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SEMINAR "THE ROLE OF ENTERPRISES IN THE LAW ON PROMULGATION OF LEGAL DOCUMENTS"



On August 13, 2014, EPLegal took part in a seminar organized by Vietnam Chamber of Commerce and Industry (VCCI), the Ministry of Justice and the Public Participation and Accountability Facilitation Fund on "The role of enterprises in the Law on Promulgation of Legal Documents".

Law on Promulgation of Legal Documents was first issued by the National Assembly in 1996, amended and supplemented in 2002, and wholly amended in 2008, accordingly, the process of promulgation of Legal Documents has been improved to be more explicit. However, in fact, the quality of Legal Documents still remain restricted and inadequate. Thus, Law on Promulgation of Legal Documents (revised) has been drafted with big amendments, consisting of 16 Chapters, 158 Articles (add 4 more articles in comparison with The Law in 2008). This Draft prescribes the principles, authority, process, procedures of building, issuing and enforcing Legal documents, the responsibilities of the state agencies, organizations, individuals in building and enforcing Legal documents. The seminar captured the attention of many organizations, enterprises/associations from many fields, experts, lawyers and researchers.

The ideas raised during the seminar originated from the practice implementation of laws and study experience. They are meaningful for the Drafting Board to complete the draft Law, to ensure the logicity, obviousness, comprehensiveness, feasibility of the Law and legitimate benefits for its subjects.

Legal Updates

1/ Circular No. 34/2014/TT-NHNN of the State Bank of Vietnam guiding the management of the deposit of the international travel enterprise

The international travel enterprises are allowed to withdraw from the deposit accounts. The enterprises have to return that sum of money into such accounts within 30 days as from the date of withdrawal; after this period, if the deposit amount in the account doesnot reach the amount as specified by laws, the bank shall promptly notify the Ministry of Culture, Sports and Tourism to take further action to remedy.

The deposit shall be maintained during throughout the operation duration of the international travel enterprises. The interest on the deposit balance shall be paid by the bank

with the interest rate agreed by both parties in accordance with the provisions on the interest rate applicable to VND deposit of the State Bank of Vietnam in each period. On the basis of the agreed interest rate of the deposit amount, the bank shall calculate the interest for the deposit balance and transfer into accounts as required by the relevant enterprises or pay to the enterprises in cash.

2/ Circular No. 36/2014/TT-NHNN of the State Bank of Vietnam stipulating minimum safety limits and ratios for transactions performed by credit institutions and branches of foreign banks

Commercial banks, cooperative banks and branches of foreign banks are allowed to use up to 60% of short-term

capital for medium and long term loans; whereas this ratio for non-bank credit institutions is 200%.

Besides, the amount of capital contribution, share purchase of a commercial bank, financial company and its subsidiaries, associate firm into an enterprise does not exceed 11% of the charter capital of such enterprise. The total amount of capital contribution, share purchase of a commercial bank into an enterprise (including allocated and contributed capital amounts granted to subsidiaries and associate firms of that commercial bank) does not exceed 40% of charter capital and reserve funds of that commercial bank; such limit for the financial company is 60% of the charter capital and reserve funds of the financial company.

In addition, credit institutions and branches of foreign banks (exclusive of financial and financial leasing companies) must maintain the loan-to-deposit ratio as follows: state-owned commercial banks, branches of foreign banks: 90%; cooperative banks, joint-stock commercial banks, joint venture banks and wholly foreign-owned banks: 80%. As regards credit institutions and branches of foreign banks that have been newly established, within the first 3 years of their operations, the State Bank's Governor shall determine specific ratio different from the above-mentioned ratios. Foreign commercial banks, cooperative banks and branches of foreign banks shall not have to comply with above mentioned loan-to-deposit ratio if the amount of charter capital, allocated funds retained after making investment in, purchasing fixed assets, contributing capital and buying stocks stays greater than the outstanding loan.

3/ Decree No. 105/2014/ND-CP of the Government providing details and directives on the implementation of several articles of the Law on Health Insurance

From 01/01/2015, the rate of monthly health insurance contribution of the female employees in their maternity leaves from work shall be 4.5% of monthly salary that they receive before taking their maternity leave; besides, employees entitled to paid sick leaves from work for a period of more than 14 days off in a month shall be exempt from health insurance contribution but still eligible to enjoy the entitlement to their health insurance benefits. Employees sent abroad for study or business trips shall be exempt from health insurance contribution; such period shall be recorded as their term of health insurance contribution until the time they receive the decision on return made by their employers.

