

BUSINESS PARTICIPATION IN

LEGISLATION

Draft Decree on Business registration

Receptiveness of drafting boards



Guiding on implementation of Law on enterprises and Law on investment 2014

LEGISLATION

The **BUSINESS PARTICIPATION IN LEGISLATION** is a publication by Vietnam Chamber of Commerce and Industry about Vietnam business community participation in current legislation.

Highlights reflect VCCI's major comments/ recommendations on the guidance on implementation of Law on Enterprises and Investment Law 2014.

Receptiveness evaluates how state agencies are receptive to VCCI's inputs through comparison of 22 issued legal documents in first 6 months of 2015 against VCCI's recommendation sent to drafting board.

Quick look provides list of drafts of legal documents which VCCI has commented from January to June 2015.

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RECEPTIVENESS

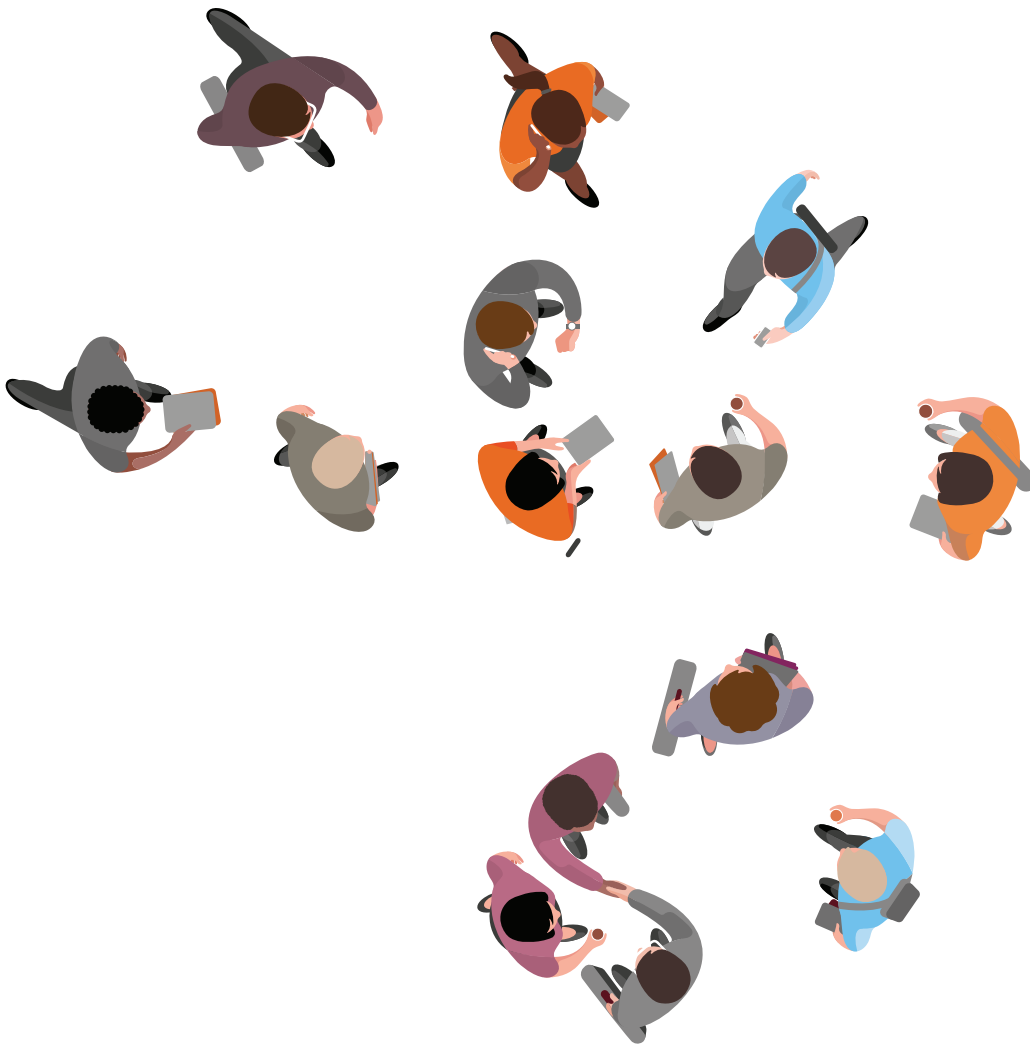
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Full draft of legal normative documents and supporting materials, comments and recommendations, information on related past and upcoming events are posted on our website: www.vibonline.com.vn

