterprises; business investment in technical establishments in support of small- and medium-sized enterprises, and small- and medium-sized enterprise incubators; and business investment in co-working space in support of small- and medium-sized innovative startup enterprises in accordance with the law on support for small- and medium-sized enterprises.

3. Investment incentives shall be applied to new investment projects and expanded investment projects.

4. The specific level of each type of investment incentive must comply with the tax, accounting and land laws.

5. The investment incentives specified at Points b, c and d, Clause 2 of this Article shall not apply to:

- a) Investment projects to exploit minerals;
- b) Investment projects to produce or trade in excise tax-liable products or services specified in the Law on Excise Tax, except projects to manufacture automobiles, aircraft or cruises;
- c) Investment projects to build commercial houses in accordance with the housing law.

6. Investment incentives shall be applied for a definite period and on the basis of project implementation results of investors. During the period of enjoying investment incentives, investors must satisfy conditions for entitlement to investment incentives in accordance with law.

7. In case an investment project satisfies conditions for entitlement to different investment incentive levels, including also the investment incentives specified in Article 20 of this Law, the highest investment incentive level shall apply.

8. The Government shall detail this Article.

## **Article 16. Sectors and trades eligible for investment incentives and geographical areas eligible for investment incentives**

1. Sectors and trades eligible for investment incentives include:

- a) Hi-tech activities, hi-tech supporting industry products; research and development activities, and production of products formed from scientific and technological outcomes in accordance with the law on science and technology;
- b) Production of new materials, new energies, clean energies and renewable energies; manufacture of products with an added value of at least 30% and energy-efficient products;
- c) Manufacture of electronic products, key mechanical products, agricultural machinery, automobiles and automobile parts; shipbuilding;
- d) Manufacture of products on the List of supporting industry products prioritized for development;
- dd) Manufacture of information technology products, software and digital content;
- e) Cultivation and processing of agricultural, forest and fishery products; forest planting and protection; salt production; marine fishing and fishing logistics services; production of plant varieties and animal breeds and biotech products;
- g) Waste collection, treatment, recycling or reuse;
- h) Investment in development, operation and management of infrastructure facilities; development of mass transit in urban centers;
- i) Early childhood education, general education, vocational education, and higher education;
- k) Medical examination and treatment; production of drugs and drug materials, and drug storage; scientific research into preparation technologies and biotechnologies for producing new drugs; manufacture of medical equipment and devices.

manufacture of medical equipment and devices;

- l) Investment in physical training and sports facilities for people with disabilities or professional athletes; protection and promotion of the value of cultural heritages;
- m) Investment in geriatric centers, psychiatric centers, and treatment centers for orange agent victims; nursing homes for the elderly, people with disabilities, orphans and street children;
- n) People's credit funds and microfinance institutions;
- o) Production of products and provision of services created by or participating in value chains or industrial clusters.

2. Geographical areas eligible for investment incentives include:

- a) Geographical areas meeting with difficult socio-economic conditions and geographical areas meeting with extremely difficult socio-economic conditions;
- b) Industrial parks, export processing zones, hi-tech parks and economic zones.

3. Based on the sectors, trades and geographical areas eligible for investment incentives specified in Clauses 1 and 2 of this Article, the Government shall promulgate, amend and supplement the List of sectors and trades eligible for investment incentives and the List of geographical areas eligible for investment incentives; and determine sectors and trades eligible for special investment incentives on the List of sectors and trades eligible for investment incentives.

## **Article 17. Procedures for application of investment incentives**

Based on the subjects specified in Clause 2, Article 15 of this Law, the written approval of investment policy (if any), investment registration certificates (if any) and other relevant laws, investors shall themselves determine investment incentives and carry out procedures for enjoying investment incentives at tax offices, finance agencies, customs agencies or other competent agencies, depending on each type of investment incentive.

## **Article 18. Forms of investment support**

1. Forms of investment support include:

- a) Support for development of technical and social infrastructure systems inside or outside investment project fences;
- b) Support for human resources training and development;
- c) Credit support;
- d) Support for access to production and business grounds; support for relocation of production and business establishments under decisions of state agencies;
- dd) Support for science, technique and technology transfer;
- e) Support for market development and information provision;
- g) Support for research and development.

2. Based on socio-economic development orientations and state budget balancing capacity in each period, the Government shall stipulate in detail the forms of investment support specified in Clause 1 of this Article for hi-tech enterprises, science and technology enterprises, science and technology organizations, enterprises investing in agriculture and rural areas, enterprises investing in education and law dissemination, and other subjects.

## **Article 19. Support for development of infrastructure systems of industrial parks, export processing zones, hi-tech parks and economic zones**

1. Based on master plans already decided or approved in accordance with the planning law, ministries, ministerial-level agencies and provincial-level People's Committees shall formulate plans on development investment in, and organize the construction of, technical and social infrastructure systems outside the fences of industrial parks, export processing zones, hi-tech parks and functional sub-zones of economic zones.

2. The State shall support part of development investment capital from the state budget and preferential credit capital for the comprehensive development of technical and social infrastructure systems inside and outside the fences of industrial parks in geographical areas meeting with difficult socio-economic conditions or geographical areas meeting with extremely difficult socio-economic conditions.

3. The State shall support part of development investment capital from the state budget and preferential credit capital and apply other methods to raise capital for the construction of technical and social infrastructure systems inside economic zones and hi-tech parks.

## **Article 20. Special investment incentives and supports**

1. The Government shall decide on the application of special investment incentives and supports in order to encourage the development of a number of investment projects having great effects on socio-economic development.

2. Subjects eligible for special investment incentives and supports specified in Clause 1 of this Article include:

- a) Investment projects to establish new innovation centers or research and development centers capitalized at VND 3 trillion or more, and having disbursed at least VND 1 trillion in 3 years after obtaining an investment registration certificate or written approval of investment policy (including also the expansion of such investment projects); and the National Innovation Center established under the Prime Minister's decision;
- b) Investment projects in sectors or trades eligible for special investment incentives capitalized at VND 30 trillion or more, having disbursed at least VND 10 trillion in 3 years after obtaining an investment registration certificate or written approval of investment policy.
- 3. The level and duration of application of special incentives must comply with the Law on Enterprise Income Tax and the land law.
- 4. Special investment supports shall be provided in the forms specified in Clause 1, Article 18 of this Law.
- 5. Special investment incentives and supports specified in this Article shall not apply to:
  - a) Investment projects which have been granted an investment certificate or investment registration certificate or investment policy decision before the effective date of this Law;
  - b) The investment projects specified in Clause 5, Article 15 of this Law.
- 6. The Government shall propose the National Assembly to decide on application of investment incentives other than the investment incentives specified in this Law and other laws in case of necessity to encourage the development of an investment project of special importance or a special economic-administrative unit.
- 7. The Government shall detail this Article.

## **Chapter IV**

# **INVESTMENT ACTIVITIES IN VIETNAM**

### **Section 1**

### **FORMS OF INVESTMENT**

#### **Article 21. Forms of investment**

- 1. Investment to establish economic organizations.
- 2. Investment to contribute capital or purchase shares or capital contributions.
- 3. Implementation of investment projects.
- 4. Investment in the form of BCC.
- 5. New forms of investment and new types of economic organizations according to regulations of the Government.

#### **Article 22. Investment to establish economic organizations**

- 1. Investors shall establish economic organizations according to the following regulations:
  - a) Domestic investors shall establish economic organizations in accordance with the law on enterprises and other laws relevant to each type of economic organization;
  - b) Foreign investors establishing economic organizations must meet the market access conditions applicable to foreign investors specified in Article 9 of this Law;
  - c) Before establishing economic organizations, foreign investors must have investment projects and shall carry out procedures for grant or modification of investment registration certificates, except cases of establishing small- and medium-sized innovative startup enterprises and innovative startup investment funds in accordance with the law on support for small- and medium-sized enterprises..
- 2. From the date of obtaining enterprise registration certificates or other papers of equivalent legal validity, economic organizations established by foreign investors become investors implementing investment projects in accordance with the investment registration certificates.

#### **Article 23. Implementation of investment activities by foreign-invested economic organizations**

- 1. When making investment in establishment of other economic organizations; contribution of capital to, or purchase of shares or capital contributions at, other economic organizations; or investment in the form of BCC, economic organizations must meet the conditions and shall carry out investment procedures according to regulations applicable to foreign investors if falling into one of the following cases:
  - a) Having over 50% of their charter capital held by a foreign investor/foreign investors, or having a majority of their general partners being foreign individuals, for partnerships;
  - b) Having over 50% of their charter capital held by an economic organization/economic organizations specified at Point a of this Clause;
  - c) Having over 50% of their charter capital held by a foreign investor/foreign investors and an economic organization/economic organizations specified at Point a of this Clause;

c) Having over 50% of their charter capital held by a foreign investor/foreign investors and an economic organization/economic organizations specified at Point a of this Clause.

2. When making investment in establishment of other economic organizations; contribution of capital to, or purchase of shares or capital contributions at, other economic organizations; or investment in the form of BCC, economic organizations other than those specified at Points a, b and c, Clause 1 of this Article must meet the conditions and shall carry out investment procedures according to regulations applicable to domestic investors.

3. In case a foreign-invested economic organization already established in Vietnam has a new investment project, it may carry out procedures to implement such project without having to establish a new economic organization.

4. The Government shall stipulate in detail the order and procedures for investment in establishment of economic organizations and the implementation of investment activities of foreign investors and foreign-invested economic organizations.

## **Article 24. Investment in the form of contribution of capital, or purchase of shares or capital contributions**

1. Investors are entitled to contribute capital to, and purchase shares and capital contributions at, economic organizations.

2. Foreign investors' contribution of capital to, or purchase of shares or capital contributions at, economic organizations must comply with the following regulations and meet the following conditions:

a) The market access conditions applicable to foreign investors specified in Article 9 of this Law;

b) Assurance of national defense and security in accordance with this Law;

c) Provisions of the land law regarding conditions for receiving land use rights and conditions for use of land on islands and in border communes, wards or townships and coastal communes, wards or townships.

## **Article 25. Forms of contribution of capital, and purchase of shares and capital contributions**

1. Investors may contribute capital to economic organizations in the following forms:

a) Purchasing initially or additionally issued shares of joint stock companies;

b) Contributing capital to limited liability companies and partnerships;

c) Contributing capital to economic organizations other than those specified at Points a and b of this Clause.