The Decree also stipulates the subsidization rate for health insurance contributions for several subjects. The members of nearly-poor families are entitled to be subsidized 100% of health insurance contributions within 5 years after such families escape from poverty. Where members of nearly-poor families which have escaped from poverty before January 1, 2015 but the span ranging from the poverty escape to January 1, 2015 is less than 05 years, the residual subsidization time shall be at least 01 year; the learner, students shall be subsidized 30% of health insurance contributions.

Where the holders of health insurance cards take the medical care provided by a healthcare provider but their health insurance cards have expired, their medical expenses incurred until they are discharged from the hospital or finish their outpatient treatment shall be covered within the limit on insurance benefits and coverage rates; the persons participating in the health insurance are hospitalized before January 01, 2015 but have been discharged from the hospital since January 01, 2015, their medical expenses shall be covered within the limit on insurance benefits and coverage rates in accordance with the regulations set out in the Law amending and supplementing the Health Insurance Law.

4/ Circular No. 30/2014/TT-NHNN of the State Bank of Vietnam providing for the entrustment operation and entrustment taking of credit institutions, foreign bank's branches

The credit institutions (excluding financial companies), foreign bank's branches are not permitted for entrustment, entrustment taking for production business projects. Besides, the credit institutions, foreign bank's branches are not permitted taking entrustments, entrusting for capital contribution, share purchase. The financial companies, financial leasing companies, cooperative banks, people's credit fund, micro financial organizations are not permitted for entrustment, entrustment taking for the purchase of enterprise bonds.

Also in accordance with this Circular, entrustment shall be made in writing, in conformity with simple regulations such as: the entrusted party shall not be authorized to re-entrust to a third party; the hand-over of entrusting capital must be in conformity with the progress of the entrustment contents; the entrusted party being credit institutions, foreign bank's branches shall not classify debts, set up provisions and use provisions to handle with risks...

For the entrustment operations and entrustment taking, the credit institutions, foreign bank's branches must have internal regulations on management of entrustment operations and entrustment taking conformity with the nature, operation scale; must have the risk management department, facilities, qualified staff to ensure the performance of the works... In case the credit institutions, foreign bank's taking entrustment from organizations, individuals to invest in production project, business, financial leasing, lending, they must ensure that the entrusting party being an organization, individual have no outstanding debt at the time of entrustment.

5/ Circular No. 41/2014/TT-BCT of the Ministry of on the basis, procedures for identification of foreign workers reassigned inside the enterprises operating within 11 service sectors in vietnam's WTO commitments on services, who are exempt from work permits

The basis for identification of foreign workers being managers, executive officers, experts, skilled workers reassigned inside an enterprise operating within 11 service sectors in Vietnam's WTO commitments on services, who are exempt from work permits includes.

The foreign enterprise has established a commercial presence in Vietnam; the commercial presence in Vietnam of the foreign enterprise operates within mentioned 11 service sectors; the foreign worker that has been employed by the foreign enterprise for at least 12 months before being sent to work at the company's commercial presence in Vietnam

Documents which the foreign workers must submit to The Department of Labor, War Invalids and Social Affairs shall include: a document issued by the foreign enterprise assigning such person to work at the enterprise's commercial presence in Vietnam and specifying the work duration; a certificate confirming the position of manager, executive officer, expert, or skilled worker; a document proving that the foreign worker has been employed by the foreign enterprise for at least 12 months before being sent to work at the company's commercial presence in Vietnam; a document proving that the commercial presence in Vietnam of the foreign enterprise engages in the 11 service sectors (Investment License, Certificate of Investment, Certificate of Business Registration,...). The Department of Labor, War Invalids and Social Affairs shall consider such

documents and determine the foreign workers' eligibility for exemption from work permits.

6/ Circular No. 151/2014/TT-BTC dated October 10, 2014 of the Ministry of Finance Guiding the implementation of the Government's Decree No. 91/2014/ND-CP dated October 1, 2014, amending, supplementing several articles of decrees on taxes

The persons who were transferred real estates before July 1, 1994 are not required to pay personal income tax. The persons who were transferred real estates from July 1, 1994 to before January 1, 2009 and submit valid dossiers of application for land use right or house and other land-attached asset ownership certificates on January 1, 2009 or after and obtain approval of a competent state agency, shall pay personal income tax only one time.

With regard to purchase of goods/services valued at or more than VND 20 million under an instalment plan or deferred payment plan, the business entities shall declare and deduct the input VAT according to the sale contract, VAT invoice, and bank transfer documents. If the bank transfer receipt is not available because the payment is not due, the business entities may declare and deduct the input VAT. If the bank transfer receipt is not available at the time of payment, the business entities must declare and decrease the deducted VAT in proportion to value of goods or services without bank transfer receipt in the tax period incurred the cash payment.

