SUMMARY OF DIALOGUE
BETWEEN MINISTRY OF PLANNING & INVESTMENT AND RELEVANT MINISTRIES/AGENCIES AND VBF

14:00 – 17:00, May 17th, 2016
MPI Premises, 6B Hoang Dieu Street, Hanoi
List of Participants: Appendix 1

ENTERPRISE LAW 2014

Prepared by Vietnam Business Forum

No.	Article/Reference	Issues	Recommendations	Responses
1.	Article 7 of the Law on Enterprises Article 7 of Decree No.78/2015/ND-CP	**Business lines** According Article 7 of the Law on Enterprises, enterprises are permitted to freely engage in the business lines that are not prohibited by law. Item 5, Article 7 of Decree No.78/2015/ND-CP regulates that "Business lines that are not mentioned in Vietnam's system of business lines and also not in other legislative documents, the business registration authority shall **consider** adding them to National Enterprise Registration Database if they are not prohibited, then request the Ministry of Planning and Investment (General Statistics Office) to add new business lines". However, in practice, when enterprises desire to register business lines which are not mentioned in Vietnam's system of business lines, not mentioned in other legislative documents and also not mentioned in banned business lines, because of the word "consider" in the above regulation, some Business Registration Offices approve such business lines but some Business	The Ministry of Planning and Investment should give a notice requesting Business Registration Offices to approve business lines as proposed by enterprises.	**Response by Mr. Phan Duc Hieu – Vice President, Central Institute for Economic Management:** There is no need to issue further documents to repeat such regulations because Law and Decree have stated clearly. **Ms. Nguyen Hai Thao – Senior Associate, Allen & Overy:** The unclear point lies at the business lines which are not available in the level 4 - business lines system. **Response by Mr. Phan Duc Hieu – Vice President, Central Institute for Economic Management:** As prescribed in Decree 78, regardless of being included or excluded in the business line system, business registration agencies will consider the supplement. In case of being excluded in the system, it should be reported to statistics agency for supplement.

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		Registration Offices refuse registration of such business lines.		
2.	Redundancy and insufficiency of procedure for issuance of shares	LOE 2014 stipulates that changing number of shares offered for sale, changing the capital charter and increasing capital charter plan need GMS's approval, which is more redundant than LOE 2005 regulations. According to the LOE 2005, only changing number of shares offered for sale and increasing capital charter plan required approval. Besides, Decree 78 on enterprise registration does not mention about the registration of changing the number of shares offered for sale.	Decree 78 to cover the procedure for registration of changing the number of shares offered for sale.	**Response by Ms. Nguyen Hong Van – Business Registration Management Agency, MPI:** There are some changes in Enterprise Law. Charter capital has become contributed capital by shareholders. The offering of volume of shares is no longer included in charter capital. Therefore, currently, Decree states that there must be a decision at the meeting minutes when changing the charter capital. This is separated from offering volume of shares. According to Decree 78 and Enterprise Law, when changing the offering volume of shares, enterprises are no longer required to register changes to business registration agency.
3.	Redundancy and insufficiency of the List of conditional business	This List includes the businesses which are totally opened (CPC 841 – 845) on computer service which is still conditional business. This List does not include *"the businesses which are not yet committed under the WTO or other international treaties and Vietnamese law does not provide for foreign investment conditions"*. For these businesses, opinions from the ministries are required.		**Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** To be covered in the discussion on Investment Law.
4.	Standard forms for investment procedures under Circular No.16/2015/TT-BKHDT	**Business lines based on VSIC and CPC** Standard forms for investment procedures require to write codes of business lines under conditional investment sectors applicable to foreign investors based on	VSIC's codes should be revised based on CPC's codes.	**Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** To be covered in the discussion on Investment Law.

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		VSIC and CPC. In fact, a VSIC code may include many detailed activities, corresponding to various CPCs codes or no CPC. Thus, foreign investors need to base on which system to register their business lines as well as to know the scope of business activities that the enterprise is allowed to perform.		
5.	Article 8 of the Law on Enterprises Article 40 of the Law on Investment	**Changes in information of the investor** Pursuant to Article 8 of the Law on Enterprises, enterprises are obliged to register changes in enterprise registration contents. Article 40 of the Law on Investment regulates that "When the Investment Registration Certificate has to be adjusted, the investor shall follow the procedures for adjusting the Investment Registration Certificate". Information of the investor recorded in Investment Registration Certificate/Enterprise Registration Certificate includes many details such as name, number and date of issuance of ID/passport/Business Registration Certificates, address, telephone number, etc. Therefore, when any information of the investor is changed (e.g. address, telephone number, etc.) the business organization must carry out procedures for adjusting both Investment Registration Certificate and Enterprise Registration Certificate.	There should be a regulation requiring the adjustment of the Enterprise Registration Certificate only. In addition, the information of the investor in the Investment Registration Certificate should be replaced by the information of the business organization implementing the project.	**Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** The Law has specified clearly 2 obligations. To realise this recommendation, the law will have to be modified. MPI will take further consideration.