2. Investors may purchase shares or capital contributions at economic organizations in the following forms:

a) Purchasing shares of joint stock companies from such companies or their shareholders;

b) Purchasing capital contributions of members of limited liability companies to become members of such companies;

c) Purchasing capital contributions of limited partners of partnerships to become limited partners of such partnerships;

d) Purchasing capital contributions of members of economic organizations other than those specified at Points a, b and c of this Clause.

## **Article 26. Procedures for investment in the form of capital contribution or purchase of shares or capital contributions**

1. Investors contributing capital to, or purchasing shares or capital contributions at, economic organizations must meet the conditions and shall carry out procedures for change of members, partners or shareholders in accordance with provisions of the relevant law corresponding to each type of economic organization.

2. A foreign investor shall carry out procedures to register the contribution of capital to, or purchase of shares or capital contributions at, an economic organization before carrying out procedures for change of members, partners or shareholders if falling into one of the following cases:

a) The capital contribution or purchase of shares or capital contributions leads to an increase in foreign investors' holding rate in the concerned economic organization, in case the economic organization operates in a sector or trade in which foreign investors are subject to conditional market access;

b) The capital contribution or purchase of shares or capital contributions leads to an situation whereby the foreign investors or economic organizations specified at Points a, b and c, Clause 1, Article 23 of this Law hold over 50% of charter capital of the concerned economic organization in either the following cases: increasing foreign investors' charter capital holding rate to over 50% from 50% or a lower rate; or increasing foreign investors' charter capital holding rate in case foreign investors' holding rate in the concerned economic organization is already higher than 50%;

c) The foreign investor contributes capital to, or purchases shares or capital contributions at, an economic organization having a certificate of the right to use land on islands or in border communes.

wards or townships, coastal communes, wards or townships, or other regions with effects on national defense or security.

3. Investors not falling into the cases specified in Clause 2 of this Article shall carry out procedures for change of members, partners or shareholders in accordance with relevant laws when contributing capital to, or purchasing shares or capital contributions at, economic organizations. If wishing to register the contribution of capital to, or purchase of shares or capital contributions at, economic organizations, investors shall comply with Clause 2 of this Article.

4. The Government shall stipulate in detail the dossier, order, and procedures for contribution of capital to, or purchase of shares or capital contributions specified in this Article.

## **Article 27. Investment in the form of BCC**

1. BCCs signed between domestic investors must comply with the civil law.

2. For BCCs signed between domestic investors and foreign investors or among foreign investors, the procedures for grant of investment registration certificates must comply with Article 38 of this Law.

3. Parties to a BCC shall form a coordinating board to perform the BCC. Functions, tasks and powers of the coordinating board shall be agreed by the parties.

## **Article 28. Contents of a BCC**

1. A BCC must have the following principal contents:

- a) Names, addresses and competent representatives of the contracting parties; transaction address or address of the project implementation site;
- b) Objectives and scope of business investment activities;
- c) Contributions of the contracting parties and distribution of business investment earnings between the parties;
- d) Contract performance schedule and duration;
- dd) Rights and obligations of the contracting parties;
- e) Modification, transfer and termination of the contract;
- g) Liabilities for breaches of the contract, method of dispute settlement.

2. In the course of performing a BCC, the contracting parties may agree to use assets created from their business cooperation to establish enterprises in accordance with the law on enterprises.

3. Parties to a BCC contract have the right to agree on other contents which must not be contrary to law.

## **Section 2**

# **APPROVAL OF INVESTMENT POLICY AND INVESTOR SELECTION**

## **Article 29. Selection of investors for implementation of investment projects**

1. The investor selection shall be carried out in one of the following forms:

- a) Auction of land use rights in accordance with the land law;
- b) Bidding to select investors in accordance with the bidding law;
- c) Approval of investors in accordance with Clauses 3 and 4 of this Article.

2. The selection of investors for implementing the investment projects specified at Points a and b, Clause 1 of this Article shall be carried out after the investment policy is approved, except projects not subject to approval of investment policy.

3. In case of holding an auction of land use rights in accordance with the land law but only one person registers for participation in the auction or the auction fails or in case of organizing bidding to select investors in accordance with the bidding law but only one investor registers for participation in the bidding, the competent agency shall carry out the procedures for approval of the investor if the investor meets the conditions specified in relevant laws.

4. For investment projects subject to approval of investment policy, competent agencies shall concurrently approve investment policy and investors not through auction of land use rights or bidding for investor selection in the following cases:

a) The investors have obtained land use rights, except cases in which the State recovers land for national defense or security purpose or for socio-economic development in the national or public interest in accordance with the land law;

b) The investors receive agricultural land use rights transferred or contributed as capital or rent agricultural land use rights to carry out non-agricultural production and business investment projects and do not fall into cases subject to land recovery by the State in accordance with the land law;

c) The investors implement investment projects in industrial parks or hi-tech parks;

d) Other cases not subject to auction or bidding in accordance with law.

5. The Government shall detail this Article.

## **Article 30. The National Assembly's competence to approve investment policy**

The National Assembly shall approve investment policy for:

1. Projects with great environmental impacts or a latent possibility of causing serious environmental impacts, including:
  - a/ Nuclear power plants;
  - b/ Investment projects requiring change of the use purpose of 50 hectares or more of special-use forests, headwater protection forests or border protection forests; 500 hectares or more of windbreak or sandbreak protection forests or protection forests for tide shielding and sea encroachment prevention; or 1,000 hectares or more of production forests;
2. Investment projects requiring change of the use purpose of 500 hectares or more of paddy fields with 2 or more crops;
3. Investment projects requiring relocation and resettlement of 20,000 or more people in mountainous regions or 50,000 or more people in other regions;
4. Investment projects requiring application of special mechanisms or policies subject to decision by the National Assembly.

## **Article 31. The Prime Minister's competence to approve investment policy**

Except the projects specified in Article 30 of this Law, the Prime Minister shall approve investment policy for:

1. Investment projects falling into one of the following cases, regardless of their capital sources:
  - a) Investment projects requiring relocation and resettlement of 10,000 or more people in mountainous regions or 20,000 or more people in other regions;
  - b) Investment projects to build airports or aerodromes; runways of airports or aerodromes; passenger terminals of international airports; or cargo terminals of airports or aerodromes with a capacity of 1 million tons/year or higher;
  - c) New investment projects to provide air passenger transport services;
  - d) Investment projects to build new harbors or harbor areas of special seaports; harbors or harbor areas with a total investment capital of VND 2,300 billion or more of class-I seaports;
  - dd) Investment projects on petroleum processing;
  - e) Investment projects involving betting and casino business, except the business of prize-winning electronic games for foreigners;
  - g) Investment projects to build houses (for sale, lease or lease-purchase) or urban centers falling into the following cases: using 50 hectares of land or more or using under 50 hectares of land but accommodating 15,000 people or more in urban areas; using 100 hectares of land or more or using under 100 hectares of land but accommodating 10,000 people or more in non-urban areas; or being implemented in protection areas of national relics or special national relics recognized by competent authorities, regardless of their land areas and population;
  - h) Investment projects on building and commercial operation of infrastructure of industrial parks or export processing zones;
2. Investment projects of foreign investors in the fields of provision of telecommunication services with network infrastructure, afforestation, publishing and press;
3. Investment projects subject to approval of investment policy by 2 or more provincial-level People's Committees;
4. Other investment projects subject to approval of investment policy or investment decision by the Prime Minister in accordance with law.

## **Article 32. Provincial-level People's Committees' competence to approve investment policy**

1. Except the investment projects specified in Articles 30 and 31 of this Law, provincial-level People's Committees shall approve investment policy for:
  - a) Investment projects applying for land allocation or lease by the State not through auction, bidding or transfer; projects applying for permission for change of land use purposes, except cases of land allocation or land lease, permission for change of land use purposes of households or individuals for which written approvals of provincial-level People's Committees are not required in accordance with the land law;
  - b) Investment projects to build houses (for sale, lease or lease-purchase) or urban centers falling into the following cases: using under 50 hectares of land and accommodating under 15,000 people in urban areas; using under 100 hectares of land and accommodating under 10,000 people in non-urban areas; or being implemented in areas restricted from development or historic inner city areas (determined in

or being implemented in areas restricted from development of historic inner-city areas (determined in urban plans) of special-grade urban centers, regardless of their land areas and population;

c) Investment projects on building and commercial operation of golf courses;

d) Investment projects of foreign investors or foreign-invested economic organizations on islands or in border communes, wards or townships; coastal communes, wards or townships; or other areas having impacts on national defense and security.

2. Management boards of industrial parks, export processing zones, hi-tech parks or economic zones shall approve investment policy for the investment projects specified at Points a, b and d, Clause 1 of this Article and implemented in their industrial parks, export processing zones, hi-tech parks or economic zones in conformity with approved master plans.

3. The Government shall detail this Article.

## **Article 33. Dossiers and contents of appraisal of requests for approval of investment policy**

1. A dossier of request for approval of investment policy for an investment project proposed by an investor must comprise:

a) A written request for implementation of the investment project, including also the investor's commitments to bear all expenses and risks in case the project is not approved;

b) A document on the legal status of the investor;

c) Documents explaining the investor's financial capacity, including at least one of the following documents: the investor's financial statements of the last 2 years; financial support commitment of the parent company; financial support commitment of a financial institution; guarantee for the investor's financial capacity; and another document proving the investor's financial capacity;

d) The investment project proposal, covering the following principal contents: the investor or form of investor selection; investment objectives and scope, investment capital and capital raising plan, and project implementation site, duration and schedule; information on the actual state of use of land in the project implementation site and proposals for land use demand (if any), labor demand, investment incentives, the project's socio-economic impacts and benefits; and preliminary assessment of environmental impacts (if any) in accordance with the law on environmental protection.

In case the construction law requires the formulation of a prefeasibility study report, the investor may submit a prefeasibility study report as replacement for the investment project proposal;

dd) In case the investor does not request the State to allocate or lease land or to permit change of land use purposes, the investor shall submit a copy of the paper on land use rights or another document certifying that the investor has the right to use the project implementation site;

e) Explanations about the technology used in the investment project, for projects subject to appraisal of, or solicitation of opinions on, technologies in accordance with the law on technology transfer;

g) The BCC, for investment projects in the form of BCC;

h) Other documents related to the investment project, requirements on conditions and capacity of the investor in accordance with law (if any).

