



# ClientAlert

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## Introduction

Dear Reader,

This month saw a handful of new regulations that affect business in Vietnam. We've briefed them and outlined the most important changes from each new regulation. They cover numerous topics concerning extension of existing investment projects and deadlines for payment of taxes in 2021, trademark registration prevention, certificates of origin under the EVFTA, E-invoices, and securities trading forms.

As always, we hope you find this month's Client Alert helpful. We look forward to working with you.

Kind regards,  
Indochine Counsel

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# Extension of Existing Investment Projects

Law No. 61/2020/QH14 on Investment (the “**2020 Investment Law**”) and Decree No. 31/2021/ND-CP dated 26 March 2021, providing detailed regulations and guidelines for implementation of a number of articles of the 2020 Investment Law (“**Decree 31**”) have made liberalizing changes. Regulations on the extension of project implementation duration (the “**Project Duration**”), however, have gone in the other direction and have been tightened. Some remarkable notes on conditions and regulatory procedures for extension of the Project Duration are discussed below.

## Maximum Project Duration

Under the 2020 Investment Law, the Project Duration outside an economic zone may not exceed 50 years. If investment projects are implemented in economic zones, geographical areas with difficult or extremely difficult socio-economic conditions, or are projects with large investment capital but slow capital recovery, the Project Duration may be longer but not to exceed 70 years.

Investors have the right to adjust (increase or decrease) the Project Duration during the operation and before the expiry date of their investment project (“**Case 1**”), or extend when the Project Duration is expired (“**Case 2**”). The Project Duration after adjustment or extension may not exceed the maximum period as mentioned above.

## Deadline for Extension Procedure

The 2020 Investment Law does not state a deadline for the extension procedure, except for investment projects that use land, in which case the procedure must be initiated at least six months before the expiration of the Project Duration.

## Extension Conditions

The Project Duration will be extended if the following conditions are satisfied:

- (a) The projects do not use outdated technology or potentially cause environmental pollution, or are treated as resource-intensive projects (the “**List of Extension-prohibited Projects**”). The projects in the List of Extension-prohibited Projects are recognized in Decree 31 (Article 27.10), however, in order to identify whether or not an existing investment project is subject to the List of Extension-prohibited Projects, the competent authority specialized in science and technology will collaborate with relevant agencies to proceed with an appraisal procedure (Article 27.11);
- (b) The projects are not subject to the cases in which investors must transfer assets without compensation to the State of Vietnam or Vietnamese partner(s);
- (c) Extension of the projects is in line with national planning, regional planning, provincial

planning and special administrative–economic unit planning (if any); conforms to development and orientations objectives in urban, residential housing development planning programs (for residential housing construction investment projects and urban areas investment projects); and

- (d) Conditions for land allocation or land lease are in line with prevailing laws on land (in case of concurrently requesting land use extension).

The extension or adjustment of the Project Duration will be decided by the authorities based on a number of criteria, including objectives, scale, location and operational requirements of the projects (“**Re-appraisal Work**”).

### Extension Procedure

The extension procedure is applied for both projects that are subject to and those that are not subject to investment policy approval. The steps to be taken are as follows:

**Step 1:** The investors submit four sets of applications to the Ministry of Planning and Investment (the “**MPI**”) or the investment registration authority<sup>1</sup> (the “**IRA**”) corresponding to the authority to approve investment policy or issue the investment registration certificate. The application must demonstrate (i) the satisfaction of the Extension Conditions, and (ii) the financial capacity of investors. Investors are allowed to simultaneously extend the Project Duration and amend or update other contents of the projects.

**Step 2:** Within three working days from receipt of the proper application, the MPI or the IRA shall send a copy of the application to the land authority and relevant authorities in order to seek their written opinions regarding the satisfaction of the Extension Conditions. The regular time for these authorities to express their responses is 10 working days.

**Step 3:** Based on the responses and the assessment of the MPI or the IRA, the investment policy approval authority or the IRA (for Projects that do not require an investment policy approval) shall decide to extend the Project Duration.

If investors proceed with adjusting the Project Duration before the expiry date, for Case 1, the procedure is similar to that for an amendment to other contents of investment projects, as long as the projects satisfy the Re-appraisal Work requirements and hence is simpler than Case 2 in which time will be required to approach various authorities to obtain the final approval for the extension.

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<sup>1</sup> Under the 2020 Investment Law, the investment registration agency means the competent/authorized State agency to issue, amend and revoke IRC which includes the management board of an industrial zone, export processing zone, high-tech zone or economic Zone, or the Department of Planning and Investment.

# Offering and issuance of securities, tender offers, share repurchases, registration and delisting of public companies

On 31 December 2020, the Ministry of Finance issued Circular No. 118/2020/TT-BTC ("**Circular 118**"), which came into effect on 15 February 2021.

