VIETNAM BUSINESS FORUM

QUỐC HỘI VIỆT NAM
NATIONAL ASSEMBLY OF VIET NAM

MEETING BETWEEN NATIONAL ASSEMBLY ECONOMIC COMMITTEE & VBF

Date & Time: 8:30 – 11:30, Thursday, 3rd October 2024
Venue: Hoa Mai Meeting Room, 1st floor, NA Building, 01 Doc Lap, Ba Dinh, Hanoi

TENTATIVE AGENDA

1. **Opening remarks and introduction**
   By Mr. Nguyen Dinh Viet, NAEC Vice-chairman & Mr. Michael Nguyen, VBF Co-chair

2. **Evaluation of the socio-economic situation in 2024 and 2025 socio-economic outlook** (20 mins)
   By Mr. Hong Sun, VBF Vice-chair & VBF Representatives

   Responses from NAEC

3. **Recommendations on amending some key laws in the economic field:**

   3.1. Law on Securities (15 mins)
   By Capital Markets WG (Mr. Kien Nguyen & Mr. Nguyen Khac Hai, CMWG SC)

   3.2. Law on Enterprises and Law on Investment (15 mins)
   By Investment & Trade WG (Mr. Seck Yee Chung & Mr. Duc Tran, WG Co-Heads)

   3.3. PPP Law and Bidding Law (15 mins)
   By Infrastructure WG (Mr. Tran Tuan Phong, WG Co-Head)

   Responses by NAEC

4. **Closing**
   By Mr. Nguyen Dinh Viet, NAEC Vice-chairman & Mr. MiChael Nguyen, VBF Co-chair

VBF PARTICIPANTS LIST

No.	Full name	Title
1.	Michael Vu Nguyen	VBF Co-Chairman
2.	Nitin Kapoor	VBF Vice-Chairman
3.	Hong Sun	VBF Vice-Chairman
4.	Stuart Livesey	VBF Board Member
5.	Seck Yee Chung	VBF Board Member
6.	Chris Jeffery	VBF Board Member
7.	Hidetoshi Suzuki	VBF Board Member
8.	Pham Ngoc Thach	VBF Board Member
9.	Shiro Muto	JCCI Chairman
10.	Ginny Foote	AmCham Board member
11.	Susumu Yoshida	JCCI General Secretary
12.	Natalie Fairlie	AusCham Vice President
13.	Wonsik Son	KoCham Board member
14.	Tran Anh Duc	Co-Head of VBF Investment & Trade WG
15.	Tran Tuan Phong	Co-Head of VBF Infrastructure WG
16.	Huong Vu	Head of VBF Tax & Customs WG
17.	Kojima Masao	Head of VBF Banking WG
18.	Kien Nguyen	VBF Capital Markets WG SC member
19.	Nguyen Khac Hai	VBF Capital Markets WG member
20.	Phan Thi Hong Thuy	Head of BWG L&C Committee
21.	Takuya Sahashi	JCCI Representative
22.	Nguyen Hoang Minh	Senior Associate
23.	Nguyen Thi Hong Ha	Associate
25.	Uyen Nguyen	VBF Secretariat
26.	Ngoc Anh	VBF Secretariat
27.	Huyen Duong	VBF Secretariat

SOCIO-ECONOMIC REPORT
AT VBF MEETING WITH NA ECONOMIC COMMITTEE

I. Evaluation of the socio-economic situation in 2024

1. Overview of socio-economic situation:

- **GDP in the first half 2024 reached 6.42%,** exceeding the target set in the Gov Resolution 01/NQ-CP dated January 5, 2024. If this recovery momentum is maintained in the final quarters, the annual GDP growth potentially meets the target of 6.5%.

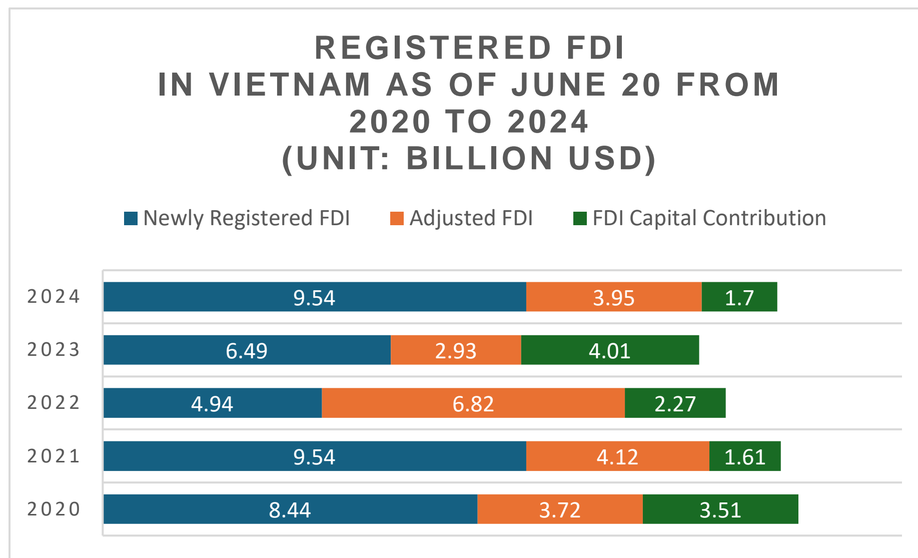
- **FDI sector significantly contributed to GDP growth:** In the first 6 months of 2024, the export turnover was estimated at 190,08 billion USD, an increase of nearly 15% compared to the same period last year. Of this, the FDI sector accounted for USD 136,69 billion, equaling to nearly 72% of total export turnover.

  [Source: General Statistics Office]

2. Assessment of investment environment:

2.1. Investment environment continues to improve, reflected in the steady increase in FDI flow, indicating foreign investor confidence in Vietnam. Specifically:

✓ The total registered FDI in Vietnam as of June 2024 (including newly registered FDI, adjusted FDI, and FDI capital contribution) reached nearly USD 15,19 billion, an **increase of 13%** compared to the same period last year.



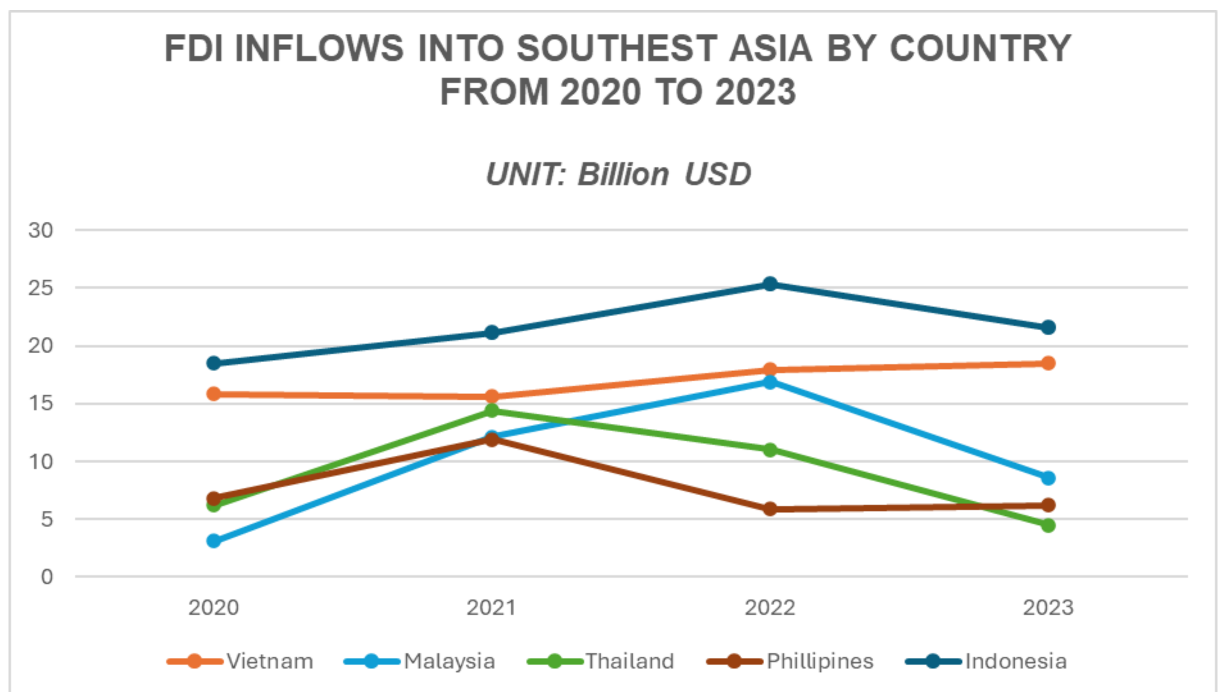
✓ *Notably, the actual FDI in Vietnam in the first 6 months of 2024 was estimated at 10,84 billion USD, up 8% compared to the same period last year. This is the highest actual FDI for the first half of the year in the past 5 years.*