2. A dossier of request for approval of investment policy for an investment project formulated by a competent state agency must comprise:

a) A written request for investment policy approval of the project;

b) The investment project proposal, covering the following principal contents: investment objectives and scope, investment capital, project implementation site, duration and schedule, and the project's socio-economic impacts and benefits; information on the actual state of use of land in the project implementation site, land recovery conditions, for projects requiring land recovery, and projected land use demand (if any); preliminary assessment of environmental impacts (if any) in accordance with the law on environmental protection; the tentative form of investor selection and conditions applicable to investors (if any); and special mechanisms and policies (if any).

In case the construction law requires the formulation of a prefeasibility study report, competent state agencies may use a prefeasibility study report as replacement for the investment project proposal.

3. Contents of appraisal of a request for approval of investment policy:

a) Assessment of the investment project's conformity with national-level master plans, regional master plans, provincial master plans, urban master plans and master plans of special administrative-economic units (if any);

b) Assessment of land use demand;

c) Preliminary assessment of the investment project's socio-economic benefits; preliminary assessment of environmental impacts (if any) in accordance with the law on environmental protection;

d) Assessment of investment incentives and conditions for entitlement to investment incentives (if any);

dd) Assessment of technologies to be used in the investment project, for projects subject to appraisal of, or solicitation of opinions on, technologies in accordance with the law on technology transfer;

e) Assessment of the investment project's conformity with objectives and orientations for urban

development and housing development programs and plans, preliminary plan on investment planning to

development and housing development programs and plans; preliminary plan on investment phasing to ensure synchronicity; preliminary structure of housing products and land funds for social housing development; preliminary plan on construction and management of urban infrastructure inside and outside the project, for projects on construction of houses and urban centers.

4. Contents of appraisal of a request for concurrent approval of investment policy and investor:

- a) The contents specified in Clause 3 of this Article;
- b) The capability to satisfy the conditions for land allocation or land lease, for cases of land allocation or land lease not through auction of land use rights or bidding for investor selection; the capability to satisfy the conditions for change of land use purposes, for projects applying for permission for change of land use purposes;
- c) Assessment of the satisfaction of market access conditions applicable to foreign investors (if any);
- d) Other conditions applicable to investors in accordance with relevant laws.

5. The Government shall detail this Article.

## **Article 34. Order and procedures for approval of investment policy by the National Assembly**

1. The dossiers specified in Clauses 1 and 2, Article 33 of this Law shall be submitted to the Ministry of Planning and Investment.

2. Within 15 days after receiving a complete dossier, the Ministry of Planning and Investment shall report to the Prime Minister on the establishment of a State Appraisal Council.

3. Within 90 days after being established, the State Appraisal Council shall appraise the dossier and make an appraisal report covering the contents specified in Article 33 of this Law for submission to the Government.

4. At least 60 days before the opening date of a National Assembly session, the Government shall compile and send the dossier of request for approval of investment policy to the National Assembly's agency in charge of verification.

5. A dossier of request for approval of investment policy must comprise:

- a) The report of the Government;
- b) The dossier specified in Clause 1 of this Article;
- c) The appraisal report of the State Appraisal Council;
- d) Other relevant documents.

6. Contents of verification of a request for approval of investment policy:

- a) The satisfaction of the criteria for determining the investment project to be subject to approval of investment policy by the National Assembly;
- b) The necessity for project implementation;
- c) The project's conformity with national-level strategies and master plans, regional master plans, provincial master plans, master plans of urban areas and master plans of special administrative-economic units (if any);
- d) Project implementation objectives, scope, site, duration and schedule, land use demand, plan on ground clearance, relocation and resettlement, plan on selection of major technologies and environmental protection solutions;
- dd) Total investment capital and capital sources;
- e) Assessment of socio-economic benefits, assurance of national defense and security and sustainable development of the project;
- g) Special mechanisms and policies; investment incentives and supports and conditions for application thereof (if any).

7. The Government and related agencies, organizations and individuals shall provide sufficient information and documents to serve the verification; give explanations about matters related to the project when so requested by the National Assembly's agency in charge of verification.

8. The National Assembly shall consider and adopt a resolution on approval of investment policy, covering the contents specified in Clause 1, Article 3 of this Law.

9. The Government shall stipulate in detail the order and procedures for appraisal of investment project dossiers by the State Appraisal Council.

## **Article 35. Order and procedures for approval of investment policy by the Prime Minister**

1. The dossiers specified in Clauses 1 and 2, Article 33 of this Law shall be submitted to the Ministry of Planning and Investment.

2. Within 3 working days after receiving a complete dossier, the Ministry of Planning and Investment shall send the dossier to related state agencies for appraisal of the matters specified in Article 33 of this Law.

3. Within 15 days after receiving the dossier, the consulted agencies shall send their appraisal opinions on the matters falling within the scope of their state management to the Ministry of Planning and

on the matters falling within the scope of their state management to the Ministry of Planning and Investment.

4. Within 40 days after receiving the dossier, the Ministry of Planning and Investment shall appraise the dossier and make an appraisal report covering the contents specified in Article 33 of this Law for submission to the Prime Minister for approval of investment policy.
5. The Prime Minister shall consider and approve investment policy covering the contents specified in Clause 1, Article 3 of this Law.
6. For an investment project specified in Clause 3, Article 31 of this Law, the Prime Minister shall designate the investment registration agency of a province or centrally run city to grant an investment registration certificate for the whole project.
7. The Government shall stipulate in detail the order and procedures for appraisal of investment projects subject to approval of investment policy by the Prime Minister.

## **Article 36. Order and procedures for approval of investment policy by provincial-level People's Committees**

1. The dossiers specified in Clauses 1 and 2, Article 33 of this Law shall be submitted to investment registration agencies. Within 35 days after receiving a dossier, the investment registration agency shall notify dossier-processing results to the concerned investor.
2. Within 3 working days after receiving a complete dossier, the investment registration agency shall send the dossier to related state agencies for appraisal of the matters specified in Article 33 of this Law.
3. Within 15 days after receiving the dossier, the consulted agencies shall send their appraisal opinions on the matters falling within the scope of their state management to the investment registration agency.
4. Within 25 days after receiving the dossier, the investment registration agency shall make an appraisal report covering the contents specified in Article 33 of this Law for submission to the provincial-level People's Committee.
5. Within 7 working days after receiving the dossier and appraisal report, the provincial-level People's Committee shall approve investment policy; in case of refusal, it shall issue a written reply, clearly stating the reason.
6. The provincial-level People's Committee shall consider and approve investment policy covering the contents specified in Clause 1, Article 3 of this Law.

## **Section 3**

# **PROCEDURES FOR GRANT, MODIFICATION AND REVOCATION OF INVESTMENT REGISTRATION CERTIFICATES**

## **Article 37. Cases of carrying out procedures for grant of investment registration certificates**

1. Cases for which procedures for grant of investment registration certificates are required:
  - a) Investment projects of foreign investors;
  - b) Investment projects of the economic organizations specified in Clause 1, Article 23 of this Article.
2. Cases for which procedures for grant of investment registration certificates are not required:
  - a) Investment projects of domestic investors;
  - b) Investment projects of the economic organizations specified in Clause 2, Article 23 of this Law;
  - c) Investment in the form of contribution of capital to, or purchase of shares or capital contributions at, economic organizations.
3. For the investment projects specified in Articles 30, 31 and 32 of this Law, domestic investors and the economic organizations specified in Clause 2, Article 23 of this Law shall implement such projects after obtaining approval of investment policy.
4. If wishing to have investment registration certificates for the investment projects specified at Points a and b, Clause 2 of this Article, investors shall carry out the procedures for grant of investment registration certificates specified in Article 38 of this Law.

## **Article 38. Procedures for grant of investment registration certificates**

1. An investment registration agency shall grant an investment registration certificate to an investment project subject to approval of investment policy specified in Articles 30, 31 and 32 of this Law within:
  - a) Five working days after receiving the written approval of investment policy and investor, for investment projects for which investment registration certificates are required;
  - b) Fifteen days after receiving the investor's application for an investment registration certificate, for investment projects other than those specified at Point a of this Clause.
2. For an investment project not subject to approval of investment policy specified in Articles 30, 31 and

32 of this Law, the investor shall be granted an investment registration certificate if the following conditions are satisfied:

- a) The project falls outside the sectors or trades banned from business investment;
- b) The investor has a site for project implementation;
- c) The project conforms with the master plans specified at Point a, Clause 3, Article 33 of this Law;
- d) The project meets conditions on investment per unit of land area and the number of employed workers (if any);
- dd) The investor meets market access conditions applicable to foreign investors.

3. The Government shall stipulate in detail conditions, dossiers, order and procedures for grant of investment registration certificates.

## **Article 39. Competence to grant, modify and revoke investment registration certificates**

1. Management boards of industrial parks, export processing zones, hi-tech parks or economic zones shall grant, modify and revoke investment registration certificates with regard to investment projects located in their industrial parks, export processing zones, hi-tech parks or economic zones, except those falling into the cases specified in Clause 3 of this Article.
2. Provincial-level Departments of Planning and Investment shall grant, modify and revoke investment registration certificates with regard to investment projects located outside industrial parks, export processing zones, hi-tech parks or economic zones, except those falling into the cases specified in Clause 3 of this Article.
3. Investment registration agencies of localities where investors implement investment projects or locate or intend to locate their executive offices to implement investment projects shall grant, modify and revoke investment registration certificates for:
  - a) Investment projects implemented in 2 or more provincial-level administrative units;
  - b) Investment projects implemented both inside and outside industrial parks, export processing zones, hi-tech parks or economic zones.
  - c) Investment projects located in industrial parks, export processing zones, hi-tech parks and economic zones of the localities where management boards of industrial parks, export processing zones, hi-tech parks or economic zones are not yet established or fall outside the management scope of management boards of industrial parks, export processing zones, hi-tech parks or economic zones.
4. The agencies receiving investment project dossiers are competent to grant investment registration certificates, except the cases specified in Articles 34 and 35 of this Law.

## **Article 40. Contents of an investment registration certificate**

1. Name of the investment project.
2. The investor.
3. Code of the investment project.
4. Project implementation site; to-be-used land area.
5. Objectives and scope of the investment project.
6. Investment capital of the investment project (including capital contributed by the investor and mobilized capital).
7. Operation duration of the investment project.
8. Investment project implementation schedule, covering:
  - a) Capital contribution and mobilization schedule;
  - b) Schedule of achievement of major operational objectives of investment project. If the investment project is to be implemented in different stages, the certificate must specify the implementation schedule of each stage.
9. Investment incentives and supports (if any) and bases and conditions for application thereof.
10. Conditions on the investor implementing the project (if any).

