

# TO PERFECT LEGAL ENVIRONMENT FOR ATTRACTING MORE FOREIGN INVESTMENT INTO VIETNAM

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## 1. To make legal regulations on economic operations and investment into laws

Although our legal frame of investment is rather sufficient, but to perfect it, our country should develop ordinances, regulations and legal documents into laws for higher legality; especially for regulations on concentrated industrial zones, construction of urban area such as industrial zones of Amata, Đồng Nai, Vietnam-Singapore, Sông Bé, South Thăng Long urban area, south Nhà Bè-north Bình Chánh Highway (Bình Thuận Highway or South HCMC urban area)...

The institution of laws will bring trust to investors since they will not face with too many changes and amendments in regulations on economic operations and investment and they will be compensated for loss due to changes as ruled in law.

## 2. To perfect economic legal system:

Vietnam has issued a lot of economic laws and legal documents for a short time. However these laws are still deficient and have not covered all transactions in the market economy yet.

The Government should soon promulgate laws on trade, real estate business, market and stock trading, regulations on hi-tech industrial parks.

Sublaws on equitization, environmental protection, technology transfer, bidding need be perfected in accordance with international practice...

The systematic, scientific, practical features, and especially feasibility of law must be ensured.

## 3. To perfect taxation legal system

The taxation system, especially import, export duties should be perfected in order to integrate into and cooperate with Asean nations in tariff. To expand agreements on bilateral taxation, monitor and well perform signed agreements are the best way to speed up foreign investment in Vietnam. Vietnam's taxation authorities are studying and reforming tax system in the second stage including three new tax bills such as value added tax (VAT) to tackle shortcomings of turnover tax, corporation income tax in replacement for profits tax, personal income tax in replace-

ment for ordinances on income tax imposed on residents and highly-earning persons.

Laws on turnover tax, special consumption adopted by the National Assembly at the eighth session, term IX, in 1995, though target at simplifying tax rates and make them appropriate to business activities, overcome shortcomings in tax policy, but they are not reasonable and should be soon replaced with VAT.

Ordinance on fees and charges collection should be issued for uniformity, the management of this collection must be done in order with the aim to prevent unreasonable fees and charges annoying the people, especially foreign investors.

## 4. To definitely punish tax avoidance.

In the business cooperation contract, the Vietnamese party still carries out false accounting in order to reduce turnover, profits and enjoy lower tax rates so its foreign partner can take advantage to evade tax.

Foreign enterprises have many opportunities to avoid tax such as: raising the value of asset contribution, increasing prices of materials to reduce accumulation and profits tax, lowering the selling price of products, especially internal prices in the multinational, selling materials which are free of import duty in domestic markets for tax evasion, transferring profits to the home country under the cloak of exports in order to avoid tax on profits transferring, or changing partner but selling shares in reality. Tax loss are easily found in business consignment of rep offices, various services of foreign organizations not affected by the Foreign Investment Law, no income declaration for income tax evasion, especially in rep offices, joint venture enterprises fig-

uring out high costs which are uncontrollable.

The local partners in joint ventures helped tax arrears drag on. Unreasonable high costs for reduction of taxed profits must be recovered to the State budget.

## 5. To reject capital allowance:

The above analysis shows environment of stable economy, firm and open legislation is more effective than investment privileges,

and to secure revenues of the budget reasonably and avoid unnecessary incentives which cannot enhance investment, the contribution of capital under the form of natural resources and the capital allowance in three years should be abolished, especially for entertainment services such as golf course which are subject to high tax rates and make loss to the budget if they are free of tax.

## 6. To amend tax on profits transfer

As mentioned above, tax rates are divided into too many categories and minute conditions, so negative acts and tax loss can easily take shape. The tax on profits remitted home thus should be amended with a view to avoiding ambiguity in payment of interest and principal, management cost, patent which is exempt from tax.

## 7. To stipulate concretely and limit import duty-free materials and equipment.

The materials and equipment used for construction should be free of import duty, there should be incentives for the usage of domestically made materials and equipment. (the drilling equipment used in the oil industry and domestically made for example).

Only hi-tech equipment can be imported and technological standard, machinery, usage state must be checked by consulting organizations and experts. Other equipment that can be domestically made is enabled to stimulate the home manufacturing industry in the process of industrialization.

## 8. To change the decisive feature of the management board in joint ventures

Regulations on the enterprise's charter are too firm, sometimes they are in name only. The problems

which need 100% consensus of the management board should be reduced.

**9. To supplement the Foreign Investment Law with the form of joint stock company.**

The Government should study policy on indirect investment, that is, foreigners are permitted to buy shares of Vietnam's joint stock companies with the aim to realize the decision of equitization which is now sluggish. At the same time the local partner need seek measures to increase its stock instead of pooling only by land-use right or old buildings, equipment that have little value in the capital structure of the joint venture.

