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Investment Law in Vietnam Regulating and Ensuring Business Investment Activities

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Abstract: Each country has each own Investment Law. The Law on Investment 2020 helps to increase the consistency and synchronism of the legal system on investment and business; meet the requirements of mobilizing and effectively using resources for development investment.

Firstly, improve the quality and efficiency of attracting domestic and foreign investment resources in accordance with the planning and development orientations of sectors, fields and localities on the basis of ensuring security and defense. Sustainable development and environmental protection.

This study shows that these regulations have created more favorable conditions for investment registration activities; cutting costs and administrative procedures in investment and business activities. Completing the mechanism of decentralization of management between central and local agencies on the basis of ensuring the effectiveness and efficiency of state management of investment and business activities

Keywords: Regulations, Business, Investment Law, Articles.

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INTRODUCTION

Ensuring property ownership for investors and Sectors banned from business investment, Lines of conditional investment and business as prescribed in Article 10 of the Law on Investment 2020:

Article 6. Sectors and trades banned from business investment

1. The following business investment activities are prohibited:
 - a. Trading in narcotic substances specified in Appendix I of this Law;
 - b. Trading in chemicals and minerals specified in Appendix II of this Law;
 - c. Trading in specimens of wild plant and animal species extracted from nature specified in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; specimens of endangered, precious and rare species of forest plants, animals and aquatic animals of Group I, derived from natural exploitation as specified in Appendix III of this Law;
 - d. Doing business in prostitution;
 - e. Buying and selling human beings, tissues, corpses, human body parts, human fetuses;
 - f. Business activities related to human cloning;
 - g. Trade in firecrackers;
 - h. Debt collection service business.
2. The production and use of the products specified at Points a, b and c, Clause 1 of this Article in analysis, testing, scientific research, healthcare,

pharmaceutical production, criminal investigation, and insurance. National defense and security protection shall comply with the Government's regulations.

Article 7. Lines of conditional investment and business

1. Lines of business investment with conditions are those in which the performance of business investment activities in such lines and trades must satisfy necessary conditions for reasons of national defense, security or order, self, social safety, social ethics, community health.
2. The list of conditional business lines and industries is specified in Appendix IV of this Law.
3. Conditions for business investment in the industries and trades specified in Clause 2 of this Article are prescribed in laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly Standing Committee, and decrees of the Government, and international treaties to which the Socialist Republic of Vietnam is a signatory. Ministries, ministerial-level agencies, People's Councils, People's Committees at all levels, other agencies, organizations and individuals may not issue regulations on business investment conditions.
4. Conditions for business investment must be regulated in accordance with the reasons specified in Clause 1 of this Article and must ensure publicity, transparency, objectivity, saving time and compliance costs of investors.

METHODOLOGY

This study uses mainly qualitative analysis with case in Vietnam, also combined with synthesis and inductive methods.

MAIN FINDINGS

According to Article 5 of the Investment Law 2020, the business investment policy for foreign investors is as follows:

Article 9. Industry, trade and market access conditions for foreign investors

1. *Foreign investors may apply market access conditions as prescribed for domestic investors, except for the case specified in Clause 2 of this Article.*
2. *Pursuant to laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly Standing Committee, decrees of the Government and international treaties to which the Socialist Republic of Vietnam is a signatory, the Government The Government shall announce the List of industries and trades restricted from market access for foreign investors, including:*
 - a) *Sectors and trades that have not yet had access to the market;*
 - b) *Lines and trades with conditional market access.*
3. *Market access conditions for foreign investors specified in the List of industries and trades restricted from market access for foreign investors include:*
 - a) *Rate of ownership of charter capital of foreign investors in economic organizations;*
 - b) *Form of investment;*
 - c) *Scope of investment activities;*
 - d) *Investor's capacity; partners participating in investment activities;*
 - e) *Other conditions as prescribed in laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly Standing Committee, decrees of the Government and international treaties to which the Socialist Republic of Vietnam is governed. Is a member.*
4. *The Government shall detail this Article.*

INVESTMENT GUARANTEE

Article 10. Property ownership guarantee

1. Lawful assets of investors shall not be nationalized or confiscated by administrative measures.
2. In case the State requisitions or requisitions property for reasons of national defense and security or in the national interest, in a state of emergency, and for natural disaster prevention and control, the investor shall be paid and compensated in accordance with regulations. Provisions of law on requisition and requisition of property and other relevant provisions of law.

