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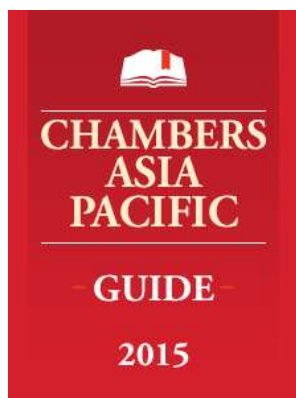
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**EPLLEGAL HAS BEEN RANKED IN CHAMBER AND PARTNERS GUIDE 2015**

**IN THE THIRD CONSECUTIVE YEAR**



The Chambers Guides have been ranking the best law firms and lawyers since 1990 and now cover 185 jurisdictions throughout the world.

It ranks both lawyers and law firms based on the research of 150 full-time editors and researchers employed at its head office in London. Beside using information submitted by law firms, these researchers who are trained in the techniques of investigative research conduct in-depth face-to-face or telephone interviews for the consideration and assessment. This rigorous assessment process is to ensure that only the most deserving firms and lawyers will gain a place in the Chambers guide.

In Chambers Asia-Pacific Guides this year, EPLegal with its outstanding performance has been ranked in Band 3 (in the area of “Projects, Infrastructure & Energy”). Mr Tony Nguyen – Managing Director of EPLegal who is lauded by clients for his “in-depth knowledge of the oil and gas industry in Vietnam” has been ranked in Band 2 of the same area.

**SEMINAR "COMMENT FOR THE DRAFT OF THE DECREE ON BUSINESS REGISTRATION AND THE DRAFT OF DECREES GUIDING THE LAW ON ENTERPRISES AND THE LAW ON INVESTMENT"**

On April 22, 2015, EPLegal took part in a seminar organized by Vietnam Business Forum (VBF) and the Ministry of Planning and Investment on “Comment for the Draft of the Decree on Business Registration and the Draft of Decrees guiding the Law on Enterprises and the Law on Investment”.



The Law on Enterprises (LOE) and the 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 believed to give a strong boost to the country's business environment. The Decrees guiding these laws are expected to detail and realize the change policies of the

new laws. The seminar, therefore, captured the attention of many organizations, enterprises/associations, experts, lawyers and researchers. Mr. Tony Nguyen - Managing Director of EPLegal gave his comments on the draft decree on business registration and the draft decree guiding the Law on Enterprises regarding the business lines, the company's stamps, and the procedures to register and change the content of business registration.

The ideas raised during the seminar originated from business practice and study experience. They are meaningful for the Drafting Board to complete the drafts, to ensure the logicity, obviousness, comprehensiveness, feasibility of the Decrees guiding the new laws.

## Legal Updates

### **1/ Decree No. 30/2015/ND-CP providing details on implementation of several articles regarding selecting the investor of the Law on Bidding**

In case of applying the method of service price, the investors which are not the preferential entities shall add an amount equivalent to 5% of the service price to their own service price to compare, rank; in case of applying the method of State-contributed capital, the investor which are not the preferential entities shall add an amount equivalent to 5% of proposed State-contributed capital to the State-contributed capital proposed by such investors in order to compare, rank.

In case of applying the method of social benefit, state benefit, the investors which are the preferential entities shall add an amount equivalent to 5% of the amount submitted to State Budget to the amount submitted to the State Budget proposed by such investors to compare, rank; in case of applying the combination method, the investors shall enjoy the preferential treatment according to the proportion of the combination method with the condition that total value of the preferences not exceed 5%.

Towards the domestic bidding, the maximum selling price of the bidding invitation dossier is VND 20m/set, of the dossiers of invitation for pre-qualification is VND 5m/set; towards the international bidding, the prespective prices are VND 30m/set and VND 10m/set. The expense of preparing the dossiers of invitation for pre-qualification; of appraising the dossiers of invitation for pre-qualification, of the accessing the dossiers of invitation for pre-qualification and appraising the pre-qualification result are maximized by VND 100m; VND 50m; VND 100m and VND 50m...

### **2/ Decree No. 29/2015/ND-CP providing details and guidance on implementation of several articles of Law on Notarization**

The notarization practice organizations have to take out professional liability insurance for their notaries within 60 days in the latest, from the day of practice registration of such notaries, at the rate agreed by the insurers and the notarization practice organizations or the socio-professional organizations of the notaries (in case of the attorney), but the minimum rate shall be VND 3m/year for each notary.