✓ In the past 6 months, FDI focuses on the following sectors:

- Processing and manufacturing industries *(accounting for nearly 80% of total actual FDI)*
- Real estate business activities
- Production and distribution of electricity, gas, hot water, steam, and air conditioning

✓ Several large projects in high-tech sectors, semiconductors, energy, and electronic components have received new investments and capital expansions. New fields like data center development are also being considered by large investors.

✓ Comparison with some countries in the region:
FDI in developing Asia fell by 8 per cent to $621 billion, according to 2024 World Investment Report by UNCTAD (UN Trade & Development). However, FDI inflows into Vietnam have consistently maintained an upward trend in recent years.



Source: https://unctad.org/publication/world-investment-report-2024

2.2. Investment policies in 2024

✓ Many laws, decrees, and circulars are being discussed for revision, with nearly 30 laws expected to be amended in the 2024-25 NA sessions. The implementation of the **"one law amending multiple laws"** approach, which modifies several related laws under a single framework, aims to address long-standing obstacles and overlapping issues that previous sessions could not fully resolve through individual amendments. This approach is expected to bring significant positive changes to the country's economic and social landscape in coming time.

✓ **Some new (amended) laws come into effect in 2024, having significant impacts on the FDI sector:**

▪ **Energy sector**

- The current DPPA mechanism allows renewable energy generators, such as transition power plants, to dispatch their capacity directly through DPPA by connecting directly to customers via private transmission lines, instead of selling exclusively to EVN as before. However, direct power trading through the national grid may not be immediately feasible, given that the Circular on the electricity market, which will replace Circular 45, and the Law on Electricity are still being revised and have not yet been issued.

- Regarding wind power development policies, we acknowledge that the Government has provided clearer information on the pilot mechanisms for offshore wind power projects. However, in the initial phase, assigning EVN and PVN to implement pilot projects could face challenges, as these entities lack sufficient experience in developing such projects. Meanwhile, foreign investors with relevant experience are keen on concrete and practical mechanisms that would enable them to invest in these projects or collaborate with domestic enterprises for project development.

- Although we understand that the Electricity Law revision does not fall under the remit of the National Assembly's Economic Committee, we would like to highlight a few points for consideration in the upcoming discussion during the October NA session:

  - For large-scale projects and emerging areas like offshore wind, we recommend implementing special mechanisms, such as exemptions from being listed in the Power Development Plan if a pilot project is approved through an ad-hoc resolution of the National Assembly or a decision by the Prime Minister.
  - Additionally, we suggest exemptions from price brackets for electricity sales to facilitate capital mobilization and increase flexibility for investors. We also recommend reconsidering restrictions on share or capital contribution transfers in offshore wind power projects before the commercial operation date, as this would adequately ensure the preservation of investor responsibilities and obligations.
  - MOIT is currently reviewing the PDP8 to identify necessary revisions to ensure adequate power supply, especially as certain projects are behind schedule. From the investor/developer perspective, we believe that immediate policies for distributed energy resources, such as rooftop solar for self-consumption and the integration of battery energy storage systems, are crucial. These resources can significantly alleviate pressure on the national grid and provide more time for grid development. Therefore, the issuance of the Draft RTS Decree is essential, along with the subsequent development of connection and communication standards for large-scale RTS with dispatching units. In the longer term, the PDP revision should consider increasing the capacity for rooftop solar power for self-consumption to incorporate this valuable energy source.

▪ **Law on Credit Institutions**

The enactment of the Law on Credit Institutions 2024 not only marks a significant step in strengthening the legal framework but also has a considerable impact on foreign direct investment in Vietnam. Effective from July 1, 2024, the Law on Credit Institutions 2024 introduces amendments aimed at enhancing transparency, minimizing risks, and increasing the stability of the banking sector, which is expected

to attract more foreign investors to the financial and banking market. This is demonstrated through:

- Stricter Ownership Controls: The Law sets stricter requirements to better control ownership ratios in credit institutions by (i) broadening the scope of "related persons" to prevent manipulation of credit institutions' operations; (ii) requiring disclosure of information about shareholders holding 1% or more of the charter capital of credit institutions; and (iii) reducing the shareholding ratio of institutional shareholders. These regulations will limit cross-ownership and are significant in managing and operating the banking system in a stable, transparent manner, and making the financial and banking market more attractive to foreign investors.
- Early Intervention Measures: The Law specifies cases where the State Bank of Vietnam can decide to apply early intervention measures to credit institutions and outlines the activities that credit institutions must and must not engage in when early intervention measures are applied. This increases investors' trust in the stability of the banking system.

In summary, the Law on Credit Institutions 2024 has laid the foundation for transparency, effective risk management, and closer alignment with international standards, contributing to attracting foreign investment into Vietnam's financial and banking sector.

While the Law on Credit Institutions brings positive impacts, it also presents several challenges for foreign investment:

- *The roadmap for tightening credit limits under the Law on Credit Institutions can create significant difficulties for foreign-invested enterprises. These enterprises, which are typically customers of foreign banks, often have parent companies operating in their home countries with established long-standing credit relationships with those banks. When investing directly in Vietnam, these enterprises need domestic loans to support their operations. They usually approach foreign banks in Vietnam for loans or credit facilities, as this is convenient and appropriate. Besides proving their operational and repayment capabilities in Vietnam, they can leverage the guarantees, commitments, and reputation of their parent companies for credit facilities in Vietnam. Foreign-invested banks assess the credit risk of these enterprises by evaluating both the enterprise in Vietnam and the parent company as a whole. The credit risk for foreign-invested customers and related groups is generally not significant. However, this customer group often finds it challenging to access credit from domestic banks due to the lack of prior credit relationships and insufficient operational results to prove their creditworthiness. Therefore, foreign-invested enterprises typically rely on foreign-invested banks in Vietnam to meet their capital needs. If credit limits are tightened, these enterprises may struggle to secure the necessary capital for their operations.*

- **Global Minimum Tax**

  - **BOT Power Companies:** Currently, several BOT (Build-Operate-Transfer) power projects in Vietnam are being invested in by multinational corporations with revenues exceeding 750 million EUR. As a result, BOT companies are also

subject to the global minimum tax policy. Since most BOT projects operate primarily on borrowed capital, the implementation of QDMTT will significantly impact cash flow. Additionally, many BOT projects have government guarantees for payment, policy stability commitments, and compensation mechanisms in case of adverse legal changes. Therefore, the government needs to take this issue into consideration to harmonize the interests of all parties and ensure Vietnam's energy security.