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6.	**LAW ON ENTERPRISES** **Article 143. Invitation of the Shareholders' Meeting** 3. The meeting invitations must be enclosed with documents as below: ... c) Standard form of authorization. **Article 144. Shareholders' attendance in Shareholder meeting** 1. ... The authorization for representatives to participate in the meeting must be made into formal document following the form specified by the issuing company. Authorized persons must present authorization documents when registering to attend the meeting.	As per our actual experiences, many foreign investors signed a Power of Attorney to authorize an individual to attend the meeting and cast the votes on their behalf. Issuing companies often require this POA to be notarized and/or consularised before allowing entrance registration to the meeting. The process of notarization and consularisation in foreign country may take one to two months to be completed. In the meanwhile, the investors must wait until issuing companies announce the template of the POA in their meeting announcement (which is often no sooner than 7 days prior to meeting date) so that they can start the whole process of signing, notarising and consularising. They cannot start this pro-actively as they must wait for the official announcement from the issuers. To overcome this obstacle, we would propose that all joint stock companies accept the same standard template of the POA for investors to authorize a proxy to attend the meetings, so that foreign investors may pro-actively start and complete the authorizing process without any delay due to waiting for announcement from the issuers.	We would suggest that the MPI issue an official letter guiding/recommending all joint stock companies to accept the same **standard template of the POA** for investors to authorize a proxy to attend the meetings. Pls. find enclosed a draft of the standardized POA for your reference. POA template for Proxy voting (One-off) POA template for Proxy voting (Blanket)	**Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** During the compiling process, lawmakers supposed that POA form for shareholder would not change over the time. To facilitate shareholders, companies usually have a common form. Lawmakers could not expect that a different POA form is required for each Meeting of Shareholders and that companies intentionally request special and inaccessible POA form. MPI is just able to provide recommendations, which is not really appropriate as MPI is an administrative office. Usually, in other countries, associations such as EuroCham, AmCham… will make recommendations. For the sake of shareholders, companies should use one common POA form.
7.	**LAW ON ENTERPRISES** **Article 150. Minutes**	Currently, the participation of foreign investors in Vietnam stock market is rapidly increasing. The State Securities Commission	We would suggest that the MPI issue an official letter guiding/recommending all joint stock companies to disclose	**Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:**

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	of shareholder meetings 1. The content of shareholder meeting shall be recorded in the meeting minutes and might be recorded and stored under other electronic forms. The minutes must be written in Vietnamese, and might be additionally written in foreign languages and must include the following contents: a) ...; b) ...; ...	(SSC) has recently announced plans for upgrading Vietnam's stock market from Frontier Market to Emerging market regarding the Morgan Stanley Capital International's (MSCI's) classification of markets. This classification has been widely used by the community of international investors in strategic plans of global investments. According to these plans, SSC is actively encouraging public companies to disclose information in English on their companies' websites. Minutes of the General Meeting of shareholders are an important document/ foundation allowing investors to track and monitor the operations of the company in implementing the voted contents of the meeting. Therefore, we suggest that all joint stock companies should disclose reference translation of the meeting minutes in English, applicable to companies with medium to large capital (particularly charter capital of VND 100billion or more).	reference translation of the meeting minutes in English, applicable to companies with medium to large capital (particularly charter capital of VND 100billion or more).	If documents are made in English, business registration agencies in Vietnam will have difficulty to understand. There is a provision on this issue and also an understanding on English limitation.
8.	Article 206 of Enterprise Law Article 60 Decree 78/2015/NĐ-CP	**Termination of operation of branch/reprensative office** According to the Article 206 of Enterprise Law, application dossier for termination of operation of branch/representative office does not include document evidencing that the branch/representative office's tax code has been closed. However, when enterprise submits application dossier for termination of operation of branch/representative office, they are required to provide document	There should be a clear regulation that when enterprise submits application dossier for termination of operation of their branch/representative office to Business Registration Office, Business Registration Office dose not require they to provide document evidencing that their branch/representative office's tax code has been closed.	**Response by Ms. Nguyen Hong Van – Business Registration Management Agency, MPI:** Article 60, Decree 78 states that beside required documents in this Decree, business registration office is not allowed to request enterprises for other documents. Regarding operation termination of rep. office/branch, Joint Circular 01 between MPI and MOF states: in case branch/rep.office has not fully completed its tax obligations in