Despite the fact that Circular 118 is to supersede Circular No. 162/2015/TT-BTC, Circular 118 has a much narrower sphere of application insofar as regulations once rooted in Circular No.162/2015/TT-BTC are now prescribed in Decree No.155/2020/ND-CP. Circular 118 only regulates procedural aspects, specifically templates of application dossiers. In detail,

## Prospectus

Circular 118 separates templates of prospectuses for each issuing purpose, as well as requiring information to be reflected in a prospectus to be much more detailed. Further, information on offering/issuance-related partners and information that might affect investors' decisions are now regulated as an integral part of a prospectus.

## Notice of offering/issuance

Circular 118 provides new templates of offering/issuance notice for these following offering/issuance procedures:

- ✓ Public offering of shares/bonds;
- ✓ Issuance of shares for swapping under contracts of merger or consolidation;
- ✓ Issuance of shares for paying dividends, or for raising share capital;
- ✓ Issuance of shares for Employee Stock Ownership Plans (ESOP); and
- ✓ Issuance of shares for exercise of rights under warrants.

## Reports on results of the offering/issuance

Templates for this kind of report are specifically rendered for each offering/issuance purpose. Namely, brand new templates are set forth for the following purposes:

- ✓ Public offering of shares & bonds;
- ✓ Private placement of shares or warrant-linked preference shares;
- ✓ Issuance of shares which shall be swapped for shareholders' shares in other public companies or non-public joint-stock companies, stakes of members of limited liability companies or debts;
- ✓ Issuance of shares for swap under the consolidation or merger contract;
- ✓ Issuance of shares for paying dividends or increasing share capital from equity;

- ✓ Issuance of shares under an Employee Stock Ownership Plan;
- ✓ Issuance of shares for conversion of bonds;
- ✓ Issuance of shares for exercise of rights under warrants; and
- ✓ Overseas offering of shares or issuance of shares used as the basis for overseas offering of depositary receipts.

## Procedure on reporting and disclosing information on repurchase of treasury stocks

Such procedure is not regulated since repurchase is no longer prescribed in the (current) 2019 Securities Law. Reporting and disclosing procedures on the sale of treasury shares rooted in Circular 118 (without any significant amendment) are now only applicable to treasury stocks repurchased before 1 January 2021.

## Extension of Deadlines for Payment of Taxes

In sympathy and understanding with the difficulties of businesses affected by the COVID-19 Pandemic, the Vietnamese Government issued Decree No. 52/2021/ND-CP on 19 April 2021 (“**Decree 52**”) to extend the deadlines for payment of value-added tax (VAT), corporate income tax (CIT), personal income tax (PIT) and land rental fees in 2021 for eligible taxpayers, particularly as follows:

### Subjects eligible for the extension

**Group 1:** Enterprises, organizations, household businesses, individuals that have **manufacturing** activities in the following economic sectors:

- ✓ Agriculture, forestry and aquaculture;
- ✓ Production and processing of food; textiles; garments; manufacture of leather and leather products; wood treatment and manufacture of products from wood, bamboo, rattan (except furniture); manufacture of products from straw and plaiting materials; manufacture of paper products; manufacture of rubber and plastic products; manufacture of products from other non-metallic minerals; metal production; mechanical working; metal treating and coating; manufacture of electronics, computers and optical products; manufacture of automobiles and other motor vehicles; furniture production;
- ✓ Construction;
- ✓ Publishing; cinematography and production of TV programs, music recording and publishing;
- ✓ Extraction of crude oil and natural gas (except corporate income tax on crude oil, condensate, natural gas collected under international agreements or contracts);
- ✓ Beverage production; printing, replication of recordings; production of coke, refined petroleum products; manufacture of chemicals and chemical products; manufacture of products from precast metals (except machinery and equipment); manufacture of motorcycles; repair, maintenance and installation of machinery and equipment; and

- ✓ Water drainage and wastewater treatment.

**Group 2:** Enterprises, organizations, household businesses and individuals that **do business** in the following economic sectors:

- ✓ Transport and warehousing; accommodation, food and drink; education and training; healthcare and social assistance; real estate trading;
- ✓ Employment services; travel agencies, tourism services and auxiliary tourism services;
- ✓ Composing, art and entertainment; library, archive, museum operation and other artistic activities; sports and entertainment; cinemas;
- ✓ Radio and TV broadcasting; computer programming, counseling services and other computer-related services; information service provision; and
- ✓ Mineral extraction auxiliary services.

**Group 3:** Enterprises, organizations, household businesses and individuals engaged ***in production*** of ***supporting industry products*** that are given priority for development; key mechanical products as determined in the Appendix issued together with Decree No. 111/2015/ND-CP dated 3 November 2015 and Decision No. 319/QD-TTg dated 15 March 2018.

