

LAW ON INVESTMENT

In order to mobilize and utilize effectively sources of capital, natural resources, labor, and other potential of the country, to contribute to speeding up national industrialization and modernization; further accelerating economic reform; ensuring freedom and equal right of enterprises of all economic sectors before laws in investing and doing business; protecting legitimate right and interest of investors; encouraging business and investment activities in various sectors and locations in order to promote socio-economic development; and improving the efficiency of State management of business and investment activities;

Pursuant to the Constitution of the Socialist Republic of Vietnam enacted in 1992 as amended and supplemented in accordance with the Resolution No. 51/2001/QH10 dated 25 December 2001 by the 10th National Assembly at its 10th session.

This Law makes provisions on investments by organizations and individuals of all economic sectors in the Socialist Republic of Vietnam.

CHAPTER I GENERAL PROVISIONS

Article 1

This Law provides for the investment and business activities of organizations and individuals of all economic sectors including their right to conduct business and investment activities; for the assurance of rights and profits of investment activities and investment incentives in order to mobilize all resources for investment in the national socio-economic development in the areas of industry, agriculture, commerce, services and other activities in the territory of the Socialist Republic of Vietnam.

The Socialist Republic of Vietnam encourages both domestic and foreign investors to invest in Vietnam on the basis of respect of independence, sovereignty and laws of Vietnam.

The Socialist Republic of Vietnam protects the ownership rights and other legitimate rights of investors, treat them equally on a non-discriminatory basis; provides favourable conditions and adopts simple and prompt procedures to investors.

Article 2.

This Law applies to the following subjects:

- a. Business and production organizations including State owned enterprises (SOEs), limited liability companies, joint stock companies, partnerships, private enterprises and cooperatives.
- b. Individuals including individual business households, business individuals and groups of business individuals.

Style Definition: List Bullet 2:
Justified

- c. Foreign organizations and individuals; overseas Vietnamese people and foreigners permanently residing in Vietnam.

Article 3.

- 1.

- f. concessions including rights to explore and exploit natural resources;
 - g. tangible and intangible property, including moveable and immoveable property, and any relevant property-related rights, such as right to lease, mortgage, lien and pledge;
3. “Business investment activities” mean the activities aimed at using property, funds and other investments to invest in the business activities in accordance with the law for the purpose of making profits.
 4. “Domestic investment” means a business investment activity carried out in Vietnam by the investors being Vietnamese organizations and individuals or by overseas Vietnamese people.
 5. “Foreign directive investment” means the bringing of capital into Vietnam in the form of money or any assets by foreign investors for the purpose of carrying out business investment activities on the basis of setting up an enterprise or other forms as provided for by the Vietnae fl.6(y)-9-5.7(e4(activitieC(a)-7.5(13an)-8g.-1.93 TD0 Tc()Tj0 -(5.)71546 TD.0047 Tc(g.)T Tw[(b)3.7.1(hehe)44la

- (a) for the public purpose;
- (b) on a non-discriminatory basis;
- (c) strictly in accordance with the procedures provided for by law;

The State shall not carry out any new investment activities for the purpose of competing with investment incentive beneficiaries

Article 17

Article 22

1. Foreign investors are restricted from making investments in the areas or sectors of List II attached to this Law. If a foreign investor makes investment in any of these sectors, he/she must obtain an approval from the Prime Minister on the basis of the Minister of Planning and Investment.
2. The Ministry of Planning and Investment (**MPI**) must annually revise the list of sectors where investments are restricted listed in this Appendix and submit the list to the Government for amendments and supplements.

Any amendment or supplement to the list of s

A person seeking for entitlement to investment incentives must lodge application documents for investment incentives with the agency in charge of investment incentive management. Procedures and form of application documents shall be provided by MPI.

- e. Preventative and control measures with regard to the factors detrimental to the environment.
 - f. Commencement date of the incentive project.
 - g. Date of commencement of operations.
 - h. Distribution of products or goods made or assembled or services supplied.
 - i. Exportation of products or services respectively made or assembled.
 - j. Specific incentives, incentive rates and duration of such entitlement.
2. When the incentive granting agency has decided to grant incentives, it shall notify the applicant in writing in respect of such decision and conditions for such incentives within 15 days from the date of such decision.