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		evidencing that the branch/representative office's tax code has been closed.		accordance with tax laws, tax authorities will update inactive status or add the "incompleted tax obligation" status to the tax code. The updated information will also be forwarded to the national business registration portal. The business registration office is then requested to inform enterprises to fully complete these duties of their affiliates before application for liquidation. So, this term has been specified positively.
9.	Article 69 of Decree 108/2006/NĐ-CP Article 158 Law on Enterprise 60/2005/QH11 Articles 201 and 202 of Law on Enterprise 68/2014/QH13 Article 59 of Decree 78/2015/NĐ-CP	**Dissolution** Enterprise FDI A has been granted IC in 2012. Enterprise A has completed formalities for closure of tax code with Hanoi tax authorities on April 22, 2015. The Business registration division-DPI Hanoi has rejected the application file for dissolution of Enterprise A in arguing that Enterprise A had not yet converted the business registration contents provided in its IC into New Enterprise registration certificate in compliance with New Law, but the tax code of Enterprise A had already been closed according to Law on enterprise 2005. That is why The Business registration division-DPI Hanoi has no sufficient legal basis to carry out dissolution procedures. It must wait for more guidelines from MPI. A major challenge faced by investors/Enterprise A is that Banks do not allow the remittance of remaining capital to	For the time being, there are no clear provision on dissolution applied to enterprises whose tax code has been closed under Law on enterprise 2005 and application for dissolution submitted according to Law on enterprise 2015. The process of attracting and promoting foreign investment into Vietnam cannot only focus on the steps of establishing investment and business project, but the steps of terminating investment project, business dissolution have to be clear and straightforward to ensure rights and benefits of investors related to transfering funds and assets back to their home countries after implementing tax, finance duty... to the Government.	**Responses by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** This question is not directly relevant to either Enterprise Law or Investment Law, but closing tax code and transferring money for liquidated enterprises. MPI needs further consideration to provide response.

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		country of origine.		
10.	Article 8, 32 Law on Enterprise (LoE)	**Business lines** Under Article 32 LoE, enterprise shall inform the Registration Office when changing/amending the businessline. The Decision and meeting minus of Member Counsil/Shareholders/Owners…must be attached to the notice. Beside, Charter will be amened according to the amendment of business line. Problem is: In case enterprises intend to make the small and irregular transaction which belong to the biz lines have not been informed, enterprise must prepare the Decision as mentioned above, while holding the meeting or getting the signature from Members/Shareholders is quite difficult and time-waste for the FDI enterprise. Furthermore, for the manufacturing enterprise, in order to manufacturer the CBU which belongs to the informed lines, it has to produce the supporting parts or tools, etc. If want to irregularly import/distribute such parts or tools, enterprises also face on the same difficulty. For the FDI enterprise, when changing/supplementing the business lines in order to carry out the small and irregular transaction as mentioned above, whether enterprise needs to amend the Investment Registration Certificate (specifically "project	Allow enterprise to change/supplement the bussiness lines which are directly relating to its informed lines with small and irregular transactions by informing the Registration office with the Decision of the legal representative other than of Member Counsil/Shareholers.etc. in order to ensure the concept of Article 8 LoE. Issuing the guideline regarding this matter.	**Response by Mr. Phan Duc Hieu, Vice President, Central Insitute for Economic Management:** The concept of businessline directly related to enterprise's production/business with small volume and value is neither clear nor stated in Enterprise Law. By definition of Enterprise Law, businessline is a constant, continuous, and profitable activity. When supplementing a business line, the approval of Genral Meeting of Shareholders is required. Thus, suppose that enterprises are not asked to provide report/documents, they still have to do so, which means enterprises must not arbitrarily supplement business lines. Enterprises definitely have to provide such report/documents even if not being asked by Government authorities. **Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency:** The concept of small value is unclear. For household business, small business is different from big one at the market scale; meanwhile inflation depends on the majority. Therefore, when making Decree 78, MPI has taken the majority into account. Also, according to Enterprise Law, businessline is a compulsory content of company charter. This is the reason why Decree

