

Author:

[E-mail✉](mailto:isamu@nishimura-asahi.com) [Isamu Imaizumi](mailto:isamu@nishimura-asahi.com)

[E-mail✉](mailto:ha@nishimura-asahi.com) [Ha Hoang Loc](mailto:ha@nishimura-asahi.com)

[E-mail✉](mailto:mai@nishimura-asahi.com) [Mai Thi Ngoc Anh](mailto:mai@nishimura-asahi.com)

On 11 January 2022, the National Assembly of Vietnam voted to pass a set of amendments (the “**Amendments**”) proposed by the government in an attempt to improve the legal framework for investment and business in Vietnam. Taking effect on 1 March 2022, the Amendments make changes to the Law on Enterprises, Law on Investment, Housing Law, Law on Excise Tax, Law on Bidding, Law on Electricity, Law on Public Investment, Law on Public - Private Partnership Investment Form, and Law on Civil Judgment Enforcement.

Below is a summary of some of the amendments.

1. Law on Enterprises

- *Vote-counting method at general meeting of shareholders (“**GMS**”)*

Under the current Law on Enterprises, matters other than voting on the election of directors and inspectors are to be approved by a simple majority or supermajority (65% or more) of the total votes of all attending shareholders. However, under the Amendments only the votes cast by those shareholders present and voting are included in the calculation of the shareholder vote.

This amendment addresses a common problem in calculating shareholder votes where attending shareholders leave the meeting before it is concluded or do not cast any vote (even an abstention). The Amendments clarify that the voting rights of such shareholders are not to be taken into consideration for purposes of passing resolutions of the GMS.

- *Requisite signatures for effectiveness of the meeting minutes of members’ council (“**MC**”) and board of management (“**BOM**”)*

Prior to the Amendments, the Law on Enterprises required signatures of the chairman of the meeting and the person keeping the meeting minutes of the MC and BOM. However, their refusal to sign did not invalidate those minutes so long as all other attending members of the MC or BOM signed the meeting minutes. This provision was effective in preventing abuses of power by the meeting chairman or minutes keeper, but it enabled those attending MC or BOM members who voted against an MC or BOM resolution to invalidate those minutes (and place serious obstacles in enforcement and implementation of the resolutions adopted at the relevant meetings) by refusing to sign the meeting minutes.

To correct this situation, the Amendments provide that the signatures of all attending members of the MC or BOM who approve the meeting minutes are sufficient to validate the meeting minutes in case the meeting chairman or minutes keeper refuse to sign them.

- *Restatement of the rights and obligations of the owners of multi-member limited liability companies (“LLC”)*

Prior to the Amendments, important rights and obligations were vested in the members of members’ council , including the rights to sell or gift capital equity, receive dividends, receive the remainder of the assets upon dissolution or bankruptcy of the LLC, and the obligation to make equity contributions in full and on time. Because the members of the members’ council could be the authorized representatives of the corporate owners/members, the Law on Enterprises caused confusion where it appeared that the authorized representatives, but not the corporate owners, had those rights and obligations.

To address this concern, the Amendments vest these important rights and obligations in the owners/members of the LLC, not their authorized representatives.

- *Mid-year financial statements of state-owned enterprises (“SoEs”)*

The Amendments relieve SoEs of the obligation to have mid-year financial statements audited. It is believed that this will reduce unnecessary compliance burdens and make the requirement inconsistent with other regulations on the management of SoEs.

- *Re-definition of defense and security enterprises (“DSEs”)*

According to the government, there are about 20 enterprises that have been performing national defense and security tasks as assigned by the Ministry of National Defense, but they have not been entitled to any incentives under the law because the Law on Enterprises has required that DSEs be SoEs (i.e., directly owned by the state), even though such enterprises may be indirectly owned by the state.

To incentivize and motivate companies that are taking part in national defense and security tasks, the Amendments broaden the definition of DSEs to now include subsidiaries of the SoEs that are wholly-owned by the state.

