



# Special Alert

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## New Draft Decree to Govern Industrial Zones

On 22 May 2018, the Government issued Decree No. 82/2018/ND-CP regulating the management of industrial zones and economic zones (“**Decree 82**”). Decree 82 created the legal framework for industrial zones to attract foreign investment capital, therefore driving economic growth. Within the first five months of 2021, industrial and economic zones have attracted about 291 foreign investment projects with newly registered capital and increases in existing capital reaching approximately USD6.02 billion, an jump of about 10.3% over the same period last year. They also attracted about 271 domestic investment projects with new registered capital and increases in existing capital of about VND53.2 trillion<sup>1</sup>.

To consolidate and unify the laws related to investment, construction, and real estate business which were recently enacted by the National Assembly and to create the legal framework for new models of industrial zones as actually operated in Vietnam, the Ministry of Planning and Investment recently circulated a draft decree (the “**Draft Decree**”) with the intent to replace Decree 82 for collection of opinions. Some notable points under the Draft Decree are as follows.

### Management and amendment of the master plan

According to Article 59.1(c) of the Law on Planning 2017 and Resolution No. 110/NQ-CP dated 2 December 2019 of the Government promulgating the list of plans integrated into national planning, regional planning, provincial planning, the planning of industrial zones and economic zones are both integrated into national planning, regional planning, and provincial planning.

Therefore, the Draft Decree has added provisions to direct construction and plans for development of industrial parks and economic zones<sup>2</sup>. Specifically, the construction direction is considered to fall

<sup>1</sup> <http://www.mpi.gov.vn/Pages/tinbai.aspx?idTin=50199&idcm=188>

<sup>2</sup> Chapter 2 of the Draft.

under regional planning, which defines objectives, orientations, solutions and organizes the implementation of industrial zones and economic zones at the regional level<sup>3</sup>. The plan for development of industrial zones and economic zones falls under the ambit of the provincial planning authorities, who determine the expected number, name, area and location of industrial zones according to district-level areas of provinces and municipalities<sup>4</sup>. At the same time, the Draft Decree also adds regulations on making and adjusting the direction and plans for development of industrial zones, specified at Chapter 2 of the Draft Decree.

### Authorization and delegation of power

The Draft Decree (i) authorizes the Minister of Planning and Investment or (ii) the recipients of delegated powers to Provincial People's Committees for consideration and granting of new projects, and adjusting the expansion of investment projects in construction and trading of industrial infrastructure.

### Consideration and grant of investment projects in construction and trading of industrial infrastructure

The Draft Decree has added regulations to ensure compliance with investment in the development of previously established industrial zones and with the newly promulgated and amended law as follows:

The area of the industrial zone must be suitable to attract investment in the province or municipality and is at least 75 hectares and ensures that at least 5% of the total industrial land area of the industrial park is set aside for small and medium enterprises, supporting industrial enterprises, innovative enterprises, other enterprises subject to priority and support in terms of production and business in accordance with the provisions on land lease and sublease<sup>5</sup>.

The occupancy rate of 60% shall not be applied in the following cases: (i) the total natural land area of industrial zones in provinces and centrally run cities is less than 1,000 hectares; (ii) the industrial zone has previously had an infrastructure construction and business investment project approved by a competent authority but terminated and assigned to new investors; (iii) investment projects for construction and operation of infrastructure operating under the models of eco, supporting or specialized industrial zones, and (iv) investors commit to spend at least 30% of industrial land in the industrial park to allow high-tech investment projects, supporting industrial projects, innovation projects and priority projects to attract investment<sup>6</sup>.

The Draft Decree also adds more specific and detailed regulations on investment plans for residential housing and social, cultural and sports facilities servicing workers working in industrial zones<sup>7</sup>.

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<sup>3</sup> Article 2.4 of the Draft.

<sup>4</sup> Article 2.5 of the Draft.

<sup>5</sup> Article 7.5 of the Draft.