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		target" part). Which criteria used to distinguish and to unify in which case enterprise needs to register the Investment Registration Certificate amendment when changing/supplementing the lines?		78 requires relevant documents to be approved by General Meeting of Shareholders.
11.	**Change of an enterprise's legal representative** Articles 31.1 and 31.2 of the Law on Enterprises Article 29.3 of Decree 78/2015/ND-CP on enterprise registration	Since there is an inconsistency between Decree 78 and template forms with the provisions of the Law on Enterprises.	According to Articles 31.1 and 31.2 of the Law on Enterprises, an enterprise having any change to the contents in the ERC must register within 10 days from the date of such change (i.e. when the change has become effective). Article 29.3 of Decree 78 provides that the information on the ERC becomes valid from the date of issuing the ERC. DPIs apply Article 29.3 of Decree 78 to claim that the change of the new legal representative shall not become effective when the enterprise has not amended its ERC, and do not recognize the signature of the new legal representative when preparing the dossiers amending the ERC. According to Article 43, Decree 78, the dossiers for changing the legal representative of a limited liability company and a joint stock company including: - The notice of change of legal representative - Duly copy of one of personal identification paper of the additional/replacement person to act as the company's legal representative	**Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency:** Firstly, judicially, pursuant to Civil Law, registration of enterprise's legal representative will be valid from the date of issuing business registration. Secondly, based on the benefit principle of the 3rd party. Within a company, a newly voted position will be valid immediately to company's members. However, for the 3rd party, in order to ensure transparency in civil and economic transactions, ensure the rights for all parties, and create a fair business environment, Decree 78 was designed in the direction that: for information/contents required to include on the paper will be valid from the date of issuing ERC to ensure its publicity . Enterprise's legal representative means to be on behalf of the company to take part in every civil or economic transaction/relation. Therefore, rights and benefits of the 3rd person/party will completely be affected. **Ms. Nguyen Lan Phuong – Partner, Baker & McKenzie:** Actually, changing the legal

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			- Decisions of the company owner, board of members, and board of management The above documents are not required to have the signature of the legal representative. However, in practice, the dossiers are required to have the power of attorney/letter of authorization to the dossier submitter and the notice of change of tax registration information. Such documents must have the signature of the legal representative and in practice Ho Chi Minh DPI and Hanoi DPI request to have the signature of the former legal representative. Enterprises face with many difficulties in obtaining the signature of the former legal representative. *Recommendation:* template forms must be amended to accept the signature of the new legal representative.	representative happens quite often because of many reasons, such as death of previous legal representative or personal conflicts, etc. There are many reasons that they might not be able to sign or refuse to sign documents to dismiss themselves. In order to support enterprises, the Decree should leave this authority for enterprises. The registration of new legal representative to be in line with license only has administrative meaning after the change has been done. **Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency:** According to the law, legal representative is not permitted to sign the document to replace themselves. Decree 78 states that the person for signature is Chairman of Board Member or Chairman of Board in case of joint stock company. In case legal representative is also Chairman of BoD, if legal representative is dismissed from the company but refuses to every change, Chairman of BoD has to be replaced at first. Then, the new Chairman of BoD will sign documents to replace legal representative. This is a provision in Decree 43, which has been implemented since 2010. Circular 20 (former Circular 14) provides clear guidance on every position/signature.

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				About the company's discretion, the Ministry completely agree with VBF opinion. However, a legal representative means to be on behalf of the company to join civil and economic relations. Therefore, beside his responsibility to the company, the 3rd party - which means the society in general - has to be taken into account, to ensure the balance of both elements. **Ms. Nguyen Lan Phuong – Partner, Baker & McKenzie:** Dossier of changing legal representative requires POA for the person submitting documents and a notice of changing tax registration content – which is signed by enterprise's legal representative and has to be submitted together with the dossier of replacing legal representative. For these 2 papers, local DoITs argee to the signature of previous legal representative, who normally is not willing to sign documents for changes to be valid. On this issue, the Ministry has announced to change the sample form. Whether the change has been made and where to find the Circular for such changes? **Response by Mr. Bui Anh Tuan - Deputy Director, Business Registration Management Agency:** That is not a notice on changing tax information but on updating/

