



TECHNICAL REPORT 3

Assessment the conformity of regulations related to MOIT's administrative procedures under the list of conditional sectors described in the 2014 Investment Law

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“Support MOIT in revising legal acts regulating administrative procedures for foreign direct investment”

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I. Overview

Vietnam continues to improve its business climate to attract foreign direct investment (FDI), and has sustained registered FDI of roughly USD 17 billion per year over the last five years. In 2014 Vietnam successfully attracted new investment from world class IT companies including Samsung, Nokia, and LG. Investors commonly cite Vietnam's geographic proximity to global supply chains, relative political and economic stability, expected benefits from completion of the Trans-Pacific Partnership (TPP) trade agreement, the EU-Vietnam free trade agreement (EU-Vietnam FTAs) and an increasing desire to diversify their manufacturing base in Asia away from China as reasons for investing in Vietnam.

In 2014, Vietnam continued to take concrete steps to improve the investment climate and further integrate into the global economy. It revised several key related laws including the Enterprise Law, the Investment Law, the Bankruptcy Law, in addition to the new Housing Law, and Real Estate Business Law. The State Bank of Vietnam (SBV) worked hard to stabilize the banking sector and maintain the stability of the Vietnamese Dong (VND). The Government of Vietnam moved forward with its ambitious plan to equitize over 500 state-owned enterprises (SOEs) by the end of 2015. On the trade front, Vietnam continued to advance negotiations on six separate trade agreements, among which include the TPP and the EU-Vietnam FTAs, which it hopes to conclude in 2015.

II. The 2014 Investment Law

In December 2014 Vietnam passed a new Investment Law including 7 chapters, 76 articles with breakthrough changes aimed at improving the investment environment. The new Investment Law made many new and different provisions from the former Investment Law in 2005.

1. Advantage of the new 2014 Investment Law

Separate business registration content out of investment certificate

The biggest problem of the former 2005 Investment Law was overlapping conditions to the Enterprise Law. To do business in Vietnam, it required foreign investors having investment certificate which included the contents of enterprise registration. Therefore, the investment certificate was also certificate of enterprise registration certificate. Foreign investors must comply with both investment condition and enterprise registration condition.

The new 2014 Investment Law now resolving this problem by separate content of enterprise registration out of investment registration certificate (IRC). It exist only information of investment projects¹ in the new IRC. Depending of its business, foreign investors could register enterprise certificate as stipulated by the Enterprise Law 2014.

Under the new Investment Law, companies must apply for an investment license when establishing a new company, and update their business license when they: 1) make significant changes to an ongoing enterprise, such as increasing investment capital; 2) restructure the

¹Article 3(6) and Article 39 of the 2014 Investment Law.

form of investment or investment ratios between foreign and domestic partners, 3) change the foreign management structure, or 4) add new business activities.

The new law also says that foreign and domestic investors are treated the same in cases of nationalization and confiscation. However, foreign investors are subject to different business licensing processes and restrictions, and Vietnamese companies that have a majority foreign investment are subject to foreign investor business license procedures.

Deregulation registration certificate of investment for domestic investors²

According to the former 2005 Investment Law, investment projects with 15 billion of capital or more, or in conditional investment sectors must apply for investment certificate, regardless of foreign or domestic capital invested.

From now on, project of domestic investors will not apply for investment certificate. They just need to operate under a certificate of business registration.

Simultaneously, the new 2014 Investment Law using the concept of “business investment” to replace the two previous concepts as “direct investment and portfolio investment”³.

Narrowing application scope of IRC for foreign investors

According to the former 2005 Investment Law, all enterprises with any proportion of foreign capital (whether foreign investors accounted for only 1% of charter capital) have apply for investment certificate.

To encourage foreign investment, the 2014 Investment Law only requires foreign investors and FDI enterprise (foreign investors holding 51% of charter capital; or foreign investors and FDI enterprise holding 51% of charter capital⁴) to apply for investment certificate. This regulation has signification support and narrowing scope of IRC for foreign investors.

Remaining FDI projects (foreign investors or FDI enterprises holding less than 51% of charter capital) will be treated as domestic investment projects and do not need to apply for an investment certificate.

Regulations on conditional sectors

According to the former 2005 Investment Law, Vietnam used a “positive list” approach, meaning that foreign investors were only allowed to operate in a list of specific sectors outlined by law.

Starting in July 2015, Vietnam will use a “negative list” approach, meaning that foreign investors will be allowed to operate in all areas except for six prohibited sectors. Additionally, there are 267 conditional sectors that are now technically open to foreign investment but will require an investment license⁵. In fact, the new law only lists conditional sectors which are existed on numerous legal documents. The “negative list” approach also meaning that state agencies no longer have the right to set the business conditions, unless approved by the

² Article 36(2) of the 2014 Investment Law

³ Article 1,2 and Article 3(5) of the 2014 Investment Law

⁴ Article 23 of the 2014 Investment Law

⁵ Annex 4 of the 2014 Investment Law

National Assembly to amend the above list. This approach ensures the list will not change quickly.

The six prohibited sectors⁶ banned from investment and businesses are corpse, tissue and body-part trading; prostitution; human asexual reproduction; the trading of drugs and chemical substances specified in an appendix of the law; and the trading of species of wild plants and animals specified either in appendices of the law or the Convention on International Trade in Endangered Species (CITES).

These regulations can be seen as an institutionalization of Article 33 of the Vietnamese Constitution: “Everyone has the right to free doing business in conditional sectors in which the law does not prohibit”. This spirit was also reaffirmed in Article 5 of the 2014 Investment Law⁷.

Clarification of the foreign investors and domestic investors

There has been some confusion under the former 2005 Investment Law as to what level foreign ownership will result in a company incorporated in Vietnam being deemed a foreign invested enterprise (FIE), which is subject to the more stringent licensing requirements and other restrictions that apply to foreign investors. Some Vietnamese authorities have required an FIE to have majority foreign ownership, while others more typically have found even a 1% foreign ownership to be sufficient⁸.

The new law has resolved this issue by removing the concept of FIE and introducing the concept of an “economic organization with foreign owned capital”. Under the 2014 Investment Law:

- A foreign investor is a foreign individual or a foreign organization that is incorporated in a foreign country to conduct business investment in Vietnam⁹.
- An economic organization with foreign owned capital is an economic organization incorporated in Vietnam which has at least one shareholder/member being foreign investors¹⁰.

An economic organization with foreign owned capital shall be treated as a “foreign investor” if: (i) It has foreign investor(s) holding 51% or more of its charter capital or, in case of partnership, having the majority of unlimited liability partner(s) being individual(s); or (ii) It has the business organization(s) mentioned in (a) above holding 51% or more of its charter capital; or (iii) It has foreign investor(s) and the business organization(s) mentioned in (a) above jointly holding 51% or more of its charter capital.

An economic organization with foreign owned capital does not belong to one of the cases mentioned above shall be treated as a “local investor”¹¹.

⁶ Article 6 of the 2014 Investment Law

⁷ Investors are authorized to invest in conditional sectors in which the law does not prohibit.

⁸ In the retail sector, for example, when a foreign investor holds 1% or more in a local retail company, that company is deemed to be an FIE and is required to obtain approval from the local authority when opening any additional retail outlets. This approval is granted at the discretion of the local authority and can therefore act as a barrier to foreign investment in the retail sector.

⁹ Article 3(14) of the 2014 Investment Law

¹⁰ Article 3(17) of the 2014 Investment Law

Shortening issuance time of IRC

Compared to 30 days under the former 2005 Investment Law, the issuance time of IRC was substantially shortened to 15 working days since the licensing authority receiving a complete dossier.

According to Article 37 of the 2014 Investment Law, if the project is subject to issuance of a decision on investment policies, the issuance time of investment registration certificate is five working days from the date of receipt of the written decision on investment policies. For other projects, the issuance time is 15 working days since the licensing authority receiving a complete dossier.

However, there are few cases where investors were granted investment certificate on time as stipulated in the 2005 Investment Law. This situation required reforming not only in law but also at all stages of enforcing investment law.

2. Disadvantage of the new 2014 Investment Law

Recognizing the issuance of decision on investment policies

Article 30, 31 and 32 of the 2014 Investment Law require major projects (such as: nuclear power plants, transforming purpose of national parks, etc) which have approved by the National Assembly, the Prime Minister or the PPCs through decision of investment policies. 2014 Investment Law has officially recognized investment approval procedure which applied unofficially for some projects under the former investment law.

Although these projects are major and important for Vietnam's economy, the recognition of approval procedure may arise inequity among investors. It provides an opportunity for incompetent investors to take project through non-transparent way. Besides, the caution of licensing authorities when applying the new investment law may arise a risk that projects which are not subject to approve investment policies also forced to do it in practice.

Uncertainty about the status of foreign investors

The new investment law determines the status of foreign investors by two criteria: (i) nationality; and (ii) capital contribution ratio.

According to the new investment law, there are three groups of foreign investors: (i) investors having foreign nationality; (ii) Vietnamese economic organizations in which foreign investors holding 51% or more of charter capital; and (iii) Vietnamese economic organizations in which foreign investors holding less than 51% of charter capital. Only group (i) and (ii) among them are subject to conditions and restriction applicable to foreign investors. The group (iii) shall apply the procedures and conditions as domestic enterprises. It would be difficult to accept this distinction when an enterprise (know as economic organization) having 51% of foreign capital another having 50,9% of foreign capital now have to apply different procedures of investment.

On the other hand, even an enterprise having 51% of foreign capital (so-called E1) established a new one (so called E2) in Vietnam, E2 still have to apply conditions and restrictions applicable to foreign investors. This is discrimination between Vietnamese enterprises,

¹¹ Article 23 of the 2014 Investment Law

because in terms of nationality, E1 and E2 are both Vietnamese nationality. Moreover, considering the proportion of capital, the foreign capital ratio of E2 can be very low. For example, if foreign capital ratio of E1 is 51% and E1 hold 55% of charter capital of E2, so the proportion of foreign capital in E2 is just 28.6% (52% x 55%). So it is hard to convince if E2 still have to comply conditions and restrictions applicable to foreign investors whether the ratio of foreign capital accounted for only 28.6% of charter capital.

III. Administrative procedures on the list of 28 conditional sectors of the MOIT

1. List of 28 conditional sectors of the MOIT

In the list of 267 conditional sectors attached to the 2014 Investment Law, there are 28 sectors covered by the MOIT, including:

- Petrol and oil trading;
- Gas trading;
- Commercial assessment services;
- Industrial explosive trading (including destruction thereof);
- Explosive precursor trading;
- Business operations using industrial explosives and explosive precursor;
- Blasting services;
- Trading in chemicals except banned chemicals according to Convention on prohibiting the development, production, stockpiling, usage and destruction of chemical weapons;
- Inorganic fertilizer trading;
- Wine trading;
- Trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry;
- Operations of Commodity exchange;
- Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy;
- Trading in foods under the management of the Ministry of Industry and Trade;
- Rice export;
- Temporary import for re-export of goods subject to special excise tax;
- Temporary import for re-export of frozen food;
- Temporary import for re-export of goods on the List of used goods;
- Franchising;
- Coal trading;
- Logistics services;
- Mineral trading;

- Industrial precursor trading;
- Goods trading and directly related activities of foreign investors;
- Electronic commerce activities;
- Petroleum activities;
- Assessment of conformity of pneumatic tools, industrial lifting devices, chemicals, industrial explosives, equipment serving mineral and petroleum extraction; except for equipment and instruments serving extraction at sea;
- Multi-level marketing business.

The Ministry of Planning and Investment (MPI) is in the process of drafting a detailed decree guiding the 2014 Investment Law, which review the status of 267 conditional sectors specified in Vietnam's current regulations. Based on 4 criteria of classification, the draft Decree divided 267 sectors into 4 groups¹², including:

- 72 conditional sectors stipulated conditions for foreign investors in domestic regulations (72 conditional sectors);
- 46 conditional sectors stipulated conditions for foreign investors in international commitments of Vietnam (46 conditional sectors);
- 128 conditional sectors not specified conditions for foreign investors (128 conditional sectors);
- 21 conditional sectors not specified conditions (21 conditional sectors).

According to the draft decree, 28 conditional sectors covered by the MOIT are also divided into 4 groups as following:

- *12 conditional sectors stipulated conditions for foreign investors in domestic regulations* (Petrol and Oil trading; Industrial explosive trading (including destruction thereof); Explosive precursor trading; Business operations using industrial explosives and explosive precursor; Blasting services; Trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry; Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy; Industrial precursor trading; Franchising; Logistics services; Goods trading and directly related activities of foreign investors; Electronic commerce activities; Petroleum activities; Operations of Commodity exchange);
- *5 conditional sectors stipulated conditions for foreign investors in international commitments of Vietnam* (Gas trading; Trading in chemicals except banned chemicals according to Convention on prohibiting the development, production, stockpiling, usage and destruction of chemical weapons; Inorganic fertilizer trading; Trading in foods under the management of the MOIT; Industrial precursor trading);
- *2 conditional sectors stipulated conditions for foreign investors in both domestic regulations and international commitments of Vietnam* (Petrol and Oil trading; Wine trading);

¹² Source: The Ministry of Planning and Investment.

- *9 conditional sectors not specified conditions for foreign investors* (Commercial assessment services; Rice export; Coal trading; Mineral trading; Assessment of conformity of pneumatic tools, industrial lifting devices, chemicals, industrial explosives, equipment serving mineral and petroleum extraction; except for equipment and instruments serving extraction at sea; Multi-level marketing business)¹³;

The MOIT do not have any sectors in the group of 21 conditional sectors not specified conditions. That means in the coming period, the MOIT will not arise any new conditional sectors.

Thus, basing on the current status of Vietnam's domestic regulations and a number of Vietnam's international commitments, the draft decree has reviewed and cited many MOIT's sectors that prohibit or restrict foreign investors such as: Petrol and Oil trading, Gas trading, Business operations using industrial explosives and explosive precursor, Blasting services, Inorganic fertilizer trading, Wine trading, Trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry, Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy, Industrial precursor trading (prohibition in some specified goods), Petroleum activities (prohibition in some specified activities). But this review is so limited because it was performing within the framework of some investment agreements (ACIA, Vietnam-Japan BIT) and the WTO agreements.

Some of above sectors also open up for foreign investors in case of international commitments of Vietnam allowed (Petrol and Oil trading, Gas trading, Petroleum activities, etc.).

This draft decree is only at consultation stage, so it still exist some incomplete contents, including:

Some MOIT's sectors stipulated conditions for foreign investors in domestic regulations but not yet listed on group of 72 conditional sectors

The draft decree has listed a group of 72 conditional sectors stipulated conditions for foreign investors in domestic regulations, including 12 sectors occupied by the MOIT. But there are many MOIT's sectors which are stipulated conditions for foreign investors, but not listed in this group, such as: Gas trading, Inorganic fertilizer trading, Trading in foods under the management of the MOIT, Industrial precursor trading; Temporary import for re-export of frozen food; Temporary import for re-export of goods subject to special excise tax; Temporary import for re-export of goods on the List of used goods. Although

Also some sectors have just listed on group of 72 conditional sectors, but not described conditions involved (e.g. conditions of import and export petrol and oil, etc.).