## **Article 41. Adjustment of investment projects**

1. In the course of project implementation, investors may adjust the objective, transfer part or the whole of investment projects, merge projects or divide or split a project into more than one project, use land use rights or land-attached assets of investment projects to contribute capital to establish enterprises, enter into business cooperation or carry out other activities in accordance with law.
2. Investors shall carry out procedures for modification of investment registration certificates if the adjustment of investment projects results in change of the contents of the investment registration certificates.
3. An investor whose investment project has obtained approval of investment policy shall carry out procedures for approval of the modification of investment policy if falling into one of the following cases:
  - a) Changing the objectives indicated in the written approval of investment policy; adding new objectives which are subject to approval of investment policy;

- b) Changing the land use area by more than 10% or over 30 hectares, changing the investment site;
- c) Increasing the total investment capital by 20% or more, resulting in change of the scale of the investment project;
- d) Extending the investment project implementation schedule in which the total investment period is prolonged by more than 12 months compared with the investment project implementation schedule indicated in the first written approval of investment policy;
- dd) Adjusting the operation duration of the investment project;
- e) Changing technologies that have been appraised or put up for appraisal opinions in the course of seeking approval of investment policy;
- g/ Changing the investor before the project is put into operation, for investment projects subject to concurrent approval of investment policy and investor, or changing conditions applicable to investors (if any).

4. For investment projects that have obtained approval of investment policy, investors may not adjust the investment project implementation schedule by more than 24 months compared with the investment project implementation schedule indicated in the first written approval of investment policy, except the following cases:

- a) Remedy the consequences in force majeure events specified in the civil law and land law;
- b) Adjusting the project implementation schedule due to delay in land allocation, land lease or grant of permission for change of land use purposes by the State;
- c) Adjusting the project implementation schedule at the request of state management agencies or due to delay in performance of administrative procedures by state agencies;
- d) Adjusting investment projects because state agencies change relevant master plans;
- dd) Adjusting the objectives already indicated in the written approval of investment policy; adding objectives which are subject to approval of investment policy;
- e) Increasing total investment capital by 20% or more, resulting in change of the scale of investment projects.

5. The state agencies competent to approve investment policy will have the competence to approve modification of investment policy.

In case the request for adjustment of an investment project makes the project be subject to approval of investment policy by a higher authority, such authority will be competent to approve modification of investment policy according to this Article.

6. The order and procedures for modification of investment policy must comply with Article 34, 35 or 36 of this Law, depending on the to-be-modified contents.

7. In case the request for adjustment of an investment project makes the project be subject to approval of investment policy, the investor shall carry out procedures for approval of investment policy before adjusting the investment project.

8. The Government shall detail this Article.

## **Section 4**

# **ORGANIZATION OF IMPLEMENTATION OF INVESTMENT PROJECTS**

## **Article 42. Principles of implementation of investment projects**

- 1. For investment projects subject to approval of investment policy, investment policy shall be approved before investors implement investment projects.
- 2. For investment projects for which investment registration certificates are required, investors shall carry out procedures for grant of investment registration certificates before implementing investment projects.
- 3. In the course of implementation of investment projects, investors shall comply with this Law, laws on planning, land, environment, construction, labor, and fire prevention and fighting, other relevant laws, written approvals of investment policy (if any), and investment registration certificates (if any).

## **Article 43. Security for implementation of investment projects**

- 1. Investors shall make deposits or obtain bank guarantees for deposit obligations for securing the implementation of investment projects that request the State to allocate or lease land or to permit change of land use purposes, except in the following cases:
  - a) Investors win the auction of land use rights to implement investment projects that are allocated land with land use levy or leased land by the State with one-off payment of land rental for the entire lease period;
  - b) Investors win the bidding for the implementation of land-using investment projects;
  - c) Investors are allocated or leased land by the State on the basis of receiving the transfer of investment projects for which deposits have been made or capital contribution or mobilization has been

completed according to the schedule indicated in the written approvals of investment policy and investment registration certificates;

d) Investors are allocated or leased land by the State to implement investment projects on the basis of receiving land use rights or land-attached assets transferred from other land users.

2. Depending on the size, characteristics and implementation schedule of each investment project, the level of deposit for securing the implementation of an investment project shall range between 1% and 3% of the project's investment capital. In case an investment project is to be implemented in different stages, deposit amounts shall be paid and reimbursed according to the implementation progress of the investment project, except cases ineligible for deposit reimbursement.

3. The Government shall detail this Article.

## **Article 44. Operation duration of investment projects**

1. The operation duration of an investment project in an economic zone must not exceed 70 years.

2. The operation duration of an investment project outside an economic zone must not exceed 50 years. For an investment project in a geographical area meeting with difficult socio-economic conditions or in a geographical area meeting with extremely difficult socio-economic conditions or an investment project which has a large investment capital amount but capital recovery is slow, the operation duration may be longer but must not exceed 70 years.

3. For an investment project using land allocated or leased by the State but to which the handover of land is delayed, the delay duration shall not be included in its operation duration or implementation schedule.

4. Upon the expiration of an investment project's operation duration, if the investor wishes to continue implementing the investment project and satisfies conditions as specified by law, the project's operation duration may be considered for extension but must not exceed the maximum duration specified in Clauses 1 and 2 of this Article, except:

a) Investment projects using outdated technologies, potentially causing environmental pollution or being resource-intensive;

b) Investment projects in the cases where the investors are required to transfer assets to the Vietnamese State or Vietnamese partner without compensation.

5. The Government shall detail this Article.

## **Article 45. Determination and assessment of investment capital value; inspection of machinery, equipment and technological lines**

1. Investors shall ensure the quality of machinery, equipment and technological lines for implementation of investment projects in accordance with law.

2. Investors shall self-determine the investment capital value of their investment projects after these projects are put into operation.

3. When necessary, in order to perform the state management of science and technology or determine tax bases, competent state management agencies may solicit independent assessment of investment capital value or independent inspection of the quality and value of machinery, equipment and technological lines after investment projects are put into operation.

4. Investors shall bear all assessment and inspection expenses in case assessment or inspection results lead to an increase in their tax liabilities toward the State.

5. The Government shall detail this Article.

## **Article 46. Transfer of investment projects**

1. An investor may transfer the whole or part of its/his/her investment project to another if the following conditions are fully met:

a) The to-be-transferred investment project or part of the investment project is not subject to operation termination according to Clauses 1 and 2, Article 48 of this Law;

b) The foreign investor that is the transferee of the project or part of the project satisfies the conditions specified in Clause 2, Article 24 of this Law;

c) The conditions specified in the land law, for cases of transfer of investment projects together with transfer of land use rights and land-attached assets;

d) The conditions specified in the housing and real estate business laws, in case of transfer of housing investment projects or real estate projects;

dd) The conditions specified in the written approval of investment policy, the investment registration certificate or specified in relevant laws (if any);

e) Upon the transfer of investment projects, in addition to complying with this Article, state enterprises shall also comply with the law on management and use of state capital invested in production and business at enterprises before adjusting investment projects.

2. In case the transfer conditions specified in Clause 1 of this Article are satisfied, the procedures for transfer of the whole or part of an investment project are as follows:

- a) For investment projects for which investors are approved under Article 29 of this Law and those that are granted investment registration certificates, investors shall carry out procedures for adjustment of investment projects according to Article 41 of this Law;
- b) For investment projects not falling into the case specified at Point a of this Clause, the transfer of investment projects or transfer of property ownership rights to investors receiving transferred investment projects must comply with the civil, enterprise and real estate business laws and other relevant laws.

## **Article 47. Cessation of investment projects**

- 1. To cease the operation of its/his/her investment project, an investor shall notify in writing such cessation to the concerned investment registration agency. In case of ceasing the operation of the investment project due to a force majeure event, the investor is entitled to exemption from land rental or reduction of land use levy for the cessation period to remedy the consequences of such event.
- 2. The state management agency in charge of investment shall decide on cessation of some or all operations of an investment project in the following cases:
  - a) For protection of relics, vestiges, antiques or national treasures in accordance with the Law on Cultural Heritages;
  - b) For remediation of violations of the environmental protection law at the request of state management agencies in charge of environment;
  - c) For implementation of occupational safety assurance measures at the request of state management agencies in charge of labor;
  - d) Under a court judgment or ruling or an arbitral award;
  - dd) The investor fails to properly comply with the written approval of investment policy or investment registration certificate and repeats violations even after having been administratively sanctioned.
- 3. At the proposal of the Ministry of Planning and Investment, the Prime Minister shall decide on cessation of some or all operations of an investment project in case the implementation of such project affects or threatens to affect national defense and security.
- 4. The Government shall stipulate in detail the conditions, order, procedures and cessation period of investment projects under this Article.

## **Article 48. Termination of investment projects**

- 1. An investor shall terminate investment activities or an investment project in the following cases:
  - a) The investor itself/himself/herself decides to terminate the operation of the project;
  - b) Under the operation termination conditions specified in the contract or enterprise charter;
  - c) The project's operation duration expires.
- 2. The investment registration agency shall terminate some or all operations of an investment project in the following cases:
  - a) The investment project falls into one of the cases specified in Clauses 2 and 3, Article 47 of this Law but the investor is unable to address the reason for operation suspension;
  - b) The investor is not allowed to further use the investment site and fails to carry out procedures for change of the investment site within 6 months from the date it/he/she is not allowed to further use the investment site, except the case specified at Point d of this Clause;
  - c) The project has ceased operation and past 12 months from the date of cessation, the investment registration agency cannot contact the investor or its/his/her lawful representative;
  - d) The investment project is subject to land recovery due to failure of or delay in putting land into use as specified in the land law;
  - dd) The investor fails to make deposits or obtain guarantees for deposit obligations in accordance with law, for investment projects requiring security for implementation;
  - e) The investor carries out investment activities on the basis of false civil transactions specified in the civil law;
  - g) Under a court judgment or ruling or an arbitral award.
- 3. For an investment project subject to approval of investment policy, the investment registration agency shall terminate the investment project after obtaining opinions of the agency competent to approve investment policy.
- 4. Investors shall themselves liquidate investment projects in accordance with the law on asset liquidation upon termination of investment projects, except the case specified in Clause 5 of this Article.
- 5. The handling of land use rights and land-attached assets upon the termination of investment projects must comply with the land law and other relevant laws.
- 6. The investment registration agency shall decide on revocation of investment registration certificates of investment projects that terminate operation under Clause 2 of this Article, except those that terminate some of their operations.
- 7. The Government shall stipulate in detail the order and procedures for termination of investment projects under this Article.