HIGHLIGHTS



The Law on Enterprise and Law on Investment were issued in 2014 and came into force since 1st July, 2015. Following recommendations on these two Laws, VCCI had also proactively and decisively participated in commenting on the guiding documents to ensure that the positives and renovations of these laws would be fully and consistently demonstrated.

Based on comments of business community as well as researches of experts as according to the review standards of VCCI, the recommendations focused on three main points:

- Regulate the provisions in guidance legislation/guiding documents so as to strictly follow the renovated spirit

of Law on Enterprises and Law on Investment;

- Eliminate some procedures which are troublesome to enterprises and are not in accordance with the spirit of the Law as well as not fulfill the state management purposes;

- Recommend mechanism for supervising the business conditions' amendment and supplementation to ensure that issued business conditions will only serve the purposes which are clearly identified in Law on Investment.

Recommendations for 02 Guiding Decrees of these two Laws are specified as following:

HIGHLIGHTS

Decree on Business Registration



BUSINESS LINES

The activity of listing business lines while proceeding business registration's procedures are suggested as following:

- When registering for business, enterprises only list the future business lines at their discretions/as their understanding (as long as meeting the requirements of Article 24 in Law on Enterprises 2014);
- When handling the registration, the local authority bases on the business lines which enterprise has proposed to identify the code of business lines according to the Vietnam business line code system, for statistics or others governing purposes (not affect enterprises).

ISSUING THE BUSINESS REGISTRATION UNDER THE BACK-UP PROCEDURE

Recommend to clarify the regulations to solve the following problems:

- National business registration information system;
- Under which circumstances that allow the registration be taken by “not using National business registration information system”;
- How enterprise can identify whether these circumstances must be undertaken in back-up procedures or not (normal procedure).

TASKS AND POWERS OF BUSINESS REGISTRATION AUTHORITY

Recommend to eliminate the provision that regulate the Business registration authority have the power “To request enterprises/households to temporarily cease doing business in conditional business lines when find out that they fail to fully satisfy the conditions as prescribed by law, concurrently notify such to competent state agencies for handling under law” because this regulation has been out of the competence of the business registration authority and over-lapped with the competence of sectorial authorities as well as conflicted with the draft itself/ other provisions within the Draft.

HANDLING WITH ENTERPRISE’S NAME VIOLATING THE REGULATIONS OF INDUSTRIAL PROPERTY RIGHTS

The procedures to handling the request of violated industrial property rights’ owner are now conflicting with regulations prescribed in Decree 99/2013/ND-CP. VCCI’s recommendations:

- Regulate the procedures as such in Decree 99/2013/ND-CP;
- Revise the provision: from the moment that the business registration office receive request from the office that issued penalty decision to industrial property violation, the business registration office shall request the violating enterprises to change their names for a specific duration, after that if the violated enterprise fail to change their name, the business registration office will issue a decision to withdraw enterprise Registration Certificate under Point a Clause 1 Article 211 Law on Enterprises.

RECEIVING AND PROCESSING THE REGISTRATION DOSSIER

The regulations are implicit and inconsistent to the Law on Enterprise , therefore recommend that:

- Regulate the duration of processing and granting the Registration certificate is 03 working days since the receiving date;

- Clearly regulate the duration of processing and granting the Registration certificate when register on the internet.

