

Corporate Commercial

New Law Amending the Investment Law, Corporate Law, and Seven Other Laws to Take Effect on 1 March 2022

On 11 January 2022, the National Assembly of Vietnam issued Law No. 03/2022/QH15 (“**Law 03/2022**”) amending and supplementing several articles of the Law on Public Investment; Law on Public – Private Partnership; Law on Investment; Law on Housing; Law on Bidding; Law on Electricity; Law on Excise Tax; and Law on Enforcement of Civil Judgements. Law 03/2022 took effect from 1 March 2022.

The key features of Law 03/2022 are set out below.

1. Amendment and supplementation of the Law on Investment

1.1 New conditional business line

Pursuant to Article 5.3 of Law 03/2022, the list of conditional business lines set out in the Annex IV of Law on Investment No. 61/2020/QH14 (“**Law on Investment**”) shall be supplemented with one following additional business line (having the ordinal number of 132a): “*Business on providing network security products and services (excluding business on products and services of network information and civil cryptographic)*”.

1.2 Amendment on the authorities of granting approval of investment guidelines

Article 3.1 and 3.2 of Law 03/2022 has amended and adjusted the scope of authority to grant in-principle approval, specifically as follows:

- (i) The Prime Minister shall have the authority of granting in-principle approval regarding:
 - Investment projects on construction of houses and urban areas with a land use scale of **300 hectares** or more; or with a population of **50.000 people** or more;
 - Investment projects in accordance with cultural heritage laws, regardless of the size of the land and population, within **zone I** protection of relics recognized by the competent authorities as national relics or special national relics; within **zone II** protection of the relics recognized by the competent authority as a special national relics on the World Heritage list.
- (ii) Provincial People’s Committees shall have the authority of granting in-principle approval regarding:
 - Investment projects on construction of houses and urban areas with a land use scale of less than **300 hectares** and a population of less than **50.000 people**;

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- Investment projects in accordance with cultural heritage laws, regardless of the size of the land and population, within **zone II protection** of relics recognized by the competent authorities as national relics or special national relics, excluding relics recognized by the competent authority as special national relics on the World Heritage list; and
- Investment projects regardless of land area size and population in restricted development areas or historic inner cities (defined in urban planning projects) of special urban areas.

Compared to the previous regulations, Law 03/2022 has downsized the authority of the Prime Minister. Accordingly, the local competent authorities may now have more power regarding in-principle investment grants, thus making the licensing procedures less complicated and burdensome to investors.

2. Amendment of the Law on Enterprise

2.1 Conditions for ratification of resolutions at General Meetings of Shareholders regarding joint stock companies

Previously, as prescribed in Article 148.1 of the Law on Enterprise No.59/2020/QH14 (“**Law on Enterprise**”), a resolution of the General Meeting of Shareholders (“**GMS**”) regarding major issues shall be ratified if approved by a number of shareholders that represent at least 65% of votes of all participating shareholders.

However, under the new regulation in Article 7.5 of Law 03/2022, the above condition is amended as follows:

“A resolution regarding the following issues shall be ratified if it is approved by a number of shareholders that represent at least 65% of votes of all participated and voted shareholders, except for the cases specified in Clause 3, 4 and 6 of this Article; the specific ratio of votes shall be regulated in the company’s charter:

- a) Types of shares and total number of shares of each type;*
- b) Change of business lines, business professions and fields;*
- c) Change in the organizational and management structure of the company;*
- d) Investment project or asset sale with a value of 35% or more of the total value of assets recorded in the company’s most recent financial statement, unless the company’s charter stipulates the other ratio or value;*
- d) Reorganization or dissolution of the company;*
- e) Other matters prescribed by the company’s charter.”*

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Accordingly, the recent amended regulation is stricter than the previous one as it requires the ratio for ratification of a resolution of GMS to be at least 65% of all participating and voting shareholders.

2.2 Supplementation regarding the regulation of meeting minutes of Boards of Management

The Law on Enterprise previously regulated in Article 158.2 regarding the meeting minutes of Boards of Management (“**BOM**”) that in the event the chairman of the meeting and/or the secretary refuse to sign the minutes, such minutes shall still be considered effective if signed by all other participated members of the BOM and contains all information as regulated by law.

However, in the new Law 03/2022, the abovementioned regulation has been amended, with more specific regulation as follows:

- The meeting minutes must specifically state that the chairman of the meeting and/or the secretary refuse to sign the minutes;
- The chairman and/or the secretary shall take personal responsibility for any damages towards the company caused by their refusal of signing the minutes; and
- All members who signed the meeting minutes shall be jointly responsible for the accuracy and the truthfulness of the minutes meeting.

