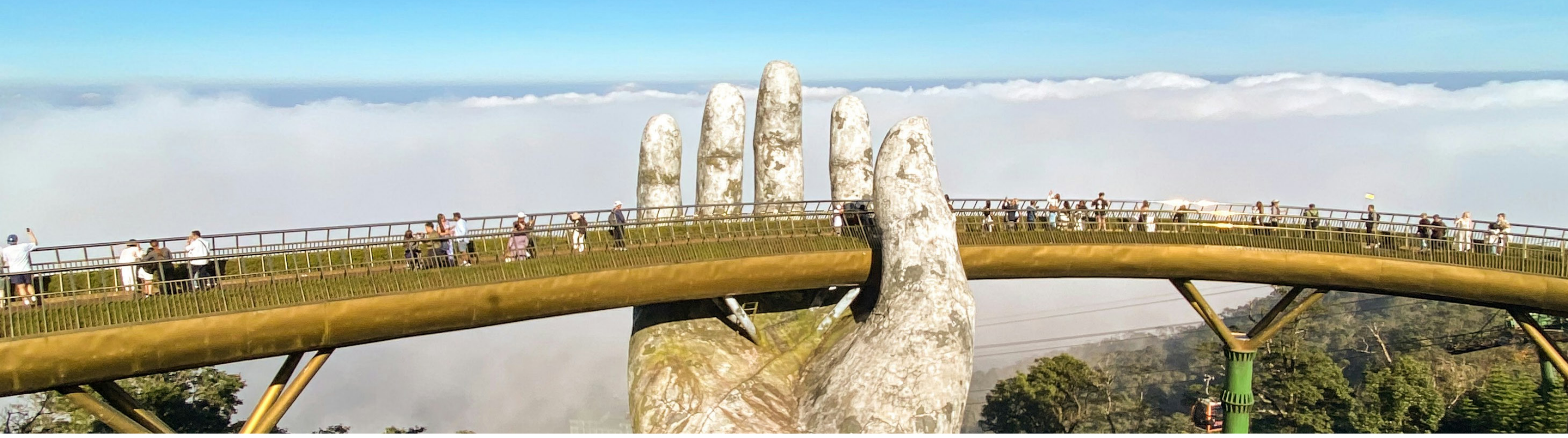

RHTLaw Vietnam

20TH ANNIVERSARY

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VIETNAM'S NEW DRAFT LAW ON INVESTMENT AND BUSINESS ATTEMPTING RADICAL REFORMS TO ENHANCE INVESTMENT LANDSCAPE

The Ministry of Finance ("**MOF**") has recently introduced a new project of a draft law ("**Draft Law**") substituting for the prevailing Law on Investment No. 61/2020/QH14, as amended from time to time ("**Law on Investment**"). The Draft Law aims at enhancing administrative procedures and streamlining detailed provisions into fundamental principles for ease of implementation, thereby fostering a more liberated environment for investment and business activities domestically and overseas.

New name to better reflect the legislative nature

The Law on Investment has invariably been the main legal framework regulating the business and investment activities inside and outside Vietnam. However, its title appears to partially represent the governing scope of the legislation where only the investment aspect is mentioned while the business aspect is neglected. Noticing this omission, the MOF intends to adopt a new name of "Law on Investment and Business" for the Draft Law to indicate the nature and the governing scope of the legislation more comprehensively.

Government's greater autonomy in regulating investment and business activities

The Draft Law has also witnessed a notable shift in law-making mindset. The legislation focuses on establishing guiding principles only, while implementation provisions shall be detailed in the subordinate legal documents to be proactively provided by the Government in consideration of the socio-economic status from time to time.

Inbound foreign investment

1. Investment and business sectors subject to conditions

It is proposed that the Government will be delegated the responsibility to formulate a list of conditional sectors for investment and business and amend the conditional sectors as it sees fit. The Draft Law only sets forth the criteria based on which the conditions for investment and business are established such as *capability, professional qualifications, human resources, physical facilities, and management systems*.

2. Investment and business sectors eligible to incentives

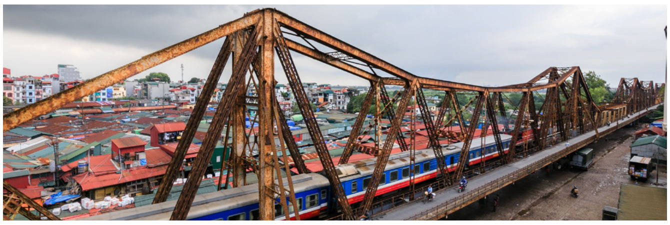
It is also proposed that the Draft Law will only provide for the in-principle mechanisms and enable the Government to decide the business lines entitled to investment incentives.

- Investment incentives include exemption and/or reduction of corporate income tax, import tax, land rental, land use price, land use tax; depreciation; and others as decided by the Government from time to time.

- Business lines eligible for investment incentives include those in the fields of *development of science, technology, innovation, digital transformation, green economy, digital economy, value chains, education, healthcare, and national culture,* etc. Details of the relevant business lines and their incentive degrees will be guided by the Government.

3. Incorporation of an economic organization before registration of an investment project

Under the Law on Investment and its predecessors, there lays down a consistent principle that foreign investors are required to register an investment project before setting up a legal entity in Vietnam.



The Draft Law has broken the pattern by introducing a new mechanism that allows foreign investors to set up their subsidiaries first and the registration of an investment project may follow. The legal entity will be registered as the investor of its investment project.

Outbound investment

1. No outward investment registration for investments less than VND20 billion

Under the Law on Investment, all investment projects from Vietnam to overseas are required (i) to obtain from the MOF an Outward Investment Registration Certificate and thereafter (ii) to register the overseas capital transfer with the State Bank of Vietnam.

However, the Draft Law has lifted the first requirement with respect to the projects with investment capital less than VND20 billion (around USD760,000). This means investors only need to carry out registration procedures relating to the oversea capital transfer with the State Bank of Vietnam.

2. Longer deadline for repatriating outward investment proceeds

In addition, under the current Law on Investment, investors are required to repatriate all profits and revenues derived from outward investment to Vietnam within **6 months** from the date of the tax finalization report or an equivalent document. Under the Draft Law, this period has been extended to up to **12 months**.

All in all, it can be seen that the Draft Law has endeavored to significantly reduce procedure-related provisions in line with the law-making orientation, while simultaneously removing unnecessary obstacles to make Vietnam's investment landscape more appealing to foreign investors and enhance its competitiveness within the region.

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