The insurers shall indemnify the individuals executed the notarized insurance contract and the individuals, organizations related to such contracts for the material damages. The damages has to be occurred by the notaries within the insurance period; in case the notaries collude to deceive the document's content, the documents notarized; facilitate the party of contracts, transactions to perform the factitious transaction,..., the insurers is not entitled to compensate and indemnify.

Regulations for the auction of transformation the notarial bureaus: the bidder took over the transformational notarial bureaus has to be a notary practicing over the province where the notarial bureau to be transformed locates; the tentative head of notarial bureau has to have more than 2 years of experience. In particular, the notary who is being the head or the partner of a notarial bureau shall be not entitled to take part in the auction.

The notarial bureaus established on the areas with difficult socio-economic conditions; areas with special difficult socio-economic conditions will be enjoyed the preferential

treatment such as favor fee rate of office hire, support in office, facilities in the first 3 years of operation and other favour method in tax according to law.

### **3/ Decree No. 28/2015/ND-CP providing details on the implementation of several articles of the Employment Law on unemployment insurance**

The employers shall prepare and submit the dossier of unemployment insurance for the employees within 30 days after the effective date of the labour contract or working contract of such employees.

In case that the employees entered into the casual labour contracts or regular works with terms from 3 months to fewer than 12 months before January 1, 2015 are performing such contracts, the employers shall effect the unemployment insurance for such employees if the remaining periods of the contracts are more than 03 months.

Towards the employees who take the maternity leave or sick leave with terms from or more than 14 days, receive the social insurance allowance only (not receive the salary), are in the suspension time of the labour contract or working contract, shall not buy the unemployment insurance during such periods.

### **4/ Decision No. 528/QD-BHXH provides regulations for electronic transactions in the implementation of procedures for social insurance, health insurance, unemployment insurance; procedures for social insurance and health insurance card**

The organizations submit the Social Insurance dossier via e-portal of Viet Nam Social Insurance or e-transaction website of I-VAN during 24 hours per day and 07 days per week, including Saturday, Sunday, holiday, Tet holiday.

In order to register the electronic transaction method, all organizations, including new-established organizations, organizations which are joining social insurance, medical insurance, voluntary insurance, access the e-portal of Viet Nam Social Insurance and submit the declaration form. Within 3 days, the information management system will automatically grant and activate the transaction account of electronic Social Insurance of such organizations or will send the notice by email if it did not meet the conditions to grant the account.

In case of any changes, supplements of the information of the digital certificate or email address, telephone number or the attention person, within 5 days after changing, supplementing, the organizations will access the e-portal of Viet Nam Social Insurance to declare and submit the changes declaration form, supplements declaration form as provided in Decision No. 08/2015/QD-TTg.

The organizations wants to register via I-VAN will access the e-portal of I-VAN to fill and submit the online declaration form, I-VAN will submit these documents to e-portal of Viet Nam Social Insurance and will revert to such organizations within 2 hours after receipt of the notice from Social Insurance office.

### **5/ Decree No. 12/2015/ND-CP on guidelines for the Law on amendments to Laws, Decrees on taxations**

Personal Income Tax (PIT) arisen out the income of assigning the real estate and stocks will apply only 01 method of calculation: 2% over the assigning price for real estate and 0,2% over sell price for stock.

The benefits in respect of house, power, water and other services (if any) for the house which the employers build to support the employees working in the industrial zone or the house which the employers build in the area with difficult socio-economic conditions, areas with special difficult socio-economic conditions to support the employees will not be the taxable object of PIT from 2015.

Investment projects applying favour tax rate of 20% until end of PIT period of 2015, will apply tax rate of 17% from 2016.

If paying lately the tax than being provided by law, the extension time, period in notice of the administrative tax office, period in the punishment decision of the administrative tax office, will pay fully the tax amount together with the amount for late payment at rate of 0.05% per day over the amount lately paid. The lack amount of tax exposed by investigation, examination or by the tax payer from 01/01/2015, the amount for late payment will apply the rate of 0.05% per day over the amount lately paid.

### **6/ Circular No. 26/2015/TT-BTC guiding the valu-added tax and tax administration in Decree No. 12/2015/ND-CP on guidelines for the Law on amendments to Laws, Decrees on taxations, and amendments to Circular No. 39/2014/TT-BTC on invoices for goods sale and service provision**

As from 2015, if the buyer's name or address on an issued invoice is incorrect but the buyer's TIN is correct, only an adjustment note is required instead of an adjusted invoice.

Other important content is that from January 01, 2015 when a taxpayer receives land use right from another entity, deductible land price when calculating VAT is the price written on the capital contribution contract. If the price for transfer of land use right is lower than the price of contributed land, the former shall apply.