## **Article 49. Establishment of executive offices of foreign investors under BCCs**

1. Foreign investors under BCCs may establish their executive offices in Vietnam for contract performance. The location of executive offices shall be decided by foreign investors under BCCs to meet contract performance requirements.
2. Executive offices of foreign investors under BCCs shall have their own seals; and may open accounts, recruit employees, sign contracts and carry out business activities within the ambit of the rights and obligations stated in the BCCs and executive office establishment registration certificates.
3. Foreign investors under BCCs shall submit dossiers of registration for establishment of executive offices to investment registration agencies of localities where these offices are to be located.
4. A dossier of registration for establishment of an executive office must comprise:
  - a) The written registration for establishment of an executive office, stating the name and address of the Vietnam-based representative office (if any) of the foreign investor under the BCC; name and address of the executive office; contents, duration and scope of operation of the executive office; and full name, place of residence and serial number of people's identity card, citizen identity card or passport of the head of the executive office;
  - b) The decision of the foreign investor under the BCC on the establishment of the executive office;
  - c) A copy of the decision of appointment of the head of the executive office;
  - d) A copy of the BCC.
5. Within 15 days after receiving a dossier specified in Clause 4 of this Article, the investment registration agency shall grant an executive office operation registration certificate to the foreign investor under a BCC.

## **Article 50. Termination of operation of executive offices of foreign investors under BCCs**

1. Within 7 working days after obtaining the decision on termination of the operation of its/his/her executive office, a foreign investor shall send a dossier of notification to the investment registration agency of the locality where such office is based.
2. A dossier of notification of termination of the operation of an executive office must comprise:
  - a) The decision on termination of the operation of the executive office, in case of termination ahead of schedule;
  - b) The list of creditors and debt amounts already paid;
  - c) The list of employees and their rights and interests already settled;
  - d) The tax office's certification of the investor's fulfillment of tax obligations;
  - dd) The social insurance agency's certification of the investor's fulfillment of social insurance-related obligations;
  - e) The operation registration certificate of the executive office;
  - g) A copy of the investment registration certificate;
  - h) A copy of the BCC.
3. Within 15 days after receiving a dossier specified in Clause 2 of this Article, the investment registration agency shall decide to revoke the operation registration certificate of the executive office.

# **Chapter V**

## **OFFSHORE INVESTMENT ACTIVITIES**

### **Section 1**

#### **GENERAL PROVISIONS**

##### **Article 51. Principles of offshore investment activities**

1. The State shall encourage offshore investment in order to exploit, develop and expand markets; increase the export of goods and services and the earning of foreign currencies; access modern technologies, raise administration capacity and acquire additional resources for national socio-economic development.
2. Investors carrying out offshore investment activities shall comply with this Law, other relevant laws, laws of countries and territories where investment is made (below referred to as host countries), and relevant treaties; and shall take responsibility for the efficiency of their offshore investment activities.

##### **Article 52. Forms of offshore investment**

1. Investors shall carry out offshore investment activities in the following forms:
  - a) Establishing economic organizations in accordance with the laws of host countries;
  - b) Making investment in the form of overseas contracts;

- c) Contributing capital to, or purchasing shares or contributed capital amounts at, overseas economic organizations to participate in managing such economic organizations;
- d) Purchasing and selling securities and other valuable papers or making investment via overseas securities investment funds or other intermediary financial institutions;
- dd) Other forms in accordance with the laws of host countries.

2. The Government shall stipulate in detail the form of investment specified at Point d, Clause 1 of this Article.

## **Article 53. Sectors and trades banned from offshore investment**

- 1. The sectors and trades banned from business investment specified in Article 6 of this Law and relevant treaties.
- 2. Sectors and trades with technologies and products banned from export in accordance with the law on foreign trade management.
- 3. Sectors and trades banded from business investment in accordance with the laws of host countries.

## **Article 54. Sectors and trades subject to conditional offshore investment**

- 1. Sectors and trades subject to conditional offshore investment include:
- a) Banking;
- b) Insurance;
- c/ Securities;
- d) Press, radio and television broadcasting;
- dd) Real estate business.

2. Conditions for offshore investment in the sectors and trades specified in Clause 1 of this Article shall be prescribed in the laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly, decrees of the Government, and treaties on investment to which the Socialist Republic of Vietnam is a contracting party.

## **Article 55. Offshore investment capital sources**

- 1. Investors shall contribute capital and raise capital from different sources to carry out overseas investment activities.
- 2. The borrowing of foreign-currency loans and transfer of foreign-currency investment capital must comply with the conditions and procedures specified in the laws on banking, credit institutions, and foreign exchange management.
- 3. Based on the objectives of the monetary policy and foreign exchange management policy in each period, the State Bank of Vietnam shall stipulate the provision of foreign-currency loans by credit institutions and foreign bank branches in Vietnam to investors under Clause 2 of this Article for making offshore investment.

## **Section 2**

# **PROCEDURES FOR APPROVAL OF OFFSHORE INVESTMENT POLICY AND DECISION ON OFFSHORE INVESTMENT**

## **Article 56. Competence to approve offshore investment policy**

- 1. The National Assembly shall approve offshore investment policy for:
  - a) Offshore investment projects capitalized at VND 20 trillion or more;
  - b) Investment projects requiring special mechanisms or policies to be decided by the National Assembly.
- 2. Except the investment projects specified in Clause 1 of this Article, the Prime Minister shall approve offshore investment policy for:
  - a) Offshore investment projects in the banking, insurance, securities, press, radio or television broadcasting, and telecommunications sectors which are capitalized at VND 400 billion or more;
  - b) Offshore investment projects other than those specified at Point a of this Clause which are capitalized at VND 800 billion or more.
- 3. Investment projects other than those specified in Clauses 1 and 2 of this Article are not subject to approval of offshore investment policy.

## **Article 57. Dossiers, order and procedures for approval of offshore investment policy by the National Assembly**

- 1. Investors shall submit an offshore investment project dossier to the Ministry of Planning and Investment, which must comprise:
  - a) A written registration for offshore investment.

a) A written registration for offshore investment;

b) A document on the legal status of the investor;

c) The investment project proposal, covering the following major contents: form, objectives, scale and location of investment; preliminarily estimated investment capital, capital raising plan and structure of capital sources; project implementation schedule and investment stages (if any); and preliminary analysis of investment efficiency of the project;

d) At least one of the following documents proving the investor's financial capacity: the investor's financial statements of the last 2 years; the parent company's commitment to providing financial support; a financial institution's commitment to providing financial support; guarantee for the investor's financial capacity; and another document proving the investor's financial capacity;

dd) The investor's commitment to self-balancing foreign currency sources or a licensed credit institution's written commitment to providing foreign currencies to the investor;

e) The owner's representative agency's written approval of the investor's offshore investment activities and a report on internal appraisal of the offshore investment proposal specified in Clause 1, Article 59 of this Law, for state enterprises, or the offshore investment decision specified in Clause 2, Article 59 of this Law;

g) For offshore investment projects in the sectors and trades specified in Clause 1, Article 54 of this Law, the investor shall submit a competent state agency's written certification of its/his/her satisfaction of the offshore investment conditions in accordance with relevant laws (if any).

2. Within 5 working days after receiving a complete dossier, the Ministry of Planning and Investment shall propose the Prime Minister to decide on the establishment of a State Appraisal Council.

3. Within 90 days from the date of its establishment, the State Appraisal Council shall appraise the dossier and make an appraisal report for submission to the Government. An appraisal report must cover the following contents:

a) The conditions for grant of an offshore investment registration certificate as specified in Article 60 of this Law;

b) The investor's legal status;

c) The necessity for carrying out offshore investment activities;

d) The project's conformity with Clause 1, Article 51 of this Law;

dd) The form, scale, location and implementation schedule of the investment project; offshore investment capital and capital sources;

e) Assessment of risks in the host country.

4. At least 60 days before the opening date of a National Assembly's session, the Government shall send a dossier of request for approval of offshore investment policy to the National Assembly's agency in charge of verification.

5. The dossier of request for approval of offshore investment policy must comprise:

a) A report of the Government;

b) The dossier specified in Clause 1 of this Article;

c) The State Appraisal Council's appraisal report;

d) Other related documents.

6. Contents of verification of the request for approval of offshore investment policy:

a) The satisfaction of the criteria for determining the investment project to be subject to approval of investment policy by the National Assembly;

b) The necessity for carrying out offshore investment activities;

c) The project's conformity with Clause 1, Article 51 of this Law;

d) The form, scale, location and implementation schedule of the investment project; offshore investment capital and capital sources;

dd) Assessment of risks in the host country.

e) Special mechanisms and policies, investment incentives and supports and conditions for application thereof (if any).

7. The Government and related agencies, organizations and individuals shall provide sufficient information and documents to serve the verification; and explain matters related to the investment project when so requested by the National Assembly's agency in charge of verification.

8. The National Assembly shall consider and adopt a resolution on approval of offshore investment policy, covering the following contents:

a) The investor to implement the project;

b) Objectives and location of investment;

c) Offshore investment capital and capital sources;

d) Special mechanisms and policies, investment incentives and supports and conditions for application thereof (if any).

9. The Government shall stipulate in detail the order and procedures for appraisal of offshore investment project dossiers by the State Appraisal Council.

## **Article 58. Dossier, order and procedures for approval of offshore investment policy by the Prime Minister**

1. Investment project dossiers must comprise with Clause 1, Article 57 of this Law.
2. Investors shall submit investment project dossiers to the Ministry of Planning and Investment. Within 3 working days after receiving a complete dossier, the Ministry of Planning and Investment shall send the dossier to related state agencies to solicit appraisal opinions.
3. Within 15 days after receiving the investment project dossier, the consulted agencies shall give appraisal opinions in writing on the contents falling within the scope of their management.
4. Within 30 days after receiving the investment project dossier, the Ministry of Planning and Investment shall appraise it and make an appraisal report for submission to the Prime Minister. The appraisal report must cover the contents specified in Clause 3, Article 57 of this Law.
5. The Prime Minister shall consider and approve offshore investment policy covering the contents specified in Clause 8, Article 57 of this Law.