REGISTRATION OF BRANCHES, REPRESENTATIVES; BUSINESS PLACE ANNOUNCEMENT

Some regulations are inconsistent with Law on Enterprises, hence, recommend to eliminate some regulations as following:

- Enterprise must send an announcement of business place to the Business registration office within 10 working days, since the date of deciding to set it up;
- Add business place address to the Business Registration Certificates or Branch Operation Registration Certificates.

REGISTRATION ON THE INTERNET

Some of the regulations are implicit or not fully demonstrated the features and positives of the Internet registration procedures:

- Applied to two ways to register on the internet: recommend to regulate clearly the duration of each procedures;
- In case of not using digital public signature: regulate that these procedures could be undertaken wholly online and considered to issue certificate at the time the paper dossiers are applied.

THE PROCEDURE OF NOTICING THE BUSINESS PLACE OF HOUSEHOLD

Recommend to eliminate the provision “A wholesale household, mobile household may doing its business outside the registered place but shall inform the local tax office and market management authority at its head office and business place location” as it is unsuitable, unfeasible and unnecessary.

HIGHLIGHTS

Decree detailing and guiding some provisions of Investment Law



CONDITIONAL BUSINESS LINES:

Announce the conditions for business lines: VCCI recommend adding a regulation relating to the announcement of conditions for 267 conditional business lines listed in Investment Law;

The effect of business conditions posted on Portal: VCCI recommend regulating that if there is any difference between the contents posted on Portal and the ones in other legislation documents, then the former shall be preferential.

REGULATION ON BUSINESS CONDITIONS BETWEEN INVESTMENT LAW AND OTHER LEGISLATIONS

Starting time to process the procedures to amend and supplement List of conditional business lines of Investment Law: Recommend to specify the starting time to process the procedures to supplement prohibited business lines or conditional busi-

ness lines in Law on Investment or issuing a secondary legislation regulated these contents at the same time the Law on Investment comes into effect; supervising business conditions shall be come along with drafting these specified normative legal documents that contain business conditions.

Procedures to issuing legislations regulate business conditions: Recommend to issue an independent procedure to control the business conditions regulated in legislation; under this procedure: after issuing legislation, Ministry of Planning and Investment could automatically update the contents relating to new business condition on Portal.

PROCEDURE TO AMEND THE INVESTMENT POLICY

The criteria for the competent state agencies to appraise review and allow to adjust or not the investment policies should be specified.

PROCEDURE TO IMPLEMENT INVESTMENT PROJECTS AND ACTIVITIES OF FOREIGN INVESTMENT ENTITY

Recommend to eliminate the provision on investment notifications of foreign – investment - entity which are not regulated under Point a, b, c Clause 1 Article 23 of Law on Investment as it is inconsistent with Law on Investment.

CEASING THE IMPLEMENTATION OF INVESTMENT PROJECT

Recommend amending the procedure to cease the implementation of investment project back to its nature - a notification procedure; which means investor only need to provide information to Investment Registration Offices about the ceasing of implementation project and no need to wait for the approval from this agency.

THE LEVEL OF COLLATERAL FOR INVESTMENT PROJECT WHICH ARE ASSIGNED OR LEASED LAND

Recommend to adjust the gap between the highest and lowest level of collateral to limit the risk of the harassment from Investment Registration Offices as well as bribery from investor to get the lowest level of collateral.

PROCEDURES FOR PERIODIC REPORTING OF ECONOMIC ENTITY IMPLEMENTING INVESTMENT PROJECT

to minimize the hassles and procedures arising from reporting obligation, the proposal provides the following procedures:

- Monthly report only contains the situation of charter capital and investment capital contribution (not divided into capital resources and investment subjects);
- Quarterly report only contains indicators of monthly report and the revenue, number of employees; the month that has quarterly report, is no needed that month report solely;
- Annual report will include all criteria as prescribed in Article 71.2 (do not add any other criteria which are not mentioned in Article 71.2, for example report of technology origin, land and water using situation, ... are not prescribed in Article 71.2).