Where a real estate company signs a contract with a household or individual who have a piece of agricultural land to convert it into housing land and such conversion is conformable with regulations of law on land, taxable price shall equal transfer price minus (-) deductible land price. Transfer price is the price for compensation corresponding to the area of agricultural land that is withdrawn under a plan approved by a competent authority.

Also in accordance with this Circular, Taxpayer (both organizations and individuals) engaged in hotel and restaurant business, supermarket business, and other business lines using cash register systems and shopkeeper software to receive payments, they must be connected with tax authorities according to their plan. Especially, when selling goods and services, including those used for trade promotion, advertising, samples, goods and services used for donation, exchange, or paid as salaries except for good internally circulated or internally used to proceed production, the seller must issue invoices.

## **7/ Decree No. 15/2015/ND-CP on investment in the form of public – private - partnership**

Proportion of owned capital of the investor shall be not lower than 15% over total invested capital or is minimized by 10% of the capital amount which exceeds VND 1,500b (if total capital is more than VND 1,500b).

Conditions of selection the PPP investment project: projects proposed by Ministry, provincial people's committee shall be in accordance with the scheme, plan of field, area development and with the plan of the economic – social development of local area; shall be in accordance with the investment field as provided; shall be able to attract and receive the commercial capital, technology, administrative experience of the investment; shall be able to stably, continuously supply products, services which meet the demand of the users, and shall have total invested capital from or more than VND 20b, except for the invested project under O&M contract and the project of agriculture infrastructure...

For the projects proposed by the investors, it has to have the invested capital from or more than VND 20b; shall be able to stably, continuously supply products, services; shall be in accordance with the investment field as provided, etc.; especially, if the investors are the state-owned enterprises, the investors will have to join with other enterprises to propose the projects.

The selections of investors are performed through open bidding or direct appointment of bidding. In case that the feasible study reports or project proposal (for C-Group project) approved by Ministry, provincial people's committee, the investors will enjoy the preferential method during the bidding.



## THE DRAFT DECREE ON BUSINESS REGISTRATION

### REPLACING THE DECREE 43/2010/NĐ-CP

Tony Nguyen – Dung Pham

One of the most noticeable amendments of new Law on Enterprise 2014 is in respect of the enterprise registration procedures along with policies of shortening the registration period, simplifying the dossier and facilitating the establishment process and operation for enterprises. The Decree guiding the Law on Enterprises on business registration will not only detail such amendments, but also realize the change policies of Law on Enterprises 2014. The Draft of such decree (the “Draft”) which has been completed in general has clarified several crucial issues of the new Law on Enterprises. However, the Draft remains lots of legal gaps lead to the difficulties in applying new Law and thus, it is necessary to be amended and modified in a reasonable measurement.

#### 1. Lines of business

Removing the information of business lines in the Business Registration Certificate (the “BRC”) is one of the most important amendments in the Law on Enterprises 2014, which practically recognize the freedom of the enterprises in business under the provisions of the Constitution 2013. However, there are still confused regulations in Article 7 of the Draft with respect to the declaration of the business lines which challenge the enterprises when registering to set up enterprise, reporting the supplement or change of the business lines or requesting for changing to the BRC.



Particularly, as prescribed in Article 7 of the Draft, the enterprises have to “choose the 4<sup>th</sup> level economic sub-lines of business from the System of economic lines of Vietnam and record its code number in the letter requesting for business registration.... The business registration office shall then conduct a comparison and record the line of business, including its code number on the National database on enterprise registration”.

In the practice of the Law on Enterprises 2005, the system of economic lines of Vietnam has not covered the business lines which led to the events that the enterprises as well as the state agencies cannot identify the code number of the business lines which the enterprises intended to register. Besides, the differences in the understanding and application of

the regulation on the recording of the business lines amongst the business registration offices, between the business registration offices and the enterprises also make it difficult for the enterprises in business registration. Thus, the recording and coding the business lines has become an obstacle in business registration of the old Law on Enterprises.

Article 7 of the Draft reused the way of declaration of the business lines provided for in Article 7 of the Decree No. 43/2010/ND-CP on the business registration, did not show the above mentioned innovation of the new Law on Enterprises.

Article 7.2 of the Draft indicated that the recording of business lines on the BRC only has significance for statistic work, which does not correspond with the Article 29 of the Law on Enterprises – *“the BRC of the enterprise shall not incorporate the information of the business lines”*.