- **Progress on Decree Issuance:** Resolution 107/2023/QH15, regarding the application of the additional corporate income tax under the global anti-base erosion rule, was approved by the National Assembly on November 29, 2023. This resolution came into effect on January 1, 2024, and applies from the 2024 financial year onwards. However, as we approach the end of 2024, the government has yet to issue the guiding decree for implementing Resolution 107. Many companies, particularly subsidiaries of multinational corporations, are concerned about how to comply with this new regulation. It is crucial that the government accelerates the drafting and issuance of the decree to allow businesses to proactively prepare and comply with the additional corporate income tax requirements in a timely manner.

- **Land Law 2024**

  - The 2024 Land Law has effectively altered the Vietnamese real estate landscape, creating both potential benefits and drawbacks for foreign investors. This new Law aims to resolve the overlapping and conflicting issues of existing land regulations, improve land management practices, and foster a more transparent and sustainable investment environment to attract foreign capital.

  - One material change in the 2024 Land Law is its clearer definition of foreign-invested enterprises (FIEs). According to this Law, companies with foreign capital exempted from the investment procedures under the Investment Law are not deemed FIEs and can enjoy the same rights as domestic companies. This change could facilitate real estate transactions for companies with minority foreign ownership and eliminate some of the bureaucratic hurdles that have historically slowed down such deals.

  - Another important change is that the 2024 Land Law has resolved a previous uncertainty for foreign investors by introducing clearer guidelines for extending land use terms. Investors can now proactively apply for extensions before their current land use rights expire, provided that their project duration has been approved by the competent authorities. This reform provides greater certainty for international investors seeking long-term investments in Vietnam's market.

  - Furthermore, the new Land Law aims to simplify administrative procedures related to land. It also offers clearer guidelines for land expropriation. District-level people's committees now have the capacity to make decisions regarding land expropriation, even for projects in industrial areas. This change is expected to streamline the expropriation process, as previously some cases required intervention from provincial-level committees, leading to unnecessary delays.

- Despite the progress made, there are still challenges that need to be addressed, emphasizing the need for further refinement. Specifically, under the 2024 Land Law, the concept of "land pricing table" (bảng giá đất) used as a reference for the value of land in land-related transactions will now be issued by the provincial People's Committee on an annual basis based on market conditions, instead of on a 5-year term basis as in the 2013 Land Law. This should mean that the land costs will be based more on the recent and suitable actual market value, which may fluctuate and impact investment projects' costs. This adjustment may raise financial concerns and prompt international investors to hesitate to invest in Vietnam.

II. 2025 socio-economic outlook

1. GDP growth forecast: 6.5% (according to the World Bank's Taking Stock report issued in August 2024).

- The anticipated recovery will be driven by continued improvements in export-oriented manufacturing and a rebound in domestic demand, both of which are expected to benefit from the broader economic environment and policies.
- From the perspective of foreign enterprises, this target appears ambitious but feasible. Foreign businesses are likely to focus on the recovery of the manufacturing sector and trade, as both have shown resilience and growth potential in 2024. The growth outlook remains sensitive to global economic conditions, particularly in major markets such as the U.S., EU, and China, where economic slowdowns could impact Vietnam's export performance.

2. FDI capital flow forecasts and Areas/ sectors of FDI focuses

- FDI inflows are expected to remain strong in 2025. High-tech manufacturing, particularly in electronics, is likely to remain a key focus for FDI in 2025. As the global supply chain shifts continue, foreign companies may increasingly view Vietnam as a strategic hub for high-tech manufacturing.
- The Just Energy Transition Partnership (JETP) will play a crucial role in shaping FDI flows, especially in renewable energy. Vietnam's commitment to transitioning from coal to cleaner energy sources through JETP will attract significant foreign investments in green energy projects, such as solar and wind energy.
- Besides energy, real estate remains another key sector for FDI. Although the sector has faced challenges, the government is implementing reforms to improve market transparency and ease investment procedures. The recovery of the real estate market, supported by foreign capital, is expected to gain momentum in 2025.

3. Recommendations for improving the investment environment:

- **Human resources:** Promoting vocational training and improving labor skills are key factors in helping Vietnam maintain and enhance competitiveness. There should be specialized training programs in industries related to Industry 4.0, such as IT, AI, and automation.

- **Infrastructure investment:** Strengthening investment in key infrastructure components, such as highways, seaports, airports, and smart logistics systems. This will help increase Vietnam's connectivity with international markets and attract more investment.

- **Digital transformation and green development:** Continuing to support enterprises, especially SMEs, in the digital transformation process. The application of digital technology and automation will help enterprises improve production efficiency, optimize costs, and

enhance competitiveness in the international market. Promoting the adoption of clean technology solutions, renewable energy, and developing policies that support green economic development will not only attract investors focused on sustainable development but also protect the environment.

- **Legal reforms:** *Amendments and supplements to some important laws/policies will be presented in detail by WG (Working Group) Heads.*

DRAFT LAW AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE LAW ON SECURITIES

Presented by
VBF Capital Markets WG

[PART 1]

<u>BACKGROUND</u>

Law on Securities No. 54/2019/QH14 was enacted by the 14th National Assembly on November 26, 2019 and took effect from January 1, 2021.

Law on Securities and its guiding documents have created the highest legal framework, comprehensively regulating securities activities and the securities market. After three years of implementation, new requirements and challenges arising from the continuous development of the economy in general and the securities market in particular and the requirement to upgrade market status necessitate amendments to the Law on Securities.

Recently, the Draft Law amending and supplementing a number of articles of the Law on Securities (hereinafter referred to as the "**Draft Law** ") has been sent out for broad consultation.

<u>COMMENTS AND SUGGESTIONS</u>

Through careful consideration, we have found that the Draft Law has basically demonstrated the goal of "timely overcoming limitations and risks in operation of the securities market, contributing to further improving the effectiveness of law enforcement, strengthening the efficiency of state management of securities and the securities market, and protecting the legitimate rights and interests of investors".

However, we also believe that some specific provisions in the Draft Law, if officially enacted, will **<u>seriously affect and even lead to disruption of operations of the fund management sector</u>**, as well as other financial institutions in the market.

Therefore, it is recommended that the following provisions in the Draft Law be removed or amended:

1. **Point b, Clause 3, Article 12 of the Law on Securities** *(amended and supplemented by Point a, Clause 3, Article 6 of the Draft Law)*

"3. Committing acts of securities market manipulation, including one, some or all of the following acts:

[…]

b) Placing buy and sell orders for the same securities on the same trading day or colluding with others to buy and sell securities without actually transferring ownership or with ownership only being transferred among group members to generate artificial securities price or supply and demand;"

1.1 We understand that this regulation is intended to limit the manipulation of securities prices and creation of artificial supply and demand. Amending regulations to tighten management and limit market manipulation is necessary, but the wording can be confusing, leading to the following understanding: the practice of "placing buy and sell orders for the same securities on the same trading day" is prohibited.

1.2 We would like to share that placing buy and sell orders for the same securities on the same trading day ***is a normal practice for fund management and market operations***.

We would like to illustrate with the following examples:

<u>Example 1:</u> Open-ended Fund A received a trading order and payment for that transaction from Investor X in the morning trading session (at 10:00). Then, Investor X requested to withdraw money in the afternoon (at 13:30). To meet investors' requirements, Open-ended Fund A must buy and sell securities in its portfolio on the same day (in which there may be cases where the same securities are bought and sold) to achieve the necessary liquidity. This is a normal activity of an open-ended fund and is not intended to create artificial securities prices or supply and demand.

<u>Example 2:</u> Investor Y placed a sell order for XYZ shares in the morning when the price was high. The market then experienced a downturn, making XYZ share price more attractive. Investor Y decided to place a buy order for XYZ shares. The decisions to place buy and sell orders for XYZ shares on the same trading day are consistent with the law of supply and demand and Investor Y's assessment of market prospect, and are not intended to create artificial share prices or supply and demand.