If the applicant agrees with the conditions for entitlement to such incentives, he/she must confirm it with the investment incentive granting agency within 30 days from the date of being so noticed and the relevant investment incentive licence shall take effect 30 days after the date it is granted to the incentive beneficiary.

3. An investment incentive certificate shall be issued in a uniform format provided for by

Article 31

An enterprise which suffers loss after finalizing tax with the tax authority in relation to its incentive investment activities shall be able to carry forward such loss to the following years which shall be offset against the taxable income. The maximum period during which the carrying forward of losses is allowed shall not exceed five (5) years from the expiry date of the period for tax exemption. An incentive beneficiary may select to offset his/her loss amounts against the net profits of any one or several specific years.

Article 32

With regard to incentive activities entitled to CIT exemptions, dividends from such activities shall be exempt from income tax during the period in which a person is entitled to CIT¹.

Article 33

An investor making investments in a location where investments are encouraged as referred to in clause 1(b) of Article 25 of this Law shall be entitled to the following incentives:

- a. A 50% reduction in the CIT rate applicable to incentive investment activities for a maximum of two years from the expiry date of the incentive period provided for in Article 30 of this Law (For those investment projects entitled to incentives in accordance with the sector).
- b. Other investment activities carried out in a location where investments are encouraged shall be exempt from CIT for a maximum period of no more than four (4) years and shall be entitled to a 50% reduction in CIT for the following four (4) years.
- c. An investor making investments in a location where investments are encouraged shall be entitled to a deduction in any twofold amount of the costs of transportation, electricity and water supply incurred if the incentive beneficiary carries out the incentive activities in a location where investment are specially encouraged. Procedures and conditions for the above entitlement shall be decided by the investment incentive granting agency and shall be stated in the investment incentive certificate.
- d. An investor making investments in a location where investments are especially encouraged shall be entitled to deduct from his/her net profits an amount of no more than 25% of the construction or installation costs of those facilities used during taxable activities. Specifically, the incentive beneficiary, in addition to ordinary depreciations, may select to offset the above proportion of costs against the net profits of any or several specific years during 10 years as from the date he/she earns income from incentive activities.

Article 34

¹ Translator's note: Vietnamese text is unclear.

If an investor makes investment in a project in which investments are encouraged he/she shall be entitled to a part of the whole of CIT already paid in respect of the profits used for reinvestment purpose.

Article 35

1. An investor carrying out incentive investment activities shall be entitled to exemption from import duties in respect of goods imported to form fixed assets, comprising:
 - (a) Equipment and machinery;
 - (b)

machinery and equipment;

- (b) Construction materials which are not yet domestically produced and are imported to form fixed assets of the enterprise;
- (c) Materials imported for production of products for supply to other enterprises directly producing goods for export.

Article 39

1. In accordance with the procedures provided for in legislation on entry and exit, foreign individuals are allowed to enter into Vietnam to explore investment opportunities or [to conduct] any other activities rela

Article 41

1. The State shall set up, and encourage the establishment of, investment support funds. An investment support fund shall provide medium and long term loans with preferential interest rate, provide partially preferential assistance or apply partially preferential interest rates to the investment projects in respect of which an investment credit guarantee is granted. The Government shall provide re-guarantee through the State Bank of Vietnam in the same

Article 48

1. Where an incentive beneficiary terminates its operations, is reorganized or is assigned to another enterprise, its incentive certificate shall be valid for no more than three (3) months from the date of such termination, reorganization or assignment.
2. If the new manager of the operations so merged or assigned wants to take over those incentive activities under the same conditions as those stated in the incentive certificate, he/she shall lodge an application for incentives within the time limit referred to in clause 1 of this Article. If it is deemed by the incentive granting authority necessary to grant incentives, an incentive certificate shall be granted to the beneficiary and the rights and interests provided for in this Law shall be as favourable as those granted to the original beneficiary.