Article 11. Assurance of business investment activities

1. The State does not force investors to fulfill the following requirements:
 - a. Prioritize the purchase and use of domestic goods and services or must purchase and use goods and services from domestic manufacturers or service providers;
 - b. Export of goods or services reaches a certain rate; restricting the quantity, value and type of goods and services exported or produced or supplied domestically;
 - c. Import goods with quantity and value corresponding to the quantity and value of exported goods or must balance foreign currency from export sources to meet import demand;
 - d. Achieve the localization rate for domestically produced goods;
 - e. Achieve a certain level or value in research and development activities in the country;
 - f. Providing goods or services at a specific location in the country or abroad;
 - g. To locate its head office at the location requested by a competent state agency.
2. Based on socio-economic development conditions and investment attraction demand in each period, the Prime Minister shall decide to apply forms of State guarantee to implement investment projects within his/her competence. The right to approve investment policies of the National Assembly, the Prime Minister and other important infrastructure development investment projects.
3. The Government shall detail this clause.

Article 12. Guarantee of the right to transfer assets of foreign investors abroad.

After fully fulfilling financial obligations to the State of Vietnam in accordance with the law, foreign investors may remit the following assets abroad:

1. Investment capital, investment liquidations;
2. Income from business investment activities;
3. Money and other assets lawfully owned by the investor.

Article 13. Guarantee of business investment in case of change of law

1. In case the newly promulgated legal document provides for new investment incentives or higher investment incentives, the investor shall be entitled to investment incentives according to the provisions of the new legal document for the period of preferential enjoyment. Remaining incentives of investment projects, except for special investment incentives for investment projects in the case specified at Point a, Clause 5, Article 20 of this Law.
2. In case the newly promulgated legal document stipulates that investment incentives are lower than the investment incentives previously enjoyed by the investor, the investor may continue to apply the

investment incentives according to the previous regulations. For the remaining incentive period of the investment project.

3. The provisions of Clause 2 of this Article shall not apply in the case of changing provisions of legal documents for reasons of national defense, security, social order and safety, social ethics, or health. Community and environmental protection.
4. In case an investor is not allowed to continue to apply investment incentives as prescribed in Clause 3 of this Article, it shall be considered and resolved by one or several of the following measures:
 - a. Deduct the investor's actual loss from taxable income;
 - b. Adjusting the operational objectives of the investment project;
 - c. Support investors to overcome damage.
5. For an investment security measure specified in Clause 4 of this Article, the investor must make a written request within 03 years from the effective date of the new legal document.

Ensuring Business Investment Activities

First, the State does not require investors to “Provide goods or services at a specific location in the country or abroad; set up the head office at the location required by the competent state agency”. This regulation is completely consistent with the rights of enterprises as stipulated in the law on investment and competition when investors establish business models to enter the market. Also according to the enterprise law, enterprises have the full right to “actively choose their business lines, occupations and geographical areas” and no subject has the right to infringe or impose unreasonable demands on them. (Le Van Tranh, Dinh Tran Ngoc Huy, 2022).

DISCUSSION AND CONCLUSION

Most of countries around the world have been making efforts to negotiate about trade liberalization with the purpose of promoting trade growth by reducing and eliminating tariff and non-tariff barriers, making international trade flows as much freely and smoothly as possible. However, regulations, procedures and some related documents for international trade, sometimes, may be a burden for businesses to waste time and money (Le Thi Viet Nga, Dinh Tran Ngoc Huy, Nga Nguyen Thi Hang, Leng Thi Lan, Nguyen Ngoc Thach, 2021).

The State does not force investors to “prioritise the purchase and use of domestic goods and services” or “must purchase and use goods and services from domestic manufacturers or service providers” (Le Van Tranh, Dinh Tran Ngoc Huy, 2022).

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