2. Law on Investment

- *Provincial authorities are given more power to grant in-principle approvals*

The Amendments expand the provincial governments’ authority to grant in-principle approvals as follows:

- (i) With respect to construction of residential housing in urban zones, the provincial governments may grant in-principle approvals to projects having a land use scale of below 300 hectares or that have a population scale of below 50,000 inhabitants, which represents an increase from below 50 hectares or below 10,000 inhabitants. The prime minister has the sole authority to grant in-principle approvals for investment projects concerning the construction of residential housing in urban zones on a larger scale.
- (ii) With respect to investment projects falling within the scope of the protection of relics, the provincial governments may grant in-principle approvals to projects located in certain national relic zones, or

those located in restricted development areas or within certain historical inner areas (determined in accordance with urban master planning of the project) of a wider special category urban area. The prime minister has the sole authority to grant in-principle approvals to projects located in all other national relic zones, or those located at world heritage sites.

- *New conditional business line*

The Amendments add the following item to the list of conditional business lines: Trade in cybersecurity products and services, except for trade in products and services relating to cyber information security and civil cryptography.

To address the increasing risks surrounding cybersecurity products and services, the Amendments enable the government to form specific rules about the conditions for trading cybersecurity products and services.

3. Housing Law

- *Requirement for development of residential projects*

The Amendments have now clarified that: (i) commercial housing projects may be developed on residential land or on a mixture of residential land and other types of land for which the state permits conversion of land use purpose to residential land under lawful use right of the developers; and (ii) when commercial housing projects are developed in latter cases, conversion of non-residential land into residential land shall be carried out after the granting of in-principle approval and investor approval.

Unfortunately, the congress rejected a much-anticipated amendment of the law that allows residential projects to be developed wholly on non-residential lands. One of the largest concerns is that the proposed amendment could encourage accumulation of non-residential land and negatively impact state policies on land use.

4. Law on Excise Tax

- *Preferential excise tax rates for battery-powered electric vehicles*

To encourage the development of a local and foreign market for battery-powered electric vehicles, a preferential excise tax package is offered with respect to battery-powered electric vehicles under the Amendments. Accordingly, battery-powered electric passenger vehicles are subject to preferential tax rates from 1% to 3%, depending on the number of seats, until 28 February 2027. After that date, the tax rates will be increased to a range of 4% to 11%. For cargo vehicles, the preferential tax rates are 2% to 7% until 28 February 2027 and beyond.

5. Law on Public - Private Partnership Investment Form

- *Authority to grant in-principle investment approval of a public - private partnership investment project funded by Official Development Assistance (ODA) loans and preferential loans from foreign sponsors (the “Foreign-Capital-Borrowed PPP Projects”)*

Under the Law on Public - Private Partnership Investment Form (the “PPP Law”), all the Foreign-Capital-Borrowed PPP Projects must be granted in-principle investment approval by the prime minister. However,

the Amendments shift a part of this authority of the prime minister to lower-level authorities. Specifically, under the Amendments, only Foreign-Capital-Borrowed PPP Projects with a total investment level equivalent to that of “Group A” projects, in accordance with the Laws on Public Investment, require the approval of the prime minister.

Accordingly, in light of the Amendments, the remaining Foreign-Capital-Borrowed PPP Projects (such as “Group B” and “Group C” projects) may now be granted in-principle investment approval by lower-level authorities (e.g., ministers, heads of central authorities and other agencies, and provincial People’s Councils), and thus the approval process for these projects is expected to be accelerated and less complicated.

6. Law on Electricity

- *Non-state economic sectors are allowed to operate the transmission grids they invest in and build*

Under the Law on Electricity, the transmission of power under the national power system is a state-monopolized activity. The Amendments allow investors of non-state economic sectors to now operate the transmission grids that they have invested in and built themselves.

This amendment creates a necessary legal corridor to attract investment and development in transmission grids following the socialization of transmission activities under Resolution No. 55-NQ/TW dated 11 February 2020 and in line with the PPP Law.

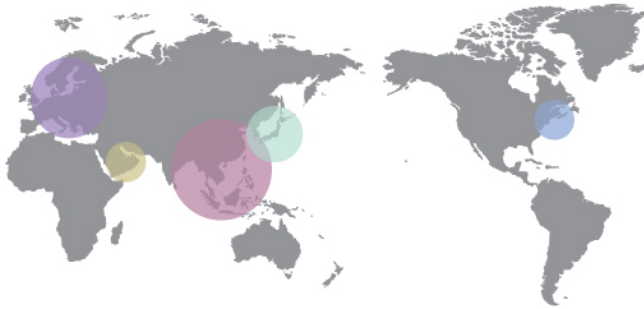
In order to ensure the transparency and enforceability of the above-mentioned policy, the Amendments (i) grant the agency in charge of national electricity transmission the right to connect to the transmission grid invested in and built by the investors in all economic sectors when all the technical conditions and standards are satisfied and (ii) impose on such agency the obligation to ensure the right of organizations and individuals engaged in activities related to electricity and its production and transmission to connect to the transmission grid invested in and built by such agency.