**Group 4:** Small enterprises and microenterprises as per the Law on Assistance for Medium and Small Enterprises No. 04/2017/QH14 and Decree No. 39/2018/ND-CP elaborating the Law on Assistance for Medium and Small Enterprises.

**Group 5:** Credit institutions and foreign bank branches that provide assistance for enterprises, organizations and individuals affected by Covid-19 as prescribed by the State Bank of Vietnam (“SBV”).

*Notes: The list of economic sectors mentioned in Group 1 and Group 2 above are classified in accordance with Decision No. 27/2018/QD-TTg; and the economic sectors or fields mentioned in Group 1, 2 and 3 above must be the industries or fields having revenue in 2020 and/or 2021.*

## Extension period

*For VAT (except VAT at the import stage)*

- ✓ VAT payable arising from March to June 2021 and arising in the first and second quarter of 2021: the extension period will be **5 months**;
- ✓ VAT payable arising in July 2021: the extension period will be **4 months**; and
- ✓ VAT payable arising in August 2021: the extension period will be **3 months**.

*For the CIT*

CIT payable arising in Quarter 1, 2021 and Quarter 2, 2021: the extension period will be **3 months**.

### *For VAT and PIT of household businesses and individuals*

The deadline for payment of VAT and PIT payable arising in 2021 of the household businesses and individuals will be *no later than 31 December 2021*.

### *Land rental fee*

The deadline for payment of land rental fee payable arising in the first period of 2021 will be *no later than 30 November 2021*.

### Extension procedure

*No later than 30 July 2021*, eligible taxpayers must submit a request for extension of tax and land rental fees payment at the same time as submitting their monthly or quarterly tax declaration dossiers. The tax authority shall not be responsible for notifying the taxpayers whether such extension periods of tax payment and land rental fees are granted.

## Refusal of Trademark Registration

As provided in Article 74.2(h) of the 2005 Law on Intellectual Property (the “**IP Law**”, as amended in 2009 and 2019), an expired trademark may still be used for a period of five years from the expiry date thereof, as a basis for refusal of registration of any later trademark which is confusingly similar to it, except for the case where the expired trademark has not been used for five consecutive years as provided in Article 95.1(d) of the IP Law.

In the context of the fast development of the economy and the media, this time period is no longer reasonable. It is too long for trademarks that may be used for a brief season by failed startups or other enterprises, such as those who might have closed from Covid-19 related difficulties or other causes. The five-year length of time should be shortened because of the following reasons:

- ✓ the development of the economy has led to a tremendous increase in the number of trademarks to be used for goods and services circulating in the markets, and which are advertised in many different media; and the people who are a target of the trademark may quickly forget those which have been withdrawn from the market. In other words, the previous confusion or misleading nature of a well-established trademark over long periods of time is no longer applicable; and
- ✓ as the increased economic activity requires more new trademarks, while at the same time the limitation period remains at five years the resource pool of potential trademarks that may not be confusingly similar to existing or recently existing trademarks is narrowed.

Therefore, in the Draft of the Law to amend and supplement to the IP Law (the “**Draft Law**”) published by the Government in November 2020, the time period of five years is proposed to be reduced to three years. And in case three years has not transpired a later trademark which is

confusingly similar to the expired trademark may be allowed if the applicant in question provides evidence proving that the expired trademark has not been used for five consecutive years.

While the proposed change is evaluated as necessary and reasonable it is still longer than those one provided in certain countries in the area, for example, in China, Hong Kong, Malaysia and Singapore trademarks may prevent subsequent registrations for only one year.

## Submitting certificate of origin documents for imported goods under the EVFTA

As the European Union – Vietnam Free Trade Agreement (EVFTA) became enforceable on 1 August 2020, the Ministry of Finance issued Circular No. 07/2021/TT-BTC providing the required time for submitting the certificate of origin documents for imported goods under the EVFTA (“**Circular 07**”). Below are several points that importers in Vietnam should know about the said timeframe.

### The required time for submission

A customs declarant submits documents certifying the origin of imported goods at the time of conducting customs procedures in accordance with Article 7.1(a) of Circular No. 38/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance on determining the origin of exported and imported goods (“**Circular 38**”).

In the scenario that there is no certificate of origin of imported goods at the time of conducting the customs procedures to apply the special preferential import tax rate under the EVFTA, a customs declarant may request to make a late submission of the certificate of origin on the import customs declaration form. The customs declarant is entitled to declare and submit the certificate of origin within two years from the date of registration of the import customs declaration and within the validity period of the certificate of origin itself.

If the cause of a customs declarant’s failure to submit the certificate of origin prior to its expiration is due to force majeure or other valid reasons which are out of the control of the importer or other late submission circumstances, the General Department of Customs will consider the application of the special preferential import tax rate under the EVFTA on a case-by-case basis. For all other circumstances, the goods must be imported before the certificate of origin documents expire.

