

## LEGAL UPDATE

No. 1 – February 2022

(01 Feb 2022 – 15 Feb 2022)



### News in focus

*New Law amending the Law on Investment, Law on Enterprises and other 7 Laws*



### New legal documents

Remarkable among documents:

*The Minister of Finance's Circular 05/2022/TT-BTC guiding the restructuring of enterprises that are not eligible for equitization and transfer of shares with receivables of enterprises in which 100% of charter capital is held by the State with the function of purchasing, sale and settlement of debts*

## A – News in focus

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### **New Law amending the Law on Investment and Enterprises and other 7 Laws**

*(Taking effect from 01 March 2022)*

On 11 Jan 2022, the National Assembly enacted the Law No. 03/2022/QH15 amending and supplementing several Articles of the Law on Public Investment, Law on Public – Private Partnership Investment, Law on Investment, Law on Housing, Law on Bidding, Electricity Law, Law on Enterprises, Law on Excise Tax and Law on Enforcement of Civil Judgments (*hereinafter referred to as “**Law No. 03/2022/QH15**”*), which comes into effect from 01 March 2022.

In this legal update, we reveal some of the most remarkable amendments of the Law No. 03/2022/QH15.

Contents	Applicable regulations	Law No. 03/2022/QH15
<b>1. Law on Enterprises</b>		
<b>Periodic information disclosure</b>	Report and summary of the mid-year financial statements <b><i>audited by an independent auditing organization</i></b> ; the term for publication must be before July 31 every year; including the parent company's financial statements and the consolidated financial statements (if any).	<b>Do not regulate</b> that Report and summary of the mid-year financial statements must be audited by an independent auditing organization.
<b>Minutes of meeting (MoM) of the BOD of JSC</b>	Law No. 03/2022/QH15 stipulates <b>more detailed than</b> the applicable regulations: In case the chairperson, the person taking the minutes refuses to sign the MoM, but if all other members of the BOD attend and agree to approve the MoM, sign and have all the contents as prescribed at Points a, b, c, d, dd, e, g and h, Clause 1, Article 158 of the Law on Enterprises, this minutes is effective. <i>The MoM clearly states that the chairperson and the person recording the minutes refuse to sign the MoM. The signatories of the MoM are jointly responsible for the accuracy and truthfulness of the contents of the MoM. The chairperson, the person taking the minutes is personally responsible for any damage caused to the enterprise due to their refusal to sign the MoM in accordance with this Law, the company's charter and other relevant laws.</i>	
<b>Conditions for approving the GMS's Resolution</b>	A resolution on the following contents shall be approved if the number of shareholders representing 65% or more of the total votes of all attending shareholders agree...	A resolution ..... representing 65% or more of the total votes <i>of all shareholders attending and voting at the meeting agree....</i>
<b>Enforcement Term</b>	Law No. 03/2022/QH15 stipulates <b>more detailed than</b> the applicable regulations: Pursuant to this Law, the Government stipulates in detail the organization, management and operation of enterprises directly serving national defense and security or combining economic with national defense and security, <i>are SOEs and limited companies held 100% of the charter capital by SOEs specified in Clause 2, Article 88 of this Law.</i>	
<b>2. Law on Bidding</b>		
<b>Projects using ODA and preferential loans</b>	Law No. 03/2022/QH15 <b>supplements new Article – Article 33a:</b> “1. Making, submitting, appraisal and approval of contractor selection plans, bidding dossiers, requirement dossiers, determination of short lists for procurement activities of projects using ODA, preferential loans are made before signing international treaties, international agreements on ODA, preferential loans. 2. The Government stipulates in detail this Article.”	
<b>Basis for planning contractor selection</b>	Law No. 03/2022/QH15 supplements as follows: International treaties and agreements for projects funded by ODA, preferential loans, <i>except for the case specified in Article 33a of the Law on Bidding 2013.</i>	