Limited scope of international commitments of Vietnam reviewed

The draft decree was reviewed the conformity of international commitments of Vietnam to the list of conditional sectors under the 2014 Investment Law. This is a remarkable effort to harmonize domestic law with international commitments of Vietnam. However, this is not a comprehensive review because its scope is just limited in some investment agreements

¹³ See Annex for more detail.

(ACIA¹⁴, Vietnam-Japan BIT¹⁵) and WTO's accession commitments. All of Vietnam's FTAs (including TPP, VN-EU FTA, etc.) are yet to be reviewed.

With a new strategy of FTAs negotiation toward a generation of comprehensive FTAs, covering not only trade and tax but also other areas, including investment, Vietnam is forecast to have major changes in policies and law for their implementation. Conclusion of all Vietnam's six active trade agreement negotiations (the TPP, the Regional Comprehensive Economic Partnership (RCEP), the Vietnam-EU FTA, the Vietnam-Eurasian Customs Union FTA, the Vietnam-Republic of Korea FTA, and the Vietnam-European Free Trade Area FTA) would open the door for a considerable increase in FDI. Thus, a review scope of conditional sectors without these FTAs will be a major shortcoming.

While Vietnam has 58 bilateral investment agreements with many countries and territories¹⁶, there are only 2 of them are reviewed in the draft decree (ACIA, Vietnam-Japan BIT). It raises questions for foreign investors from other areas on the conformity of these conditional sectors with investment commitments between Vietnam and their government.

2. Administrative procedures on the list of 28 conditional sectors of the MOIT

The MOIT currently manage 28 conditional sectors, meaning that to do business in such sectors, organizations and individuals have meet conditions for reasons of defense, national security, social order and security, social morality and public health.

The MOIT normally managed through two ways including administrative procedures (licensing, certification, etc.) and specified business conditions. So some conditional sectors stipulated by respective administrative procedures, but others only stipulated by business conditions. On the other hand, there are many administrative procedures which are not requiring business conditions. These procedures only require business to provide documentations to proof of compliance legislation (for example: providing good receipts, papers or documents to prove origin and quality of goods, etc.). That why within 28 MOIT's conditional sectors, there are many sectors specified business conditions without administrative procedures¹⁷.

The Minister of the MOIT issued Decision No 4204/QĐ-BCT on 27 April 2015 to issue a list of 392 administrative procedures of the MOIT at all four levels of government, including 205 administrative procedures under the 28 conditional sectors of 2014 Investment Law as following:

- Petrol and Oil trading: 17 procedures;

¹⁴ The ASEAN Comprehensive Investment Agreement (ACIA)

¹⁵ The Agreement between Vietnam and Japan for the Liberalization, Promotion and Protection of Investment (the Vietnam-Japan BIT)

¹⁶ Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium and Luxembourg, Bulgaria, Burma, Chile, China, Cuba, Czech Republic, Cambodia, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, India, Indonesia, Italy, Iran, Japan, Kazakhstan, Korea, Kuwait, Laos, Latvia, Lithuania, Malaysia, Mongolia, Mozambique, Netherlands, North Korea, Oman, Philippines, Poland, Qatar, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Ukraine, United Kingdom, Uruguay, Uzbekistan, United Arab Emirates, and Venezuela.

¹⁷ Detailed content of administrative procedures in each sector was analyzed in Report No2.

- Gas trading: 6 procedures;
- Commercial assessment services: 3 procedures;
- Industrial explosive trading (including destruction thereof): 9 procedures;
- Explosive precursor trading: 7 procedures;
- Business operations using industrial explosives and explosive precursor: none;
- Blasting services: 3 procedures;
- Trading in chemicals except banned chemicals according to Convention on prohibiting the development, production, stockpiling, usage and destruction of chemical weapons: 21 procedures;
- Inorganic fertilizer trading: 9 procedures;
- Wine trading: 18 procedures;
- Trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry: 23 procedures;
- Operations of Commodity exchange: 3 procedures;
- Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy: 36 procedures;
- Rice export: 3 procedures;
- Temporary import for re-export of goods subject to special excise tax: 1 procedure;
- Temporary import for re-export of frozen food: 1 procedure;
- Temporary import for re-export of goods on the List of used goods: 1 procedures;
- Franchising: 2 procedures;
- Coal trading: none;
- Logistics services: none;
- Mineral trading: none;
- Industrial precursor trading: 2 procedures;
- Goods trading and directly related activities of foreign investors: 8 procedures;
- Electronic commerce activities: 7 procedures;
- Petroleum activities: 1 procedure;
- Trading in foods under the management of the MOIT: 10 procedures;
- Multi-level marketing business: 14 procedures;
- Assessment of conformity of pneumatic tools, industrial lifting devices, chemicals, industrial explosives, equipment serving mineral and petroleum extraction; except for equipment and instruments serving extraction at sea: none.

The detailed content of each administrative procedure was analyzed in the Report N°2.

IV. Conformity of administrative procedures on the list of 28 conditional sectors of the MOIT under the 2014 Investment Law

1. Conformity of current administrative regulations under the 2014 Investment Law

Control activities of administrative procedures are developed since the implementation phase of the Project 30 (2007-2010)¹⁸. The legal system to control administrative procedures was formed step by step by a number of Decree and Circular as following:

- Decree No 63/2010/ND-CP dated Jun 8, 2010 of Government on controlling administrative procedures (as amended by Decree No 48/2013/ND-CP dated May 14, 2013);
- Decree 20/2008/ND-CP dated Feb 14, 2008 of Government on receiving, handling feedback and recommendations of individuals and organizations on administrative regulations;
- Circular No 05/2014/TT-BTP dated Feb 7, 2014 of the Ministry of Justice guiding the publication of administrative procedures and report on the situation of controlling administrative procedures;
- Circular No 07/2014/TT-BTP dated Feb 24, 2014 of the Ministry of Justice guiding the impact assessment and review of administrative procedures;
- Circular No 25/2014/TT-BTP dated Dec 31, 2014 of the Ministry of Justice guiding the inspect of control activities of administrative procedures;
- Circular No 19/2014/TT-BTP dated Sept 15, 2014 of the Ministry of Justice on import, upload and mining data of procedures and management on the National Database of Administrative Procedures.

Among these legal documents, the Decree No 63/2010/ND-CP is considered as the foundation of procedures control activities at national level. Content of other documents is based on principles and regulations of the Decree No 63/2010/ND-CP. Therefore, this report will focus on evaluating the compatibility of the Decree No 63/2010/ND-CP under the 2014 Investment Law.

The Decree 63/2010/ND-CP includes 6 chapters 37 articles¹⁹. It was amended by Decree No 48/2013/ND-CP dated May 14, 2013 to transfer the national control agency of administrative procedures from the Government Office to the Ministry of Justice.

The Decree also stipulated conditions on administrative procedures. Accordingly, conditions of an administrative procedure are requests that individual and organizations must meet or do when performing a specific administrative procedure²⁰. It also regulated that these conditions must be regulated on legal documents at government level or at ministry level (decree, circular)²¹. In case of regulating conditions on ministry's legal documents (circular), it specified that these conditions must be technical standards. So under the Decree No 63/ND-CP, conditions could be regulated on legal documents at both government and ministry level.

¹⁸ Decision 30/QD-TTg dated Jan 10, 2007 to approve the Simplification project of administrative procedures in the period 2007 – 2010 (hereinafter referred as the Project 30)

¹⁹ Article 1, Decree 63/2010/ND-CP

²⁰ Article 3(4) of Decree 63/2010/ND-CP

²¹ Article 8(3) of Decree 63/2010/ND-CP

Meanwhile, the 2014 Investment Law has a different approach when regulated that all business investment conditions must be regulated in law, ordinances, decrees and international treaties to which Vietnam is a member. Ministries, ministerial-level agencies, People's Councils and People's Committees at all levels, other agencies and individuals are prohibited to regulate business investment conditions²².

Through review of 28 conditional sectors, it can be seen that there are several technical standards which are also business investment conditions. By the other way, there are many technical standards which are not business investment conditions (for example: technical standard for cylinders). So it is important not only to amend the Decree 63/2010/ND-CP to be in conformity with the new investment law but also to have more clearly definitions of business investment conditions.

2. Conformity of administrative procedures on the list of 28 conditional sectors of the MOIT under the 2014 Investment Law

In case of amending the Decree 63/2010/ND-CP in accordance with the 2014 Investment Law, the MOIT should amend a series of legal documents relating to business investment conditions. Accordingly, all business investment conditions regulated on MOIT's circulars must be abolished or moved up to Decrees.

Besides, the MOIT should also amend regulations relating to investors (licensing investment certificate, legal status of foreign investors, etc.) at its both Decrees and Circulars in accordance with the new investment law.

In this section, the report will analyze the compatibility of MOIT's administrative regulations within 28 conditional sectors. Basing on the criteria of regulating conditions for foreign investors, there are two groups of MOIT's administrative regulations as following:

- (i) Group of administrative regulations which are stipulated conditions for foreign investors;
- (ii) Group of administrative regulations which are not stipulated conditions for foreign investors.

2.1. Administrative procedures on the list of conditional sectors with restrictions to foreign investors

In trade and industry sector, the term "investor" is limited by the concept of "trader". The concept of a "trader" cited by the 2005 Commercial Law includes economic organization established legally and individuals doing business independently, regularly and having business registration²³. The 2005 Commercial Law also divide trader concept by nationality, including Vietnamese trader and foreign trader.

Article 16 of the 2005 Commercial Law defines "foreign trader" means a trader who is established and registered under its foreign law or recognized by its foreign law. Foreign trader can place representative office or branch in Vietnam and establish Vietnamese enterprise under Vietnam regulations. Its representative office and branch has rights and

²² Article 7(3) of the 2014 Investment Law

²³ Article 6 of the 2005 Commercial Law

obligations under Vietnam regulations. Foreign trader must be responsible for all activities of its representative office and branch in Vietnam.

Enterprise with foreign investment established by foreign trader under Vietnam regulations or international treaties which Vietnam is a member shall be regarded as Vietnamese trader²⁴. Pursuant to Article 22 of the 2005 Commercial Law, the Ministry of Trade (the MOIT) is in charge of issuing licenses for establishment of representative office and branch of foreign trader in Vietnam; establishment of joint-venture enterprises, enterprises with 100% foreign capital in Vietnam in cases of these traders which are specialized to conduct Goods trading and directly related activities under Vietnam regulations and international treaties that Vietnam is a member.

However, the concepts of “FIEs” and “joint-venture enterprise” are no longer defined in the new investment law. Instead, it used new concepts of “foreign investor” and “economic organization with foreign capital” while international treaties of Vietnam and most of legal documents relating to trade and industry areas are still using these above concepts²⁵. So it requires the draft decree guiding the implementation of the 2014 Investment Law should have guidelines to modify the system of legal documents relating to trade and industry areas in accordance with the new investment law.

By reviewing 28 conditional sectors under the MOIT management, there are 3 types of conditional sectors, including: (i) *conditional sectors that prohibit completely the participation of foreign investors*; (ii) *conditional sectors that prohibit partial the participation of foreign investors*; and (iii) *conditional sectors that are not regulated conditions for foreign investors*.

The content of this section will focus on the conditional sectors type (i) and (ii). The type (iii) will be analyzed in section 2.2.

(i) *Conditional sectors that prohibit completely the participation of foreign investors* (Industrial explosive trading (including destruction thereof); Business operations using industrial explosives and explosive precursor; Blasting services; Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy)

Because these sectors may affect the national security and defense, the Vietnam Government should prohibit all participations of foreign investors. It can consider as a condition of nationality because these sectors still open to domestic investors. In addition to condition of nationality, domestic investors have to comply to a lot of strict requirements relating with several ministries.

* *Industrial explosive trading (including destruction thereof) and Business operations using industrial explosives and explosive precursor*

Concerning Industrial explosive trading (including destruction thereof) and Business operations using industrial explosives and explosive precursor, current Vietnam legal documents have stipulated conditions from production, transportations, storage and trading to

²⁴ Article 16(4) of the 2005 Commercial Law

²⁵ For example: the ACIA (list 4) still referred the definition of “FIEs” in the 2005 Investment Law

destruction. Conditions also applied to individuals directly related to industrial explosives and explosive precursor activities²⁶.

By reviewing Vietnam legal system relating to industrial explosives and explosive precursor, there are two activities in which its conditions are not conform with the new investment law, including:

- *Transportation activity of industrial explosives*

Legal basis: Transportation activity of industrial explosives is regulated by the following documents:

- Article 26 of Ordinance N° 16/2011/UBTVQH12;
- Article 24 Decree N° 39/2009/ND-CP;
- Article 13 Decree N° 104/2009/ND-CP;
- Article 4 Circular N° 35/2010/TT-BCA and Circular 04/2014/TT-BCT dated Jan 21, 2014 on amending several articles of Circular 35/2010/TT-BCA dated Oct 11, 2010 of the Ministry of Public Security on licensing industrial explosives transportation and dangerous goods.

Conformity with the 2014 Investment Law:

Article 4 of Circular N° 35/2010/TT-BCA which is amended by Circular N° 04/2014/TT-BCA are not conform with the new investment law when regulating conditions of industrial explosives transportation at Circular level²⁷.

Recommendation: Amending Circular 35/2010/TT-BCA and Circular 04/2014/TT-BCA toward bringing all business investment conditions to the Decree level.

- *Storage activity of industrial explosives and individuals directly related to industrial explosives and explosive precursor activities*

Legal basis:

- Article 23 of Decree 39/2009/ND-CP;
- Article 4 and Article 5 of Circular 23/2009/TT-BCT;
- Article 1 of Circular 26/2012/TT-BCT.

Conformity with the 2014 Investment Law:

Article 4 and Article 5 of Circular 23/2009/TT-BCT and Article 1 of Circular 26/2012/TT-BCT which are not conform with the 2014 Investment Law when regulating conditions for individuals directly related to industrial explosives and explosive precursor activities.

Recommendation: amending Circular 23/2009/TT-BCT and Circular 26/2012/TT-BCT toward bringing all business investment conditions to the Decree level.

²⁶ See Annex for more detail.

²⁷ Article 7(3) of the 2014 Investment Law stipulates that: "Conditions for making investments in the conditional sectors mentioned in Paragraph 2 of this Article shall be specified in the Laws, Ordinances, Decrees, and the international agreements to which the Socialist Republic of Vietnam is a signatory. Ministries, ministerial agencies, the People's Council, People's Committees, and other entities must not issue regulations on conditions for making business investments."