<sup>6</sup> Article 7.7 of the Draft.

<sup>7</sup> Article 7.8 of the Draft.

## Regarding investment incentives

The Draft Decree supplements provisions on investment incentives for investment projects in the list of special sectors and occupations with special investment incentives in economic zones or investment projects subject to special investment support and incentives in accordance with the law on investment implemented in industrial zones.

Specifically, for the above-mentioned projects, after the investment policy and the investor of the project is approved or the selection of an investor is completed, the Provincial People's Committee shall consider and decide on the permission for the investment project to be implemented before completing the construction procedures, labor, land and other relevant procedures which are under the competence of the Provincial People's Committees or the Management Boards of industrial zones and departments. In this case, the investor must commit to the progress of completing the procedures and take full responsibility if it does not comply with the conditions and regulations as prescribed under applicable laws<sup>8</sup>.

## Regarding the industrial models

The Draft Decree supplements the regulations on the model of specialized industrial zones. This is an industrial zone model specializing in manufacturing and providing services for the production of products of a certain industry or profession. The ratio of land area to be leased or subleased to projects on investment in specialized industries and trades must be at least sixty (60) per cent of the rentable area of an industrial zone<sup>9</sup>. Specialized industrial zones are entitled to mechanisms and policies on investment incentives as applicable to supporting industrial zones.

Regarding the model of industrial zone - urban area - service, the Draft Decree has amended and supplemented the provisions on conditions for consideration and approval of investment policies for investment projects in construction and trading of industrial infrastructure and procedures for investment in industrial zone - urban area - service to ensure compliance with recently promulgated laws<sup>10</sup>.

## Regarding methods to mobilize capital to invest in the construction of industrial zones' infrastructure

The Draft Decree adds methods to mobilize capital to invest in the construction of industrial zone infrastructure, including: (i) advance land rent from investors wishing to lease land or sublease land in industrial zones to invest in the construction of infrastructure of industrial zones; (ii) annual revenues or other legal state budget sources and state budget revenues in the economic zone for investment in the construction of technical and social infrastructure in the economic zone<sup>11</sup>.

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<sup>8</sup> Article 22.5 of the Draft.

<sup>9</sup> Article 2.1(c) of the Draft.

<sup>10</sup> Article 7 of the Draft.

<sup>11</sup> Article 23.1 of the Draft.

## Regarding export processing

The Draft Decree supplements regulations on export processing enterprises and investment projects in export processing activities. Export processing is only a business activity of an export processing enterprise<sup>12</sup>. It is important to note that assets formed from investment projects in export processing activities that are entitled to tax incentives applicable to export processing activities shall not be used to carry out other business activities. In case of using these assets to carry out other business activities, tax incentives that have been exempted or reduced in accordance with the tax law must be refunded<sup>13</sup>. The Draft Decree also has transitional regulations for export processing enterprises established in accordance with the law on previously existing industrial and economic zones.

## Regarding the land sublease price in the industrial zone

The Draft Decree supplements the provisions on handling measures in case the land sublease price in the industrial zone increases by more than 30% compared to the land sublease price bracket registered with the Management Board of industrial zones<sup>14</sup>. Specifically, the Management Board of industrial zones shall decide to implement the following price measures: (i) on the basis of assessing the impact on the business investment environment in the area, the Management Board of industrial zones and economic zones requests investors of building and trading in industrial infrastructure investment projects to re-register the price bracket and fees before the time as prescribed in Article 2.2 and explain about the price brackets and fees, and (ii) at the request of investors wishing to lease land in the industrial park to implement production and business investment projects, the Management Board of industrial zones and economic zones shall organize price negotiations in accordance with the laws<sup>15</sup>.

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<sup>12</sup> Article 2.13 of the Draft.

<sup>13</sup> Article 27.7 of the Draft.

<sup>14</sup> Article 28 of the Draft.

<sup>15</sup> Article 28.3(a) and (b) of the Draft.

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