Contents	Applicable regulations	Law No. 03/2022/QH15
<b>3. Law on Public Investment</b>		
<p><b>Programs and projects that are decided on the investment policy by the Prime Minister</b></p>	<p>Law No. 03/2022/QH15 <b>amends and supplements</b> to the following regulations:</p> <ul style="list-style-type: none"> <li>- Projects specified in Clause 1, Article 8 of the Law on Public Investment; other group A projects using central budget capital managed by the Ministries and central agencies;</li> <li>- Investment programs and projects of group A funded by ODA and preferential loans from foreign investors, except for national target programs and public investment programs specified in Clauses 1 and 2, Article 17 of the Law on Public Investment;</li> <li>- Investment programs and projects using non-refundable aid ODA in the following cases: Programs and projects of group A; programs and projects with the policy framework; programs and projects in the field of national defense and security, religion; sector outreach programs; procurement of goods subject to the Prime Minister's permission; Vietnam's participation in regional programs and projects.</li> </ul>	
<b>4. Law on Investment</b>		
<p><b>Projects that are approval on the investment policy by the Prime Minister</b></p>	<p>Law No. 03/2022/QH15 <b>amends and supplements</b> to the following regulations:</p> <ul style="list-style-type: none"> <li>- Investment projects on construction of houses (for sale, lease, lease-purchase), urban areas with a land use scale of 300 hectares or more or a population from 50,000 people;</li> <li>- Investment projects which are in accordance with the laws on cultural heritage regardless of the land area scale, the population within the protection zone I of the relic recognized as national monuments, special national monuments by the competent authority; within the protection zone II of the relic recognized by the competent authority as a special national relic on the world heritage List.</li> </ul>	
<p><b>Projects that are approval on the investment policy by the Provincial People's Committee</b></p>	<p>Law No. 03/2022/QH15 <b>amends and supplements</b> to the following regulations:</p> <ul style="list-style-type: none"> <li>- Investment projects on construction of houses (for sale, lease, lease-purchase), urban areas with a land use scale of under 300 hectares or a population under 50,000 people;</li> <li>- Investment projects which are in accordance with the laws on cultural heritage regardless of the land area scale and population within the protected zone II of the relic recognized as national monuments, special national monuments by the competent authority, except for special national relics under the world heritage List; investment projects regardless of land areas, population in restricted development areas or historic inner cities (defined in urban planning projects) of special urban areas.</li> </ul>	
<p><b>Conditional business lines for investment and trading</b></p>	<p>Law No. 03/2022/QH15 <b>supplements 01 business line</b> as follows:</p> <p>Trading cybersecurity products and services network security products and services (excluding trading network information security products and services and trading civil cryptographic products and services).</p>	

## B - New legal documents

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### Remarkable new legal documents (Enacted from 01 Feb 2022 – 15 Feb 2022)

No.	Legal documents	
<b>INVESTMENT</b>		
<b>1</b>	The Government's Resolution 16/NQ-CP in 2022 on extending the time for allocating capital for projects using capital from the lawful revenue for investment of Vietnam Social Security	
	Enactment date: 08 Feb 2022	Effective date: 08 Feb 2022
<b>2</b>	The Government's Resolution 18/NQ-CP in 2022 implementing Resolution 44/2022/QH15 on investment policy of the East North-South Expressway construction project in the 2021-2025 period	
	Enactment date: 11 Feb 2022	Effective date: 11 Feb 2022
<b>TRAFFIC - CONSTRUCTION</b>		
<b>3</b>	The Government's Resolution 15/NQ-CP in 2022 on signing the ASEAN Mutual Recognition Agreement for the group of building construction materials (MRA BCM)	
	Enactment date: 08 Feb 2022	Effective date: 08 Feb 2022

No.	Legal documents	
<b>ENTERPRISES</b>		
<b>4</b>	The Minister of Finance's Circular 05/2022/TT-BTC guiding the restructuring of enterprises that are not eligible for equitization and transfer of shares with receivables of enterprises in which 100% of charter capital is held by the State with the function of purchasing , sale and settlement of debts	
	Enactment date: 08 Feb 2022	Effective date: 01 April 2022
<b>5</b>	The Minister of Finance's Circular 07/2022/TT-BTC guiding the handing over, receipt and handling of debts and assets, except when converting ownership of enterprises, public non-business units and as designated by the Government and the Prime Minister	
	Enactment date: 09 Feb 2022	Effective date: 01 April 2022
<b>FINANCE - BANKING</b>		
<b>6</b>	Circular 02/2022/TT-BNNPTNT repealing Circular 32/2016/TT-BNNPTNT providing for settlement of completed projects with state capital managed by the Ministry of Agriculture and Rural Development	
	Enactment date: 11 Feb 2022	Effective date: 15 Feb 2022
<b>7</b>	The Government's Resolution 16/NQ-CP in 2022 on extending the time for allocating capital for projects using capital from the lawful revenue for investment of Vietnam Social Security	
	Enactment date: 08 Feb 2022	Effective date: 08 Feb 2022
<b>8</b>	The Government's Resolution 17/NQ-CP in 2022 Report on mobilizing and using resources from the state budget, contributions from domestic and foreign organizations, and people for COVID-19 prevention and control	
	Enactment date: 09 Feb 2022	Effective date: 09 Feb 2022
<b>SECURITIES</b>		
<b>9</b>	The Minister of Finance's Circular 6/2022/TT-BTC guiding the compliance supervision of the State Securities Commission of Vietnam towards activities in the securities sector of the Vietnam Stock Exchange and its subsidiaries and the Vietnam Securities Depository and Clearing Corporation	
	Enactment date: 08 Feb 2022	Effective date: 24 Mar 2022