**CHAPTER VI
STATE ADMINISTRATION OF INVESTMENT ACTIVITIES**

Article 49

Details of State administration of investment comprise the following:

1. Formulation of strategies, master plans, plans and policies relating to investment.
2. Promulgation, dissemination and organization of documents.
3. Providing guidelines

other economic zones.

Article 51

MPI shall be the investment State regulatory agency which assists the Government in managing investment activities in Vietnam.

MPI shall have the following duties and powers:

1. To take the lead in formulation and submission to the Government of strategies for raising various capital sources for investment and development; draft legal projects and policies relating to investment and investment encouragement including policies for mobilization of capital sources from economic sectors; Formulation of regulations and planning for development and investment; policies and regulations for administration of investment improvement of investment efficiency; avoidance of loss of State invested capital; revise and remove any barrier to investment activities.

To co-ordinate with ministries, ministerial-level agencies and Government agencies in carrying out State management of investment and provide guidelines to provincial people's committees for carrying out policies and measures relating to investment;

2. To make and consolidate a list of investment projects, to provide guidelines relating to investment procedures, to carry out State management of investment promotion activities, and to set up and manage those agencies in charge of administration of investment promotion activities overseas.
3. To organize business registration; receive investment projects and take lead on appraisal for granting investment licences to investment projects under its authority.
4. To grant investment incentive certificates for investment activities under its authority;
5. To adopt one-stop mechanism in supporting and guiding investors in carrying out their investment projects and in dealing with queries and concerns of investors during the establishment and execution of their investment projects.
6. To assess the socio-economic efficiency of investment activities.
7. To examine, inspect and provide relevant guidelines to examine and inspect investment activities in accordance with the law. To supervise and examine business registration activities, grants of investment licences, investment incentive certificates of people's committees of cities under central authority.

Article 52

Ministries, ministerial-level agencies and Government agencies shall carry out State management within the scope of their respective functions and authority:

1. Coordinate with MPI in formulation of laws, policies and master plans relating to investment.

2. Formulate plans and lists of projects calling for investment capital of the sector; organize investment promotion activities.
3. Be involved in appraisal of projects.
4. Provide guidelines and deal with procedures for implementation of projects.
5. Assess the socio-economic efficiency of investment activities in the sector under their control.
6. Carry out other duties under their authority as provided for by law.

Article 530

Provincial people's committees shall carry out the function of State administration of investment activities in their respective localities within the scope of their function and authority:

1. On the basis of the socio-economic development master plan already approved, to prepare and make public a list of projects calling for investment capital in their locality and organize investment promotion activities.
2. To appraise and grant investment licences under the authority assigned to them, to grant or refuse to grant investment incentives for incentive activities under their authority.
3. To adopt one-stop mechanism in supporting and guiding investors in carrying out their investment projects and in dealing with queries and concerns of investors during the establishment and execution of their investment projects

- a. not falling within Group A as referred to in Article of this Law;
 - b. falling within a production sector with a scale up to US\$ million;
 - c. not falling within the list of projects for which an EIA report must be prepared.
2. Agency authorized to grant investment licences may not refuse to grant an investment licence to an investment project which has satisfies all the conditions for a licence.

- projects in the sector of national defence or security;
- catching of aquatic products in the internal waters, territorial waters, exclusive economic areas and continental shelf;
- exploitation of wood
- purchase of shares in SOEs;
- distribution projects;

b.

Article 58

If an incentive beneficiary faces any difficulty carrying out of the incentive activity, he/she may make claim or request the agency which granted the investment incentive certificate referred to in Article 57 of this Law to deal with such difficulty or to request relevant ministries, sectors or local authorities and other concerned bodies in providing assistance in a prompt manner.

If any of such requests by an incentive beneficiary are not dealt with by ministries, sectors or agencies or concerned bodies, a report must be given to MPI specifying the reason therefor within 15 days from the date of receipt of such request.

Article 59

Representatives of the competent authority on investment incentives shall have right to access to the establishments of the applicants in the business hours to inspect the matters related to applied or granted investment incentives.

In case of committing any of the above breaches, the investment regulatory agency shall request and give guidelines to the investor to make appropriate adjustments. If any investor refuses to comply with such request without legitimate reasons, the investment regulatory agency may suspend the business registration certificate or investment licence for no more than 60 days from the date of such guidelines. Beyond this time limit, if none adjustment is made, the investment regulatory agency may consider and revoke the business registration certificate or investment licence.