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				supplementing information of foreign invested enterprises. When moving from Investment Law 2005 to Investment Law 2014, foreign invested enterprise will apply for enterprise registration at business registration agency. There is an old form for adding missing information of foreign invested enterprises but many legal representatives refuse to sign that form. MPI has received many complaints about this issue and promises to fix it in the coming time. There is no longer a separated notification form on changing tax information since 2008. **Ms. Nguyen Hai Thao – Senior Associate, Allen & Overy:** As prescribed, within 10 days since the change of ELR, enterprise has to make announcement for publishing the information in the national portal. Changes are only effective from the date of uploading on the national portal, which means to be valid to the 3rd party. However, within that 10 days, enterprises will have to sign lots of valuable papers to the 3rd party, such as contracts, bills, etc. The statement that the change of legal representative is still not valid to the 3rd party means the invalid transactions with the 3rd party. Meanwhile, as guidance by the Supreme Court, when a transaction is temporarily signed by enterprise's legal representative or under the wrong

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				authorisation of representative – which is fully acknowledged by the enterprise – that transaction will be automatically admitted to be valid. Therefore, such regulation goes against the direction by the Supreme Court, which might lead to a major legal problem. Within that 10 days, some enterprises will have to sign up to thousands of bills and contracts. **Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency:** Data in the national enterprise registration portal provides the original information (or legally binding information) on the enterprises, which is a fundamental principle. It means that investors will check the national enterprise registration portal for enterprise's information whenever they need. The Ministry understands that there are enterprises that have to sign up to a thousand documents in 7, 8 days. However, it should take other enterprises into account. The principle of business registration reform in all countries shares a purpose: there should be a place for users to access original information and believe that information holds the enterprise's accurate legal value. Therefore, the option which brings more benefits has to be chosen. If there are comments

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				from enterprises on the inappropriateness of the provision during implementation, MPI is willing to revise it. **Ms. Nguyen Hai Thao – Senior Associate, Allen & Overy:** An original database for users to access, search, and check information is a great idea. However, it is not necessary to be valid to the 3rd party only after being uploaded, but should be valid since the date of designation of new representative as long as being admitted by enterprises. Therefore, it should be an open regulation. It means that whoever wants to search can search, but it is not necessary to be valid to the 3rd party only after information is uploaded into the national portal. **Mr. Fred Burke – Head of VBF Invesment and Trade WG:** It will be irrational if enterprises have to wait for 10 days without taking any business activities; meanwhile they still have to pay taxes. **Response by Mr. Do Nhat Hoang – Director General, Foreign Investment Agency, MPI:** MPI well notes VBF recommendations. When the Law is enacted, the Ministry's explanation is based on the current legislation. In the upcoming

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				time, the mechanism of using one law/Decree to adjust many laws/Decrees will be adopted. VBF is requested to consolidate issues on Enterprise Law that need revision. MPI then will take further consideration and discussion.
12.	**Regulations on using foreign currencies in enterprise acquisitions & mergers**	It is necessary to have consistent guidelines between the MPI and the SBV.	Currently, there is no specific provision in the use of currencies in enterprise acquisitions & mergers, whether a foreign buyer and a foreign seller in an acquisition & merger may specify the purchase price (of shares or capital contributions in a Vietnamese company) in foreign currency or the purchase price in such transaction is still required to be converted and denominated in Vietnamese Dong. In practice, in a capital transaction with a foreign investor, such foreign investor needs to refer to a foreign currency to make payment. Vietnamese Dong is not a convertible currency outside of Vietnam, therefore the foreign investor is unable to make a transfer of VND payment without referring to a freely convertible foreign currency. (Under Circular 32/2013/TT-NHNN guiding the implementation of the regulations on restricting the use of foreign currencies in the territory of Vietnam issued by the Governor of the State Bank of Vietnam)	**Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** This issue is under the adjustment scope of the Ordinance on foreign exchange management. MPI well notes VBF recommendations. However, MPI is not authorised to impose any direction/guidance on the State Bank of Vietnam. Therefore, it's suggested VBF to directly send recommendation to SBV and forward (cc) to Ministry of Finance.