EVALUATION OF DRAFTING BOARDS' RECEPTIVENESS

During the first 6 months of 2015, there were 22 legal documents issued in many sectors under administration of 08 Ministry to which VCCI have comments, including



LAW

- Law No. 82/2015/QH13 on resource, marine environment and island (dated on 25th June, 2015)
- Law No. 80/2015/QH13 on promulgation of legal documents (dated on 22th June, 2015)

DECREE OF THE GOVERNMENT

- Decree No. 59/2015/ND-CP of the Government dated 18/6/2015 of administration of investment on construction project
- Decree No. 45/2015/ND-CP of the Government dated on 06/5/2015 regulating the measurement activity and map
- Decree No. 42/2015/ND-CP of the Government dated on 05/5/2015 of derivative stock and derivative stock market
- Decree No. 35/2015/ND-CP of the Government dated on 13/4/2015 of management and use of land for rice cultivation

- Decree No. 22/2015/ND-CP of the Government dated on 16/02/2015 detailing a number of articles of the Law on bankruptcy on property manager and practicing property management and liquidation
- Decree No. 19/2015/ND-CP of the Government dated on 14/02/2015 detailing some articles of Law on environment protection.
- Decree No. 18/2015/ND-CP of the Government dated on 14/02/2015 on Planning for environmental protection, strategic environmental assessment, environmental impact assessment and environmental protection plan
- Decree No. 15/2015/ND-CP dated on 14/02/2015 on investment in the form of Public Private Partnership

PRIME MINISTER'S DECISION

- Decision No. 12/2015/QD-TTg dated on 16/4/2015 issued by the Prime Minister of mechanism and policy to attract socialized investment on exploitation bus station

CIRCULAR OF MINISTRY

- Circular No. 96/2015/TT-BTC of Ministry of Finance dated 22/6/2015 on guiding enterprise income tax in Decree No. 12/2015/ND-CP of the Government and amending and supplementing some articles in Circular No. 78/2014/TT-BTC of Ministry of Finance, Circular No. 151/2014/TT-BTC dated on 10/10/2014 of Ministry of Finance
- Circular No. 11/2015/TT-BKHCN of Ministry of Science and Technology dated 26/6/2015 on detailing and guiding a number of articles in Decree No. 99/2013/ND-CP dated 29/8/2013 of Government on administrative fine on industrial property
- Circular No. 21/2015/TT-BNNPTNT of Ministry of Agriculture and Rural Development dated 08/6/2015 on management of plant protection drug
- Circular No. 14/2015/TT-BGTVT of Ministry of Transportation dated 27/4/2015 on compensation, non-refundable advance in transport by air
- Circular No.09/2015/TT-BGTVT of Ministry of Transportation dated 15/4/2015 on providing, managing and using data from monitoring devices journey by car
- Circular No. 46/2015/TT-BTC of Ministry of Finance dated 07/4/2015 on the amount, modes of collection, management and use of charges for appraising business conditions of gas trade
- Circular No. 12/2015/TT-BNNPTNT of Ministry of Agriculture & Rural Development dated 16/03/2015 on guiding the foods examination of imported goods originated from plant
- Circular No. 11/2015/TT-BNNPTNT of Ministry of Agriculture & Rural Development dated 10/3/2015 regulates the risk assessment of imported living sea foods
- Circular No.04/2015/TT-BNNPTNT of Ministry of Agriculture & Rural Development dated 12/02/2015 on guiding the implementation some contents of the Decree No. 187/2013/ND-CP dated 26/12/2013 of the Government guiding the implementation The Commercial Law on International Sale of Goods and activities of agency operation, purchase, sell, outsource and transit goods with foreign country in the fields of agriculture, forestry and sea foods
- Circular No.12/2015/TT-BTC of Ministry of Finance dated 30/01/2015 on detailing procedures of granting professional customs certificate, granting and withdrawing customs staff code of customs agent, procedures of recognizing and operation of customs agents



- Circular No.13/2015/TT-BTC of Ministry of Finance dated 30/01/2015 regulate the examination, monitoring, suspension, implementing customs procedures for exports, imports with IP protective demand, controlling counterfeits and infringement of intellectual property rights

VCCI had 176 recommendations for above 22 documents, averagely 8 recommendations per draft. Among those, 79 recommendations were accepted, account for 44% - compared to the overall receptive rate in 2014.