Article 62

If an investor whose business or investment activities have been suspended or whose business registration certificate or investment licence has been revoked continues its investment activities shall be subject to a monetary fine of between VND100 million to VND500 million.

Article 63

1. Any person who conducts business investment activities in accordance with this Law which investment,(n to 29r)(m)12 be .cv1

Article 66

A person who takes advantage of his/her position or duties to obstruct investment activities or who commits an act of causing troublesome to investors or does not promptly deal with the request of an investor or breaches other provisions of this Law shall be, depending on the nature and seriousness of the breach, be disciplined or prosecuted for criminal liability. If any loss occurs, compensation must be made in accordance with the law.

Chapter VII
INSPECTION, EXAMINATION AND DISPUTE RESOLUTION

Article 67

1. Any inspection of the operations a business or production establishment must be carried out within proper functions, authority and in compliance with the law. Such inspection must be carried out publicly on a working day at the head office or relevant business or production establishment of the investor. An economic or financial inspection must be carried out no more than once a year and for a period of no more than 30 days. In special cases, the length of an inspection may be extended under a decision of the competent agency but not exceeding 30 days. An extraordinary inspection shall only take place on the basis of an indication that a production or business establishment commits a breach of laws.
2. An inspection must be carried out under a decision of a competent person. At the end of an inspection, there must be a minute of inspection conclusions. The head of an

or individuals and foreign invested enterprises shall first be resolved through negotiations and mediations between the dispute parties.

If mediation fails, the dispute parties may agree to select one of the following resolution methods:

- a. By a Vietnamese court
 - b. By a Vietnamese or foreign or international arbitration
 - c. By arbitration agreed upon by the parties.
3. [With regard to] the disputes between an investor and the Vietnamese Government relating to an investment in the territory of Socialist Republic of Vietnam, all the efforts shall be made to resolve such disputes by mediation and negotiation between the dispute parties.

If a dispute cannot be resolved by mediation and negotiation within six (6) months, the investor has the right to refer such dispute to a Vietnamese, foreign or international arbitration organization for resolution.

If the Vietnamese Government has entered into an Agreement on Investment Promotion and Protection, such disputes shall be resolved in accordance with the provisions of such Agreement.

Chapter VIII IMPLEMENTATION PROVISIONS

Article 70

This Law comes into effect from to, 2006

All the previous provisions contrary to this Law are hereby repealed.

Article 71

Investors being entitled to incentives under the Law on Domestic Investment Promotion, the Law on Foreign Investment in Vietnam, the Law on Cooperatives, the Law on SOEs, and the Law on Individual Business Households shall continue enjoying those incentives for the remaining period of the investment incentive certificate already granted.

Article 72

An investment project operating before the effective date of this Law, if the investment provisions of this law are more favorable, may request the competent agency to adjust the investment incentives they are currently entitled to in accordance with this Law.

Article 73

If as a result of the promulgation of this Law if any previous investment activities now become

restricted or prohibited, the relevant investors shall be allowed to continue its business investment activities in such sector, but they have to re-register their business at the relevant competent investment regulatory agency.

Article 74

This Law replaces the Laws and provisions of relevant Laws set out in Appendix II attached to this Law.

The Government shall make detailed provisions for implementing this Law.

10. Investments in services sectors (except for those service sectors as committed in the international treaties which shall comply with the provisions of relevant international treaties).
11. Investment in the production of NPK fertilizer.
12. Production of beer and cigarettes.
13. Production and assembly of automobiles and motorbikes.
14. Production and distribution of electricity.
15. Distribution, wholesale and retail services.

**LIST OF THE LAWS
AND PROVISIONS OF THE LAWS TO BE REPLACED**

1. The Law on Foreign Investment in Vietnam
2. The Law on Domestic Investment Promotion
3. The Law (Articles.....)
4. The Law (Articles)
5. The Law (Articles)
6. The Law (Articles)
7. The Law (Articles)
8. The Law (Articles)
9. The Law (Articles)