* *Blasting services*

Legal basis:

- Article 25, 26 of Decree 39/2009/ND-CP;
- Article 26 of Decree 39/2009/ND-CP;
- Article 10 of Circular 23/ 2009/TT-BCT.

Conformity with the 2014 Investment Law:

All conditions relating to blasting services are conform with the 2014 Investment Law when regulated in the Decree 39/2009/ND-CP. For reasons of national safety and defense, conditions of this sector are strict. To implement these activities, traders must be enterprise with 100% state capital²⁸. That means this sector is monopoly by the State. All other investors, including foreign investors are prohibit to do business.

* *Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy*

Legal basis:

- Article 32, Article 38 of the 2004 Electricity Law.
- Article 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44 of Decree 137/2013/ND-CP.
- Circular 10/2015/TT-BCT.

Conformity with the 2014 Investment Law:

All conditions relating to electricity activities are conform with the 2014 Investment Law when regulated in the Decree 137/2013/ND-CP. While the 2004 Electricity Law does not prohibit foreign and domestic investors to do business, the electricity market in Vietnam is monopolized by the State. The Vietnam Electricity Group who is enterprise with 100% state capital is the unique buyer of electricity producers. It is also in charge of managing the national control system of electricity and the retail electricity system. This is a type natural monopoly which causes also a limited participation of both foreign and domestic investors.

This situation is now enhanced by many new legal documents²⁹. Accordingly, Power market (electricity market) shall be established and developed under the sequent orders and grades as follows:

Grade 1 Competitive power generation market

Accordingly, the competitive power generation is continued until the end of 2014;

Grade 2: Competitive power bulk market

²⁸ Article 26(1) of Decree 135/2009/ND-CP

²⁹ The Prime Minister has issued a Decision N° 63/2013/QĐ-TTg on the roadmap, conditions and sector structure for establishment and development of power market grades in Vietnam. To implement this Decision, the MOIT has issued Circular N° 30/2014/TT-BCT dated October 2, 2014 on management of power market grades.

This grade will be implemented in two phases as pilot competitive bulk power market from 2015 to 2016, and full competitive bulk power market - from 2017 to 2021;

Grade 3: Competitive power retail market

This grade will be implemented also in two phases as pilot competitive retail power market from 2022 to 2023, and full competitive retail power market from 2024 onward.

In order to form competitive bulk market, the power sector structure is required to satisfy two following conditions.

Firstly, at the phase of the pilot bulk market, National Load Dispatch Center and Power market's transaction administrator must be independent units which have no common interests with units participating in the power market.

Power Generation Corporation and power plants under the Vietnam Electricity Group (except big power plants having special important mean for socio-economy, national defense and security, which managed by State's monopoly as stipulated at Article 4 of the Electricity Law) shall be split into independent power generation units which have no common interests with bulk power units, transmission units, National Load Dispatch Center and Power market's transaction administrator.

Total installed capacity of a power generation unit shall not exceed 25% of total installed capacity of units participating in the Power market.

Power corporations and power companies, which satisfy above mentioned conditions, selected for participation in the pilot complete bulk market and must have clear separation between the apparatus organization and cost-accounting of power distribution and power retail parts

Secondly, at the phase of the full competitive full market, Power companies under the Power corporations are organized into independent cost-accounting units, which must have clear separation between the apparatus organization and cost-accounting of power distribution and power retail departments.

To do business in these sectors, investors must be issued electricity licenses under conditions of Decree 137/2013/ND-CP. All procedures to issue electricity licenses are regulated in Circular 10/2015/TT-BCT.

(ii) Conditional sectors that prohibit partial the participation of foreign investors (Petrol and Oil trading, Gas trading, Inorganic fertilizer trading, Wine trading; Trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry; Trading in foods under the management of the MOIT; Franchising; Industrial precursor trading; Goods trading and directly related activities of foreign investors; Explosive precursor trading; Trading in chemicals except banned chemicals according to Convention on prohibiting the development, production, stockpiling, usage and destruction of chemical weapons; Petroleum activities; Temporary import for re-export of goods subject to special excise tax ; Temporary import for re-export of goods on the List of used goods; Temporary import for re-export of frozen food).

15 conditional sectors in this group are limited partly or entire business operations of foreign investors for reasons of national security and defense or community benefits. They are a same

point that the limitation is flexible depending on international treaties of Vietnam or permission of Vietnamese authorities. In the context of international integration, Vietnam is more opening in such sectors.

** Petrol and Oil trading*

Legal basis:

- Decree 83/2014/ND-CP;
- Circular 38/2014/TT-BCT.

Conformity with the 2014 Investment Law:

All conditions relating to Petrol and Oil trading are conform to the 2014 Investment Law when regulated in the Decree 83/2014/ND-CP. As well as most of legal documents relating to trade and industry areas, the Decree 83/2014/ND-CP used the concept of "foreign traders" instead of "foreign investors" concept. Accordingly, the right to do business in such sector of foreign traders is dependent on international treaties between Vietnam and its government³⁰. This kind of nationality condition is not conflict with the new investment law³¹.

In some investment agreements of Vietnam, foreign investors are not entitled to do business in this sector³².

** Gas trading*

Legal basis:

- Decree 107/2009/NĐ-CP;
- Circular 38/2014/TT-BCT.

Conformity with the 2014 Investment Law:

Vietnam has only the Decree 107/2009/NĐ-CP which regulated on Liquefied petroleum gas (LPG). According to the 2015 MOIT's program of making legal normative documents, this Decree will be replaced by a new decree which adding 2 types of gas, including liquefied natural gas (LNG) and compressed natural gas (CNG).

The regulations relating to gas trading activities from production, distribution, transportation, trading and testing is completely consistent with the new investment law. There are many technical standards regulated at circular level, but it is difficult to define that they are business investment conditions because it applied on goods only and we haven't yet a clear definition on business investment conditions³³.

³⁰ Article 4(1) of Decree 83/2014/ND-CP regulated that: "1. Foreigners trading in petrol - oil in Vietnam under treaties to which the Socialist Republic of Vietnam is a contracting party shall comply with this Decree; when those treaties provide otherwise, they prevail."

³¹ Article 16(2) of the 2005 Commercial Law

³² In ACIA and Vietnam-Japan BIT, foreign investors are prohibit to do business in petrol and oil sector.

³³ For example in export-import gas activity, there are many conditions applied on gas quality, but it is not a business investment condition. Please see detailed content in Annex of this report.

In case of manufacturing, repair and testing cylinder operations, there are many regulations which are not conform to the new investment law, including:

- Manufacturing and repair cylinders operation:

Articles 46, 47 of Circular 41/2011/TT-BCT are not conform to the 2014 Investment Law because it stipulated conditions to issue production and repair certificate of LPG cylinders.

- Testing cylinders operation:

Article 43 of Circular 41/2011/TT-BCT is not conform with the 2014 Investment Law because it stipulated conditions to issue testing certificate of LPG cylinders.

Recommendation: amending Circular 41/2011/TT-BCT toward bringing all business investment conditions to the Decree level.

* Inorganic fertilizer trading

Legal basis:

- Decree 202/2013/ND-CP;
- Circular 29/2014/TT-BCT;
- Circular 35/2014/TT-BCT.

Conformity with the 2014 Investment Law:

The right of foreign investors to do business in this sector depends on the international treaties that Vietnam is a member³⁴. That means there is a nationality condition applied in this sector. While this sector was regulated by Decree 202/2013/ND-CP, the draft decree on guidelines the implementation of the 2014 Investment Law was not listed it on the group of 72 conditional sectors.

Basically, all domestic regulations relating to Inorganic fertilizer trading are consistent with the 2014 Investment Law³⁵ unless the operation of producing fertilizer.

Article 5 of Circular 29/2014/TT-BCT guides specific conditions stipulated in Article 8 of Decree 202/2013/ND-CP relating to the operation of producing fertilizer. However, it is not conform with the new investment law as well as current law on promulgate legal normative documents because it adds one other condition on storage³⁶ which is not stipulated in the Decree 202/2013/ND-CP.

Recommendation: Amending Circular 29/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

* Wine trading

Legal basis:

- Decree No 94/2012/ND-CP;

³⁴ Vietnam's commitments of inorganic fertilizers trading are different each other. In ACIA, operations of producing of NPK fertilizer (ISIC 2412) are not licensed for foreign investors, while in Vietnam-Japan BIT, foreign investors are prohibit distributing fertilizer products.

³⁵ See Annex for more detail.

³⁶ Article 5(5) of Circular 29/2014/TT-BCT

- Circular 60/2014/TT-BCT.

Conformity with the 2014 Investment Law:

Like other sectors in this group, the international treaties of Vietnam will decide the rights of foreign investors to do business in wine trading. For reasons of communication benefits, Vietnam's commitments are limited partial or entire the participation of foreign investors in this sector³⁷. Basically, the current legal documents relating to wine trading is conform to the new investment law.

* Trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry

Legal basis:

- Decree 67/2013/ND-CP;

- Circular 21/2013/TT-BCT.

Conformity with the 2014 Investment Law:

Tobacco is limited trading good for reasons of community benefits. The current regulations related to tobacco trading are limited both foreign and domestic investors³⁸. The participation of foreign investors is depended on Vietnam's international commitments which are still limited partial or entire its rights³⁹.

Basically, the current legal documents relating to trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry is conform with the new investment law.

* Trading in foods under the management of the MOIT

Legal basis:

- Law 55/2010/QH12 on Food safety.

³⁷ In ACIA, Vietnam will not issue license for foreign investors to: (i) producing alcoholic drinks and carbonated beverages (ISIC 1551); (ii) Performing services related to beer and beverage processing (CPC 88411/ISIC 1551). In Vietnam-Japan BIT, foreign investors are not permitted to distribute alcohol products (Distribution Services: Annex II: Section 19). In WTO, from the date of accession, enterprises with foreign capital in distribution sector will be allowed to provide agent services, wholesale and retail in all products manufactured in Vietnam and products legally imported into Vietnam, except alcohol.

³⁸ Paragraph 1(e) of Article 31 of Decree 67/2013/ND-CP regulated that the investment policy of producing cigarettes must be approved by the Prime Minister.

³⁹ According to Annex II of Vietnam-Japan BIT relating to exceptional sectors or matters to article 2 and article 4, foreign investors is prohibit to trading and distributing cigarettes. In WTO, the distribution services of cigarettes and cigars are exceptional sectors of WTO's commitments. In the Vietnam's schedule to the ACIA (list 10), Vietnam will not issue for foreign investors for activities as following: production of cigarettes and cigars (ISIC 1600); Production of tobacco production (ISIC 1600); Services related to processing of tobacco products such as cigarette, cigar, pipe tobacco, chewing tobacco, farmer cut tobacco based on contracts or a fee: (i) Processing of reconstituted tobacco based on contracts or a fee (CPC 88412/ISIC 1600); (ii) Processing of hookah based on contracts or a fee (CPC 8412); Services related to processing of manufactured tobacco for production of cigarette based on contract or a fee (CPC 88412).

- Decree 38/2012/ND-CP
- Decree 181/2013/ND-CP
- Circular 58/2014/TT-BCT
- Joint Circular 13/2014/TTLT-BYT-BNNPTNT-BCT.
- Circular 40/2012/TT-BCT.

Conformity with the 2014 Investment Law:

Basically, foreign investors are free to do business in this sector, unless limited by Vietnam’s international commitments⁴⁰.

Trading in foods is a complex sector which should be managed by many ministries such as the MOIT, the Ministry of Agriculture and Rural Development and the Ministry of Health. That why all business investment conditions are regulated in the Law 55/2010/QH12 on Food safety. The MOIT manage itself this sector through both administrative procedures⁴¹ and business investment conditions.

* Franchising

Legal basis:

- Commercial Law 2005;
- Decree 35/2006/ND-CP;
- Decree 120/2011/ND-CP;
- Circular 09/2006/TT-BTM.

Conformity with the 2014 Investment Law:

The legal documents relating to franchising are conform with the new investment law because all business investment conditions are regulated at decree level.

* Industrial precursor trading

Legal basis:

- Decree No 58/2003/ND-CP;
- Decree No 26/2011/ND-CP;
- Circular 42/2013/TT-BCT.

⁴⁰ In ACIA, Vietnam will not issue to foreign investors in activities as following: (i) Services related to dairy processing (CPC 88120); (ii) Dairy processing (in conjunction with development of local raw materials resources) (ISIC 1520). Under Vietnam’s commitment of WTO accession relating to food serving services (CPC 642), foreign investors have a right to open restaurants in their own name only “in parallel with investment in hotel construction, renovation, restoration or acquisition”(Sector 9.A., Viet Nam – Schedule of Specific Commitments, GATS/SC/142, WTO (2007)).

⁴¹ See Annex for more detail.

Conformity with the 2014 Investment Law:

Foreign investors are free to do business in this sector, unless limited by Vietnam's international commitments⁴².

All regulation relating to this sectors are consistent with the new investment law as are specified in the decree level.

Relating to procedure aspect, dossier content of industrial precursor export and import regulated in Circular 42/2013/TT-BCT are not conform with the Decree 58/2003/ND-CP. Under Circular 42/2013/TT-BCT, dossier content includes: (i) application for export-import licenses; and (ii) Purchase and sale contract of precursor industrial; or sale, purchase agreement; memorandum; commercial invoice. Meanwhile, dossier content under the Decree 58/2003/ND-CP is more complex, including: (i) written permission of importing or exporting countries; (ii) application to export and import. Although the dossier content of the Circular 42/2013/TT-BCT is more facility than the Decree 58/2003/ND-CP, it is still illegal and must be amended toward conform with the above decree. To simplify procedures, the MOIT should amend dossier content of the Decree 58/2003/ND-CP before regulating at circular level.

Recommendation:

Amending Circular 42/2013/TT-BCT toward conforming with the Decree 58/2003/ND-CP; or amending Decree 58/2003/ND-CP toward simplifying dossier content of industrial precursor export and import.

* Goods trading and directly related activities of foreign investors

Legal basis:

- Decree 23/2007/ND-CP;
- Circular 08/2013/TT-BCT;
- Circular 34/2013/TT-BCT.

Conformity with the 2014 Investment Law:

Pursuant to Article 22 of the 2005 Commercial Law, the Ministry of Trade (now the MOIT) is responsible to the Government for managing the issuance of establishment of representative offices, branches of foreign traders in Vietnam; establishment of joint-venture enterprises and enterprises with 100% foreign capital in Vietnam in case of such traders are specialized to purchase and sale goods under Vietnam law and in accordance with international treaties to which Vietnam is a member.