## **Article 59. Decision on offshore investment**

1. The decision on offshore investment of state enterprises must comply with the law on management and use of state capital invested in production and business at enterprises and other relevant laws.
2. Investors themselves shall decide on offshore investment activities other than those specified in Clause 1 of this Article in accordance with the Law on Enterprises.
3. Investors and agencies making decision on offshore investment specified in Clause 1 or 2 of this Article shall take responsibility for their offshore investment decisions.

## **Section 3**

### **PROCEDURES FOR GRANT, MODIFICATION AND INVALIDATION OF OFFSHORE INVESTMENT REGISTRATION CERTIFICATES**

#### **Article 60. Conditions for grant of offshore investment registration certificates**

1. Offshore investment activities adhere to the principles specified in Article 51 of this Law.
2. Offshore investment activities do not fall in the sectors or trades banned from offshore investment as specified in Article 53 of this Law and satisfy the offshore investment conditions, for sectors and trades subject to conditional offshore investment as specified in Article 54 of this Law.
3. The investor commits to self-arranging foreign currency amounts or obtains a licensed credit institution's commitment to providing foreign currency amounts for carrying out offshore investment activities.
4. There is an offshore investment decision as specified in Article 59 of this Law.
5. There is a tax office's written certification of the investor's fulfillment of the tax payment obligation, which is made no more than 3 months by the date of submission of the investment project dossier.

#### **Article 61. Procedures for grant of offshore investment registration certificates**

1. For investment projects subject to approval of offshore investment policy, the Ministry of Planning and Investment shall grant an offshore investment registration certificate to investors within 5 working days after receiving a written approval of investment policy and offshore investment decision as specified in Article 59 of this Law.
2. For investment projects other than those specified in Clause 1 of this Article, an investor shall submit a dossier of application for an offshore investment registration certificate to the Ministry of Planning and Investment. Such a dossier must comprise:
  - a) A written registration for offshore investment;
  - b) A document on the investor's legal status;
  - c) The offshore investment decision as specified in Article 59 of this Law;
  - d) The investor's written commitment to self-arranging foreign currency amounts or a licensed credit institution's written commitment to providing foreign currency amounts for the investor as specified in Clause 3, Article 60 of this Law;
  - dd) For offshore investment projects in the sectors and trades specified in Clause 1, Article 54 of this Law, the investor shall submit a competent state agency's written approval stating its/his/her satisfaction of the offshore investment conditions under relevant laws (if any).
3. For a foreign currency amount to be transferred abroad which is equivalent to VND 20 billion or more, the Ministry of Planning and Investment shall solicit written opinions of the State Bank of Vietnam.

4. Within 15 days after receiving a dossier specified in Clause 2 of this Article, the Ministry of Planning and Investment shall grant an offshore investment registration certificate, or send to the investor a written notice clearly stating the reason for refusal to grant such a certificate.
5. The Government shall stipulate in detail the order and procedures for appraisal of offshore investment projects; and the grant, modification and invalidation of offshore investment registration certificates.

## **Article 62. Contents of offshore investment registration certificate**

1. Code of the investment project.
2. The investor.
3. Name of the investment project, name of the overseas economic organization (if any).
4. Objectives and location of investment.
5. Form of investment, investment capital, investment capital sources, form of investment capital, and implementation schedule of offshore investment activities.
6. Rights and obligations of the investor.
7. Investment incentives and supports (if any).

## **Article 63. Modification of offshore investment registration certificates**

1. An investor shall carry out procedures for modification of its/his/her offshore investment registration certificate in the following cases:
  - a) Change of the Vietnamese investor;
  - b) Change of the form of investment;
  - c) Change of offshore investment capital; investment capital sources, or form of investment capital;
  - d) Change of investment location, for investment projects required to have investment locations;
  - dd) Change of main objectives of offshore investment activities;
  - e) Use of profits earned from offshore investment activities as specified at Points a and b, Clause 1, Article 67 of this Law.
2. An investor shall update changes other than those specified in Clause 1 of this Article to the national investment information systems.
3. A dossier for modification of an offshore investment registration certificate must comprise:
  - a) A written request for modification of an offshore investment registration certificate;
  - b) A document on the investor's legal status;
  - c) A report on the operation of the investment project by the time of submission of the dossier;
  - d) The decision on modification of offshore investment activities as specified in Article 59 of this Law or the documents specified at Point e, Clause 1, Article 57 of this Law;
  - dd) A copy of the offshore investment registration certificate;
  - e) The tax office's written certification of the investor's fulfillment of tax payment obligation in case of increase of offshore investment capital, which is made no more than 3 months by the date of submission of the dossier.
4. The Ministry of Planning and Investment shall modify an offshore investment registration certificate within 15 days after receiving the dossier specified in Clause 3 of this Article.
5. For investment projects subject to approval of offshore investment policy, when modifying the contents specified in Clause 1 of this Article and Clause 8, Article 57 of this Law, the Ministry of Planning and Investment shall carry out procedures for approval of the modification of offshore investment policy before modifying an offshore investment registration certificate.
6. In case the request for modification of an offshore investment registration certificate makes the investment project be subject to approval of offshore investment policy, procedures for approval of offshore investment policy shall be carried out before modification of the offshore investment registration certificate.
7. Agencies or persons competent to approve offshore investment policy have the competence to approve the modification of offshore investment policy. Agencies or persons competent to decide on offshore investment have the competence to decide on the modification of offshore investment decisions.
8. In case the request for modification of an investment project makes the project fall within the superior authority's competence to approve offshore investment policy, such authority will have the competence to approve modification of offshore investment policy.

## **Article 64. Invalidation of offshore investment registration certificates**

1. An offshore investment registration certificate shall be invalidated in the following cases:
  - a) The investor decides to terminate the investment project's operation;
  - b) The investment project's operation duration expires in accordance with the law of the host country;
  - c) Under the operation termination conditions specified in the contract or enterprise charter;
  - d) The investor transfers the whole amount of overseas investment capital to a foreign investor(s);

- dd) Past 24 months from the date of being granted the offshore investment registration certificate, the investor fails or is unable to implement the investment project according to the schedule registered with a state management agency and fails to carry out procedures for extension of such schedule;
- e) The overseas economic organization is dissolved or goes bankrupt in accordance with the law of the host country;
- g) Under a court judgment or ruling or an arbitral award.

2. Investors shall carry out procedures for termination of the operation of their overseas investment projects in accordance with the laws of the host countries and procedures for invalidation of offshore investment registration certificates.

3. The Ministry of Planning and Investment shall invalidate offshore investment registration certificates.

## **Section 4**

### **IMPLEMENTATION OF OVERSEAS INVESTMENT ACTIVITIES**

#### **Article 65. Opening of offshore investment capital accounts**

- 1. An investor may open an offshore investment capital account at a licensed credit institution in Vietnam as prescribed by the law on foreign exchange management.
- 2. All transactions of offshore investment-related outbound and inbound transfer of money shall be conducted via investment capital accounts specified in Clause 1 of this Article in accordance with the law on foreign exchange management.

#### **Article 66. Outbound transfer of investment capital**

- 1. An investor may transfer investment capital abroad for carrying out investment activities when meeting the following conditions:
  - a) Having obtained an offshore investment registration certificate, except the case specified in Clause 3 of this Article;
  - b) The investment activities have been approved or licensed by a competent authority of the host country. In case the law of the host country does not stipulate investment licensing or approval, the investor shall produce a document proving its/his/her right to carry out investment activities in the host country;
  - c) Having a capital account as specified in Article 65 of this Law.
- 2. The outbound transfer of investment capital must comply with the laws on foreign exchange management, export, and technology transfer and other relevant laws.
- 3. Investors may transfer foreign currency amounts or goods, machinery and equipment abroad for serving market survey, research and probe activities and other investment preparation activities under the Government's regulations.

#### **Article 67. Use of profits overseas**

- 1. Investors may retain profits earned from offshore investment activities for reinvestment in the following cases:
  - a) Continuing to contribute capital to make offshore investment, in case they have not fully contributed capital as registered;
  - b) Increasing offshore investment capital;
  - c) Implementing new investment projects overseas.
- 2. Investors shall carry out procedures for modification of offshore investment registration certificates in accordance with Article 63 of this Law for the cases specified at Points a and b, Clause 1 of this Article; or carry out procedures for grant of offshore investment registration certificates in accordance with Article 61 of this Law for the case specified at Point c, Clause 1 of this Article.

#### **Article 68. Inbound transfer of profits**

- 1. Except the case of retaining profits as specified in Article 67 of this Law, within 6 months from the date of issuance of a tax finalization statement or a document of equivalent legal validity under the law of the host country, investors shall transfer all profits and other incomes earned from offshore investment activities to Vietnam.
- 2. Within the time limit specified in Clause 1 of this Article, if failing to transfer profits and other incomes to Vietnam, investors shall send a written notice in advance to the Ministry of Planning and Investment and State Bank of Vietnam. The time limit for inbound transfer of profits may be extended for no more than 12 months after the expiration of the time limit specified in Clause 1 of this Article.
- 3. Past the time limit specified in Clause 1 of this Article, if investors fail to transfer profits to Vietnam and to send a notice, or past the extended time limit specified in Clause 2 of this Article, if investors fail to transfer profits to Vietnam, they shall be handled in accordance with law.