1.3 We recommend revising this provision as follows:

"b) <u>Colluding</u> to place buy and sell orders for the same securities on the same trading day without actually transferring ownership or with ownership only being transferred among group members to generate artificial securities price or supply and demand;"

Placing buy and sell orders for the same securities on the same trading day will only constitute an act of securities market manipulation in the presence of a motive to generate artificial securities price or supply and demand.

2. Point c, Clause 3, Article 12 of the Law on Securities *(amended and supplemented by Point a, Clause 3, Article 6 of the Draft Law)*

"c) Buying or selling securities with a dominant volume at market opening or closing to create a new closing price or opening price for such securities on the market;"

2.1 As analyzed in section 1.1 above, we understand that this provision is included in the Draft Law to limit act of "price influence". However, we believe that the wording of this provision currently leads to an understanding that "buying or selling securities with a dominant volume at market opening or closing" is prohibited.

2.2 We would like to share that there are many securities activities of financial institutions that require the purchase or sale of securities in dominant volumes at market opening or closing with no intention of market manipulation.

We would like to illustrate with the following examples:

<u>Example 3:</u> When rebalancing its securities portfolio, an exchange-traded fund (ETF) needs to place ATC orders so that orders are matched at the closing price. This is a mandatory and periodic operation of an ETF.

<u>Example 4:</u> Open-ended funds that receive withdrawal orders at 14:00 pm also need to place sell orders in the ATC session to meet customers' liquidity needs.

In both examples above, the *purchase or sale of securities in dominant volume at market opening or closing* are necessary, lawful activities and are not intended to manipulate the market.

2.3 In addition, in the context of Vietnam being upgraded to *FTSE Emerging Market*, Vietnam securities market is expected to attract a large number of international open-ended funds and ETFs. We believe that this regulation really confuses international investors, seriously affecting the attractiveness of Vietnam securities market.

2.4 We recommend revising this provision as follows:

"c) Buying or selling securities with a dominant volume at market opening or closing to create a new closing price or opening price for such securities on the market, except for the activities of securities investment funds, securities investment companies, foreign investment funds, foreign organizations managed by foreign fund managers, investment organizations under foreign governments or investment and financial organizations under international financial organizations.

to ensure that the operations of securities investment funds are not disrupted and can be carried out smoothly.

KEY COMMENTS ON THE DRAFT LAW AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE LAW ON SECURITIES

Presented by
VBF Captial Markets WG

[Part 2]

1. Concept of "professional securities investor" (amendments and supplements to Article 11 of the Law on Securities)

1.1. The Draft prescribes new eligibility criteria for companies/individuals to be recognized as professional securities investors. Specifically:

- It is additionally required that companies have a minimum operating period of 02 years, in addition to the requirement of having paid-in charter capital of VND 100 billion.

- Individuals must participate in securities investment for a minimum period of 02 years, with a minimum trading frequency of 10 times per quarter in the last 04 quarters, in addition to the existing requirement of holding a listed and/or registered for trading securities portfolio with a minimum value of VND 2 billion when such individuals are recognized as professional securities investors.

It is recommended to remove the above requirements for the following reasons:

- Clause 2, Article 86 of the Civil Code stipulates that "2. *The civil legal capacity of a legal entity shall arise when it is established or permitted to be established by a competent State authority; where registration of operation is required, the civil legal capacity of the legal entity shall arise upon entry into the register".*

In addition, legal entities have professional management and operating apparatus, unlike individuals who take time to master. Market practices show that legal entities are established when there are investment opportunities. The requirement of a minimum 02-year operating period for a legal entity to be recognized as a professional securities investor is not necessary.

- The frequency of securities trading does not demonstrate the financial capacity and trading experience of individual investors. In fact, major investors do not trade frequently. And at the same time, does the requirement of minimum trading frequency applicable to individual investors encourage the trend of "swing trading"?

1.2. Moreover, the Draft stipulates that only professional securities investors are allowed to participate in purchasing, trading, and transferring private placement corporate bonds.

The Law on Securities introduces the concept of "professional securities investor" to define the persons with adequate financial capacity or professional qualifications in securities. Therefore, we propose not to differentiate between individual professional securities investors and institutional professional securities investors. Moreover, it is not recommended to stipulate that only institutional professional securities investors are allowed to purchase private placement bonds. Violations in issuance and allocation of private placement bonds in recent time can be sanctioned by other measures. These violations should not be the reason to limit the investment initiative of individuals, which goes against the policy of encouraging participation of individual investors in the securities market to promote its long-term development and to limit access to stable capital by businesses.

2. Amendments and supplements to regulations on market manipulation (amendments and supplements to Article 12.3 of the Law on Securities)

2.1. In the Draft, the amendments and supplements to Article 12.3 of the Law on Securities stipulates that the act of *"giving opinions directly or indirectly through public media about a securities or an issuer in order to influence the price of such securities after having executed transaction and held a position in such securities"* is considered an act of manipulation.

Giving opinions on securities and issuers is part of the work of securities business organizations and securities practitioners. It is difficult to determine whether opinions are given objectively in the course of services provision or they are given with the purpose of market manipulation. To avoid legal risks for these subjects, we propose that this regulation shall not be applicable to securities business organizations and securities practitioners.

2.2. We find that all the acts stated in additional points a to e of Article 12.3 of the Law on Securities in the Draft are those constitute criminal offense of “securities market manipulation” as stipulated in Article 211 of the Criminal Code 2015 (revised in 2017). The overlapping provisions between the Criminal Code (including constitution of damages and applicable criminal sanctions) and the Law on Securities (without constitution of damages and specific sanctions) are not desirable and may cause confusion and bewilderment in the market.

It is recommended to retain the provisions in Clause 3, Article 12 of the current Law on Securities and supplement provisions on expanding the authority of State Securities Commission (SSC) in collecting information and reporting criminal acts, on the rights - responsibilities - procedures for coordinating with investigation agencies for securities market related criminal acts (as stipulated in Section 2, Chapter XVIII of the Criminal Code).

3. Additional requirements applicable to public offering of bonds (amendments and supplements to Article 15.3 of the Law on Securities)

The Draft stipulates that bonds offered to the public must be secured by collateral or bank guarantee in accordance with the provisions of laws, except in cases where credit institutions offer bonds as subordinated debt that qualifies as Tier 2 capital and have the representative of bondholders in accordance with the Government's regulations.

It is not recommended to add the requirement that bonds offered to the public must be secured by collateral or bank guarantee. According to the Draft Outline, the purpose of adding this provision is to improve the quality and transparency in securities offering and issuance. However, public offering is already subject to strict regulations under Article 15.3 of the Law on Securities, with specific guidelines given in Articles 19 and 26 of Decree 155/2020/ND-CP. The additional requirement on collateral and bank guarantee complicates the procedures for public offering of bonds, create barriers and burdens, and may even suffocate the corporate bond market and “freeze” an important capital mobilization channel for businesses in the market. The Drafting Committee is recommended to consider replacing it with the requirement that the issuer must have a credit rating, which is more feasible and appropriate.

4. Regarding the regulation on transfer restriction period of 3 years applicable to private placement shares, private placement convertible bonds, and private placement bonds with warrants from the completion date of relevant offerings (amendments and supplements to Article 31.1 of the Law on Securities)

The Draft stipulates that private placement shares, private placement convertible bonds, and private placement bonds with warrants are subject to transfer restriction for at least 3 years from the completion date of relevant offerings, except for cases of transfer between professional securities investors, transfer following enforceable court judgment, court decision, or arbitration decision, or transfer for the purpose of inheritance in accordance with the provisions of laws.