Finally, the inspection and determination of the goods’ origin, for the application of the special preferential import tax rate under the EVFTA, will be exercised under Circular 38 and its amendments.

## E-invoices

On 19 October 2020, the Government issued Decree No. 123/2020/ND-CP (“**Decree 123**”) on



invoices and documents. Accordingly, e-invoices are encouraged to be adopted before 1 July 2022 and will become compulsory from 1 July 2022, i.e. the effective date of Decree.

Decree 123 made significant changes compared to Decree No. 119/2018/ND-CP ("**Decree 119**") that prescribed the use of e-invoices for sales of goods and provision of services.

We hereby point out some noticeable contents for legal compliance purposes.

## [Abolishing the regulation on compulsory use of e-invoices from 1 November 2020 in Decree 119](#)

Specifically, Point 2 and Point 4, Article 35 of Decree 119 on e-invoices are repealed. It is therefore no longer compulsory for businesses, economic organizations, other organizations, business households and individuals to complete the implementation of e-invoices and authenticated e-invoices from 1 November 2020, unless the tax authority requires the businesses to implement E-invoices as otherwise regulated by Decree 123 or Decree 119. If a business cannot meet conditions of information technology infrastructure, that business may continue using the current form of invoices and must prepare and submit the data of output invoices together with submission of Value Added Tax ("**VAT**") returns.

## [Using printed but unused invoices](#)

If enterprises and economic organizations that have notified the tax authority of the publication of printed invoices, self-printed invoices, unauthenticated e-invoices or have registered to apply authenticated e-invoices or have purchased invoices from the Tax Authority before 19 October 2020, may continue to use them from 19 October 2020 to the end of 30 June 2022 in compliance with the invoice procedures according to the provisions of Decree No. 51/2010/ND-CP ("**Decree 51**") and Decree No. 04/2014/ND-CP ("**Decree 04**").

During the period from 19 October 2020 to 30 June 2022, the business establishments must apply e-invoices according to the provisions of Decree 123 or Decree 119. If the informed business fails to meet information technology infrastructure requirements and continues to use the aforesaid invoices, it must send its invoice data to the Tax Authority by using Form No. 03 in Appendix IA enclosed with Decree 123 and submit its VAT declaration. The Tax Authority shall create data about invoices of businesses in order to consolidate them into the e-invoice database and publish it on the Web Portal of the General Department of Taxation for searching of e-invoice data.

## [Invoice usage for newly established enterprises](#)

Enterprises established during the period from 19 October 2020 to 30 June 2022, if required by the Tax Authority to implement e-invoices in line with the provisions of Decree No. 123, they must follow the Tax Authority's instructions. If any enterprise continues to use invoices as prescribed in Decree 51 and Decree 04 due to its failure to meet the information technology infrastructure requirements, it

must send its invoice data to the Tax Authority by using the Form No. 03 enclosed with Decree 123 and submit its VAT declaration. The Tax Authority shall create data about e-invoices of businesses in order to consolidate them into the e-invoice database and publish it on the Web Portal of the General Department of Taxation for searching of e-invoice data.

## About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

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A full list of partners, associates and other professionals is available on our website. |

# Contact Us

For further information or assistance, please contact the following Indochine professionals:



**Dang The Duc**  
Managing Partner  
duc.dang@indochinecounsel.com



**Nguyen Thi Hong Anh**  
Partner, Head of IP&T Practice Group  
anh.nguyen@indochinecounsel.com



**Le Nguyen Huy Thuy**  
Partner  
thuy.le@indochinecounsel.com



**Le Van Duong**  
Partner, Head of Hanoi Office  
duong.le@indochinecounsel.com



**Phan Anh Vu**  
Partner  
vu.phan@indochinecounsel.com



**Steven Jacob**  
Foreign Associate  
steven.jacob@indochinecounsel.com



**Pham Thi Thanh Lan**  
Partner  
lan.pham@indochinecounsel.com



Greater China Desk  
**Ly Nghia Dzung / 李義勇**  
Associate  
dung.ly@indochinecounsel.com

**Ho Chi Minh City**  
Unit 305, 3rd Floor, Centec Tower  
72-74 Nguyen Thi Minh Khai, District 3  
Ho Chi Minh City, Vietnam  
T +84 28 3823 9640  
F +84 28 3823 9641  
E info@indochinecounsel.com

**Hanoi**  
Unit 705, 7th Floor, CMC Tower  
Duy Tan Street, Cau Giay District  
Hanoi, Vietnam  
T +84 24 3795 5261  
F +84 24 3795 5262  
E hanoi@indochinecounsel.com

[www.indochinecounsel.com](http://www.indochinecounsel.com)

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