VCCI's recommendations on transparency which were not accepted focused mainly on:

- Clarify procedures of "sub-license";
- Clarify criteria which the State agencies apply as basis to grant license.

Non-accepted VCCI's recommendations on consistency mainly related to: relation between various documents regulating the same issue(s). There is an amazing matter that some recommendations which clarified inconsistency between the guiding documents and guided documents but still not accepted.

The quantity of recommendations on reasonability is quite high (41% of recommendations). But the number of accepted ones is less than a half (account for 44.4% of all recommendations), which mainly related to:

- Eliminate business conditions issued in ministerial documents (violate authorization business conditions regulated in The Enterprise Law 2005 and The Investment Law 2014)
- Eliminate the overkill management measures and administrative intervention to market factors.

QUICK LOOK

List of documents commented by VCCI

In the first 6 months of the year, VCCI had commented on 47 drafts¹ categorized by types as below

No.	Name	Drafting agency
LAW/CODE DRAFTS		
1	Maritime code (revised)	Ministry of Transport
2	International treaty law (revised)	Ministry of Foreign Affairs
3	Export and import tax law (revised)	Ministry of Finance
4	Fee and charge law	Ministry of Finance
5	Law on security of network information	Ministry of Information and Communications
6	Civil procedure code (revised)	Ministry of Justice
7	Criminal code (revised)	Ministry of Justice
8	Civil code (revised)	Ministry of Justice
GOVERNMENT DECREE DRAFTS		
1	Decree on sanctioning of administrative violations in commercial activities, produce, purchase counterfeits, prohibited goods and protect consumer's interest	Ministry of Industry and Trade
2	Decree on detailing the implementation of Law on Enterprises	Ministry of Planning and Investment
3	Decree on registering enterprises	Ministry of Planning and Investment
4	Decree on detailing and guiding the implementation Law on Investment	Ministry of Planning and Investment
5	Decree regulate direct investment to foreign country	Ministry of Planning and Investment
6	Decree on planning public medium - term and annual investment	Ministry of Planning and Investment
7	Decree on monitoring capital investment in enterprises, monitoring finance, assessing the activities' efficiency and finance information announcement of 100% charter capital State own enterprises and enterprises have State capital.	Ministry of Finance
8	Decree on sanctioning of administrative violations in environmental protection	Ministry of Natural Resources and Environment
9	Decree detailing and guiding implementation of Law on enforcement of civil judgment.	Ministry of Justice

¹ For key recommendations on the drafts, please refer to Vietnamese version. For full comments, please visit our website www.vibonline.com.vn (Vietnamese)