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13.	**Regulations on using foreign currencies in enterprise acquisitions & mergers**	Due to the inflexible application of the provisions of law by enforcement authorities	With respect to a foreign-invested company's branch currently operating under the Investment Certificate (issued under the 2005 Law on Investment), when conducting the change of information on its Investment Certificate, the DPIs have different guidelines. Particularly, Hai Duong DPI guides enterprises to take 2 steps: - Step 1: conduct the procedure for converting the branch's Investment Certificate into the Investment Registration Certificate and update the changed information - Step 2: conduct the procedure for obtaining the Business Registration Certificate However, we find that the above guideline is inconsistent with the provisions of law. Particularly, the Business Registration Certificate is only issued to an enterprise other than a branch, therefore, it is impossible to apply this procedure to a branch. Pursuant to the Law on Enterprises, in this case, it is required to apply the procedure for obtaining the branch Establishment Certificate. *Recommendation:* we propose providing specific guidelines on the amendment of the contents of the branch Investment Certificate and subsequent relevant procedures.	N/A
14.	**Currencies used in**	This is a practical issue that needs a	When preparing the dossiers for	N/A

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	capital contribution to establish a company	consistency among investment authorities, banks and tax authorities.	establishing a foreign-invested enterprise/dossiers for obtaining the Investment Certificate, the contributed capital of the enterprise shall be specified in Vietnamese Dong and an equivalent foreign currency (United States Dollar). However, when contributing capital, the contributed capital converted from a foreign currency into Vietnamese Dong will be different from the amount of Vietnamese Dong registered in the dossiers and in the Investment Registration Certificate/Enterprise Registration Certificate. *Recommendation:* we propose providing guidelines on this issue and adopt the fact that a foreign investor is allowed to contribute capital in foreign currency, and when being converted at the time of capital contribution, the VND amount shall not completely be the same to the VND amount specified in the dossiers for establishing an enterprise/dossiers for obtaining an Investment Certificate, and in the Investment Registration Certificates/Enterprise Registration Certificates.	
15.	**Timeline for handling the enterprise registration dossiers**	The Business Registration Division does not implement as required.	Pursuant to the provisions of the Law on Enterprises and Decree 78, after receiving the enterprise registration dossiers, the Business Registration Division will review the validity of the dossiers. Where the dossiers are invalid, the Business Registration Certificate	**Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency:** According to Decree 78, business registration agencies shall provide enterprise with business registration within 3 working days since the date of

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			shall issue a notification requesting the correction and/or supplement of the enterprise registration dossiers within 3 days from the date of receiving the dossiers. However, in practice, this timeline is usually more prolonged than as prescribed by law, even to 5-7 working days. This affects the schedules and business plans of enterprises. *Recommendation:* we request the Business Registration Division to implement in accordance with the regulation on the timeline for issuing a notice.	valid dossier submission. In reality, statistics from business registration agencies nationwide shows an average of 2.8 days for new enterprise registration and 1.9 days for renewal registration. Some applications might take more time to be processed. Detailed feedback is expected to reflect via the hotline 08044963 for MPI's timely actions. **Ms. Nguyen Lan Phuong – Parner, Baker & McKenzie:** To process the application in appropriate/stipulated period of time, DoITs often request enterprises to supplement more documents which are not prescribed in the regulations of Decree 78. **Response by Mr. Do Nhat Hoang – Director General, Foreign Investment Agency, MPI:** It is suggested VBF consolidate pratical problems to submit the business registration management departments for releasing a notice to prevent the spread of such situation. **Mr. Fred Burke – Head of VBF Investment and Trade WG:** Prime Minister Nguyen Xuan Phuc has made a strong recommendation that administrative procedures have to be streamlined for enterprises' better competition in new supply chain in the

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				FTA context. The way of thinking and working style of government's officials need to be changed. Besides, messages on more cooperation and support in the relationship between enterprises and Vietnam administrative system need to be circulated from the central to local levels.
16.	**Requested dossier/Information to supplement the contents of the enterprise registration**	The Business Registration Division does not support enterprises to quickly carry out administrative procedures.	The contents that the Business Registration Division requests to be amended and/or supplemented as the Notification requesting the correction and/or supplement of the contents of the enterprise registration are too general. Taking as an example, it is notified that the codes affixed by an enterprise to its business lines are not appropriate, but there is no specific guideline on which industry codes to use. With such general requirements, it is hard for enterprises to amend and supplement dossiers in a timely manner, and it will take time to liaise with the Business Registration Division to clarify the requirements of dossier amendment and/or supplement. *Recommendation:* we request the Business Registration Division to specify the requirements of amendment and/or supplement (e.g. specify industry codes that the Business Registration Division assumes to be in line with the enterprise's registered business lines).	**Response by Mr. Bui ANh Tuan – Deputy Director, Business Registration Management Agency:** Comments 14, 15, 16 relates to implementation issue. MPI would need specific information/cases for further actions.
17.	**Dossiers of notifying the change to a**	The guidance under the Circular is conflicting with Decree 78 that causes	Pursuant to Article 52.1(d) of Decree 78, when changing a shareholder being a	