## **Chapter VI**

# STATE MANAGEMENT OF INVESTMENT

## Article 69. Responsibility for state management of investment

1. The Government shall perform the unified state management of investment in Vietnam and offshore investment from Vietnam.
2. The Ministry of Planning and Investment shall assist the Government in performing the unified state management of investment in Vietnam and offshore investment from Vietnam, and has the following tasks and powers:
  - a) To submit to the Government or Prime Minister for approval strategies, plans and policies on investment in Vietnam and offshore investment from Vietnam;
  - b) To promulgate or submit to competent agencies for promulgation legal documents on investment in Vietnam and offshore investment from Vietnam;
  - c) To issue forms for carrying out procedures for investment in Vietnam and offshore investment from Vietnam;
  - d) To guide, disseminate, and organize, supervise, examine and evaluate the implementation of, legal documents on investment;
  - dd) To formulate and submit to competent agencies for promulgation mechanisms for settlement of problems confronted by investors, and prevention of disputes between the State and investors;
  - e) To review, evaluate and report on investment in Vietnam and offshore investment from Vietnam;
  - g) To build, manage and operate the national investment information systems and the national investment database;
  - h) To grant, modify or invalidate offshore investment registration certificates;
  - i) To perform the state management of industrial parks, export processing zones and economic zones;
  - k) To perform the state management of investment promotion and coordinate investment promotion activities in Vietnam and foreign countries;
  - l) To examine, inspect, supervise and evaluate investment activities, manage and coordinate in managing investment activities according to its competence;
  - m) To negotiate and conclude investment-related treaties according to its competence;
  - n) Other tasks and powers concerning state management of investment as assigned by the Government or Prime Minister.
3. Ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, coordinate with the Ministry of Planning and Investment in performing the state management of investment in Vietnam and offshore investment from Vietnam, specifically as follows:
  - a) To coordinate with the Ministry of Planning and Investment and with one another in formulating investment-related laws and policies;
  - b) To assume the prime responsibility for, and coordinate with one another in, formulating and promulgating laws, policies, standards and technical regulations, and guiding implementation thereof;
  - c) To submit to the Government for promulgation according to its competence business investment conditions for the sectors and trades specified in Article 7 of this Law;
  - d) To assume the prime responsibility for, and coordinate with the Ministry of Planning and Investment in, formulating master plans, plans, and lists of investment-calling projects in their sectors; to organize sector-specific investment mobilization and promotion;
  - dd) To participate in appraising investment projects subject to investment policy approval in accordance with this Law and take responsibility for appraisal contents falling within the ambit of their functions and tasks;
  - e) To supervise, evaluate, and conduct specialized inspection of, the satisfaction of investment conditions, and perform the state management of investment projects falling within their competence;
  - g) To assume the prime responsibility for, and coordinate with provincial-level People's Committees and with one another in, settling difficulties and problems for investment projects in the fields falling within the scope of their state management; to guide the decentralization of powers to and authorization for management boards of industrial parks, export processing zones, hi-tech parks or economic zones to perform state management tasks in these parks or zones;
  - h) To periodically evaluate socio-economic benefits of investment projects falling within the scope of their state management and send evaluation reports to the Ministry of Planning and Investment;
  - i) To provide relevant information for building the national investment database; to maintain and update the investment management information systems in their assigned fields and integrate such information into the national investment information systems.
4. Provincial-level People's Committees and investment registration agencies shall, within the ambit of their tasks and powers, perform the state management of investment in Vietnam and offshore investment from Vietnam, specifically as follows:
  - a) To coordinate with ministries and ministerial-level agencies in making and announcing lists of

a, to coordinate with ministries and ministerial-level agencies in making and amending laws on investment-calling projects in localities;

b) To assume the prime responsibility for or participate in appraising investment projects subject to investment policy approval in accordance with this Law and take responsibility for appraisal contents falling within the ambit of their functions and tasks; to assume the prime responsibility for carrying out procedures for grant, modification and revocation of investment registration certificates;

c) To perform the state management of investment projects in localities;

d) To settle according to their competence, or submit to competent authorities for settlement of, difficulties and problems confronted by investors;

dd) To periodically evaluate the effectiveness of investment activities in localities and send evaluation reports to the Ministry of Planning and Investment;

e) To provide relevant information for building the national investment database; to maintain and update the national investment information systems;

g) To direct the organization, supervision and evaluation of the implementation of the investment reporting regime.

5. Overseas Vietnamese representative missions shall monitor and support investment activities and protect lawful rights and interests of Vietnamese investors in host countries.

## **Article 70. Investment monitoring and evaluation**

1. Investment monitoring and evaluation activities cover:

a) Monitoring and evaluation of investment projects;

b) Overall monitoring and evaluation of investment.

2. Responsibility for investment monitoring and evaluation:

a) State management agencies in charge of investment and specialized state management agencies shall conduct overall monitoring and evaluation of investment and monitoring and evaluation of investment projects under their management;

b) Investment registration agencies shall monitor and evaluate investment projects for which they are competent to grant investment registration certificates.

3. Contents of monitoring and evaluation of investment projects:

a) For investment projects using state capital for business investment, state management agencies in charge of investment and specialized state management agencies shall monitor and evaluate such projects based on the contents and criteria approved under investment decisions;

b) For projects using other funding sources, state management agencies in charge of investment and specialized state management agencies shall monitor and evaluate the objectives and conformity of such projects with approved master plans and investment policy, investment schedule, and satisfaction of law-prescribed requirements on environmental protection, technology, and use of land and other natural resources;

c) Investment registration agencies shall monitor and evaluate the contents specified in investment registration certificates or written approvals of investment policy.

4. Contents of overall monitoring and evaluation of investment:

a) Promulgation of legal documents detailing and guiding the implementation of the law on investment; and the implementation of the law on investment;

b) Actual implementation of investment projects;

c) Evaluation of investment results nationwide and in ministries, ministerial-level agencies and localities, and investment projects as decentralized;

d) Sending of recommendations on investment evaluation results and measures to handle problems and violations of the law on investment to the same-level and superior state management agencies in charge of investment.

5. Evaluating agencies and organizations may themselves carry out investment evaluation or hire fully qualified and capable experts or consultancy organizations to do so.

6. The Government shall detail this Article.

## **Article 71. National investment information systems**

1. The national investment information systems include:

a) The national information system on domestic investment;

b) The national information system on foreign investment in Vietnam;

c) The national information system on offshore investment from Vietnam;

d) The national information system on investment promotion;

dd) The national information system on industrial parks and economic zones.

2. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with related agencies in, building and operating the national investment information systems; building the national investment database; and assessing the operation of these systems by central and local state management agencies in charge of investment.

3. State management agencies in charge of investment and investors shall fully, promptly and

3. State management agencies in charge of investment and investors shall fully, promptly and accurately update relevant information to the national investment information systems.

4. Information on investment projects stored in the national investment information systems is legally valid as primary-source information on investment projects.

## **Article 72. Reporting on investment activities in Vietnam**

1. Entities to observe the reporting regime include:

- a) Ministries, ministerial-level agencies and provincial-level People's Committees;
- b) Investment registration agencies;
- c) Investors and economic organizations that implement investment projects in accordance with this Law.

2. The periodical reporting regime is specified as follows:

- a) Quarterly and annually, investors and economic organizations that implement investment projects shall report to local investment registration agencies and statistics offices on implementation of such investment projects, covering disbursed investment capital, business investment results, information on labor, payment to the state budget, investment in research and development, environmental treatment and protection, and specialized indicators by field of operation;
- b) Quarterly and annually, investment registration agencies shall report to the Ministry of Planning and Investment and provincial-level People's Committees on receipt of dossiers, and grant, modification and revocation, of investment registration certificates, and on operation of investment projects under their management;
- c) Quarterly and annually, provincial-level People's Committees shall review and report on investment in localities to the Ministry of Planning and Investment;
- d) Quarterly and annually, ministries and ministerial-level agencies shall report on grant, modification and revocation of investment registration certificates or other papers of equivalent validity (if any) within the scope of their management; and report on investment activities related to the scope of their management to the Ministry of Planning and Investment for summarization and reporting to the Prime Minister;
- dd) Annually, the Ministry of Planning and Investment shall report to the Prime Minister on investment nationwide and report on assessment of the implementation of the reporting regime by the agencies specified in Clause 1 of this Article.

3. Agencies, investors and economic organizations shall send reports in written form and via the national investment information systems.

4. Agencies, investors and economic organizations specified in Clause 1 of this Article shall make unscheduled reports upon request of competent state agencies.

5. For projects not subject to grant of investment registration certificates, investors shall report them to investment registration agencies before implementing such projects.

## **Article 73. Reporting on overseas investment activities**

1. Agencies, organizations and individuals subject to the reporting regime include:

- a) Ministries and ministerial-level agencies tasked to manage offshore investment activities in accordance with law, and agencies representing state capital amounts at enterprises;
- b) Investors that implement offshore investment projects in accordance with this Law.

2. The reporting regime for the entities specified at Point a, Clause 1 of this Article is specified as follows:

- a) Annually, the reporting entities shall, within the ambit of their functions and tasks, report on the management of offshore investment activities to the Ministry of Planning and Investment for summarization and reporting to the Prime Minister;
- b) Annually, the Ministry of Planning and Investment shall report to the Prime Minister on offshore investment.

3. The reporting regime for investors is specified as follows:

- a) Within 60 days from the date an investment project is approved or licensed in accordance with the law of the host country, the concerned investor shall send a written notice of implementation of overseas investment activities, together with a copy of the written approval of the investment project or a document proving its/his/her right to carry out investment activities in the host country, to the Ministry of Planning and Investment, State Bank of Vietnam and Vietnamese representative mission in the host country;
- b) Quarterly and annually, the investor shall send a report on operation of the investment project to the Ministry of Planning and Investment, State Bank of Vietnam and Vietnamese representative mission in the host country;
- c) Within 6 months from the date of issuance of a tax finalization statement or a document of equivalent legal validity in accordance with the law of the host country, the investor shall send a report on operation of the investment project, together with the financial statement, tax finalization report or document of equivalent legal validity as proscribed by the law of the host country, to the Ministry of

document or equivalent legal validity as prescribed by the law of the host country, to the Ministry of Planning and Investment, State Bank of Vietnam, Ministry of Finance, Vietnamese representative mission in the host country, and competent state management agency prescribed by this Law and other relevant laws;

d) For offshore investment projects using state capital, investors shall observe not only the reporting regime specified at Points a, b and c of this Clause but also the investment reporting regime prescribed in the law on management and use of state capital invested in production and business at enterprises.

4. The reports specified in Clauses 2 and 3 of this Article shall be made in written form and via the national investment information systems.

5. The agencies and investors specified in Clause 1 of this Article shall make unscheduled reports at the request of competent state agencies to meet relevant state management requirements or settle arising problems related to investment projects.

## **Article 74. Investment promotion activities**

1. The Government shall direct the formulation and organize the implementation of investment promotion policies and orientations so as to promote and facilitate investment activities based on sectors, regions and partners in conformity with socio-economic development strategies, master plans, plans and strategies in each period; ensure the implementation of interregional and intersectoral investment promotion programs and activities in association with trade promotion and tourism promotion.

2. The Ministry of Planning and Investment shall formulate, and organize the implementation of, the national investment promotion plan and program; coordinate interregional and intersectoral investment promotion activities; and supervise, monitor and evaluate investment promotion efficiency nationwide.

3. Ministries, ministerial-level agencies and provincial-level People's Committees shall, within the ambit of their tasks and powers, formulate, and organize the implementation of, investment promotion plans and programs in the fields and localities under their management in conformity with socio-economic development strategies, master plans and plans and the national investment promotion program.