It is recommended to retain the provisions of current law on transfer restriction period applicable to private placement securities. It is also recommended that documents guiding the implementation of the Law on Securities shall clarify the process for transferring private placement securities between professional securities investors during the transfer restriction period, to serve as the basis for implementation by investors and issuers in practice.

5. Some issues which are not included in the Draft

5.1. It is recommended to remove the regulation that public companies buying back treasury shares must carry out procedure to reduce their charter capital.

5.2. It is recommended to supplement regulations so that IPO and listing can be performed simultaneously, to approach the process applied in developed markets and to reduce risks for buying investors in an IPO.

RECOMMENDATIONS FOR AMENDING THE LAW ON INVESTMENT

Presented by:
Mr. Seck Yee Chung
Head of the Investment & Trade WG

Good morning leaders of the National Assembly Economic Commiteee. On behalf of the Investment & Trade Working Group of Vietnam Business Forum, we appreciate the Government's great effort in boosting the economy and FDI, attracting high tech investments, and encouraging green growth. We have compiled some high-level comments related to the Investment Law that we hope will be considered and addressed.

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FIRST, market entry conditions applicable to foreign investors for sectors not committed by Vietnam in any international treaty

According to Decree No. 31/2021/ND-CP guiding the Investment Law, where (i) a sector is not committed by Vietnam in any international treaty, (ii) Vietnamese laws do not contain provisions restricting market access to that industry, and (iii) there are no conditions even if applicable for domestic investors, then the foreign investors should be entitled to to participate in the market in such sector, considering the general orientation of Vietnam to facilitate foreign investments.

However, in practice, when applying for Investment Registration Certificate ("**IRC**") for foreign investment in sectors yet committed in international treaties, we observe many challenges from the authorities who take strict view in granting approval to investors, even though the explanation has fully and clearly set out conformity with Vietnamese laws. This has caused many obstables for foreign investors, which might affect the overall investment landscape into Vietnam.

Furthermore, under the Investment Law, except for business sectors stated in Appendix I of Decree 31/2021/ND- CP, foreign investors are entitled to market entry conditions same as domestic investors. Based on the above, it is expected that all conditional business sectors with market entry conditions specifically applicable to foreign investors shall be comprehensively listed in Appendix I of Decree 31/2021/ND- CP. And, the foreign investors are entitled to access the market as domestic investors if they engage in a non-listed sector.

Nonetheless, there are cases where the business sectors are not listed in Appendix I, but the specialized regulations prohibit the ownership of foreign investors. As an example, cyber information security services are not listed in Appendix I of Decree 31/2021/ND-CP. However, under the Law on Cyberinformation Security, the foreign-invested enterprises ("**FIEs**") are disqualified to obtain a license for provision of cyber-information security testing and evaluation services. This leads to the consequence that foreign investors are not allowed to hold any shares in a company providing cyber-information security testing and evaluation services.

→ Therefore, we respectfully suggest that when considering IRC application dossiers for foreign investment, the authorities should have a more flexible and relaxed review to keep market access open to foreign investors, in particular for sectors where Vietnam has not introduced limitations in international treaties.

Also, we suggest to carefully identify business sectors prohibited under specialized regulations to update Decree 31/2021/ND-CP accordingly.

SECOND, exceeding amount of documents required by licensing authorities

The current regulations prohibit local authorities from requesting additional document for licensing purpose other than those prescribed by laws. Nonetheless, in practice, licensing authorities still sometimes require investors to submit additional documents which are not required by law. This

could significantly cause the delay of investment registrations and further incur additional costs for the investors for preparation and provision of such documents.

→ Therefore, we respectfully suggest the authorities to consider and not to require any additional documents other than the regulatory documents as required by laws.

THIRD, requirement for obtaining the IRC for business locations and branches of FIEs

With respect to FIEs operating under the IRC and ERC, in case these companies wish to expand their business by establishing business locations or branches (within/ or not within the same province), the current laws on investment do not set out a proper guidance on how to do it.

→ Therefore, we suggest that new investment legislation is needed to clearly regulate this matter, investors should have the right to amend the investment capital as shown on the issued IRC, or to apply for a new IRC for each new location.

LAST, inconsistency in regulating FIEs

An FIE is established by way of:

(a) Green-field establishment: applying for IRC, then the ERC; or

(b) Acquiring contributed capital or equity from the owners/ domestic investors: applying for M&A Approval, then applying for change of the owner on the ERC or updating the shareholders' registry.

In principle, a company with foreign ownership is established by either method (a) or (b) shall enjoy similar treatments under the laws. However, we observe that companies established by (a) and (b), will have the following differences:

- With respect to (a), such company shall have the IRC, time-limited investment project, limitation on loan capital, and if there are any changes with respect to duration of the project implementation, to limitation on loan capital, then the company shall need to apply for an amendment of the investment project.

- With respect to (b), such company is not issued with/ does not have an IRC, therefore, the company will have no limitation for investment term and loan capital.

→ Therefore, we suggest that there should be additional regulations to ensure that companies (a) and (b) are subject to the same treatment under the laws.

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Our members are keen work together with the National Assembly Economic Commiteee and the Government to improve the legal framework and investment environment of Vietnam. Our ultimate aim is to enhance investors' confidence, and to strengthen Vietnam's competitive capabilities in the international market. Therefore, it is much appreciated that the National Assembly Economic Commiteee recognizes our suggestions as mentioned.

Thank you.

CHALLENGES AND OBSTACLES IN THE IMPLEMENTATION OF THE ENTERPRISE LAW 2020 AND RECOMMENDATIONS

Presented by:
Mr. Tran Anh Duc
Co-Head of the Investment & Trade Working Group

No.	References	Issue	Recommendations
1.	**Legal representative/ General Director being uncontactable (Article 12 of the Enterprise Law)**	Article 12.3 of the Enterprise Law provides that an enterprise must ensure to have at least 1 legal representative residing in Vietnam. If the enterprise has 1 legal representative residing in Vietnam, when he exits from Vietnam, he must authorize in writing to another individual to carry out rights and obligations of the legal representative in Vietnam. Article 12.5 of the Enterprise Law also provides that if the enterprise has only 1 legal representative and he is absent from Vietnam for more than 30 days but does not authorize another individual to carry out his rights and obligations or in special cases (e.g., death, missing,…) then the owner, Members' Council, Board of Management may decide another person to act as legal representative. However, the law does not specific the case where the legal representative (cum General Director) of the company is suddenly uncontactable without authorizing another individual, and this issue could cause the disruption in operation of the company. In the absence of the legal representative, the company is not able to make payments for taxes, employees, contractors and banks, etc.	Suggest providing that in the case where the legal representative/General Director is uncontactable for the period of 7 days, the owner, Members' Council, Board of Management may decide another individual to temporarily act as acting legal representative/General Director of the company.
2.	**Registration for changes in the content of the Enterprise Registration Certificate (Article 30 of the Enterprise Law 2020)**	Article 30.2 of the Enterprise Law 2020 provides: "*The company is responsible for registering changes in the content of the Enterprise Registration Certificate within 10 days from the date of change*." We understand that changes in the content of the Enterprise Registration Certificate (such as the company name, charter capital, legal representative, or company members) take effect according to the internal regulations of the enterprise or agreements between the relevant parties when satisfying the legal requirements.	Article 30.2 of the Enterprise Law 2020 provides: "*The company is responsible for registering changes in the content of the Enterprise Registration Certificate within 10 days from the effective date of the change*."