⁴² In ACIA, Vietnam will not issue to foreign investors in activities as following: (i) services related to producing of caustic soda NaOH (liquid) (CPC 88460/ISIC 2411); (ii) Services related to producing of H₃PO₄ and HCl acids (CPC 88460/ISIC 2411); Services related to producing of chemical products such as phosphor, silicate-natri, tripolyphotphat, aluminium hydroxide, light powder, calcium chloride, active coal and black carbon (CPC 88460/ISIC 2429). To invest in such sectors, foreign investors have to comply with requirements on technology and quality that would conflict with the provision of national treatment in the ACIA (quality requirements of foreign investment enterprises can be higher than domestic enterprises).

In this sector, the MOIT manage two activities, including: (i) Goods trading and directly related activities of foreign investors; and (ii) Setting up retail establishment in addition to the first establishment of foreign investors.

There are many regulations are not conform with the new investment law because they are completely basing on the former 2005 Investment Law, including:

- According to Decree 23/2007/ND-CP, the business license is also the investment license. Meanwhile, the new investment law has separated business and enterprise registration content out of investment license.
- Article 3,4,5 of Circular 08/2013/TT-BCT regulated conditions to exercise the right to import, export and distribution of foreign investors while the new investment law has prohibited to regulate business investment conditions at circular level.
- Article 1 of Circular 08/2013/TT-BCT cited roadmaps provided for in Appendix 01 to the Decision No. 10/2007/QD-BTM dated May 21, 2007, of the Minister of Trade (now as the Minister of Trade and Industry) publicizing roadmaps for goods trading and directly related activities and other relevant regulations. However, this decision has been replace by Circular 34/2013/TT-BCT.

Recommendation:

- Amending Decree 23/2007/ND-CP toward separating contents of business license and investment license;
- Amending Circular 08/2013/TT-BCT, toward bringing all business investment conditions to decree, and referring roadmaps for goods trading and directly related activities and other relevant regulations under Circular 34/2013/TT-BCT.

* Explosive precursor trading

Legal basis:

- Ordinance 16/2011/UBTVQH12;
- Ordinance 07/2013/UBTVQH13;
- Decree 39/2009/ND-CP;
- Decree 54/2012/ND-CP;
- Decree 76/2014/ND-CP;
- Circular 23/2009/TT-BCT;
- Circular 26/2012/TT-BCT;
- Circular 61/2014/TT-BCT.

Conformity with the 2014 Investment Law:

Explosive precursor trading includes activities from trading, production to export and import explosive precursors. Conditions of these sectors are regulated in several legal document⁴³

⁴³ See Annex for more detail

and managed by many ministries such as the MOIT, the Ministry of Defense, the Ministry of Agriculture and Rural Development.

For reasons of national security, defense and community benefits, its conditions are strictly. That why under the ordinance 16/2011/UBTVQH12 the State hold a monopoly in this sector⁴⁴. The Ordinance 07/2013/UBTVQH13 amending several articles of the Ordinance 16/2011/UBTVQH12 has opened scope for other business organizations⁴⁵. Instead of state owned enterprises, business organization of explosive precursors could be any enterprises. That means foreign investors are also free to do business in such sector. However, it still requires approval by the Prime Minister as proposed by the MOIT, the Ministry of Defense, the Ministry of Public security.

In some Vietnam's international commitments, foreign investors are still limited to do business in such sector⁴⁶. Basically, domestic regulations relating to this sector are conform with the 2014 Investment Law, except conditions of producing explosive precursors. Accordingly, Article 4, 5 of Circular 23/2009/TT-BCT and Article 1 of Circular 26/2012/TT-BCT regulated conditions of individuals relating to production of explosive precursors while the new investment law has prohibit to regulate business investment conditions at circular level.

Recommendation: Amending Circular 23/2009/TT-BCT and Circular 26/2012/TT-BCT toward bringing all business investment conditions to decrees.

* Trading in chemicals except banned chemicals according to Convention on prohibiting the development, production, stockpiling, usage and destruction of chemical weapons

Legal basis:

- Law 06/2007/QH 12 on Chemical;
- Decree No 108/2008/ND-CP
- Decree 26/2011/ND-CP;
- Decree No 38/2014/ND-CP;
- Circular 28/2010/TT-BCT;
- TT 55/2014/TT-BCT.

⁴⁴ Paragraph 4(a) of Article 25 of Ordinance cited that: "a) Business organizations on industrial explosives and explosive precursors must be enterprises with 100% state-owned capital who is tasked by the Prime Minister as proposed by the MOIT, the Ministry of Public Security and the Ministry of Defense".

⁴⁵ Article 1(6) of Ordinance 16/2011/UBTVQH12 cited that: "a) Business organisation of industrial explosives must be state-owned enterprises tasked by the Prime Minister as proposed by the MOIT, the Ministry of Defense, the Ministry of Public Security. Business organisations of explosive precursors must be enterprises approved by the Prime Ministers as proposed by the MOIT, the Ministry of Defense, the Ministry of Public security. The Government stipulates business conditions of explosive precursors."

⁴⁶ In ACIA, foreign investors are prohibit to product and supply industrial explosive materials using in oil and gas activities (ISIC 2429); production and supply of explosive materials (2429), production of industrial explosive devices (ISIC 2429).

Conformity with the 2014 Investment Law:

Chemicals except banned chemicals according to Convention on prohibiting the development, production, stockpiling, usage and destruction of chemical weapons (hereinafter referred to as the Convention) includes: (i) Chemicals in the list of industrial chemicals subject to conditional production and trading; (ii) Chemicals in the list of industrial chemicals restricted from production or trade; and (iii) Chemicals under the Table 1, Table 2, Table 3 and DOC-PSF chemicals.

Basically, foreign investors are free to do business in this sectors unless restricted by Vietnam's international commitments⁴⁷.

Most of current conditions relating to this sector are comply with the 2014 Investment Law except Circular 28/2010/TT-BCT which regulated business investment conditions relating to producing and trading chemicals under the two lists mentioned above⁴⁸.

Recommendation:

Amending Circular 28/2010/TT-BCT toward bringing all business investment conditions to decrees

* Petroleum activities

Legal basis:

- Integrated document N° 18/VBHN-VPQH on Petroleum Law (Petroleum Law 18/VBHN-VPQH).
- Decree 48/2000/NĐ-CP.
- Decree 115/2009/NĐ-CP.

Conformity with the 2014 Investment Law:

Foreign investors are free to do business in this sector, unless restricted by Vietnam's international commitments⁴⁹. As citing in the 2014 Investment Law, petroleum activities are

⁴⁷ In ACIA, foreign investors do not accepted to do business in sectors as below: (i) Services related to producing of industrial gas such as oxy, nitro, CO₂ (solid or liquid) (CPC 88460/ISIC 2411); (ii) Services related to producing of caustic soda NaOH (liquid)(CPC 88460/ISIC 2411); (iii) Services on distributing acid-sulphuric used in producing other products (CPC 88460/ISIC 2411); (iv) Services incidental to producing of common used insecticides (Foreign investment is allowed in producing of input materials (toxin) only) (CPC 88460/ISIC 2421); (v) Services related to producing of common used paints (CPC 88460/ISIC 2422). Several services requires foreign investors to comply requirements on technology and quality that would conflict with the provision of national treatment in the ACIA, including: (i) Services related to producing of H₃PO₄ and HCl acids (CPC 88460/ISIC 2411); (ii) Services related to producing of chemical products such as phosphor, silicate-natri, tripolyphotphat, aluminium hydroxide, light powder, calcium chloride, active coal and black carbon (CPC 88460/ISIC 2429).

⁴⁸ See Annex for more detail.

⁴⁹ In ACIA, foreign investors are prohibit to prepare for the following services: Covering reinforced concrete and anti-corrosive paint foroil and gas pipeline (CPC 88300); Services related to testing, adjusting, repairing and maintaining industrial measure and control equipment for oil and gas sector (CPC 88300);Oil and gas warehouse services (CPC 88300); Oil and gas supply base services (CPC 88300);Catering and allied services including food and foodstuff, cleanwater and vegetable to off-

under the approval of investment policy of the Prime Minister⁵⁰. Thus, the Petroleum Law regulate many requirements adding to foreign investors relating to the tender process for contracting petroleum, or in some special cases, selecting partners by the Prime Ministers to sign petroleum contracts⁵¹. There are three petroleum activities which requires business investment conditions, including: (i) Services of cleaning fixed works, equipment and facilities relating to petroleum activities; (ii) Petroleum contracts; (iii) Assignment of petroleum contracts.

The MOIT don't have any circular guiding the petroleum law. All above conditions are regulated at law and decree level.

* Temporary import for re-export of frozen food; Temporary import for re-export of goods subject to special excise tax; Temporary import for re-export of goods on the List of used goods

Legal basis:

- Decree 187/ND-CP;
- Circular 05/2014/TT-BCT.

Conformity with the 2014 Investment Law:

Current domestic regulations allow Vietnamese traders and other organizations and individuals related to commerce under the 2005 Commercial Law to doing activities of temporary import for re-export; temporary export for re-import and border-gate transfer⁵². Accordingly, traders shall have the right to import and export goods irrespective of the lines of business for which they have registered, except goods on the list of import and export goods of which is prohibited or temporarily suspended specified in the Decree 187/2013/ND-CP and other legal documents. In addition, Article 3 of the Decree 187/2013/ND-CP also added that foreign traders, foreign investment enterprises and its branches must comply with both other related laws, Vietnam's international commitments and the roadmap announced by

shore construction facilities (CPC88300);Manpower supply services including professional manpower, skills and foreign language training for manpower supplied to foreign countries, signing manpower supply contracts with foreign companies (CPC 88300);Services related to gas processing: separating Bupro, Condensate (CPC 88300);Leasing services related to other machines and equipment including specialized equipment in oil and gas industry (CPC88300);Services related to database for oil and gas study (CPC 88300);Services related to database for geological study and seismic survey for oil and gas industry (CPC 88300);Services related to geological and exploration drilling (CPC 88300);Risk assessment, including field-survey, data collection, using special software on impact assessment of frequency and sensitiveness, proposing mitigation measures (CPC 88300);Services on Environment Protection and Management, including: (i) Environmental background study (CPC 88300); (ii) Establishing oil-spill response plan, including environmental sampling and analysis (sediment samples, biology, soil, water, air), measuring water and air quality, obtaining onsite spectrum, collecting and assessing data on nature (such as environmental climatic, and hydrographic data), socio-economic data, etc, making reports on environmental background study, environmental impact assessment, oilspill response plan (CPC 88300); Proposing environmental management plan in oil and gas activities, particularly for offshore environment and sensitive coastline areas (CPC 88300).

⁵⁰ Paragraph 1(d) of Article 31 of the 2014 Investment Law.

⁵¹ Article 16 of Petroleum Law 18/VBHN-VPQH.

⁵² Article 2 of Circular 05/2014/TT-BCT.

the MOIT. However the draft decree guiding the 2014 Investment Law listed these above sectors at the group of conditional sectors not specified conditions for foreign investors.

On the other hand, the distinction of goods trading and goods transit activities into 3 sectors above according to the 2014 Investment Law are not comply with the current situation of these sectors. The Decree 187/2013/ND-CP regulated many kind of goods which requires conditions such as: (i) list of prohibited goods for export and import⁵³; (ii) list of export and import goods required conditions⁵⁴; (iii) list of export and import goods subject to plant and animal quarantine, aquatic quarantine⁵⁵; and (iv) A number of lines of goods which may be imported or exported pursuant to separate provisions. To implement the Decree 187/2013/ND-CP, the MOIT has promulgated Circular 05/2014/TT-BCT regulating on activities of temporary import for re-export; temporary export for re-import and border-gate transfer of goods. Accordingly, the Circular 05/2014/TT-BCT has 5 lists of conditional goods, including: (i) List of prohibited goods to temporary import for re-export; temporary export for re-import and border-gate transfer⁵⁶; (ii) List of temporary suspended goods to temporary import for re-export; temporary export for re-import and border-gate transfer⁵⁷; (iii) List of conditional frozen foods to temporary import for re-export; (iv) List of goods subject to special excise tax to temporary import for re-export; (v) List of conditional goods on the List of used goods to temporary import for re-export.

So the list of conditional sectors under the 2014 Investment Law which just regulated 3 sectors relating to the lists (iii); (iv) and (v) of the Circular 05/2014/TT-BCT are not enable. The scope of goods relating to activities of temporary import for re-export; temporary export for re-import and border-gate transfer as regulated as both the Decree 187/2013/ND-CP and then the Circular 05/2014/TT-BCT is wider than these 3 sectors mentioned as the 2014 Investment Law. Therefore, it could be better if these 3 sectors in the 2014 Investment Law are grouped at a general sector named "temporary import for re-export, temporary export for re-import and border-gate transfer of goods". This sector would includes these 5 lists regulated in the Circular 05/2014/TT-BCT.

Besides, the Circular 05/2014/TT-BCT still remains some articles which regulated business investment conditions, thus conflict with the new investment law. Article 3, 9, 10 and 11 of the Circular 05/2014/TT-BCT which regulated list of conditional goods are not conform with the 2014 Investment Law.

Recommendation: Amending Circular 05/2014/TT-BCT toward bringing all conditional investment sector to the decree.

⁵³ Annex 1 of the Decree 187/2013/ND-CP

⁵⁴ Annex 2 of the Decree 187/2013/ND-CP

⁵⁵ According to Article 7 of Decree 187/2013/ND-CP, the Ministry of Agriculture and Rural Development is in charge of citing specified goods of this list.

⁵⁶ Annex I of the Circular 05/2014/TT-BCT

⁵⁷ Annex II of the Circular 05/2014/TT-BCT

2.2. Administrative procedures on the list of conditional sectors without specific restrictions to foreign investors

Among 28 conditional sectors under the management of the MOIT, there are 9 conditional sectors without specific requirements with foreign investors⁵⁸. In almost all sectors of this group, Vietnam does not have any specific international commitments or domestic regulations to restrict foreign investor's right. However, it has also to comply common conditions under specific law as domestic investors.

By reviewing these sectors, there are many regulations which are not conform with the 2014 Investment Law⁵⁹.

V. Conclusion

The domestic legal document relating to 28 conditional sectors under the management of the MOIT is relatively complex, involving more than 80 legal documents at levels of laws, ordinances, decree and circular.

Through the review, it may have noticed many inappropriate and inconsistent points between the new investment laws with the current legal documents, including:

*** The 2014 Investment Law**

According to the 2014 Investment Law, there are 267 conditional sectors that are now technically open to foreign investment but will require an investment license. It can be seen as an institutionalization of Article 33 of the Vietnamese Constitution: "Everyone has the right to free doing business in conditional sectors in which the law does not prohibit". However, this list provided only their name and do not describe in detail its specific activities as well as respective conditions attached. So it requires guidance at decree level to specify in detail relative activities and respective condition.

By review 28 conditional sectors under the management of the MOIT, this report shows that there are many sectors which are duplicates of legal basis and conditions. Some of them are not covered overall conditions relating to their activities.