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	shareholder being a foreign investor	difficulties to enterprises.	foreign investor, an enterprise must submit the decision and meeting minutes of the General Meeting of Shareholders on such change. However, Article 5.2 of Circular 20 has specifically guided that these two documents are only required to be submitted when the founding shareholder who is a foreign investor transfers its common shares to a person who is not a founding shareholder in the company within a period of 03 years from the date on which the company is granted the Enterprise Registration Certificate. However, in practice, when submitting the notice of change to a foreign shareholder which does not fall under Article 5.2 of Circular 20, some officers of the Business Registration Division still request the submission of these 2 documents. *Recommendation:* we request the Business Registration Division to implement in accordance with Decree 78.	
18.	**Procedure for changing an enterprise's business lines**	Lack of specific regulations.	Pursuant to Article 49 of Decree 78, when changing its business lines, the enterprise is only required to submit the notice to the Business Registration Division will all contents as required under this Article. However, in practice, at Hanoi DPI, before implementing the change to an enterprise's business lines,	

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			with respect to conditional business lines, the enterprise is required to firstly amend the investment project, then to amend the business lines at the Business Registration Division. This application in reality has not been provided or guided in any legislation that causes embarrassment to enterprises when amending their business lines especially in the case where the enterprises conduct the capital contribution transfer and/or the change of the investor at the same time with the expansion of business lines. *Recommendation:* we propose providing specific guideline on the above procedure.	
19.	**Lack of specific regulations on the re-organization of enterprises, including merger, consolidation, division, separation of enterprises** The Law on Enterprises and Decree 78	The Law and Decree should clearly set forth these contents to guide DPIs and enterprises	Currently, there have been no specific regulations on the following issues: - value an enterprise when re-organizing; - how to make payment in the re-organization of an enterprise; - how is charter capital of the re-organized enterprise [handled]; - how to conduct the procedures? Taking as an example, both 2 enterprises having 1 USD of capital decide to merge. Enterprise A does business efficiently and is valued at 10 million USD. Enterprise B makes continuous losses in business and is valued at 0 USD. As such, when conducting a merger, both parties decide that the new	**Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** There is conflict between enterprises and business registration agencies in processing relevant administrative procedures. Sometime enterprises keep physically adding the value of charter capital when merging. This is not fault of Enterprise Law itself but implementation problems. In the upcoming time, MPI will provide guidance documents and training for business registration departments to better understand the essence of acquisition, merger, unification, separation of enterprises.

No.	Article/Reference	Issues	Recommendations	Responses
			charter capital of the merged enterprise shall be 10 million USD, both owners shall co-own according to the 50-50 proportion of the charter capital, and the owner of Enterprise B is required to pay to the owner of Enterprise A 5 million USD. In practice, a transaction in such way is very reasonable, however it may be impossible to be conducted, given the following: - DPIs consider a merger as an accrual of the charter capital of 2 enterprises currently registered on the IRCs of both 2 enterprises; - there is no regime for the owner of Enterprise B to repay the entitled difference to the owner of Enterprise A; - DPIs do not know which procedure comes first, and which comes later if the enterprise concurrently has both IRC and ERC.	**Ms. Nguyen Lan Phuong – Partner, Baker & McKenzie:** There should be a particular Decree or Circular on this matter so that enterpirses and relevant authorities share the same understanding for consistent implementation. Current regulations in Enterprise Law are clearly not sufficient enough for parties to understand and resolve problems. **Response by Mr. Phan Duc Hieu – Vice President, Central Institue for Economic Management:** Enterprises' merger and acquisition are not regulated by Enterprise Law but more important laws such as competition law, tax law, and contractual law. Its essense is about asset transaction, which is therefore intervened by the 3 mentioned laws before merger and acquisition process. The role of lawyers, financial advisors, and accountants is more important than advisers on Enterprise Law. Procedures process comes after merger completion. Even big financial companies use a huge set of practices for advising M&A cases. MPI also wants to provide specific guidance but there are many different cases. Thus, MPI is only able to provide basic training so that business registration agencies understand the process to minimise argument with enterprises on business registration results. It depends on M&A