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Public Relations Section, Nishimura & Asahi [E-mail](#) 

Nishimura & Asahi has 18 offices throughout Japan and in the markets that matter, with Asia as the starting point.



Tokyo

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo 100-8124 Japan
Tel +81-3-6250-6200 +81-3-6250-7210 (Nishimura & Asahi LPC Principal Office)

Nagoya

Tel +81-52-533-2590

LPC Partner Hiroki Fujii

Osaka

Tel +81-6-6366-3013

LPC Partners Taisuke Igaki
Yuichiro Hirota
Hiromune Usuki
Masanori Ban
Satoshi Niki

Fukuoka

Tel +81-92-717-7300

LPC Partners Tsuneyasu Ozaki
Kengo Takaki
Yoshinobu Nakagawa
Yasuko Maita

Bangkok

Tel +66-2-126-9100
E-mail info_bangkok@nishimura.com
Co-representatives Chavalit Uttasart
Hideshi Obara
Jirapong Sriwat

Jakarta^{*1}

Walalangi & Partners
Tel +62-21-5080-8600
E-mail info@wplaws.com
Representative Luky Walalangi
Rosetini & Partners Law Firm
Tel +62-21-2933-3617
E-mail info_jakarta@nishimura.com
Partner Noriaki Machida

Yangon

Tel +95-1-8382632
E-mail info_yangon@nishimura.com
Representative Yusuke Yukawa
Vice Representative Isamu Imaizumi

Beijing

Tel +86-10-8588-8600
E-mail info_beijing@nishimura.com
Chief Representative Azusa Nakashima
Representative Masashi Shiga

Shanghai

Tel +86-21-5280-3700
E-mail info_shanghai@nishimura.com
Chief Representative Takashi Nomura
Representatives Seita Kinoshita
Satoshi Tojo

Singapore

Tel +65-6922-7670
E-mail info_singapore@nishimura.com
Co-representatives Masato Yamanaka
Shintaro Uno
Partners Masataka Sato
Yuji Senda
Ikang Dharyanto

Note: We are in formal law alliance with Bayfront Law LLC, a Singapore law practice, under name of Nishimura & Asahi-Bayfront Law Alliance.

Okada Law Firm (Hong Kong)^{*2}

Tel +852-2336-8586
E-mail s.okada@nishimura.com
Representative Saori Okada

New York

Nishimura & Asahi NY LLP
Tel +1-212-830-1600
E-mail info_ny@nishimura.com
Managing Partner/Chair (New York)
Katsuyuki Yamaguchi
Vice Chair (New York) Megumi Shimizu
Partner Stephen D. Bohrer
NY LLP Partners Kaoru Tatsumi
Yusuke Urano
Masaru Umeda

Dubai

Tel +971-4-386-3456
E-mail info_dubai@nishimura.com
Partner Masao Morishita

Frankfurt (main office)

Nishimura & Asahi Europe
Rechtsanwaltsgesellschaft mbH
Tel +49-(0)69-870-077-620

Düsseldorf (branch office)

Nishimura & Asahi Europe
Rechtsanwaltsgesellschaft mbH
Tel +49-(0)211-5403-9512

E-mail info_europe@eml.nishimura.com
Co-representatives Noriya Ishikawa
Dominik Kruse

Hanoi

Tel +84-24-3946-0870
E-mail info_vietnam@nishimura.com
Representative Akira Hiramatsu

Ho Chi Minh City

Tel +84-28-3821-4432
E-mail info_vietnam@nishimura.com
Representative Kazuhide Ohya
Partners Isamu Imaizumi
Vu Le Bang
Ha Hoang Loc

Taipei

Nishimura & Asahi Taiwan
Tel +886-2-8729-7900
E-mail info_taipei@nishimura.com
Co-Representatives Ing-Chian Sun
Sheng-Chieh Chang

*1 Associate office *2 Affiliate office

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