No.	References	Issue	Recommendations
		However, in practice, there is still a viewpoint (especially from the licensing authorities) that these amendments only take effect from the time they are updated on the Enterprise Registration Certificate. This causes difficulties for the parties during operations and transactions. Therefore, it should be clearly stipulated in the law or guiding decrees that updating information on the Enterprise Registration Certificate is merely an administrative management procedure. This is also reasonable because: (1) For changes in member information due to the transfer of capital contributions or changes in the type of enterprise (e.g., converting from a single member limited liability company to a multi-member limited liability company), the procedures for registering the purchase of capital contributions or shares have already been carried out with the relevant investment licensing authorities before the parties complete the transaction. (2) For changes in charter capital, the parties must also complete the payment of the additional capital contribution before submitting the application for changing the charter capital. (3) For other changes, including information on registered business lines, it should be within the enterprise's discretion, and the enterprise must comply with the legal regulations on licenses, business conditions, and other contents during its operations.	
3.	**Timing the foreign shareholder having rights and obligations in a joint stock company (Articles 31.1(b) and 31.2 of the Enterprise Law.**	According to the Enterprise Law, (Articles 47.5, 124.4), an investor shall become a shareholder when its name is recorded in the company's shareholders register. According to Article 31.2 of the Enterprise Law, the notification on change of foreign shareholder is only required to be carried out within 10 days from the change. However, Article 66.5 of Decree 31/2021/ND-CP guiding the Invesmtent Law provides that the rights and obligations of foreign investor as a member or a shareholder are established <u>upon the completion of the procedures for changing member</u> or shareholder. This	Cần phải có sự thống nhất giữa Luật Doanh Nghiệp và Nghị Định 31. There must be consistency between the Enterprise Law and Decree 31. Article 66.5 of Decree 31/2021/ND-CP should be revised to comply with Article 31 of the Enterprise Law in the way that the procedures for notification of change of foreign shareholder is a post-closing notification after the transaction has been completed under the mutual agreement of

No.	References	Issue	Recommendations
		would lead to an interpretation that the procedures for changing foreign shareholder is not a post-closing notification, but it is a condition precedent for the foreign shareholder to have rights and obligations in the joint stock company (or in other words, the condition precedent for completion of the transaction in substance).	the parties, and the rights and obligations of the foreign shareholder should have bên established at the time of completion of the transaction in accordance with the mutual agreement of the parties.
4.	**Notification of changes in foreign shareholders for unlisted public companies (Article 31.1(b) of the Enterprise Law)**	Article 31.1(b) of the Enterprises Law 2020 provides the obligation to notify changes in foreign shareholders for non-listed companies. This provision can be interpreted to mean that such changes in foreign shareholders of public companies that are registered for trading shares on UPCoM, or companies that have not registered for trading, must also be notified to the business registration authority. However, the application of such provision on notifying changes in foreign shareholders for UPCoM companies encounters the following issues: - Since shares are freely traded on UPCoM, changes in foreign shareholders can occur weekly or even daily. In cases where foreign investors purchase a small number of shares and are not obligated to disclose information, the company itself will not be able to know about the change in foreign shareholders, as the shareholder register is managed by the Vietnam Securities Depository and Clearing Corporation (VSDC) rather than the company itself; - Most transactions on UPCoM are executed in the form of matching orders, without share transfer agreement or documents evidencing the completion of the transfer; - UPCoM companies are public companies, and according to Article 4.3(e) of the Investment Law, "*The authority, order, procedures, and conditions for investment, business activities, securities, and the securities market in the Vietnamese securities market shall be implemented according to the provisions of the Securities Law.*" Since the Securities Law does not require investment in public companies to undergo the capital contribution registration procedure or share purchase with the provincial Department of Planning and Investment (**M&A Approval**), UPCoM companies will not have this approval to submit when notifying foreign shareholders. In practice, the	It is proposed to replace "listed company" with "non-public company". Additionally, in the case where a public company (including UpCom companies and listed companies) cancels its public company status, it is necessary to consider clarifying how to transfer the information of foreign shareholders from the VSDC system to the business registration authority's system

No.	References	Issue	Recommendations
		business registration authority often requires M&A Approval before agreeing to record new foreign shareholder information.	
5.	**Guidance on "other content" of enterprise registration dossier to be notified to local authorities (Article 31.1(c) of the Enterprises Law)**	It remains ambiguous which "other contents" within the enterprise registration dossier must be reported to the competent authority in the event of any changes, as stipulated in point (c) of Article 31.1 of the Enterprise Law. For instance, if the enterprise registration dossier includes the company's initial charter, it could be interpreted that any subsequent amendments to the charter must be reported to the local authorities. However, there are no specific regulations providing guidance on this matter, leaving the competent authorities uncertain about how to address it. In practice, some local authorities have declined to accept notifications concerning amendments to the charter.	We recommend to have further guidance from the Government on what Article 31.1(c) of the Enterprise Law refer to, and if it is not the intent of the lawmaker to ask for conduct notification on change of other contents which are not specified under the said articles, please clarify that such changes are not required to be notified or updated.
6.	**Decrease of charter capital**	The Enterprise Law does not clearly provide (i) whether the redemption of redeemable preference shares at the request of shareholders by a joint stock company falls under cases of charter capital decrease specified in Article 112.5 of the Enterprises Law, and (ii) if this redemption of redeemable preference shares falls under the cases of charter capital decrease, is it required to meet the conditions for decreasing the charter capital specified in Article 112.5(a) of the Enterprises Law[1] and therefore whether it is required to carry out the procedures to decrease the charter capital? In practice, the company has a large accumulated loss on its financial statements and needs to reduce its charter capital to offset and reduce the loss on the financial statements without incurring payments to shareholders. It is unclear whether the reduction in charter capital allowed for credit institutions, or has it been regulated and permitted for joint-stock companies under Circular 19/2003/TT-BTC.	It is proposed to clarify the two issues mentioned in the left column related to the joint stock company's redemption of redeemable preference shares at the request of shareholders. It is proposed to add a case where it is allowed to adjust and reduce the charter capital to record a reduction in accumulated losses without incurring capital repayments to members or shareholders.
7.	**Other preferences shares**	Article 114.2.d of the Enterprises Law stipulates that preference shares include: "Other preferred shares as stipulated in the company's charter and the securities laws." Therefore, if the company's charter specifies a	It is proposed to have further clarifications.

[1] *Under Article 112.5(a) of the Law on Enterprises, the conditions for decreasing the charter capital include (i) the company has conducted business activities for two or more consecutive years from the date of registration for establishment of the enterprise, and (ii) must ensure payment of all debts and other property obligations upon return to the shareholders;*

No.	References	Issue	Recommendations
		type of share that possesses characteristics of both redeemable preferred shares and dividend preferred shares, would such a type of share be considered legally valid?	
8.	**Conditions and procedure for redeeming the redeemable preference shares**	The Law on Enterprises does not clearly provide (i) whether the redemption of redeemable preference shares at the request of shareholders by a joint stock company falls under cases of charter capital decrease specified in Article 112.5 of the Law on Enterprises, and (ii) if this redemption of redeemable preference shares falls under the cases of charter capital decrease, is it required to meet the conditions for decreasing the charter capital specified in Article 112.5(a) of the Law on Enterprises[2] and therefore whether it is required to carry out the procedures to decrease the charter capital?	Propose clarifying the two issues mentioned in the left column related to the joint stock company's redemption of redeemable preference shares at the request of shareholders.
9.	**Reallocation/delegation of the rights of the Members' Council, the General Meeting of Shareholders, or the Board of Directors to other executive bodies of the company.**	Currently, there are differing viewpoints on whether it is permissible to stipulate in the Charter or through a resolution to delegate or reallocate decision-making authority on certain matters, which are within the authority of the Members' Council, the General Meeting of Shareholders, or the Board of Directors, to other lower-level executive bodies such as the General Director or the Board of Directors (in the case of reallocating the authority of the General Meeting of Shareholders) of the company. One perspective argues that since the Enterprises Law enumerates the "rights and obligations" of the Members' Council, the General Meeting of Shareholders, or the Board of Directors without explicitly allowing the Charter to stipulate otherwise, the delegation or reallocation of these rights is not permitted. This viewpoint is based on the interpretation that the law's enumeration of rights and obligations is exhaustive and does not provide room for further delegation or reallocation through the company's internal regulations or resolutions.	It should be clarified.
10.	**Related-party transactions**	According to the regulations on transactions and contracts between the company and related parties, shareholders/members or members of the Board of Directors/members of the Members' Council who have related interests (or are related) to the parties in the contract/transaction are not	It is proposed to have further clarifications.