No.	Article/Reference	Issues	Recommendations	Responses
				contract but not procedures. Therefore, MPI cannot release a document. **Response by Mr. Do Nhat Hoang – Director General, Foreign Investment Agency, MPI:** MPI well notes recommendations for further inclusion in the upcoming Decree.
20.		The Law and Decree should clearly set forth these contents to guide DPIs and enterprises	Please confirm if such interpretation is correct.	**Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency:** It is not how the regulations should be interpreted. Decree 78 has specified that founding shareholders are the ones having their names in the founding shareholders list.That list has to be submitted at the date of enterprise's establishment. Changing the information of founding shareholders does not depend on 3 year period as previously. Current law states that enterprise's notification for business registration agencies is required at any time of changing information on founding shareholders (address, contributed capital ratio, etc.) rather than 3 year period.
21.		Enterprise Registration Department under DPIs are overloaded. Under old laws, FIEs only need to work with FIE Department under DPI. Now we need to work with both departments. It takes time and efforts.		**Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency:** In implementation of Decree 118, Ministry of Industry and Trade is drafting a Circular on coordination

No.	Article/Reference	Issues	Recommendations	Responses
				schemes between investment registration agency and business registration agency to ensure handling enterprises' dossiers effectively. MPI will conduct a workshop to gather comments from enterprise community on this issue. VBF is expected to actively participate and provide specific comments. MPI does not expect to build an imposing model but a practical and beneficial for enterprises.
22.		When will enterprises can make the procedure of update/amendment of enterprise registration information online?		

Other issues

1. Charter capital

Ms. Nguyen Hai Thao – Senior Associate, Allen & Overy

The former Enterprise Law stipulated a 3 year period to contribute charter capital. But the new Enterprise Law prescribes 90 day period, which is inappropriate in some certain fields. In real-estate area, according to the professional law, charter capital must be equal to 15-20% invested capital. For a new urban area, invested capital might be up to billions of USD. Charter capital accordingly will increase up to hundred millions of USD. 90 days for capital contribution is impossible for enterprises and poses a question about its necessity as a new urban area project requires a long period of time - up to tens of years - to be completed.

Ms. Nguyen Lan Phuong – Partner, Baker & McKenzie

In reality, enterprise registration agencies have different ways of interpretation in case of increasing charter capital by small enterprises. Some request enterprise's capital contribution before registration of charter capital. Some request registration to be done first. Charter capital contribution will come later basing on the amended enterprise registration. Some request that in need of charter capital increase, enterprises shall contribute capital into their direct invested capital account. However, the bank will freeze that account; then, enterprises will need to get the bank's confirmation to process registration. Once being approved by business registration agencies on capital increase, the money will be released. MPI should have specific guidance for consistent implementation.

Response by Mr. Bui Anh Tuan – Deputy Director, Business Registration Management Agency, MPI

According to the Law 2014, charter capial is technically paid, except for new registration case which is allowed to pay within 40 days; otherwise, registration for capital increase requires paid-already capital. Therefore, in all documents related to enterprise's changes, there is a kind of completed contract/documents to transfer the payment.

Response by Mr. Do Nhat Hoang – Director General, Foreign Investment Agency, MPI:

The wording needs further adjustment for readers'consistent understanding.

VBF member

Regarding foreign invested enterprise's capital increase, capital contribution should not come before the change of business registration/investment license. Capital cannot be transferred into Vietnam without business registration and investment license which reflect new capital. Domestic enterprises might increase capital first and complete the procedures for changes afterwards.

2. Establishing branch and closing tax code

Mr. Pham Manh Dung – Head of Hanoi Branch, Rajah & Tann Law Firm

On establishing branch: According to Enterprise Law, branch is a dependent unit of parent company. Thus, the branch's scope of activities must be in line with those of enterprise. However, in some certain fields such as wholesale and retail distribution, business registration agency requires an actual demand assessment when a second wholesale/retail establishment is opened after the main one. State agencies should have more specific solutions on this matter.

On closing tax code: In case of branch dissolution, the branch has to be closed first. But some foreign invested enterprises are unaware of closing obligatory tax code; meanwhile, tax code and enterprise code are the same. When a branch is dissolved, payment of capital will not be transferred without enterprise's dissolution decision. It's requested State agencies to have early guidance on this issue.