If the taxpayer's business operation is suspended and tax is not incurred, the tax declaration for the suspension period might not be submitted. If the taxpayer's business is not suspended over the whole calendar year or tax year, the annual declaration must be submitted.

7/ Law on amendment to the Tax Law of the National Assembly, No. 71/2014/QH13

Income from freelance works of individuals having licenses or practicing certificates as prescribed by law with the income of VND 100 million per year or less and income from casino winning shall not be the taxable incomes as from January 1, 2015.

Sole traders shall pay personal income tax directly on their incomes; tax rates shall depend on the fields, business lines of the individuals. Accordingly, the tax rate for distribution, supply of goods shall be 0.5%. The tax rates for service

provision, construction exclusive of building materials; asset lease, insurance agent, lottery brokerage, multi-level trading; manufacturing, transport, services associated with goods, construction inclusive of building materials and other business activities shall be 2%; 5%; 1,5% and 1% respectively.

or the incomes from capital investment, royalties, franchise; from prize winning, inheritance, gifts; from real estate transfer and from securities transfer, the tax rate shall respectively be 5%; 10%; 2% and 0,1%.

From January 1, 2015, if a taxpayer pays tax after the stipulated deadline, extended deadline, or the deadline written in the notification or tax decision issued by a tax authority, such taxpayer shall pay tax in full and a late payment interest at 0.05% per day on the tax paid behind schedule.

8/ The Law on Real estate Trading of the National Assembly, No. 66/2014/QH13

From July 01, 2015, any organization or individual wish to conduct real estate trading shall set up enterprises or cooperatives and have legal capital not less than VND 20 billion (instead of VND 06 billion as before).

The organization, household and individual who conduct small-scale or irregular transactions of real estate sale, transfer, lease-out, and lease purchase shall not be required to set up enterprises, but they must make tax declaration and tax payment as prescribed.

Especially, the Law also stipulates for Guarantee on off-the-plan building sale or lease purchase. Accordingly, the investor's financial obligations must be guaranteed by a competent commercial bank in case the investor fails to transfer the building on schedule as committed to the customers before the investor sell or lease purchase off-the-plan buildings. The list of competent commercial banks which may give guarantee on the off-the-plan real estate trading shall be issued by the State bank of Vietnam.

Besides, this Law also allow any individual to provide real estate brokerage services independently provided that he obtains a real estate brokerage certificate; has full capacity for civil acts; obtains at least upper-secondary graduation degree; has passed examination in real estate brokerage knowledge. The real estate brokerage certificate's duration is 05 years. The real estate brokerage certificate granted before the effective date of this Law shall stay in force for 05

years from July 1, 2015; at the end of this period, the broker wanting to obtain the certificate must meet the requirements in this Law.

9/ Law on Housing of the National Assembly, No. 65/2014/QH13

The investor of the construction projects of social house is advanced an amount from the house buyer in accordance with the completion proportion of the construction and progress of the project as agreed in the contract of sale, but the total advance shall not exceed 70% of the value of the house before the handover to the buyer and not exceed 95% of the value of the house before the certificate of the house is granted to the buyer.

The investor of the construction projects of commercial house is required by law to conduct the procedures to request the competent authority to grant the certificate of house to the buyer, the tenant of the house within 50 days from the date of delivery of the house to the buyer or from the time the buyer has paid in full the amount as agreed, unless the buyer, the tenant voluntarily conduct the procedures for issuance of such certificate.

Foreign organizations, individuals who are allowed to enter into Vietnam are permitted to buy, lease, accept the donation, inheritance and own up to 30% of the apartments in an apartment building, 250 private houses in an area with a population equivalent to the population of administrative unit of commune-level. In addition, foreign individuals are allowed to own houses in a maximum of 50 years from the date of issuance of the certificate and this duration may be extended if required; the individual married to a Vietnamese citizen or an overseas Vietnamese is allowed to own the house stably in long-term duration.

10/ Law on Organization of the People's Court, No. 62/2014/QH13

Beside the Supreme People's Court, provincial-level People's Court, district-level People's Court, Military Court, from June 2015, the system of people's court in Vietnam will have Superior People's Court.

The Superior People's Court shall have the competence to conduct the appellate trials of cases with the first-instance judgements, decisions of provincial-level People's Court, which have not yet taken legal effect but have been appealed and/or protested against; supervisory, review trials of cases with judgements, decisions which have

already taken legal effect but been protested against according to the provisions of the procedural law.

