

LEGAL ALERT

Vietnam
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Highlights of the Draft Amendment Law on Investment

On 28 October 2019, the Government of Vietnam submitted a report (“[Draft Law](#)”) to the National Assembly with the aim of proposing its amendments and supplements to several articles of the current Law on Investment for the National Assembly to consider. Accordingly, the main purpose of the Draft Law is to further facilitate investment activities of investors and, if passed, the Draft Law will be effective from 1 January 2021.

The highlights of this draft are as follows:

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	Law on Enterprise 2014	Draft Law
List of industries and trades not allowed for investment	Investors are prohibited from conducting investment in trading narcotics, chemicals, minerals, wild flora and fauna having the characterisation as prescribed under the appendices to the Law on Investment 2014.	The appendices to the Law on Investment 2014 are abolished. Therefore, the detailed guides for characterisation of banned trading narcotics, chemicals, minerals and wild flora and fauna shall be regulated by the Government of Vietnam in separate documents. Further, debt recovery is removed from the list of conditional business but added to the list of lines and trades banned from business investment.
Preferential investment industries and trades	Investment incentives are applied to certain industries and trades.	New types of projects are included in the list of projects entitled to investment incentives, such as college education, creative start-up, producing products created from science and technology.

<p>Conditional access to the market for foreign investors</p>	<p>Not regulated.</p>	<p>The Draft Law adds a new legal notion being “<i>conditional access to the market for foreign investors</i>”. Accordingly, the Government shall promulgate the list of industries and trades with conditional market access of foreign investors, including:</p> <ul style="list-style-type: none"> • the business lines where the foreign investors not allowed to access to the market; and • the business lines where the foreign investors allowed to access markets with conditions. <p>For business lines which are not on the abovementioned lists, the conditions for market access for foreign investors are the same as for the domestic ones.</p>
<p>Registration of M&A by foreign investors</p>	<p>M&A approval must be obtained by foreign investors before contributing capital, purchasing shares or part of capital contribution in a company in Vietnam in the two following cases:</p> <ul style="list-style-type: none"> • The target company engages in business lines conditional to foreign investors; and • The capital contribution or purchase of shares or portion of capital contribution results in the foreign ownership of 51% or more of the charter capital of the said target company. <p>In practice, due to the unclear aforementioned provisions, the licensing authorities usually requires investors to obtain M&A approval where there has been any transaction in relation to the capital contribution, shares acquisition of the foreign investors despite the ownership ratio of foreign investors remain the same in the target company.</p>	<p>The Draft Law clarifies that foreign investors do not have to register their capital contribution, shares acquisition if the ownership ratio of foreign investors remaining the same in the relevant company.</p>



Regulations for Public Private Partnership (“PPP”) Contracts	Law on Investment 2014 regulates the form of investment through PPP contracts.	Currently in the proposal stage, the Ministry of Planning and Investment is proposing the legislature of Vietnam to promulgate a law on investment in a form of PPP, therefore, the Draft Law no longer regulates the form of investment through PPP contracts.
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In summary, the Draft Law is evaluated to spur economic development and if the Draft Law is passed, it may improve business activities significantly for domestic and foreign investors.

If you have any questions or require any additional information, please contact [Trang Hoang](#) of ZICO Law Vietnam (a member of ZICO Law).

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