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## LEGAL ALERT

### **New Laws on Investment and Enterprise Come Into Affect from Midnight**

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## New Laws on Investment and Enterprise Come Into Affect from Midnight



As you now all know, the **new Law on Enterprise (LOE) and Law on Investment (LOI)** will take effect from **0.00AM tomorrow, 1 July 2015** promising to bring many positive changes to Vietnam business environment.

What enterprises and investors are all now waiting for are the Decrees implementing the LOE and LOI, which have not been issued yet.

While the final draft of the decrees are now being circulated, and the *vacatio legis* by law would be 45 days after promulgation by the Government, the

Ministry of Planning of Investment (MPI) sent an urgent Official [Letter No. 4211/BKHDT-DKKD](#) dated 26 June 2015 (OL 4211) on business registration, implementing LOE ([please click here to download](#)).

Another Official Letter implementing the LOI are expected to be circulated anytime from now until Midnight (we have been informed that this Official Letter No 4326/BKHDT-ĐTNĐ dated 30 June 2015 implementing LOI was issued, and will provide you with updates in the next legal alert).

### Under OL4211, notable changes are as follows:

1. **Application of ERC for current foreign invested enterprise (FIE):** for enterprises operating under an Investment Certificate (IC) or an Investment License (IL), when amending the IC or IL, they will apply for the Enterprise Registration Certificate (ERC). The ERC dossier will be similar to the dossier for applying a new ERC, attached with the current IC or IL.
2. **Simplified ERC registration process:** Art 24 LOE only requires applicants to file, among others, scope of business, and not the HS Code or CPC to the registration request

or establishing an enterprise, be it a limited liability company (**LLC**) or a joint stock company (**JSC**). The form under Art 24 LOE is now being drafted by the local department of planning and investment (**DPI**) and to be released soon. The CPC will be filled in by the DPI, and there is still a risk that the CPC/HS Code filled by the DPI are not matched by the CPC/HS Code of products to be imported by the enterprise. However, the enterprise's application will no longer be rejected because the CPC/HS Code is not found or unfit. Please note that with respect to FIEs, the filing of HS Code and CPC would still be required under form MD-6 of Circular 08/2013/TT-BCT dated 22 April 2013 of (**Circular 08**) of Ministry of Industry and Trade (**MOIT**). This requirement is still valid until 1 July 2016, at the latest (LOI, Art 74.3).

3. **Place of business to be notified, not registered:** the notice shall be sent within 10 days to the local DPI from the date of the decision to open a new place of business. This regulation does not affect requirements to have specific license for each type of business (e.g. a supermarket license, warehouse license, school license etc).
4. **A change of the scope of business, a JSC private placement, and entry of foreign shareholders to be notified, not registered:** these changes are notified at the local DPI, who will then reconfirm within 3 working days from receipt of notice. The DPI reserves the right to reject the notice if the conditions for foreign investors' entry under WTO assessments or other local laws are not met (for "conditional projects"). Therefore it is advisable that the scope of business of an enterprise must be "clean" from conditions, before a notice of foreign shareholders are sent. After foreign shareholders have been duly notified, the enterprise may change its scope of business. This change may still be subject to scrutiny, but the conditions will be strictly by law (e.g., percentage of foreign shareholding) rather by the authorities' discretion.
5. **Enterprises can make more than one seals by notice.** The new seals will be published on the National Business Registration Portal (NBRP).
6. **Liquidation process to be simplified:** the enterprise's liquidation shall be made within 6 months from the passing of the resolution for its liquidation. Within that 6 months, the tax authority should confirm the enterprise's fulfillment of tax obligations. Unless the tax authority send a notice of objection, the liquidation process will complete within that time period and the enterprise will be deleted from the NBRP.

**Some issues are still unclear under OL4211:**

1. Whether enterprises operating under an IC or IL must surrender its original IC or IL when receiving the ERC, and if so, what would be their new Investment Registration Certificate (IRC) under the new LOI, and what would be the In Principle Approval (IPA), should an IPA be required under the new LOI.

2. Must a foreign shareholder have a “project” when it acquires shares (i.e., indirect investment) in a local company? It is likely that it is not required, but we might need to confirm this by an official letter implementing the LOI (ad hoc regulation pending Decrees implementing LOI).
3. What is the real difference between “registration” and “notice” if DPI may have the right to send a negative opinion on a notice filed?

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