The organizational structure of the Superior People's Court is composed of: The Committee of Judges of the Superior People's Court; the criminal court, civil court, economic court, labor court, administrative court, family and minor court, the assisting apparatus. The Superior People's Court shall have the chief judge, deputy-chief judges, judges, appraisers, court clerk, other employee.

The law also supplement the functions, tasks, powers of the people's court. Particularly, when the court adjudicates the criminal cases, it is entitled to check, verify, collect, supplement evidences in accordance with the Code of Criminal Procedure if necessary, beside returning the files asking for additional investigation of the Procuracy or asking for the supplement evidence, document of the Procuracy. It is a new stipulation that the first term of the judges shall be five years; in case such judges are reappointed or appointed to other level of judges, the next term shall be ten years.

11/ Law on Citizen Identification card of the National Assembly, No. 59/2014/QH13

From January 1, 2016, every Vietnamese citizen who are full fourteen years old or older shall be granted the citizen identification card (the new ID card).

The Citizen ID card is Vietnamese citizen's personal paper, which aims to facilitate the performance of the citizen's performance of transactions on the Vietnamese territory; shall be used to replace the Passport in case Vietnam and other foreign country are parties of the treaties specifying that the citizen of one party can use the Citizen ID card instead of the passport when entering the other's territory.

The front side of the Citizen ID card shall incorporate the national emblem of the Socialist Republic of Vietnam, the words: "Cong Hoa Xa Hoi Chu Nghia Viet Nam, Doc lap – Tu do – Hanh phuc"; "Can cuoc cong dan" (Citizen ID card); photo, card number, birth name and family name, birth date, sex, nationality, hometown, residence place and the expiry date. The back side shall carry the encoded information; finger print, identification particular; date of issuance; full name, position and signature of the issuer and the stamp carrying image of national emblem.

The (old) ID cards issued before January 1, 2016 shall be used till the expire date as prescribe; and shall be changed to the

Citizen ID Card if required by such person. All the forms requiring the information from the ID Card shall be used till December 31, 2019.

12/ Law on Social Insurance of the National Assembly, No. 58/2014/QH13

From 2016, male labourer who pays social insurance premiums shall be entitle to a 05 working day leave when his wife give birth; a 07 working day leave when his wife give birth on surgery or give birth of less than 32 weeks; a 10 working day leave in case his wife give birth to twin or more infants (such male labourer shall enjoy an additional leave of thirty days for each infant from the third) and a 14 working day leave in case his wife give birth to twin or more infants on surgery.

The law also supplements subjects who have to participate in compulsory social insurance, including persons working under contracts of a term from 01 – 03 months and the foreign labourers working in Vietnam having work permit or certificate or license; these provisions shall take effect from 2018. Besides, persons entitled to participate in voluntary social insurance are those who are full fifteen years old or older.

The monthly retirement pension is also adjusted by this law. Particularly, from 2016 till before of 2018, the monthly retirement pension of the laborers is equivalent to 45% of the average monthly salary or remuneration on which social insurance premiums are based, corresponding to fifteen years of paying social insurance premiums, which shall be added with 2% for men or 3% for women for each additional year of paying social insurance premiums; the maximum rate is equivalent to 75%. From 2018, the monthly retirement pension 45% of the average monthly salary or remuneration on which social insurance premiums are based, corresponding to fifteen years of paying social insurance premiums if female labourers retire in and after 2018; corresponding to 16 years of paying social insurance premiums if male labourers retire in 2018; corresponding to 17 years of paying social insurance premiums if male labourers retire in 2019; corresponding to 18 years of paying social insurance premiums if male labourers retire in 2020; corresponding to 19 years of paying social insurance premiums if male labourers retire in 2021 and corresponding to 20 years of paying social insurance premiums if male labourers retire in 2022.

THE LAW ON ENTERPRISE 2014 & THE LAW ON INVESTMENT 2014

The new Law on Enterprises (LOE) and the new Law on Investment (LOI) which have several hopefully important changes were adopted by the National Assembly on November 26, 2014. Both laws will take effect on July 1, 2015 and are expected to give a strong boost to the country's business environment.



1. The new Law on Enterprises

The legislator kept the suitable provisions of the current LOE and also amended, supplemented in order to eliminate the limitation, inadequacy of the current LOE and create the favourable business environment in Vietnam.