For the field of industrial explosives trading and explosive precursors trading, the list describes 3 sectors including: (i) Industrial explosive trading (including destruction thereof); (ii) Explosive precursor trading; and (iii) Business operations using industrial explosives and explosive precursors. However, the sector (iii) is duplicate with the sectors (i) and (ii) on legal basis and respective conditions. So it is better if the sector (iii) is included in the sectors (i) and (ii) as a specific activity.

Relating to activities of temporary import for re-export, temporary export for re-import and border-gate transfer of goods, the Annex 4 of the 2014 Investment Law only describes 3 sectors, including: (i) Temporary import for re-export of frozen food; (ii) Temporary import

⁵⁸ 9 conditional sectors without specific requirements with foreign investors includes: Logistics services; Electronic commerce activities; Operations of Commodity exchange market; Commercial assessment services; Mineral trading; Assessment of conformity of pneumatic tools, industrial lifting devices, chemicals, industrial explosives, equipment serving mineral and petroleum extraction; except for equipment and instruments serving extraction at sea; Multi-level marketing business.

⁵⁹ See Annex for more detail.

for re-export of goods subject to special excise tax; (iii) Temporary import for re-export of goods on the List of used goods. However, the scope of conditional sectors under the management of the MOIT relating to activities of temporary import for re-export, temporary export for re-import and border-gate transfer of goods are larger than these 3 sectors. According to Circular 05/2014/TT-BCT, there are 5 lists of conditional goods⁶⁰ while only three of them are described in the 267 conditional sectors under the 2014 Investment Law. Two remained lists not described in the 2014 Investment Law includes: (i) List of prohibited goods to temporary import for re-export; temporary export for re-import and border-gate transfer; and (ii) List of temporary suspended goods to temporary import for re-export; temporary export for re-import and border-gate transfer. So it is better if these five list are included in a common sector named “temporary import for re-export, temporary export for re-import and border-gate transfer of goods”.

* Draft decree guiding the implementation of the 2014 Investment Law

- Scope of reviewing business investment conditions

Regarding the scope of review, the draft decree guiding the implementation of the 2014 Investment Law describes a list of 72 conditional sectors stipulated conditions for foreign investors in domestic regulations, including 12 sectors under the management of the MOIT. These 72 conditional sectors are specified activities and its respective conditions of each sectors. However, many of them are still lack of conditions such as export-import conditions of petrol and oil, conditions of petrol-oil general agents, etc.

The draft decree has a remarkable effort to harmonize domestic law with Vietnam’s international commitments through reviewing conditions of these 267 conditional sectors stipulated in the Vietnam’s international commitments. However, the review scope is only limited to a number of agreements on investment (ACIA, Vietnam-Japan BIT) or within the WTO accession commitments. All Vietnam’s free trade agreements including important agreement such as TPP or Vietnam-EU FTAs are yet to be reviewed in the draft decree.

Obviously, the MPI have to consult the ministries as well as stakeholders through many rounds to finalize this draft decree. So to enhance quality of review, the draft decree must expand scope of review for all FTAs that Vietnam has participated, while reviewed all current domestic legal documents related to 28 conditional sectors.

- Distinction between business investment conditions and conditions related to technical standards

Current legal documents related to 28 conditional sectors existed two kind of conditions: (i) Business investment conditions; and (ii) Conditions related to technical standards. In some cases, business investment conditions are also conditions related to technical standard. But in some other cases, these two types of condition are separated. This situation makes a difficult

⁶⁰ Five lists of conditional sectors under the Circular 05/2014/TT-BCT includes: (i) List of prohibited goods to temporary import for re-export; temporary export for re-import and border-gate transfer; (ii) List of temporary suspended goods to temporary import for re-export; temporary export for re-import and border-gate transfer; (iii) List of conditional frozen foods to temporary import for re-export; (iv) List of goods subject to special excise tax to temporary import for re-export; (v) List of conditional goods on the List of used goods to temporary import for re-export.

for ministries to unify methods of review business investment conditions, thereby proposing roadmaps to amend regulations which are conflict with the new investment law. Therefore, the draft decree should indicate a more clear way to distinct whether business investment conditions and conditions related to technical standards. Moreover, the draft decree should also make clear while conditions are technical standards, did these conditions need to regulate at decree level or higher? Although the 2014 Investment Law is only required business investment conditions which must be regulated at decree level or higher, all other kind of conditions should also be regulated at decree level or higher to ensure the uniform of legal system as well as to help investors in the process of finding, understanding the legal system.

* Legal documents regulated to administrative procedures

The Decree 63/2010/ND-CP is considered as the backbone for the control of administrative procedures on overall country. Basically, this decree is consistent with direction of the 2014 Investment Law. However, it also allows conditions related to technical standards to be regulated at circular level⁶¹. This regulation raises concerns about the conformity of this decree with the new investment law.

Review result also show that, in some cases, business investment conditions are also technical standards. Therefore, amending the Decree 63/2010/ND-CP is obvious and necessary in order to conform to the spirit of the 2014 Investment Law.

* Legal documents related to 28 conditional sectors under the management of the MOT

- Regulations related to business investment conditions

28 conditional sectors under the management of the MOIT are important and complex, which requires the management of many ministries⁶². That why its legal documents related to 28 conditional sectors includes many documents issued by other ministries. Therefore, this review covered not only legal documents issued by the MOIT but also legal document of the Government and other ministries, which includes more than 80 legal documents at levels of law, ordinance, decree and circular. The review results shows that some circulars not only regulated business investment conditions, but also expanded conditions than legal documents at higher level⁶³, thereby conflict with both the 2014 Investment Law and current law of promulgating legal nominative documents and should be amended.

Besides, the review also describes many sectors which are state monopoly such as electricity activities, industrial explosive trading and tobacco trading. The MOIT is drafting a decree on goods and services applied state monopoly in trade. The draft decree are detailed specific activities under the state monopoly, in which four activities are under the management of the MOIT, including: (i) Industrial explosive trading⁶⁴; (ii) Multipurpose hydropower and nuclear

⁶¹ Article 8(3) of Decree 63/2010/ND-CP.

⁶² For example, conditions relating to technical standard is regulated by the Ministry of Science and Technology; fire safety conditions is regulated by the Ministry of Public Security, etc.

⁶³ For example, Article 5(5) of Circular 29/2014/TT-BCT guiding conditions regulated in the Article 8 of Decree 202/2013/ND-CP adds a storage condition which are outside of requirements of the Decree 202/2013/ND-CP.

⁶⁴ State monopoly in production, distribution and export-import activities

power having critical role for economy-social linked to national security and defense⁶⁵; (iii) Tobacco trading⁶⁶; (iv) National electricity system and power plants having critical role for economy-social linked to national security and defense⁶⁷. While these activities should be considered as conditional activities, both the current list of conditional sectors under the new investment law and its draft decree do not describe it. This is a lack of legal system related to investors.

- Regulations related to administrative procedures

As mentioned above, in several cases, conditions of procedures are also business investment conditions. Many conditions are not conform with the new investment law when regulating at circular level, while other are not conform with the higher legal documents when regulating content of dossier more or different than the higher legal documents⁶⁸.

In the field of electronic commerce, there are two activities in which the MOIT should guide detail the contents of procedures⁶⁹, but it currently don't have circular guiding procedures of these activities.

- Approving investment policy and investment incentives

Concerning approval of investment policy, the 2014 Investment Law still opens for approval of investment policy as analyzed above⁷⁰. For private sector, this is a limitation of the 2014 Investment Law while creating inequity among investors. However, in term of state management, such openness regulations are necessary while Vietnam must focus its resources to develop some important areas in context of global economic integration⁷¹. In the field of procedures, there are many of MOIT's procedures which are applied the approval of investment policy⁷² but not be reviewed in this report. Although these procedures are not includes conditional business conditions, it should be considered as an important area as conditional sectors and should be reviewed and enhanced to promote the participation of both foreign and domestic investors. However, the MPI till now don't have any review activities related to this content. Even this report could only review under the 267 conditional sectors for reason of limitation of scope. Therefore, it is important to add the review of this content to the draft decree guiding the implementation of the 2014 Investment Law.

- Amendments relating to the status of investors

As mentioned above, one of the biggest changes of the 2014 Investment Law is separating the business registration content out of the investment certificate. This change requires all legal

⁶⁵ State monopoly in operation

⁶⁶ State monopoly in tobacco import activity

⁶⁷ State monopoly in transmission, moderation (the national electricity system) and operation

⁶⁸ For example, dossier content of industrial precursor export and import regulated in Circular 42/2013/TT-BCT are not conform with the Decree 58/2003/ND-CP. Please see Annex for more detail.

⁶⁹ Activities includes: (i) Assessment and certification of policies for protecting personal informations in e-commerce operations; and (ii) Providing certification services of electronic contracts. Please see Annex for more detail.

⁷⁰ Articles from 30 to 35 of the 2014 Investment Law.

⁷¹ Article 16 (1) of the 2014 Investment Law describes a list of investment incentives.

⁷² All MOIT's procedures relating to investment support to develop new power projects requires approval of investment policy by the Prime Minister.

documents related to the former investment certificate should be amended, including those related to trade and industry.

Relating to the establishment of representative office and branches of foreign investors, the MOIT is drafting a Decree to submit the Government to replace the current Decree 72/2006/ND-CP dated July 25, 2006 detailed guiding the 2005 Commercial Law on the establishment of representative office and branches of foreign traders in Vietnam.

The former definitions of “FIE” or “joint-venture enterprises” are no longer exist in the new investment law, and be replaced by the new definitions of “foreign investors”, “economic organization with foreign capital”. However, several Vietnam’s international commitments as well as domestic legal documents related to trade and industry are still using the former definitions. It demand the draft decree guiding the implementation of the 2014 Investment Law to guide detailed the amendment of these definitions in order to uniform the Vietnam’s legal system./.

--END--

VI. Reviewed documents

N ^o	Legal document	Issued bodies	Issued date	Content
A. Law, Ordinance				
1	Law 18/VBHN-VPQH on Petroleum	Standing Committee of the National Assembly	18 Dec 2013	Law 18/VBHN-VPQH on Petroleum
2	Ordinance 07/2013/UBTVQH13	Standing Committee of the National Assembly	12 July 2013	Ordinance 07/2013/UBTVQH13 amending Ordinance 16/2011/UBTVQH12 on management and use of weapons, explosives and supporting tools
3	Law 24/2012/QH13	National Assembly	20 Nov 2012	Law 24/2012/QH13 on amending and supplementing the Law on Electricity
4	Ordinance 16/2011/UBTVQH12	Standing Committee of the National Assembly	14 July 2011	Ordinance 16/2011/UBTVQH12 on management and use of weapons, explosives and supporting tools
5	Law 60/2010/QH12	National Assembly	17 Nov 2010	Law 60/2010/QH12 on mineral
6	Law 50/2010/QH12	National Assembly	28 June 2010	Law 50/2010/QH12 on economical and efficient use of energy
7	Law 55/2010/QH12	National Assembly	17 June 2010	Law 55/2010/QH12 on Food safety
8	Law 05/2007/QH12	National Assembly	21 Nov 2007	Law 05/2007/QH12 on Goods quality

N ^o	Legal document	Issued bodies	Issued date		Content
9	Law 06/2007/QH12	National Assembly	21	Nov 2007	Law 06/2007/QH12 on Chemical
10	Law 36/2005/QH11	National Assembly	14	June 2005	Law 36/2005/QH11 on Commercial
11	Law 28/2004/QH11	National Assembly	3	Dec 2004	Law 28/2004/QH11 on Electricity
B. Decree					
12	Decree 58/2003/ND-CP	Government	29	May 2003	Decree 58/2003/ND-CP on controlling import-export and transit narcotics, presubstances, addictive drugs and psychotropic medicines within Vietnam territory
13	Decree 12/2006/ND-CP	Government	23	Jan 2006	Decree 12/2006/ND-CP making detailed provisions for implementation of the commercial law with respect to international purchases and sales of goods; and agency for sale and purchase, processing and transit of goods involving foreign parties
14	Decree 20/2006/ND-CP	Government	20	Feb 2006	Decree 20/2006/ND-CP detailing regulations on the commercial law regarding commercial assessment services
15	Decree 35/2006/ND-CP	Government	31	Mar 2006	Decree 35/2006/ND-CP detailing the Provisions of the 2005 Commercial Law regarding franchising
16	Decree 59/2006/ND-CP	Government	12	June 2006	Decree 59/2006/ND-CP detailing the commercial law regarding goods and

N°	Legal document	Issued bodies	Issued date	Content
				services banned from business, subject to business restriction or to conditional business
17	Decree 158/2006/ND-CP	Government	28 Dec 2006	Decree 158/2006/ND-CP detailing regulations on the commercial law regarding trading commodities via commodity exchange market
18	Decree 23/2007/ND-CP	Government	12 February 2007	Decree 23/2007/ND-CP providing regulations for implementation of commercial law regarding purchase and sale of goods by enterprises with the foreign owned capital in Vietnam
19	Decree 140/2007/ND-CP	Government	5 Sep 2007	Decree 140/2007/ND-CP providing detailed regulations on the commercial law regarding conditions for engaging in logistic services business, and limitation on liability of logistic services business entities
20	Decree 108/2008/ND-CP	Government	7 Oct 2008	Decree 108/2008/ND-CP detailing and guiding the implementation of a number of articles of the Chemical Law
21	Decree 39/2009/ND-CP	Government	23 April 2009	Decree 39/2009/ND-CP on industrial explosives
22	Decree 104/2009/ND-CP	Government	9 Nov 2009	Decree 104/2009/ND-CP providing for the list of dangerous goods and the

N ^o	Legal document	Issued bodies	Issued date	Content
				transport of dangerous goods by road motor vehicles
23	Decree 107/2009/ND-CP	Government	26 Nov 2009	Decree 107/2009/ND-CP on LPG trading
24	Decree 109/2010/ND-CP	Government	4 Nov 2010	Decree 109/2010/ND-CP on rice export
25	Decree 26/2011/ND-CP	Government	8 April 2011	Decree 26/2011/ND-CP amending and supplementing a number of articles of the Decree 108/2008/ND-CP detailing and guiding the implementation of a number of articles of the Chemical Law
26	Decree 26/2011/ND-CP	Government	8 April 2011	Decree 26/2011/ND-CP amending and supplementing a number of articles of the Government's Decree No. 108/2008/ND-CP of 7 October 2008 detailing and guiding a number of articles of the Chemical Law
27	Decree 118/2011/ND-CP	Government	16 Dec 2011	Decree 118/2011/ND-CP on amending and supplementing a number of administrative procedures in the fields of petrol and oil trading and LPG trading
28	Decree 120/2011/ND-CP	Government	16 Dec 2011	Decree 120/2011/ND-CP amending and supplementing administrative procedures provided in a number of