Article 7.4 and 7.5 of the Draft has resolved the problems related to the business lines which are not listed in the system of economic lines of Vietnam: in case the business lines not listed in the system of economic lines of Vietnam but are provided for in other legal documents, the declaration of the business lines shall be completed in accordance with the regulation in such legal documents; in case the business lines does not appear in the system of economic lines of Vietnam nor in any other legal documents, the state competent agency shall take consideration to add new code numbers for such business lines into the system of economic lines. These regulations, nonetheless, have not absolutely resolved all the problems which arose or shall arise in the reality when there is no specialized legal document instructing how to record the business lines to be in accordance with the system of economic lines. Moreover, there is apparent inconsistency in the way by which the specialized legal documents name the business lines, which make the enterprises puzzled and cannot correctly record their business lines. Article 7 of the Draft has not clarified how the enterprises will handle if their business lines does not appear in the system of economic lines of Vietnam nor in any other legal documents.

Thus, the regulations on business lines in the Draft, as a result, need adjusting and amending prudently and totally to simplify the procedures and facilitate the market entry of the enterprises.

## **2. The legal representative of the enterprise**

A remarkable amendment of the Law on Enterprise 2014 is that *“the limited liability company and the joint stock company may have one or more legal representatives”*, however, the new Law on Enterprise did not have any regulation showing if all the legal representatives have to be registered to the business office and indicated on the BRC. The Draft has also failed to clarify these vague points. Accordingly, the Article 48 of the Draft only stipulates the procedure to change the legal representative but not the procedures to add more or cut down the legal representative. Obviously, there is a legal gap which is going to challenge the enterprises in their establishment and operation.

### **3. Business registration dossiers for limited liability companies, shareholding companies and partnership companies**

In case the companies shall be established by or participated to establish by the foreign investor in accordance with the law on investment, regarding the dossiers which the foreign investor shall have to submit for business registration as prescribed in the Article 25, 26 of the Draft, the documents listed in paragraph a, b of the Sub-article 4 has already be submitted by the investor in the process applying for the Investment Certificate. Moreover, the re-submission of the legalized incorporation certificate of the investor may cause trouble to the investor, especially in case the legalized incorporation certificate become invalid at the time of submission for business registration because of the long time waiting for the investment certificate to be issued. Consequently, it is necessary to amend the Draft to allow the investor who has been issued the investment registration certificate to submit the copy of such investment registration certificate without other documents as requested in paragraph a, b of the Sub-article 4 of the Article 25 and the Article 26.



### **4. Registration dossier for change of member of limited liabilities company with two or more members, Registration for change of owner of limited liability company with one member**

As stipulated in the Article 50, 51 of the Draft, these dossiers shall include *“the documents evidencing the completion of the assignment certified by the company”*. This provision appearing in several similar articles, in fact, caused adversity to the enterprises. The business registration office may have various opinions on this kind of document, and they usually require the assignee to fully pay to the assignor. As a matter of fact, the assignee shall not agree to pay in full before the risky registration procedure have been completed. The Draft, therefore, need to be adjusted to allow the parties to decide the term and method of payment at their discretion and the payment to be separated from the administrative procedure.

### **5. Obligation, power of the business registration office**

As prescribed at Article 15.7, Article 16.5 in the Draft, the business registration office is entitled *“to request an enterprise/household business to temporarily suspend conduct of business in conditional line of business upon discovery that such enterprise fails to fully satisfy the conditions stipulated by law, at the same time to report to the competent State agency to resolve in accordance with law”*.



This regulation is beyond the competence of the business registration office. Particularly, as stipulated in Article 209 of the Law on Enterprise 2014, the business registration office are not entitled *“to request an enterprise/household business to temporarily suspend conduct of business in conditional line of business”*.

Such authority of the business registration office also overlaps the authority of the specialized competent agencies and contradicts the Article 7.8 of the Draft Decree (*“The state management of the conditional lines of business and inspection of the compliance by enterprises with such conditions shall fall within the jurisdiction of specialized*



*competent agency in accordance with specialized branch law”*). Logically, the scope of inspection obligation of the business registration office towards the enterprises only includes the issues related to the business registration contents but not other issues (such as the conditions to conduct the conditional lines of business). In the current administration system, there are specialized competent agencies whose obligation is to inspect the enterprises conducting business in the field under the control of such agency (including inspecting the fully satisfaction of the conditions

to conduct the conditional lines of business under the management of such agency). The Decree should only be as follows: *“The business registration office shall report to the competent state agency to resolve in accordance with law upon discovery that such enterprise fails to fully satisfy the conditions stipulated by law.”*