4. Funds for formulating, and organizing the implementation of, investment promotion programs shall be allocated from the state budget and other lawful sources.

5. The Government shall detail this Article.

# **Chapter VII**

## **IMPLEMENTATION PROVISIONS**

### **Article 75. To amend and supplement a number of articles of the laws related to business investment**

1. To amend and supplement a number of articles of Housing Law No. 65/2014/QH13, which was amended and supplemented under Law No. 40/2019/QH14, as follows:

a) To amend and supplement Clause 2, Article 21 as follows: "2. Paying a deposit or obtaining a bank guarantee on the obligation to pay a deposit for implementation of each project as prescribed by the law on investment.";

b) To amend and supplement Point c, Clause 2, Article 22 as follows: "c/ Approval of investors as prescribed by the Law on Investment. In case more than one investor is approved, the determination of the project owner must comply with the Construction Law. The Government shall detail this Point.";

c) To amend and supplement Clause 1, Article 23 as follows: "1. Having lawful use rights of residential land and land of other categories changed into residential land as permitted by competent state agencies.";

d) To amend and supplement Clause 2, Article 170 as follows: "2. For other housing construction projects subject to investment policy approval as prescribed by the Law on Investment, the decision on investment policy must comply with the Law on Investment.";

dd) To amend and supplement Clause 7, Article 175 as follows: "7. To organize professional training and further training in housing development and management; to stipulate the grant of certificates of completion of training courses on condominium operation management; to stipulate and recognize the grading of condominiums.";

e) To annul Clause 3 of Article 22 and Article 171.

2. To amend and supplement a number of articles of Law No. 66/2014/QH13 on Real Estate Business as follows:

a) To amend and supplement Clause 1, Article 10 as follows: "1. Organizations and individuals engaged in real estate business are required to establish enterprises or cooperatives (below collectively referred to as enterprises), except the case specified in Clause 2 of this Article.";

b) To amend and supplement Article 50 as follows: "Article 50. Competence to permit the transfer of the whole or part of real estate projects 1. For real estate projects having investors approved or investment

registration certificates granted under the Law on Investment, the competence and procedures for transferring the whole or part of such projects must comply with the Law on Investment. 2. For real estate projects other than those specified in Clause 1 of this Article, the competence to permit the transfer of the whole or part of such projects is specified as follows: a) Provincial-level People's Committees shall decide to permit the transfer of the whole or part of real estate projects, for projects in which the investment is decided by provincial-level People's Committees; b) The Prime Minister shall decide to permit the transfer of the whole or part of real estate projects, for projects in which the investment is decided by the Prime Minister.”;

c) To add the following sentence above Clause 1, Article 51: “Procedures for transferring the whole or part of real estate projects specified in Clause 2, Article 50 of this Law are carried out as follows.”.

3. To amend and supplement a number of points of Clause 2, Article 25 of Law No. 55/2014/QH13 on Environmental Protection, which was amended and supplemented under Law No. 35/2018/QH14 and Law No. 39/2019/QH14, as follows:

a) To amend and supplement Point a, Clause 2, Article 25 as follows: “a. For the objects specified in Article 18 of this Law, competent authorities shall base on preliminary environmental impact assessment to approve investment policy; investors may implement projects only after environmental impact assessment reports are approved. For public investment projects, competent authorities shall base on preliminary environmental impact assessment to decide on investment policy; base on environmental impact assessment to decide on investment, for the objects specified in Article 18 of this Law. The Government shall stipulate in detail objects and contents of preliminary environmental impact assessment;”;

b) To amend and supplement Point dd, Clause 2, Article 25 as follows: “dd) For projects other than those specified at Points a, b, c and d of this Clause, competent authorities shall base on preliminary environmental impact assessment to grant investment registration certificates, except the case of grant of investment registration certificates at the request of investors; investors may implement projects only after environmental impact assessment reports are approved.”.

4. To amend and supplement a number of articles of Law No. 14/2008/QH12 on Enterprise Income Tax, which was amended and supplemented under Law No. 32/2013/QH13 and Law No.

71/2014/QH13, as follows:

a) To add the following Clause 5a below Clause 5, Article 13: “5a. For the investment projects specified in Clause 2, Article 20 of the Law on Investment, the Prime Minister shall decide on application of preferential tax rates reduced by no more than 50% of the preferential tax rates specified in Clause 1 of this Article; the duration for application of preferential tax rates must not exceed 1.5 times the duration for application of the preferential tax rates specified in Clause 1 of this Article, and may be extended for no more than 15 years but must not exceed the duration of investment projects.”;

b) To add the following Clause 1a below Clause 1, Article 14: “1a. For the investment projects specified in Clause 2, Article 20 of the Law on Investment, the Prime Minister shall decide on application of tax exemption for no more than 6 years and the 50% reduction of payable tax amounts for no more than 13 subsequent years.”;

5. To amend and supplement a number of articles of Cinematography Law No. 62/2006/QH11, which was amended and supplemented under Law No. 31/2009/QH12 and Law No. 35/2018/QH14, as follows:

a) To annul Articles 14 and 15, and Clause 3, Article 30;

b) To remove number “14” and mark “,” right after number “14” in Article 55.

6. To annul Article 10 and Point a, Clause 2, Article 43 of Law No. 30/2009/QH12 on Urban Planning, which was amended and supplemented under Law No. 77/2015/QH13, Law No. 35/2018/QH14 and Law No. 40/2019/QH14.

## **Article 76. Implementation provisions**

1. This Law takes effect on January 1, 2021, except the provisions in Clause 2 of this Article.

2. The provisions in Clause 3, Article 75 of this Article take effect on September 1, 2020.

3. Law No. 67/2014/QH14 on Investment, which was amended and supplemented under Law No.

90/2015/QH13, Law No. 03/2016/QH14, Law No. 04/2017/QH14, Law No. 28/2018/QH14 and Law No. 42/2019/QH14, ceases to be effective on the effective date of this Law, except Article 75 of Law No. 67/2014/QH14 on Investment.

4. In case the national population database is connected with the national database on investment and business registration, Vietnamese citizens may use personal identification numbers in replacement of copies of people's identity cards, citizen identity cards, passports or other personal identification papers when carrying out administrative procedures specified in the Law on Investment and Law on Enterprises.

5. In case legal documents cite provisions on project approval decisions or investment policy decisions under the Law on Investment, the provisions on investment policy approval of this Law shall prevail.

## **Article 77. Transitional provisions**

1. Investors that are granted investment licenses, investment incentive certificates, investment certificates or investment registration certificates before the effective date of this Law may implement investment projects under such licenses or certificates.

2. Investors are not required to carry out procedures for approval of investment policy under this Law for investment projects falling into one of the following cases:

a) They obtain competent state agencies' investment policy decisions or investment policy approval or investment approval under the law on investment, housing, urban planning, or construction before the effective date of this Law:

b) Investment projects are not subject to investment policy approval, investment policy decision, investment approval or grant of investment registration certificates under the law on investment, housing, urban planning, or construction, and begin to be implemented by investors under regulations before the effective date of this Law:

c) Investors have won bidding for investor selection, or have won the auction of land use rights before the effective date of this Law;

d) Projects are granted investment incentive certificates, investment licenses, investment certificates or investment registration certificates before the effective date of this Law.

3. In case of adjustment of an investment project specified in Clause 2 of this Article and to-be-adjusted contents are subject to investment policy approval under this Law, it is required to carry out procedures for approval of investment policy or adjustment of investment policy in accordance with this Law.

4. For investment projects that have been implemented or approved or allowed to be implemented under regulations before July 1, 2015, and are eligible for implementation security under this Law, it is

not required to pay a deposit or obtain a bank guarantee on the obligation to pay a deposit. In case an investor adjusts objectives or implementation schedule of an investment project, or changes the land use purpose after this Law takes effect, it/he/she shall pay a deposit or obtain a bank guarantee on the obligation to pay a deposit under this Law.

5. Debt collection service contracts signed before the date this Law takes effect shall cease to be effective on the effective date of this Law; the contracting parties may perform activities to liquidate the contracts in accordance with the civil law and other relevant laws.

6. Foreign-invested economic organizations that are entitled to apply market access conditions more favorable than those specified in the List promulgated in accordance with Article 9 of this Law may continue to apply the conditions specified in their investment registration certificates.

7. The provisions of Clause 3, Article 44 of this Law shall apply to investment projects for which land is handed over before the effective date of this Law and investment projects for which land has not yet been handed over.

8. In case the law requires a dossier for carrying out administrative procedures to comprise the investment registration certificate or written approval of investment policy, while the investment project does not fall into the case of grant of the investment registration certificate or written approval of investment policy under this Law, the investor is not required to submit the investment registration certificate or written approval of investment policy.

9. For localities meeting with difficulties in allocating land areas for development of houses, service facilities and public utilities for employees working in industrial parks, competent state agencies may adjust master plans on construction of industrial parks (for the industrial parks established before July 1, 2014) to reserve part of land areas for development of houses, service facilities and public utilities for employees working in industrial parks.

The land areas for development of houses, service facilities and public utilities for employees working in industrial parks after relevant master plans are adjusted must be outside the geographical boundary of the industrial parks and ensure the environmental safety distance in accordance with the law on construction and other relevant laws.

## 10. Transitional provisions on offshore investment activities:

a) The regulation on the operation duration of offshore investment projects in offshore investment licenses or certificates granted before July 1, 2015, ceases to be effective;

b) Investors that are granted offshore investment licenses or certificates or offshore investment registration certificates to make offshore investment in sectors or trades subject to conditional offshore investment under this Law may continue to comply with such licenses or certificates.

11. From the effective date of this Law, for valid dossiers that have been received but no dossier processing results have been notified though the time limit for dossier processing has expired as specified in Law No. 67/2014/QH13 on Investment, which was amended and supplemented under Law No. 90/2015/QH13, Law No. 03/2016/QH14, Law No. 04/2017/QH14, Law No. 28/2018/QH14 and Law No. 42/2019/QH14, the provisions of Law No. 67/2014/QH13 on Investment, which was amended and supplemented under Law No. 90/2015/QH13, Law No. 03/2016/QH14, Law No. 04/2017/QH14, Law

No. 28/2018/QH14 and Law No. 42/2019/QH14 shall apply.

12. The Government shall detail this Article.

This Law was passed on June 17, 2020, by the XIVth National Assembly of the Socialist Republic of Vietnam at its 9th session.-