[2] *Under Article 112.5(a) of the Law on Enterprises, the conditions for decreasing the charter capital include (i) the company has conducted business activities for two or more consecutive years from the date of registration for establishment of the enterprise, and (ii) must ensure payment of all debts and other property obligations upon return to the shareholders;*

No.	References	Issue	Recommendations
		allowed to vote. However, there is no clear regulation to determine what constitutes having related interests or being related to the parties in the contract/transaction.	
11.	***Capital surplus in limited liability companies***	*"The contributed capital is the total value of assets that a member has contributed or committed to contribute to a limited liability company or a partnership. The ratio of the contributed capital is the ratio between a member's contributed capital and the charter capital of the limited liability company or partnership."* According to this definition, it seems that a limited liability company (LLC) cannot sell a contributed capital portion at a price higher than the value of the assets contributed (which can be in cash or other assets) by the member. Consequently, it cannot recognize "capital surplus" as in the case of issuing shares by a joint-stock company.	It is proposed to clarify the regulations to allow a limited liability company (LLC) to issue shares at a higher price to generate capital surplus or vice versa, depending on the company's value and the value of the contributed capital at the time of contribution.
12.	According to the draft report summarizing and assessing the implementation of the Enterprises Law 2020 enclosed with official letter no. 5595/BKHĐT-QLKTTW dated 17/7/2024 of the MPI, the direction for amending and supplementing the Enterprises Law is proposed as follows: Supplementing regulations on beneficial owners (**BO**), to which the criteria for determining an individual as a BO of an enterprise will be	Currently, the Enterprises Law 2020 does not have any regulations on enterprises' BO. The rights, obligations and conditions to determine BO of enterprises are stipulated in the Law on Anti-Money Laundering and its guiding legal text. According to Decree No. 19/2023/ND-CP detailing a number of articles of the Law on Anti-Money Laundering, a BO of an organization is an individual who actually holds directly or indirectly 25% or more of the charter capital of the organization or the last individual who has the right to control the organization (Article 7.2(a)). The regulation on determining a company's BO depends on each type of enterprise may not be consistent with the provisions of the laws on anti-money laundering. It could be that in the process of implementing the law on anti-money laundering, when applying the 25% ratio, it was difficult to determine the BO in some specific types of enterprises. For example, for a JSC, the ownership ratio that can be considered "controlling" can be up to 65% because this group of shareholders can pass Resolutions related to important issues of the company (Article 148.1 of Enterprises Law 2020). However, because the Enterprises Law 2020 does not specifically stipulate a number, as well as the laws on anti-money laundering only specify the figure of 25% and use the general phrase "having the right to control", so when applying the current law, there is no specific legal basis to determine BO suitable with the characteristics of each type of enterprise.	The Enterprises Law should refer to the laws on anti-money laundering to avoid overlapping regulations between laws. For some types of enterprises, the proposed ratios to determine BO are as follows: - JSC: over 35% (this group has the right to veto important resolutions in Article 148.1 of Enterprises Law 2020 voted by the group of shareholders owning 65% or more of the votes) - single-member LLC: sole owner is the BO - LLC with 2 or more members: over 25% (has the right to veto the decision of the Members' Council on issues directly affecting the company's operations stipulated at Article 59.3(b) of Enterprises Law 2020) Additionally, given that the BO definition covers the ultimate organisation or individual having control right over an enterprise (and including foreign

No.	References	Issue	Recommendations
	based on the percentage of share ownership and capital contribution, depending on enterprise type. Some Articles in Enterprises Law 2020 also mention the phrase "controlling shares and capital contributions" such as Article 4.23, Article 71.1(c), Article 71.3(b), Article 83.4, Article 97.4.		organisation and individual), the Enterprise Law and its implementing regulations may be taken into account to provide guidance or principles to determine BO in specific cases of foreign funds or enterprises (such as, in case of private equity having limited partners who only holds economic interest but not the right to control the enterprise and general partners who have the right to control the enterprise, or in case of foreign listed company whereby the shareholding ratios change everyday).

COMMENTS ON NOTABLE POINTS FOR THE LAW ON INVESTMENT IN THE FORM OF PUBLIC-PRIVATE PARTNERSHIP AND THE LAW ON BIDDING

Presentation by
Tran Tuan Phong
Co-Head of Infrastructure WG

A. Draft Amended Law on PPP

1. Governing Law of the project contract set

The Law on PPP stipulates that project contracts as well as contracts and agreements signed with state agencies are governed under Vietnamese legislation. For any points that is not regulated in the Vietnamese law, specific agreements can be made in the contract in compliance with the basic principles of Vietnamese law (Article 55). This provision lacks sufficient details and therefore is challenging to implementation. In the reality of mobilizing foreign capital, many lenders require that the foreign law governs the project contracts.

The Draft Law has not resolved this issue. It is proposed to allow the selection of foreign law as the governing law in accordance with the provisions of the Investment Law and the Civil Code (BLDS) for BOT contracts, Government Guarantees (GGU), direct agreements with lenders, product take-or-pay contracts (power purchase contracts, except for land lease agreements (LLA) which must be governed by Vietnamese law).

2. Dispute resolution agency of the project contract

The Law on PPP does not stipulate the selection of a dispute resolution agency in project contracts in particular and project contract sets in general. Moreover, Vietnamese partners have no legal grounds to negotiate and agree on an international dispute resolution agency. Projects by foreign investors or funded by international finance (except LLA) often require international dispute resolution agencies due to the commercial nature of the contract as well as the large and complex scale of the project.

The Draft Law has not resolved this issue. It is proposed to allows parties to select a dispute resolution agency, including international arbitration in contracts, in a unified manner.

3. Security measures for real estate through domestic security agents

The Land Law and the Civil Code do not permit the mortgage of real estate (land use rights and assets attached to land) (RE) to foreign mortgagees. In the reality of mobilizing international capital, foreign lenders require mortgaging real estate as valuable assets of the project.

The Draft Law has not resolved this issue. It is proposed to allow project companies to mortgage real estate to credit institutions or foreign bank branches in Vietnam as representatives of foreign lenders. This ensures that real estate is not directly mortgaged to foreign mortgagees in accordance with the land law while meeting the requirements of foreign lenders.

4. Cases of early termination, project repurchase obligations and payments for early termination (Clause 12, Article 3 of the Draft Law)

The Law on PPP does not fully address cases of early contract termination (e.g. termination due to breach by another Vietnamese partner (the take-or-pay party or another Vietnamese project partner (other than the Project Contracting Authority)), fault by the project enterprise, events caused by or related to the Government (Government Events) or natural force majeure events. The Law on PPP does not yet have regulations on principles, formulas and methods to determine termination payments in different termination cases, which is a necessary basis for the parties to agree and record in the project contract set.

The Draft Law has not resolved this issue. It is proposed to stipulate that the Government has the right to acquire the project when the project enterprise is at fault, and is obliged to acquire the project in other cases of termination. The principles and formulas for determining termination payments are agreed upon in the project contract for termination cases.

5. Change in law

The Law on PPP does not yet provide full, comprehensive and specific regulations on the guarantee mechanism in case of changes in the law. Currently, the new Law on PPP only stipulates the mechanism for adjusting investment policies, adjusting feasibility study reports, amending project contracts, or adjusting contract terms when the law changes (Point b, Clause 1, Article 18, Point c, Clause 1, Article 24, Point a, Clause 1, Article 50, Point d, Clause 3, Article 51 and Point b, Clause 2, Article 82), along with complicated conditions that make it challenging for investors receive compensation in case the amended law reduces project revenue (Clause 2, Article 82).