N°	Legal document	Issued bodies	Issued date	Content
				decrees detailing the commercial law
29	Decree 15/2012/ND-CP	Government	9 Mar 2012	Decree 15/2012/ND-CP on detailing a number of articles of the Mineral Law
30	Decree 38/2012/ND-CP	Government	25 April 2012	Decree 38/2012/ND-CP detailing a number of articles of the Law on Food Safety
31	Decree 46/2012/ND-CP	Government	22 May 2012	Decree 46/2012/ND-CP on amending and supplementing a number of articles of the Government Decree 35/2003/ND-CP of April 04, 2003 on detailing the implementation of a number of articles of the Law on Fire prevention and fighting and the Government's Decree No. 130/2006/ND-CP of November 08, 2006 on the compulsory fire and explosion insurance regime
32	Decree 54/2012/ND-CP	Government	22 June 2012	Decree 54/2012/ND-CP amending and supplementing a number of articles of the Decree 39/2009/ND-CP on industrial explosives
33	Decree 94/2012/ND-CP	Government	12 Nov 2012	Decree 94/2012/ND-CP on wine production and wine trading
34	Decree 52/2013/ND-CP	Government	16 May 2013	Decree 52/2013/ND-CP on e-commerce
35	Decree 67/2013/ND-	Government	27 June	Decree 67/2013/ND-CP

N°	Legal document	Issued bodies	Issued date		Content
	CP		2013		detailing a number of articles and measures for implementing the Law on Prevention and Control of Tobacco Harms regarding tobacco business
36	Decree 137/2013/ND-CP	Government	21	Oct 2013	Decree 137/2013/ND-CP guiding the implementation of the Law on Electricity
37	Decree 181/2013/ND-CP	Government	14	Nov 2013	Decree 181/2013/ND-CP detailing the implementation of the Law 16/2012/QH13 on Publication
38	Decree 187/2013/ND-CP	Government	20	Nov 2013	Decree 187/2013/ND-CP detailing implementation of the Commercial Law with respect to international purchases and sales of goods, including activities of export and import; temporary import for re-export; temporary export for re-import; border-gate transfer; activities of entrustment and receiving entrustment in importing and exporting goods; and agency for sale and purchase, processing and transit of goods
39	Decree 202/2013/ND-CP	Government	27	Nov 2013	Decree 202/2013/ND-CP on fertilizer management
40	Decree 38/2014/ND-CP	Government	6	May 2014	Decree 38/2014/ND-CP on managing chemicals under the control of the Convention on prohibiting the development,

N ^o	Legal document	Issued bodies	Issued date	Content
				production, stockpiling, usage and destruction of chemical weapons
41	Decree 42/2014/ND-CP	Government	14 May 2014	Decree 42/2014/ND-CP on management of multi-level marketing activities
42	Decree 76/2014/ND-CP	Government	29 July 2014	Decree 76/2014/ND-CP guiding the amended Ordinance on management and use of weapons, explosives and supporting tools
43	Decree 79/2014/ND-CP	Government	31 July 2014	Decree 79/2014/ND-CP guidelines for the lã on fire safety and firefighting and the Law on amendings to the Law on fire safety and fire fighting
44	Decree 83/2014/ND-CP	Government	3 Dec 2014	Decree 83/2014/ND-CP on petrol and oil trading
C. Circular				
45	Circular 10/2015/TT-BCT	Ministry of Industry and Trade	29 May 2015	Circular 10/2015/TT-BCT on procedure of granting and withdrawing electricity operation licenses
46	Circular 01/2015/TT-BCT	Ministry of Industry and Trade	12 Jan 2015	Circular 01/2015/TT-BCT stipulating procedures for registration of stamps of traders in the field of commercial assessment services
47	Circular 61/2014/TT-BCT	Ministry of Industry and Trade	29 Dec 2014	Circular 61/2014/TT-BCT guiding the implementation of a number of articles of the Decree 76/2014/ND-CP guiding the amended

N ^o	Legal document	Issued bodies	Issued date	Content
				Ordinance on management and use of weapons, explosives and supporting tools
48	Circular 60/2014/TT-BCT	Ministry of Industry and Trade	27 Dec 2014	Circular 60/2014/TT-BCT guiding the Decree 94/2012/ND-CP on wine production and wine trading
49	Circular 58/2014/TT-BCT	Ministry of Industry and Trade	22 Dec 2014	Circular 58/2014/TT-BCT on issuance and revocation of certificate of food safety under the management of the Ministry of Industry and Trade
50	Circular 55/2014/TT-BCT	Ministry of Industry and Trade	19 Dec 2014	Circular 55/2014/TT-BCT detailing and guiding the implementation of certain articles of the Decree 38/2014/NĐ-CP dated May 06, 2014 by the Government on management of chemicals to be controlled by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
51	Circular 47/2014/TT-BCT	Ministry of Industry and Trade	5 Dec 2014	Circular 47/2014/TT-BCT stipulating e-commerce websites management
52	Circular 35/2014/TT-BCT	Ministry of Industry and Trade	15 Oct 2014	Circular 35/2014/TT-BCT on issuance of automatic import license with respect to fertilizer products
53	Circular	Ministry of	30 Sep	Circular 29/2014/TT-BCT

N ^o	Legal document	Issued bodies	Issued date	Content
	29/2014/TT-BCT	Industry and Trade	2014	detailing a number of articles of the Government Decree 202/2013/ND-CP on fertilizer management regarding inorganic fertilizers and licensing production of both inorganic fertilizer an organic fertilizer and other
54	Circular 24/2014/TT-BCT	Ministry of Industry and Trade	30 July 2014	Circular 24/2014/TT-BCT Stipulating the implementation of Government's Decree No/42/2014/ND-CP dated May 14th, 2014 on management of multi-level sales activities
55	Joint circular 13/2014/TTLT-BYT-BNNPTNT-BCT	Ministry of Industry and Trade; Ministry of Agricultural and Rural Development; Ministry of Health	9 April 2014	Joint circular 13/2014/TTLT-BYT-BNNPTNT-BCT on allocation of tasks and cooperation among regulatory agencies in food safety management
56	Circular 04/2014/TT-BCT	Ministry of Industry and Trade	27 Jan 2014	Circular 04/2014/TT-BCT detailing the implementation of the Decree 187/2013/ND-CP dated November 20, 2013 of the Government detailing the implementation of the Commercial Law regarding international goods sale and purchase and goods sale, purchase, processing and transit agency activities with foreign countries

N°	Legal document	Issued bodies	Issued date	Content
57	Circular 05/2014/TT-BCT	Ministry of Industry and Trade	27 Jan 2014	Circular 05/2014/TT-BCT regulating on activities of temporary import for re-export; temporary export for re-import and border-gate transfer of goods
58	Circular 42/2013/TT-BCT	Ministry of Industry and Trade	31 Dec 2013	Circular 42/2013/TT-BCT on management and control of industrial precursors
59	Circular 34/2013/TT-BCT	Ministry of Industry and Trade	24 Dec 2013	Circular 34/2013/TT-BCT announcing the schedule for implementation of commodity trading activities and activities directly related to the purchase and sale of goods of FDI enterprises in Vietnam
60	Circular 14/2013/TT-BCT	Ministry of Industry and Trade	15 July 2013	Circular 14/2013/TT-BCT on conditions of coal trading
61	Circular 15/2013/TT-BCT	Ministry of Industry and Trade	15 July 2013	Circular 15/2013/TT-BCT on coal export
62	Circular 08/2013/TT-BCT	Ministry of Industry and Trade	22 April 2013	Circular 08/2013/TT-BCT detailing the goods trading and directly related activities of foreign invested enterprises in Vietnam
63	Circular 40/2012/TT-BCT	Ministry of Industry and Trade	21 Dec 2012	Circular 40/2012/TT-BCT on conditions for advertisement on alcohol, beverage and milk
64	Circular 41/2012/TT-BCT	Ministry of Industry and Trade	21 Dec 2012	Circular 41/2012/TT-BCT on minerals export

N ^o	Legal document	Issued bodies	Issued date	Content
		Trade		
65	Circular 26/2012/TT-BCT	Ministry of Industry and Trade	21 Sep 2012	Circular 26/2012/TT-BCT amending a number of articles of Circular 23/2009/TT-BCT on detailing a number of articles of Decree 39/2009/ND-CP on industrial explosives
66	Circular 07/2012/TT-BCT	Ministry of Industry and Trade	4 April 2012	Circular 07/2012/TT-BCT defining the energy labeling for means and equipment using energy
67	Circular 48/2011/TT-BCT	Ministry of Industry and Trade	30 Dec 2011	Circular 48/2011/TT-BCT on quality management of goods under group 2
68	Circular 41/2011/TT-BCT	Ministry of Industry and Trade	16 Dec 2011	Circular 41/2011/TT-BCT on safety management in liquefied gas industry
69	Circular 39/2011/TT BCT	Ministry of Industry and Trade	16 Nov 2011	Circular 39/2011/TT BCT on training and issuance of energy management license and energy audit license
70	Circular 11/2011/TT-BKHCN	Ministry of Science and Technology	30 June 2011	Circular 11/2011/TT-BKHCN on amendments and supplements of a number of provisions of Circular 09/2009/TT-BKHCN guiding procedures for designation of conformity assessment organization
71	Circular 14/2011/TT-BKHCN	Ministry of Science and Technology	30 June 2011	Circular 14/2011/TT-BKHCN on amending, supplementing and

N°	Legal document	Issued bodies	Issued date	Content
				repealing a number of articles of Decision 22/2006/QD-BKHCN dated Novembre 10, 2006 regarding approval of measuring device forms
72	Circular 44/2010/TT-BCT	Ministry of Industry and Trade	31 Dec 2010	Circular 44/2010/TT-BCT detailing a number of articles of the Government's Decree 109/2010/ND-CP on rice export
73	Circular 35/2010/TT-BCA	Ministry of Public security	11 Oct 2010	Circular 35/2010/TT-BCA on licensing industrial explosive materials and dangerous goods transportation
74	Circular 12/2010/TT-BKHCN	Ministry of Science and Technology	30 July 2010	Circular 12/2010/TT-BKHCN guiding quality and measurement management of liquefied petroleum gases (LPG)
75	Circular 28/2010/TT-BCT	Ministry of Industry and Trade	28 June 2010	Circular 28/2010/TT-BCT guiding on implementation of Chemical Law and Decree 108/2008/ND-CP detailing and guiding the implementation of a number of articles of the Chemical Law
76	Circular 32/2009/TT-BCT	Ministry of Industry and Trade	5 Nov 2009	Circular 32/2009/TT-BCT stipulating temporarily on the acceptable limits of the content of formaldehyde and aromatic amines released from azo dyes in reduction conditions in textile and garment

N°	Legal document	Issued bodies	Issued date	Content
				products
77	Circular 23/2009/TT-BCT	Ministry of Industry and Trade	11 Aug 2009	Circular 23/2009/TT-BCT detailing a number of articles of Decree 39/2009/ND-CP on industrial explosives
78	Circular 09/2009/TT-BKHCN	Ministry of Science and Technology	8 April 2009	Circular 09/2009/TT-BKHCN guiding procedures for designation of conformity assessment organization
79	Circular 03/2009/TT-BCT	Ministry of Industry and Trade	10 Feb 2009	Circular 03/2009/TT-BCT guiding procedures for licensing of a commodity exchange and reporting regime applicable to a commodity exchange in accordance with Decree 158/2006/ND-CP dated Dec.28, 2006 of the Government on implementation of the 2005 Commercial Law with respect to trading goods on a commodity exchange
80	Circular 09/2006/TT-BTM	Ministry of trade (Ministry of Industry and Trade)	25 May 2006	Circular 09/2006/TT-BTM guiding the franchising registration

ANNEX

OF THE REPORT N° 3: ASSESSMENT THE CONFORMITY OF REGULATIONS RELATED TO MOIT'S ADMINISTRATIVE PROCEDURES UNDER THE LIST OF CONDITIONAL SECTORS DESCRIBED IN THE 2014 INVESTMENT LAW

N°	Activities	Legal basis	Conformity with the 2014 Investment Law		Notes	Recommendations
			consistent	inconsistent		
A. Administrative procedures on the list of conditional sectors with restrictions to foreign investors						
I. Industrial explosive trading (including destruction thereof) and Business operations using industrial explosives and explosive precursors						
1	Production of industrial explosive	<ul style="list-style-type: none"> - Article 25(4) of Ordinance 16/2011/UBTVQH12; - Article 1(6) of Ordinance 07/2013/UBTVQH13; - Article 19 of Decree 39/2009/ND-CP; - Article 1(4) of Decree 54/2012/ND-CP 	x			
2	Transportation of industrial explosive	<ul style="list-style-type: none"> - Article 26 of Ordinance 16/2011/UBTVQH12; - Article 24 of Decree 39/2009/ND-CP - Article 13 of Decree 104/2009/ND-CP - Article 4 of Circular 35/2010/TT-BCA 		x	Article 4 of Circular 35/2010/TT-BCA, amended by Circular 04/2014/TT-BCA regulating conditions of transportation of industrial explosives and dangerous goods.	Amending Circular 35/2010/TT-BCA and Circular 04/2014/TT-BCA toward bringing

		and Circular 04/2014/TT-BCT dated 21 Jan, 2014 amending several articles of Circular 35/2010/TT-BCT dated Oct 11, 2010 of the Minister of the Ministry of Public Security on issuing transportation certificate of industrial explosives and dangerous goods.				all business investment conditions to the Decree level.
3	<ul style="list-style-type: none"> - Storage of industrial explosive; - Conditions of individuals related directly to industrial explosives and explosive precursors 	<ul style="list-style-type: none"> - Article 23 of Decree 39/2009/ND-CP - Article 4 and Article 5 of Circular 23/2009/TT-BCT - Article 1 of Circular 26/2012/TT-BCT 		x	Article 4 and Article 5 of Circular 23/2009/TT-BCT and Article 1 Circular 26/2012/TT-BCT Conditions of individuals related directly to industrial explosive and explosive precursors, thereby inconsistent with the 2014 Investment Law.	Amending Circular 23/2009/TT-BCT and Circular 26/2012/TT-BCT, toward bringing all business investment conditions to the Decree level.
4	Industrial explosives trading	<ul style="list-style-type: none"> -Article 25(4) of Ordinance 16/2011/UBTVQH12; - Article 1(6) of Ordinance 07/2013/UBTVQH13; - Article 19 of Decree 39/2009/ND-CP; - Article 1(4) of Decree 54/2012/ND-CP 	x			
5	Destruction of industrial	<ul style="list-style-type: none"> - Article 11 of Decree 39/2009/ND-CP 	x			

	explosives					
II. Blasting services						
6	Blasting services	- Article 25, 26 of Decree 39/2009/ND-CP; - Article 26 of Decree 39/2009/ND-CP - Article 10 of Circular 23/ 2009/TT-BCT	x			
III. Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy						
7	Electricity generation	- Article 32, Article 38 of the 2004 Electricity Law;	x			
8	Electricity transmission	- Article 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44 of Decree 137/2013/ND-CP.	x			
9	Electricity distribution	- Circular 10/2015/TT-BCT	x			
10	Wholesaling electricity		x			
11	Retailing electricity		x			
12	Import and export electricity		x			
13	Consulting		x			

	national power development plan				
14	Consulting provincial power development plan		x		
15	Consulting hydropower plan		x		
16	Consulting construction of hydropower plants		x		
17	Consulting construction of thermal power plants		x		
18	Supervising construction of transmission lines and substations		x		
IV. Petrol and Oil trading					

