



Vietnam: Law On Environmental Protection 2020 (Part 1)

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On 17 November 2020, the National Assembly approved Law No. 72/2020/QH14 on Environmental Protection (the “New LEP”), replacing the Law on Environmental Protection 2014 (the “Current LEP”).

The New LEP will take effect from 1 January 2022; however, the criteria for appraising preliminary environmental impact assessment reports have been applicable since 1 February 2021, and applicants with pending environmental administrative dossiers submitted prior to 1 January 2022 may choose to have the New LEP applied to their applications.

The New LEP introduces several significant points, which will be discussed in two separate issues (Part 1 and Part 2) of this newsletter. In this Part 1, we touch upon matters concerning classification of projects for environmental protection purposes and environmental impact assessments (“EIA”).

1. Classification of Projects

The New LEP provides a formal set of criteria for the classification of projects in accordance with the impact such projects will have on the environment. While not entirely new, such criteria are not clearly provided under the Current LEP or other environmental regulations.

The criteria set out under the New LEP classify projects into four categories based on the level of risk a given project poses to the environment, with category I being the highest risk and category IV being no risk. The scale of the proposed business, the area (measurement) of land, and certain environmentally sensitive factors, among many others, are taken into consideration in assessing the risk. The classification of projects based on such criteria is relied upon to determine whether a given project is subject to a “preliminary” EIA or “final” EIA, as well as whether an environmental permit will be required for such project.

The use of a single common set of environmental criteria throughout multiple administrative procedures is expected to bring several benefits, such as enhancing the coherence of the relevant regulations, facilitating a consistent application of the law, and

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improving the efficiency of the state's environmental management activities.

2. Projects Subject to Preliminary EIA

The Current LEP provides that projects that are simultaneously subject to both an EIA and an in-principle approval or investment registration certificate requirement are also required to have a preliminary EIA, which is supposed to serve as the basis for the aforementioned in-principle approval or investment registration certificate. However, the Current LEP provides no details as to the content of preliminary EIA; rather, it is only the regulations on public investment that make such prescription. Therefore, it has been difficult to prepare preliminary EIA for projects, other than public investments, that are in compliance with the preliminary EIA requirements. Under the New LEP, only projects that run the highest risk of having a negative impact on the environment (i.e., category I projects) are subject to the preliminary EIA, regardless of whether or not such projects are subject to an in-principle approval or investment registration certificate requirement.

The New LEP also provides for the content of the preliminary EIA, which is essentially the same as is currently provided under the regulations on public investment.

3. Projects Subject to EIA

Because of the way the Current LEP is drafted, it is possible that certain projects that are likely to have no, or an insignificant, effect environmentally (such as projects involving betting and casino services, or those that relate to education or culture) may still be subject to an EIA. As a result, the resources of both investors and the state are often wasted, as investors must implement, and the state must appraise, an EIA as well as other environmental procedures for such projects, even though their potential impact on the environment can be reasonably foreseen as insignificant.

In view of this problem, the New LEP sets out a more rational approach by only subjecting to an EIA those projects deemed to present a certain risk of negatively impacting the environment; namely, category I projects and certain category II projects, such as those that entail the exploitation of mineral and water resources or that require migration or resettlement of people, among others.

4. Authority to Appraise EIA

Under the New LEP, only the Ministry of Natural Resources and Environment, Ministry of National Defense, Ministry of Public Securities and provincial-level People's Committees have the authority to appraise EIA reports. However, the Ministry of National Defense and Ministry of Public Securities only appraise projects involving state secrets.

Other ministries and ministry-level agencies that have the authority to appraise EIA reports under the Current LEP will no longer have such authority under the New LEP. In light of this, the New LEP requires such ministries and ministry-level agencies to cooperate with the provincial-level People's Committees with regard to the appraisal of EIA reports for projects subject to an in-principle approval or investment decision from such ministries or agencies.

5. Disclosure of EIA

Under the New LEP, EIA reports will be disclosed publicly. In particular, project owners will be required to disclose their appraised EIA report on their information site, or via other means, ensuring that such information can be readily obtained. Detailed requirements will be set forth in subsequent decrees. In addition, the state authority appraising such EIA report must disclose on its electronic portal the decision approving the appraisal results. In each case, exceptions will be made for any content that constitutes an enterprise secret or state secret.

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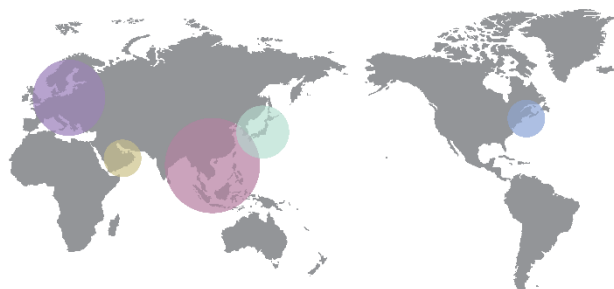


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