The Draft Law has not resolved this issue. It is proposed to implement regulations allowing parties of a PPP project contract to agree on a full and comprehensive settlement mechanism in the event of changes in law (both favorable and unfavorable). In the event of an adverse change in law, the adverse provision or regulation shall not apply to the project nor compensate for the economic loss, including the extension of the project's operating period and the increase in fees.

6. Revenue sharing (Clause 14 and 16, Article 3 of the Draft)

The current Law on PPP provides for cases of sharing increased and decreased revenue and complex procedures and conditions for the implementation of sharing. This regulation is difficult to implement in reality and therefore needs to be considered for its suitability to each specific industry and field.

The Draft Law has not resolved this issue. It is proposed that the revenue base mechanism should be an incentive mechanism and be selected based on the agreement of the parties rather than being mandatory. Revenue sharing reduction is a mechanism to “compensate” investors in case of changes in laws and policies. However, as stated in Point 5, this mechanism should be separate from the change of the law.

7. Government guarantee/State guarantee

In addition to ensuring foreign currency balance (Article 81 of the Law on PPP), the law on PPP does not specifically regulate the scope, content and form of other State guarantees but refers to investment law for those contents (Article 80.1 of the Law on PPP). The Investment Law does not specifically stipulate State guarantees which are very important and play a decisive role in the capacity of mobilizing capital, the feasibility and the success of projects (Article 11.2 of the Investment Law and Article 3 of Decree 31/2021.

The Draft Law has not resolved this issue. It is proposed to allow projects (including projects that have been approved by investors before the effective date of the Law on PPP) under the international project financing mechanism to apply Government guarantees on: (i) Payment obligations and other financial commitments of state agencies and state-owned enterprises, with a guarantee period of the entire project term (for PPAs, the period is 15 to 18 years (depending on fuel) from the date of commercial operation of the power plant) and (ii) support for foreign currency conversion for the remaining 70% of VND revenue (in addition to foreign currency conversion for 30% of project revenue (after deducting VND expenditure).

8. Foreign exchange mechanism

Projects with international funding and having costs to pay for foreign parties require a stable source of foreign currency to ensure payment obligations. Thus, the project enterprise's revenue should not be affected by exchange rate fluctuations (USD/VND) during the term of the BOT Contract. The law on foreign exchange stipulates that transactions between parties who are residents must be priced and conducted in VND, except for exceptional cases approved by the State Bank.

The Draft Law has not resolved this issue. It is proposed to allow power source projects under the international project financing mechanism to be priced and paid in foreign currency or priced in foreign currency and paid in VND based on the exchange rate applicable on the payment date in the project contract set.

9. Force Majeure events, including Government Events and Natural BKK Events

(i) Government Events

Investors and financing parties need to be protected when events related to conflicts, general labor difficulties, non-licensing, nationalization, changes in planning, policies, or decisions, directives, requests, breaches of contract, performance or non-performance of responsibilities by competent State agencies, or other adverse events related to the State (collectively referred to as “Government Events”) occurring during the project term adversely affect the economic benefits or feasibility of the project.

The Law on PPP does not stipulate mechanisms for direct compensation for economic losses that investors and project enterprises must bear due to Government Events. The act of extending the project contract term is also limited to certain cases, and does not include other Government Events as is common international practice.

The Draft Law has not resolved this issue. It is proposed to allow power projects under international project finance mechanism to apply guarantee in cases of Government Events by paying investors and PPP project enterprises capacity fees, paying financing and construction costs, other compensation for damages and termination payments.

(ii) Natural Force Majeure Event

The Law on PPP does not specifically provide mechanisms to deal with Natural Force Majeure Events (occurring in different project stages or affecting different parties). These risks need to be identified and addressed in accordance with each stage of the project (construction, trial operation, commercial operation), with appropriate responses for different scenarios (including extension of commercial operation date, cost compensation, implied commercial operation date, electricity bill payment, etc.).

The Draft Law has not resolved this issue. Proposal to allow power source projects to use a comprehensive and complete Natural Force Majeure Event guarantee mechanism in accordance with international project financing structures.

10. Feasibility Study Report and Appraisal Report for Feasibility Study Report of the PPP

According to the Law on PPP and Decree No. 35, the Feasibility Study Report must state the investment incentives, forms of investment guarantees, and mechanism to share revenue risks required for the project and corresponding approvals before the feasibility of the project can be considered. Such regulations and application directions have caused difficulties not only for investors, but also for competent authorities involved in the appraisal and approval of the Feasibility Study Report, slowing the overall progress of the project. Proposing and obtaining approval for these incentives, investment guarantees, and risk-sharing mechanisms is time-consuming and is done concurrently with the negotiation of project contract content, which occurs after the project's Feasibility Study Report has been approved.

The Draft Law has not resolved this issue. Propose flexible regulations under which the Feasibility Study Report is prepared and approved in an open manner, recognizing incentives, investment guarantees, and other investor rights that may be available under the provisions of the law and subject to specific approvals from competent State agencies during the negotiation and completion of the project contract after the Feasibility Study Report has been approved.

11. Grandfather clauses of the Law on PPP (Clause 18, Article 3 of the Draft)

The Law on PPP stipulates grandfather clauses to ensure the validity of project contracts which have been initialed or signed. However, the project is implemented on the basis of a "set" of project contracts in which the contracts are negotiated and agreed upon in a unified and consistent manner with the project contract. It is unreasonable to only stipulate that project contract is subject to the provisions in grandfather clauses.

The Draft Law has not resolved this issue. It is proposed to clearly stipulate that the grandfather clauses apply to the "set" of project contracts instead of the "project contract" to ensure the stability of implementation of projects in transition.

B. DRAFT AMENDED LAW ON BIDDING

1. Streamlining laws related to bidding and developer selection

In addition to the Law on Bidding, bidding and developer selection are regulated in many other laws. Currently, the Law on Bidding (Article 3) only handles the specific relationship with the Law on PPP and the Law on Oil and Gas.

The Law on Bidding should have provisions to handle specific relationships with other relevant laws, including the Law on Land, Law on Investment, and Law on Electricity (which is in the process of comprehensive revision). The Law on Bidding should define the scope of work and stages in bidding and developer selection as prescribed in the Law on Bidding and other laws.

2. Invitation for Expression of Interest Procedure

This is an important procedure to determine whether a public bidding process is required or the only qualified developer can be selected and approved.

Currently, the Law on Bidding (Article 46.2) generally provides as follows: In cases where land law or specialized law stipulates that bidding must be conducted to select developers when there are two or more interested developers, in addition to the steps specified in Clause 1, Article 46 (preparation and organization of bidding), the competent authority shall perform invitation for expression of interest before preparing for bidding to select developers.

The Law on Bidding should clearly stipulate that the procedure of invitation for expression of interest must be carried out first (otherwise, there is no basis to determine that there are two or more interested developers), and after invitation for expression of interest is completed, if only one developer is interested and qualified, it will be selected and approved as the developer to implement the project.

3. Projects proposed by developers

In reality, in addition to projects announced by state agencies, there are many projects proposed by developers. Currently, the Law on Bidding (Articles 46.1 and 47) only regulates cases where state agencies announce projects, including decisions approving investment policies and basic information of the project.

The Law on Bidding should specify the mechanism for handling cases where projects proposed by developers, in which the pre-feasibility study report prepared by the developer is considered as the basis for preparing the invitation for expression of interest (and then the invitation for bid, if applicable). Developers who propose projects (and have pre-feasibility reports approved) should be given priority in consideration and selection of developers.