Regarding form, the joint venture enterprise is only limited liability company according to law. This is appropriated to our country's management condition.

Many domestic and foreign investors asked for promoting mobilization of huge capital source in public, socializing shares and transferring shares easily. Therefore, the Foreign Investment Law need be amended: the joint venture enterprise is permitted to operate in the name of joint stock company.

This will make advantages for increase in capital, but also difficulties in management, not to mention our country has not issued the Stock Market Law yet, especially the stock market may easily slump due to speculation and unfavorable concept.

Thus, the recognition of the share holding of foreign invested enterprises should be carried out in parallel with the compulsory equitization. The voluntary equitization has been implemented very slowly due to local interests and dependence on the State's privileges. It need be changed vigorously to speed up the formation of the primary stock market which issues valuable securities such as stocks, bonds,...

**10. To expand sectors permitted to invest:**

To diversify economic activities, the leasing company which will help manufacturers save their capital from investing in fixed assets and trading company should be encouraged.

Well-known conglomerate should be licensed to form various joint ventures realizing many projects at the same time. This is only suited to 100% foreign invested capital because it is hard to find out the local partner due to large-size investment capital.

However we should not permit doing business harmful to national cultural identity or social security

such as gambling, sexual services. Business involving with golf course, liquor, cigarettes should be limited and subject to higher tax rates.

**11. To institute rules of privileges for domestic investment**

As mentioned above, to develop, industrialize, modernize the country, we still have to depend upon domestic investment, and foreign investment has only starting effect and attracts not many laborers.

Therefore, the fact that only domestic investors can engage in some areas and projects and enjoy certain privileges should be stipulated.

The Government should not offer all industries producing high returns and profits to foreigners due to rapid development or local interests.

**12. To make orientation and plans to attract investment**

The Government should make orientation and plans to attract investment in key industries such as infrastructure, electricity, expressway, ports, airport under the BOT form, in projects exploiting mines and basic materials, in hi-tech area.

There need be preferential measures centering at encouraging foreign investment in areas which will speed up development such as infrastructure development: electricity plant, water supply and drainage, garbage treatment, major roads and bridges, construction of concentrated industrial zones, post and telecommunications, port and airport, electronics and informatics. To do so, all authorities should make good preparation of feasibility projects, simplify evaluation procedures of foreign investment projects and secure the Vietnamese partner suited to the scale and level of the project.

**13. To reform administrative procedures:**

To reform the State administration and management in the area of cooperation and investment is a key measure to improve the investment environment. The real importance does not exist in policies, but in their implementation. Some initial tasks are as follows:

- To determine the managerial regime for foreign invested enterprises in the direction of deleting the control of ruling branches and localities is the effective measure to alleviate negative activities and create real initiative for the enterprise.

- To simplify the process, procedure of considering, evaluating investment projects, apply one-door policy and make the time of consideration for approval as short as possible.

- To review unnecessary, unreasonable and vague regulations which are easily causing negative acts in special areas such as construction, import-export, entry-exit management, granting visa, residence, environmental protection.

Regarding the reform of procedure, vouchers and receipts in taxation, the process of procedure completion should be made reasonable and stable with: bookkeeping, vouchers and receipts, steps and procedures of tax payment, tax return.

**14. To expand and institute rules for the legal consulting activities concerning investment.**

This is an important area but not controlled yet, consultancy are spontaneously done, lacking in organization and direction of the branch and the Lawyer Association.

Meanwhile, this area is very important to investors but most of it is undertaken by lawyers and foreign law firms. The rest is almost procedures implemented by organizations deriving from the former State Committee for Cooperation and Investment. The above activities show the picture of both playing football and acting as referee and thus causing not a few negative acts in formulation, evaluation and realization of investment project. This is easily seen in procedures concerning construction projects.

Therefore, domestic lawyers' skill in legal consultancy for foreign investment should be improved. The relevant agencies need form research teams for specialized legislation soon such as: team for Foreign Investment Law, team for Tax Law, team for Land Law, team for settlement of economic disputes...so that they will act as nuclei in the research of specialized legislation, and give their profound opinions about drafts of law, ordinance if need be.

In the transition into the market economy, the legal frame will determine the rule of the market for all economic sectors. In which the Foreign Investment Law has greatly affected the process of industrialization and modernization. But our country changes into the market economy in the socialist orientation, there is no precedent for such a practice, so we cannot imitate foreign law.

The process of transforming, supplementing, and amending laws and legal documents are going on to perfect legal frame for economic activities, especially Foreign Investment Law should be perfected first because foreign investors request to know the whole laws affecting their business in order to prevent risks.