19	Petrol-oil production	- Article 10 of Decree 83/2014/ND-CP	x			
20	Processing Petrol-oil	- Article 12 of Decree 83/2014/ND-CP	x			
21	Petrol-oil distribution	- Article 13 of Decree 83/2014/ND-CP	x			
22	Export-import petrol and oil	- Article 7 of Decree 83/2014/ND-CP	x			
23	Petrol-oil general agents	- Article 16 of Decree 83/2014/ND-CP	x			
24	Petrol-oil retail franchisees	Article 22 of Decree 83/2014/ND-CP	x			
25	Petrol-oil retail agents	- Article 19 of Decree 83/2014/ND-CP	x			
26	Petrol-oil retail stations	- Article 24 of Decree 83/2014/ND-CP	x			
27	Rental services of ports, petrol-oil depots	- Article 27 of Decree 83/2014/ND-CP	x			
28	Petrol-oil	Article 28 of Decree 83/2014/ND-CP	x			

	transportation services					
V. Gas trading						
29	LPG export-import	<ul style="list-style-type: none"> - Article 7 of Decree 107/2009/ND-CP - Article 4, 5 of Circular 12/2010/TT-BKHCN 	x		Article 4,5 of Circular 12/2010/TT-BKHCN regulated conditions of LPG export-import activities. However, it is purely technical standards for goods, thereby do not conflict with the 2014 Investment Law.	
30	Producing and processing LPG	<ul style="list-style-type: none"> - Article 10 of Decree 107/2009/ND-CP - Article 6, 11 of Circular 12/2010/TT-BKHCN 		x	Article 6 of Circular 12/2010/TT-BKHCN regulated business investment conditions of producing and processing LPG, thereby inconsistent with the 2014 Investment Law.	Amending Circular 12/2010/TT-BKHCN toward bringing all business investment conditions to the Decree level.
31	LPG distributors level I	<ul style="list-style-type: none"> - Article 13 of Decree 107/2009/ND-CP 	x			
32	Station of bottling LPG in cylinders	<ul style="list-style-type: none"> - Article 16 of Decree 107/2009/ND-CP; - Article 2 of Decree 118/2011/ND-CP; - Decree 46/2012/ND-CP; 	x		Article 7 of Circular 12/2010/TT-BKHCN stipulated conditions of station of bottling LPG in cylinders. These conditions are technical	

		- Article 7 of Circular 12/2010/TT-BKHCN.			standards, thereby do not conflict with the 2014 Investment Law.	
33	LPG general agents	- Article 23 of Decree 107/2009/ND-CP - Decree 79/2014/ND-CP	x			
34	LPG agents	- Article 26 of Decree 107/2009/ND-CP; - Article 2(5) of Decree 118/2011/ND-CP - Decree 46/2012/ND-CP - Decree 79/2014/ND-CP	x			
35	Store of LPG cylinders	- Article 29 of Decree 107/2009/ND-CP; - Article 2 of Decree 118/2011/ND-CP - Decree 46/2012/ND-CP - Article 8, 10 of Circular 12/2010/TT-BKHCN - Decree 79/2014/ND-CP	x		Article 8,10 of Circular 12/2010/TT-BKHCN stipulated conditions of LPG quality in facilities of storage, distribution and LPG stores. These conditions are technical standards, thereby do not conflict with the 2014 Investment Law.	
36	Station of filling LPG in vehicles	- Article 33 of Decree 107/2009/ND-CP; - Article 2(5) of Decree 118/2011/ND-CP - Decree 46/2012/ND-CP - Article 7 of Circular 12/2010/TT-BKHCN - Decree 79/2014/ND-CP	x		Article 7 of Circular 12/2010/TT-BKHCN regulated conditions of station of bottling and filling LPG. These conditions are purely technical standard, thereby do not conflict with the 2014 Investment Law.	

37	LPG supply station	- Article 37 of Decree 107/2009/ND-CP; - Article 2(5) of Decree 118/2011/ND-CP - Decree 46/2012/ND-CP - Decree 79/2014/ND-CP	x			
38	Rental services of ports, LPG depots	- Article 41 of Decree 107/2009/ND-CP	x			
39	LPG transportation services	- Article 44 of Decree 107/2009/ND-CP - Article 4,11, 18,19 Decree 104/2009/ND-CP - Article 1 of Circular 14/2011/TT-BKHCHN	x			
40	Producing and repairing LPG cylinders	- Paragraph 1(c) of Article 56 of Decree 107/2009/ND-CP; - Article 46, 47 of Circular 41/2011/TT-BCT		x	Article 46, 47 of Circular 41/2011/TT-BCT regulated conditions to issue certificate of testing and repairing LPG cylinders, thereby conflict with the 2014 Investment Law.	Amending Circular 41/2011/TT-BCT toward bringing all business investment conditions to the Decree level.
41	Testing LPG cylinders	- Paragraph 1(c) of Article 56 Decree 107/2009/ND-CP; - Article 43 Circular 41/2011/TT-BCT		x	Article 43 of Circular 41/2011/TT-BCT regulated conditions to issue certificate of testing and repairing LPG cylinders, thereby conflict with	Amending Circular 41/2011/TT-BCT toward bringing all business

					the 2014 Investment Law.	investment conditions to the Decree level.
VI. Inorganic fertilizer trading						
42	Inorganic fertilizer production	- Article 8 of Decree 202/2013/ND-CP - Article 5 of Circular 29/2014/TT-BCT		x	Article 5(5) of Circular 29/2014/TT-BCT guides specific conditions stipulated in Article 8 of Decree 202/2013/ND-CP relating to the operation of producing fertilizer. However, it is not conform with the new investment law as well as current law on promulgate legal normative documents because it adds one condition on storage which is not stipulated in the Decree 202/2013/ND-CP.	Amending Circular 29/2014/TT-BCT toward bringing all business investment conditions to the Decree level.
43	Trading inorganic fertilizer	- Article 15 of Decree 202/2013/ND-CP - Article 13 of Circular 29/2014/TT-BCT	x			
44	Exporting Inorganic fertilizer	- Article 16 of Decree 202/2013/ND-CP - Article 14 of Circular 29/2014/TT-BCT	x			
45	Importing Inorganic fertilizer	- Article 17 of Decree 202/2013/ND-CP - Article 15 of Circular 29/2014/TT-BCT	x			

46	Automatic import licensing on some fertilizer products	Circular 35/2014/TT-BCT	x			
VII. Wine trading						
47	Industrial wine production	Article 8 of Decree 94/2012/ND-CP Article 5 of Circular 60/2014/TT-BCT	x			
48	Wine craft production for trade	Article 11, 12 of Decree 94/2012/ND-CP Article 6 of Circular 60/2014/TT-BCT	x			
49	Wine distribution	Article 17, 18 of Decree 94/2012/ND-CP Article 10 of Circular 60/2014/TT-BCT	x			
50	Wholesale trading of wine products	Article 17, 18 of Decree 94/2012/ND-CP Article 11 of Circular 60/2014/TT-BCT	x			
51	Retail trading of wine products	Article 17, 18 of Decree 94/2012/ND-CP Article 12 of Circular 60/2014/TT-BCT	x			
52	Importing wines	Article 20 of Decree 94/2012/ND-CP	x			
VIII. Trading in tobacco products, tobacco materials, machinery and equipment serving tobacco industry						

53	Tobacco production	- Article 17 of Decree 67/2013/ND-CP	x			
54	Tobacco distribution	- Article 26,27,28 of Decree 67/2013/ND-CP	x			
55	Wholesale tobacco	- Article 26,27,28 of Decree 67/2013/ND-CP	x			
56	Tobacco retailing	- Article 26,27,28 of Decree 67/2013/ND-CP	x			
57	Purchase and sale tobacco materials	- Article 9 of Decree 67/2013/ND-CP	x			
58	Processing tobacco materials	- Article 12 of Decree 67/2013/ND-CP	x			
59	Importing tobacco materials, cigarette papers	- Article 36 of Decree 67/2013/ND-CP	x			
60	Certificate of tobacco growing	- Article 7 of Decree 67/2013/ND-CP	x			
61	Importing machinery,	- Article 34 of Decree 67/2013/ND-CP	x			

	equipment serving tobacco industry					
62	Tobacco export and import for trade	- Article 30 of Decree 67/2013/ND-CP	x			
63	Importing tobacco products for experimental production	- Article 31 of Decree 67/2013/ND-CP	x			
IX. Trading in foods under the management of the MOIT						
64	Food safety certificate for manufacturing establishments issued by the MOIT	- Article 34 of Law 55/2010/QH12 on Food safety; - Article 12, 22 of Decree 38/2012/ND-CP - Article 6 of Circular 58/2014/TT-BCT	x			
65	Food safety certificate for trading establishments issued by the MOIT	- Article 34 of Law 55/2010/QH12 on Food safety; - Article 12, 22 of Decree 38/2012/ND-CP - Article 6 of Circular 58/2014/TT-BCT	x			
66	Food safety	- Article 34 Law 55/2010/QH12 on Food	x			

	certificate for manufacturing establishments issued by the local department of industry and trade	safety; - Article 12, 22 of Decree 38/2012/ND-CP - Article 6 of Circular 58/2014/TT-BCT				
67	Certificate of food safety knowledges for organizations and individuals issued by the MOIT	- Annex 3 of Joint Circular of 13/2014/TTLT-BYT-BNNPTNT-BCT.	x			
68	Certificate of food safety knowledges for organizations and individuals issued by the local department of industry and trade	- Annex 3 of Joint Circular 13/2014/TTLT-BYT-BNNPTNT-BCT.	x			
69	Certificate of food advertising content under the management of	- Article 43 of Law 55/2010/QH12 on Food safety; - Decree 181/2013/ND-CP		x	Article 3 of Circular 40/2012/TT-BCT stipulated conditions to certificate of food advertising content under the management of	Amending Circular 40/2012/TT-BCT toward bringing

	the MOIT	- Article 3, Article 8 of Circular 40/2012/TT-BCT.			the MOIT, thereby inconsistent with the 2014 Investment Law.	all business investment conditions to the Decree level.
X. Franchising						
70	Registration of franchising from overseas to Vietnam	- Law 36/2005/QH11 on Commercial; - Article 5,6,7,18 of Decree 35/2006/ND-CP; - Article 3 of Decree 120/2011/ND-CP - Circular 09/2006/TT-BTM.	x			
71	Changing registration of franchising from overseas to Vietnam	- Law 36/2005/QH11 on Commercial; - Article 5,6,7,18 of Decree 35/2006/ND-CP; - Article 3 of Decree 120/2011/ND-CP - Circular 09/2006/TT-BTM.	x			
XI. Industrial precursors trading						
72	Producing industrial precursors	- Article 1(4) of Decree 26/2011/ND-CP; - Article 6 of Circular 42/2013/TT-BCT.	x			
73	Trading industrial precursors	- Article 1(4) of Decree 26/2011/ND-CP; - Article 7 of Circular 42/2013/TT-BCT.	x			

74	Import-export industrial precursors	<ul style="list-style-type: none"> - Decree 58/2003/ND-CP - Decree 26/2011/ND-CP - Article 10 of Circular 42/2013/TT-BCT 		x	<p>Dossier content of industrial precursor export and import regulated in Circular 42/2013/TT-BCT are not conform with the Decree 58/2003/ND-CP. Under Circular 42/2013/TT-BCT, dossier content includes: (i) application for export-import licenses; and (ii) Purchase and sale contract of precursor industrial; or sale, purchase agreement; memorandum; commercial invoice. Meanwhile, dossier content under the Decree 58/2003/ND-CP is more complex, including: (i) written permission of importing or exporting countries; (ii) application to export and import</p>	<p>Amending Circular 42/2013/TT-BCT toward conforming with the Decree 58/2003/ND-CP; or amending Decree 58/2003/ND-CP toward simplifying dossier content of industrial precursor export and import.</p>
XII. Goods trading and activities directly related goods trading of foreign investors						
75	Goods trading and activities directly related goods trading of foreign investors in Vietnam	<ul style="list-style-type: none"> - Article 4 of Decree 23/2007/ND-CP - Article 1 of Circular 08/2013/TT-BCT; - Circular 34/2013/TT-BCT. 		x	<p>According to Decree 23/2007/ND-CP, the business license is also the investment license. Meanwhile, the new investment law has separated business and enterprise registration content out of investment license</p>	<ul style="list-style-type: none"> - Amending Decree 23/2007/ND-CP toward separating contents of business license and investment
76	Setting up retail establishment in	<ul style="list-style-type: none"> - Article 4 of Decree 23/2007/ND-CP - Circular 08/2013/TT-BCT; 		x	<p>Article 3,4,5 of Circular 08/2013/TT-BCT regulated conditions to exercise the right to</p>	

	addition to the first establishment of foreign investors	- Circular 34/2013/TT-BCT.			import, export and distribution of foreign investors while the new investment law has prohibited to regulate business investment conditions at circular level. Article 1 of Circular 08/2013/TT-BCT cited roadmaps provided for in Appendix 01 to the Decision No. 10/2007/QĐ-BTM dated May 21, 2007, of the Minister of Trade (now as the Minister of Trade and Industry) publicizing roadmaps for goods trading and directly related activities and other relevant regulations. However, this decision has been replaced by Circular 34/2013/TT-BCT.	license; - Amending Circular 08/2013/TT-BCT, toward bringing all business investment conditions to decree, and referring roadmaps for goods trading and directly related activities and other relevant regulations under Circular 34/2013/TT-BCT.
XIII. Explosive precursor trading						
77	Explosive precursor trading	- Article 11 of Decree 76/2014/ND-CP - Article 3, 4, 5 of Circular 61/2014/TT-BCT	x		Article 3,4,5 of Circular 61/2014/TT-BCT guiding in detail conditions of explosive precursor trading which are regulated in Decree 76/2014/ND-CP, thereby conform with the 2014 Investment Law.	

