

# Vietnam: Law on Enterprises

Several new laws of paramount importance to investors, which were passed in 2014, will take effect in 2015. This briefing highlights the most important changes under one of these laws, the 2014 Law on Enterprises (“the New Law”). 2015 will be another historical milestone following the Doi Moi policy and implementation of Vietnam's WTO commitments. A separate briefing will discuss changes under the new Law on Investment.

## Simplification of license requirements

The New Law removes the scope of business activities of an enterprise and the list of founding shareholders of a joint stock company (“JSC”) from the enterprise registration certificate (“ERC”). If an enterprise changes its business activities, founding shareholders or foreign shareholders, it must “report” to the corporate registration authority to update its corporate registration records, but does not need to “register” for an update of its ERC as required under current laws.

## Change of foreign shareholders under new Law on Investment

One should distinguish the above corporate procedural requirements from any possible investment procedural requirements under the new Law on Investment. Under the new Law on Investment, an acquisition of shares by a foreign investor must be registered if the target enterprise operates in a conditional business sector for foreign investors or if it results in foreign investors (and certain forms of semi-foreign-investors) owning in aggregate at least 51% of the shares in the target enterprise. Effectively, the two new laws substantially

simplify the process of share acquisition by a foreign investor in cases where foreign equity in the target does not reach 51% and the target does not operate in a conditional business sector.

## More than one legal representative permitted

The New Law allows a JSC or limited liability company (“LLC”) to have more than one legal representative and only one of them is required to reside in Vietnam. If a JSC has more than one legal representative, the chairman and the general director must both be legal representatives.

## Lower quorum and voting thresholds

- In multi-member LLCs: the quorum of the first convened members’ council meetings and voting threshold for circular resolutions is reduced to 65% of the charter capital from the current 75% requirement.
- In JSCs: the quorum of the first convened general meeting of shareholders (“GMS”) and voting threshold for circular resolutions of shareholders is reduced to 51% of the voting shares from the current 65% and 75%

## Key issues

- Change of business activities need not be registered to update the ERC as required under current law
- Change of founding shareholders need not be registered to update the ERC
- Lower quorum and voting thresholds for multi-member LLCs
- One member LLC can reduce its charter capital
- SOE now defined as being wholly owned by the State
- Requirements for public disclosure of information by SOEs.

requirement respectively. At a GMS, the voting threshold is reduced to 51% of the voting shares of attending shareholders from the current 65% for ordinary matters and to 65% of the voting shares from the current 75% for reserved matters.

## New reporting duties regarding change of managers

A company is required to report to the relevant licensing authority within 5 days of a change of the information (i.e. name, identification information, nationality, contact address) about certain managers of the enterprises, including members of the board of management of a JSC, inspectors and general directors of a JSC or LLC.

## Change of requirements on charter capital of LLC

Under the old Law on Enterprises, a one-member LLC is not permitted to reduce its charter capital. The New Law now permits a one-member LLC to reduce its charter capital in certain circumstances. Additionally, full payment of the registered charter capital of an LLC must be made within 90 days of the issuance of the ERC (in contrast to the 36 months' period under the old Law on Enterprises) or the actually paid charter capital must be registered as adjusted charter capital.

## Fewer restrictions on founding shareholders in JSC

The identities of founding shareholders are no longer recorded in the ERC so a change of founding shareholders need not be registered (but has to be "reported"). Furthermore, the restriction on transfer of shares by a founding shareholder to third parties during the first 3 years after the issuance of its ERC does not apply to:

- additional shares acquired by a founding shareholder after incorporation of the JSC, or

- shares acquired by a third party from a founding shareholder.

## Simplified procedure for JSC to issue new shares

In a private placement of shares, a non-public JSC must file a notification to the corporate registration authority but may proceed with the private placement if 5 business days have lapsed from the filing and the corporate registration authority does not issue an objection.

In the issue of shares proportionally to existing shareholders, if the offered shares are not fully subscribed, the JSC may issue the remaining shares to shareholders or third parties acting reasonably and on terms not more favorable than those applicable to the shareholders, except where otherwise approved by the GMS.

## State-owned Enterprises ("SOE")

### New definition

The New Law defines an SOE to be an enterprise wholly owned by the State whereas under the old Law on Enterprises, an SOE is defined as an enterprise more than 50% owned by the State. The New Law also imposes detailed requirements on the members' council, chairman, general director and other managerial personnel of an SOE.

### Public disclosure

- An SOE must conduct periodical and extraordinary public disclosure on its web portal and its owner representative agency's web portal.
- Information subject to periodical public disclosure includes the charter, specific parameters of annual business plans, audited annual and semi-annual financial

statements and their summary and the organizational structure.

- Circumstances subject to extraordinary public disclosure include suspension of business operations, amendment or revocation of the ERC and other licenses in relation to the SOE's operations.

If you have any questions in relation to the above please contact the authors below.

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