Compared with the Law on Enterprise in 2005, the Law on Enterprise in 2014 has 10 chapters and 213 articles, increasing 41 articles; Chapter IV provides for State Enterprises with 22 articles that are totally new; Article 10 provides totally new criterias, rights and obligations for social enterprises. These regulations represented the spirit of the Constitution 2013 about the freedom in business of citizens and enterprises, according to which, individuals and enterprises are free to invest, business in the fields, sectors that the law does not prohibit. In general, the Law on Enterprise in 2014 was built on the basis of open-mindedness by stipulating only for the most common, oriented, suggested problems about the establishment, management, reorganization, dissolution and other related activities of the enterprises. The issues in detail and specific manners for implementation of such problems shall be decided, committed, agreed by the enterprises depending on their operations and in accordance with the provisions of the law. Particularly, the significant innovation of the Law of Enterprise 2014 is as follows:

About the business registration

The modified Law on Enterprise separated the business registration from the applying for sub-license for the conditional business lines at the time registering the enterprise. Specifically, the dossiers for business registration shall not include the documents certifying the legal capital (for business lines requiring legal capital) and practice certificates (for business lines requiring practice certificates). Another new point, the modified Law on Enterprises, along with the Law on Investment 2014, was officially abolished the provision that the Investment Certificate may be used as Business Registration Certificate. Thus, in case the foreign investors wish to establish enterprise in Vietnam, the dossiers for business registration shall include the Investment Certificate.

The Law on Enterprise 2014 added the new provision that the business registration office may require the applicant to submit the criminal records where necessary to verify the capability of the applicant to set up and manage the enterprises under the provisions of law. The Law on Enterprise 2014 Business Law also shorten the time of consideration and issuance or re-issuance of the Business Registration Certificate to 03 working days from the date of receipt of a valid dossier.

About the business lines of the enterprise

The Law on Enterprises 2014 removed the regulation that it is the obligation of the enterprise to conduct business activities within business lines recorded in the Business Registration Certificate. This Law has only provided for the satisfaction of the enterprise to the business conditions required by law and maintain such satisfaction during conducting conditional business lines. Besides, under the new Law on Enterprises, the Business Registration Certificate does not incorporate information of the business lines of the enterprise. These provisions have created a legal framework for the enterprise to conduct the business lines that the law does not prohibit instead of the registered business lines as provided by the current law, which is considered as the realization of the freedom in business under the provisions of the Constitution 2013.



About the legal representative of the enterprise

The amended Law of Enterprise 2014 has several new provisions on the legal representative of the enterprise. Accordingly, the legal representative of the enterprise is the person who represents the enterprise to exercise the rights and obligations arising from the transactions of the enterprise, act as plaintiff, defendant, party having the related rights and obligations before the arbitration, the Court and other rights and obligations as prescribed by law. The limited liability company and the joint stock company may have one or more legal representatives providing that the number of, the title and the rights, the obligations of each legal representative are specified in the company's charter.

A significant reform of the corporate seal

On the issue of corporate seal, under the Law on Enterprise 2005, the enterprise shall have one seal (in case of necessity, an enterprise can have a duplicate of its seal if it obtains approval from the seal-issuing agency), but according to the new Law on Enterprises 2014, the enterprise has the right to decide on the form, the number of and the content of its corporate seal; besides, the enterprise are obliged to notify the business registration office of its stamps to publicize on national business registration portal. This regulation helps the enterprise save cost, time. The seal shall be used in cases prescribed by law or the parties of the transaction have agreed on the use of seal. In the

development of electronic transaction, the seal is no longer necessary. This important reform are fully consistent with the general trend of the world.

In addition, the amended Law on Enterprise also legalized the use of the tax code as the enterprise identification number, specified the conversion of each type of the enterprises, did not require the same type of company for merge & acquisition division, separation and provided clearly for the rights and obligations, responsibilities of the parties,.etc. This important amendment will help boost the appealing M&A market in Vietnam.

2. The new Law on Investment 2014

The new Law on Investment (composed of 7 chapters, 76 articles) with important changes, will contribute the legal basis for a fair business environment and hopefully create a new wave of investment into Vietnam.

About approaching method

The biggest change to the Law on Investment is the creation of an "approaching method." Previously, the law stated which fields were allowed to be invested in. The new approaching method, instead, only clarifies sectors banned from investment. This change together with the reforms in the Law on Enterprise were done in the spirit of the new constitution, which aim to free citizens and firms to engage with, develop and grow businesses. Accordingly, the revised Law on Investment cut the number of prohibited business lines from 51 to 6. Citizens and firms are therefore free to invest in sectors not prohibited by the law.



About the procedures for the issuance of the investment certificate

The Law on Investment 2014 expanded and specified the investment projects where the investment registration are not required, which includes the investment projects of the domestic investors; the investment projects in the form of capital contribution, purchase of shares of the economic organization; the investment projects of the economic organization with foreign owned capital where the foreign investors hold less than 51% of the charter capital or the investment projects of the general partnership with minority of its partner is a foreign individual, etc.