78	Explosive precursor production	<ul style="list-style-type: none"> - Article 25(4) of Ordinance 16/2011/UBTVQH12 - Article 1(6) Ordinance 07/2013/UBTVQH13; - Article 16(2,3) of Decree 39/2009/ND-CP; - Article 1(1) of Decree 54/2012/ND-CP; - Article 4, 5, 7 of Circular 23/2009/TT-BCT; - Article 1 of Circular 26/2012/TT-BCT. 		x	Article 4, 5 of Circular 23/2009/TT-BCT and Article 1 of Circular 26/2012/TT-BCT regulated conditions of individuals related directly to explosive precursor trading, thereby inconsistent with the 2014 Investment Law.	Amending Circular 23/2009/TT-BCT and Circular 26/2012/TT-BCT toward bringing all business investment conditions to the Decree level.
79	Export-import explosive precursor	<ul style="list-style-type: none"> - Article 7(4) of Decree 76/2014/ND-CP - Article 15 of Decree 76/2014/ND-CP 	x			
XIV. Trading in chemicals except banned chemicals according to Convention on prohibiting the development, production, stockpiling, usage and destruction of chemical weapons						
80	Producing and trading Chemicals in the list of industrial chemicals subject to conditional production and trading	<ul style="list-style-type: none"> - Article 14 of Law 06/2007/QH12 on Chemical; - Article 7 of Decree 108/2008/ND-CP; - Article 1(4) of Decree 26/2011/ND-CP; - Article 9, 10, 11 of Circular 28/2010/TT-BCT. 		x	All conditions related to trading chemical are regulated at decree level, thereby consistent with the 2014 Investment Law. However, Circular 28/2010/TT-BCT guiding conditions of material and technical basis, thereby inconsistent with the 2014 Investment Law.	Amending Circular 28/2010/TT-BCT toward bringing all business investment conditions to the Decree level.

81	Producing and trading chemicals in the list of industrial chemicals restricted from production or trade	- Article 15 of Law 06/2007/QH12 on Chemical; - Article 17, 18, 19 of Circular 28/2010/TT-BCT.		x	All conditions related to trading chemical are regulated at decree level, thereby consistent with the 2014 Investment Law. However, Circular 28/2010/TT-BCT guiding conditions of material and technical basis, thereby inconsistent with the 2014 Investment Law.	Amending Circular 28/2010/TT-BCT toward bringing all business investment conditions to the Decree level.
82	Producing chemical under the Table 1	- Article 15 of Decree 38/2014/ND-CP - Article 6 of Circular 55/2014/TT-BCT	x		Circular 55/2014/TT-BCT guiding in detail conditions and dossier content which are regulated in Decree 38/2014/ND-CP, thereby conform with the 2014 Investment Law.	
83	Producing chemical under the Table 2, Table 3	- Article 15, 16 of Decree 38/2014/ND-CP - Article 6 of Circular 55/2014/TT-BCT	x		Circular 55/2014/TT-BCT guiding in detail conditions and dossier content which are regulated in Decree 38/2014/ND-CP, thereby conform with the 2014 Investment Law.	
84	Export-import chemical under the Table 1,2, 3	- Article 19 of Decree 38/2014/ND-CP	x		Circular 55/2014/TT-BCT guiding in detail conditions and dossier content which are regulated in Decree 38/2014/ND-CP, thereby conform with the 2014 Investment Law.	

85	Producing DOC, DOC-PSF chemical	- Article 15,18, 20 of Decree 38/2014/ND-CP - Article 6 of Circular 55/2014/TT-BCT	x		Circular 55/2014/TT-BCT guiding in detail conditions and dossier content which are regulated in Decree 38/2014/ND-CP, thereby conform with the 2014 Investment Law.	
XV. Petroleum activities						
86	Services of cleaning fixed works, equipment and facilities relating to petroleum activities	Article 13 of Law 18/VBHN-VPQH on Petroleum; Decree 48/2000/ND-CP; Decree 115/2009/ND-CP.	x			
87	Petroleum contracts	- Article 15, 16, 17 Of Law 18/VBHN-VPQH on Petroleum; Decree 48/2000/ND-CP; Decree 115/2009/ND-CP.	x			
88	Assignment of petroleum contracts	Article 24 Of Law 18/VBHN-VPQH on Petroleum; Decree 48/2000/ND-CP; Decree 115/2009/ND-CP.	x			
XVI. Temporary import for re-export of frozen food						

89	Temporary import for re-export of frozen food	- Article 11(3) of Decree 187/2013/ND-CP - Article 3, 9, 12, 18 of Circular 05/2014/TT-BCT		x	Article 3, 9 of Circular 05/2014/TT-BCT describe the conditional lists of temporary import for re-export, temporary export for re-import and border-transfer of goods, thereby inconsistent with the 2014 Investment Law.	Amending Circular 05/2014/TT-BCT toward bringing all business investment conditions to the Decree level.
XVII. Temporary import for re-export of goods subject to special excise tax						
90	Temporary import for re-export of goods subject to special excise tax	- Article 11(3) of Decree 187/2013/ND-CP - Article 10, 12, 18 of Circular 05/2014/TT-BCT		x	Article 3, 10 of Circular 05/2014/TT-BCT describe the conditional lists of temporary import for re-export, temporary export for re-import and border-transfer of goods, thereby inconsistent with the 2014 Investment Law.	Amending Circular 05/2014/TT-BCT toward bringing all business investment conditions to the Decree level.
XVIII. Temporary import for re-export of goods on the List of used goods						
91	Temporary import for re-export of goods on the List of used goods	-Article 11(3) of Decree 187/2013/ND-CP - Article 11, 12, 18 of Circular 05/2014/TT-BCT		x	Article 3, 11 Circular 05/2014/TT-BCT describe the conditional lists of temporary import for re-export, temporary export for re-import and border-transfer of goods, thereby inconsistent with the 2014	Amending Circular 05/2014/TT-BCT toward bringing all business investment

					Investment Law.	conditions to the Decree level.
92	Prohibited goods to temporary import for re-export; temporary export for re-import and border-gate transfer; Temporary suspended goods to temporary import for re-export; temporary export for re-import and border-gate transfer	- Article 11, 12, 13, 14 of Decree 1872013//ND-CP	x			
B. Administrative procedures on the list of conditional sectors without specific restrictions to foreign investors						
XIX. Logistics services						
93	Business in logistic services mainly	- Law 36/2005/QH11 on Commercial; - Article 5 of Decree 140/2007/ND-CP.	x			

94	Business in logistic services related to transportation	- Law 36/2005/QH11 on Commercial; - Article 6 of Decree 140/2007/ND-CP.	x			
95	Business in other activities related to logistic services	- Law 36/2005/QH11 on Commercial; - Article 7 of Decree 140/2007/ND-CP.	x			
XX. Electronic commerce activities						
96	Setting up commercial website for goods trading	- Article 52 of Decree 52/2013/ND-CP; - Article 3, Article 8, Article 9,10,11,12 of Circular 47/2014/TT-BCT.		x	Article 3, 8 of Circular 47/2014/TT-BCT regulated conditions of traders who trading goods through e-commerce website, thereby inconsistent with the 2014 Investment Law.	Amending Circular 47/2014/TT-BCT toward bringing all business investment conditions to the Decree level.
97	Setting up website providing e-commerce services	- Article 54 of Decree 52/2013/ND-CP. - Article 6, Article 13 of Circular 47/2014/TT-BCT.		x	Article 6, Article 13 Circular 47/2014/TT-BCT regulated conditions of traders who provide e-commerce services, thereby inconsistent with the 2014 Investment Law.	Amending Circular 47/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

98	Reliability assessment of e-commerce website	- Article 61 of Decree 52/2013/ND-CP; - Article 21 of Circular 47/2014/TT-BCT.		x	Article 21 of Circular 47/2014/TT-BCT regulated conditions of traders who provide reliability assessment services of e-commerce website, thereby inconsistent with the 2014 Investment Law.	Amending Circular 47/2014/TT-BCT toward bringing all business investment conditions to the Decree level.
99	Assessment and certification of policies for protecting personal informations in e-commerce	- Article 62 of Decree 52/2013/ND-CP	x		Although Decree 52/2013/ND-CP assigned to the MOIT to guiding the implementation of this procedure, this procedure till now is lack of legal basis. The MOIT don't have yet any circular guiding this content.	
100	Providing certification services of electronic contracts	- Article 63 of Decree 52/2013/ND-CP	x		Although Decree 52/2013/ND-CP assigned to the MOIT to guiding the implementation of this procedure, this procedure till now is lack of legal basis. The MOIT don't have yet any circular guiding this content.	
XXI. Operations of commodity exchange						
101	Operations of commodity	- Article 8, 15, 32 of Decree 158/2006/ND-CP;		x	Decree 158/2006/ND-CP regulated procedure conditions, thereby conform with the new investment	Amending Circular 03/2009/TT-BCT

	exchange	- Article 1 of Circular 03/2009/TT-BCT.			law. However, dossier content of the procedure "Reissuing establishment certificate of commodity exchange" regulated in the Circular 03/2009/TT-BCT are not conform with the Decree 158/2006/ND-CP. According to Article 13 of Decree 158/2006/ND-CP, content dossier of this procedure includes: (i) a written request; and (ii) the original or copies of license (if any). Meanwhile, Article 3 of Section I of Circular 03/2009/TT-BCT requires 3 documents, including: (i) a written request; and (ii) the remaining original of torned, burned or damaged license, or a paper confirmation of the police office on the above cases; and (iii) a copie of license certified by the authorized agencies (if any).	toward remove all documents of dossier content which are inconsistent with the Decree 158/2006/ND-CP.
102	Commodity market brokers	- Article 19 of Decree 158/2006/ND-CP	x			
103	Trading members of commodity	Article 21, 23,34,39,47 of Decree 158/2006/ND-CP	x			

	market					
XXII. Commercial assessment services						
104	Commercial assessment services	<ul style="list-style-type: none"> - Article 257, 259, 267 of the Law 36/2005/QH11 on Commercial; - Article 5 of Decree 20/2006/ND-CP; - Circular 01/2015/TT-BCT. 		x	Article 2, 4, 8 of Decree 20/2006/ND-CP stipulated requirements of seals, thereby conflict to the provisions of Article 44 of the 2014 Enterprise Law	<ul style="list-style-type: none"> - Removing Article 2, 4, 8 of Decree 20/2006/ND-CP.
XXIII. Rice export						
105	Rice export	<ul style="list-style-type: none"> - Article 4, 6, 16, 17, 18 of Decree 109/2010/ND-CP; - Article 3, 8,12 of Circular 44/2010/TT-BCT. 		x	Article 8 of Circular 44/2010/TT-BCT stipulated conditions of key traders, thereby conflict with the 2014 Investment Law.	Amending Circular 44/2010/TT-BCT toward bringing all business investment conditions to decree level.
XXIV. Coal trading						
106	Coal trading	<ul style="list-style-type: none"> - Decree 15/2012/ND-CP; - Decree 59/2006/ND-CP; - Article 4 Circular 14/2013/TT-BCT. 		x	Article 4 of Circular 14/2013/TT-BCT regulated conditions of coal trading, thereby conflict with the 2014 Investment Law.	Amending Circular 14/2013/TT-BCT toward bringing all business investment

						conditions to decree level.
107	Coal export	- Decree 15/2012/ND-CP; - Article 4 of Circular 15/2013/TT-BCT.		x	Article 4 of Circular 15/2013/TT-BCT regulated conditions of coal trading, thereby conflict with the 2014 Investment Law.	Amending Circular 15/2013/TT-BCT toward bringing all business investment conditions to decree level.
XXV.Mineral trading						
108	Mineral trading	- Law 60/2010/QH12 on mineral; - Decree 15/2012/ND-CP; - Article 4 of Circular 41/2012/TT-BCT; - Decree 12/2006/ND-CP; - Article 1 of Circular 41/2012/TT-BCT; - Decree 187/2013/ND-CP.			Article 4 of Circular 41/2012/TT-BCT stipulated conditions of mineral trading, thereby conflict with the 2014 Investment Law.	Amending Circular 41/2012/TT-BCT toward bringing all business investment conditions to decree level.
XXVI. Assessment of conformity of pneumatic tools, industrial lifting devices, chemicals, industrial explosives, equipment serving mineral and petroleum extraction; except for equipment and instruments serving extraction at sea						
109	Assessment of conformity of pneumatic tools,	- Article 3(9), Article 25(5) Law 05/2007/QH12 on Goods quality;		x	Section II of Circular 09/2009/TT-BKHCN regulated conditions related to the procedure	Amending

	industrial lifting devices, chemicals, industrial explosives, equipment serving mineral and petroleum extraction; except for equipment and instruments serving extraction at sea	<ul style="list-style-type: none"> - Section II of Circular 09/2009/TT-BKHCHN and Circular 11/2011/TT-BKHCHN (amending Circular 09/2009/TT-BKHCHN); - Article 11, 12, 13, 14 and Article 15(3) of Circular 48/2011/TT-BCT; - Article 5, Article 7 of Circular 07/2012/TT-BCT; - Article 3 of Circular 32/2009/TT-BCT; - Article 16 of Circular 29/2014/TT-BCT. 			<p>”Designating organization of conformity assessment”, thereby conflict with the 2014 Investment Law.</p> <p>Circular 48/2011/TT-BCT describes conditions to certificate goods under group 2 and certificate of conformity assessment organization who designated by the MOIT, thereby conflict with the 2014 Investment Law.</p> <p>Section II of Circular 07/2012/TT-BCT regulated conditions to designate organizations who tested and regcognized results of testing organizations, thereby conflict with the 2014 Investment Law.</p> <p>Article 3 of Circular 32/2009/TT-BCT regulated conditions of testing organizations, thereby conflict with the 2014 Investment Law.</p>	<p>Circulars 09/2009/TT-BKHCHN; 48/2011/TT-BCT; 07/2012/TT-BCT; 32/2009/TT-BCT toward bringing all business investment conditions to decree level.</p>
110	Services of energy advisory and energy audits	- Article 34 of Law 50/2010/QH12 on economical and efficient use of energy		x	Article 4, Article 7, Article 9 of Circular 39/2011/TT-BCT regulated conditions of the services, thereby conflict with the 2014 Investment Law.	Amending Circular 39/2011/TT-BCT toward bringing all business investment
111	Training services	- Article 4 of Circular 39/2011/TT BCT		x		

	of energy management and energy auditors					conditions to decree level.
XXVII. Multi-level marketing business (MLM)						
112	Registration of MLM activities	- Article 7, 8 of Decree 42/2014/ND-CP - Circular 24/2014/TT-BCT		x	Circular 24/2014/TT-BCT regulated conditions on administrative procedures, thereby conflicting with Law on promulgating legal normative documents 2015.	Amending Circular 24/2014/TT-BCT toward bringing all business investment conditions to decree level.
113	Assign training facilities of MLM	- Article 13(2) of Circular 24/2014/TT-BCT		x	Article 13(2) of Circular 24/2014/TT-BCT stipulated conditions of this procedure, thereby conflict with the 2014 Investment Law.	