No.	Name	Drafting agency
GOVERNMENT DECREE DRAFTS		
10	Decree amending, supplementing some articles of Decree No. 110/2013/NĐ-CP dated 24/09/2013 of the Government on sanctioning of administrative violations in judicial affairs support, judicial administration, marriage and family, civil enforcement of civil judgment, bankruptcy and cooperatives.	Ministry of Justice
11	Decree detailing implementation of some articles of Law on real estate business.	Ministry of Construction
PRIME MINISTER'S DECISION DRAFTS		
1	Decision on amending and supplementing Decision No. 02/2012/QĐ-TTg dated 13/01/2012 of the Prime Minister on issuing The list of essential goods and services must register its contracts with the models and conditions of general transaction.	Ministry of Industry and Trade
2	Decision of the Prime Minister on non-stop automatically collecting traffic fee.	Ministry of Transport
3	Decision of the Prime Minister on issuing The list of goods must perform customs procedure at the imported border gate	Ministry of Finance
4	Decision of the Prime Minister on regulating cases allowed to import goods on the list of used information - technology products which is banned to import	Ministry of Information and Communications
CIRCULAR DRAFTS		
1	Circular on regulating supply and usage of data from monitoring journey device of car	Ministry of Transport
2	Joint Circular on regulating calculation method, collection measure, management regime and usage of money for the use of sea area	Ministry of Transport
3	Circular on issuing National Technical Standard on environment of used and imported to collapse ships	Ministry of Transport
4	Circular on regulating the import of used machine, equipment and technological line	Ministry of Science and Technology
5	Circular on detailing some articles of Decree No 99/2013/NĐ-CP on sanctioning administrative violations in industrial property	Ministry of Science and Technology
6	Circular on regulating the assessment, confirmation and reviewing result of performing scientific – technology assignment which is not use the State budget	Ministry of Science and Technology
7	Joint Circular on guiding block - budget mechanism to perform scientific – technology assignment.	Ministry of Science and Technology
8	Circular on issuing 09 drafts National Technical Standard on occupational hygiene	Ministry of Labor, War invalids and Social Affairs

No.	Name	Drafting agency
CIRCULAR DRAFTS		
9	Circular on regulating experiment, assay and quality examination of veterinarian medicine	Ministry of Agriculture and Rural Development
10	Circular on regulating management of livestock breeds	Ministry of Agriculture and Rural Development
11	Circular on regulating quality examination, certificate of conformity, conformity seed announcement	Ministry of Agriculture and Rural Development
12	Circular on issuing The list of livestock breeds allowed to produce, purchase	Ministry of Agriculture and Rural Development
13	Circular on issuing The list of the crops guarded	Ministry of Agriculture and Rural Development
14	Circular on guiding enterprise income tax in Decree No. 12/2015/NĐ-CP of the Government and amending, supplementing some articles in Circular No. 78/2014/TT-BTC of Ministry of Finance	Ministry of Finance
15	Circular on guiding the regime of collection, submission and management fee of granting Operating license for providing intermediary payment service	Ministry of Finance
16	Joint Circular on regulating calculation method, collection measure, management regime and usage of money for the use of sea area.	Ministry of Finance
17	Circular on guiding some articles of Decree No.187/2013/ND-CP dated 20/11/2013 of the Government on importing, exporting of the used information - technology products	Ministry of Information and Communications
18	Circular on regulating classification and determination of safety level of information system	Ministry of Information and Communications
19	Circular on regulating State inspection on food safety for imported and exported foods under Ministry of Health's authorization	Ministry of Health
20	Circular on amending, supplementing some articles of Circular No. 23/2013/TT-BYT dated 13/8/2013 on guiding outsourcing medicine activity	Ministry of Health
21	Circular on issuing National Technical Standard for products from ginseng	Ministry of Health
22	Circular on issuing 05 National Technical Standard for dairy products	Ministry of Health
OTHER DRAFTS		
1	The overall plan on deploying activities of in the period 2015-2020 and the plan on deploying activities Interdisciplinary Supporting juridical Program for enterprises in 2015	Ministry of Justice
2	Project on issuing the frame of criteria for assessing, classifying specialized law practice organization in foreign investment, business and trading fields.	Ministry of Justice

On a point of building an open and favorable investment environment for enterprises, VCCI's recommendations on the drafts focused on:

- Eliminating unreasonable business conditions which cause difficulties for enterprises while target of state management is unclear and unattainable;
- Eliminating some phases in administrative procedures

which are obstacles for enterprises.

- Amending some regulations in guiding documents along with the reformed spirit reflected in the Laws;
- Clearly regulating administrative procedures to create the consistent understanding between different objects of application, limit the harassment from State agencies because of vague regulations.