3. **Amendment and supplementation of the Law on Excise Tax**

To further promote investment and development of electric vehicles and to execute the aims of reducing carbon emissions from fuel vehicles, leading to the achievement of sustainable development goals, Law 03/2022 has amended and supplemented the Excise Tariff as regulated in Article 7 of the the Law on Excise Tax No. 26/2008/QH12 in the direction of reducing excise taxes for electric vehicles within five years from the date Law 03/2022 takes effect (i.e., from 01 March 2022 to 28 February 2027).

4. **Amendment and supplementation of the Law on Housing**

Article 4 of Law 03/2022 further elaborates on the methods of land use regulated in Article 23 of the Law on Housing No. 65/2014/QH13 to conduct projects for commercial housing construction. Accordingly, the use of land to conduct investment projects for commercial housing construction must be in accordance with the masterplan and plans of land use having been approved by the competent authorities pursuant to the laws on land, except for cases in which the State recovers land for purposes of national defence and security or recovers land for socioeconomic development for national and public benefits and other cases as prescribed by law.

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To conduct investment projects for commercial housing construction, the investor must legally have the right to use the land in the following cases:

- Have the right to use residential land;
- Have the right to use residential land and other non-residential land that meets the conditions of changing land use purpose to implement investment projects.

After investment guidelines and investors are approved by a competent authority in accordance with laws on investment, such investor(s) shall be responsible for conducting the change in land use purpose with projects requiring the change of land use purpose. The investor(s) shall also be responsible for the completion of any financial obligations in accordance with land laws.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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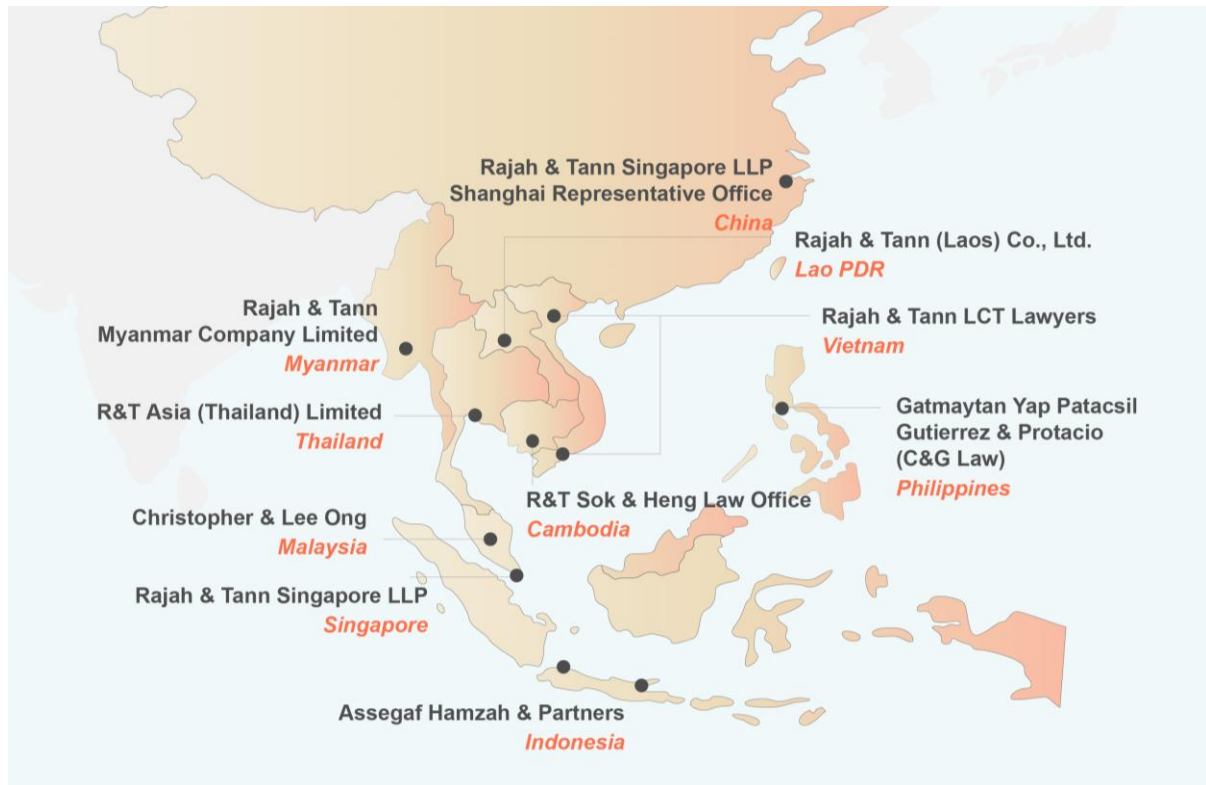
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