



TECHNICAL REPORT 4

Suggestions to simplify the MOIT's administrative procedures in accordance with The Investment Law 2014

ACTIVITY CODE: RA-2

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

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OVERVIEW

One of the main focuses of the Vietnamese Government during the 2015-2016 period is to improve the business environment, promote administrative procedures reform, reduce the implementation time and cost of procedures, simplify procedures towards a more transparency and publicity regime. It is aimed that by the end of 2015, Viet Nam economy will reach the average level of ASEAN-6 group.

To realize these goals, the Government of Viet Nam revised several key 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 Viet Nam (SBV) has managed 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, Viet Nam 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.

One of the most important law change is the new 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.

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 license¹. 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 National Assembly to amend the above list. This approach ensures the list will not change quickly.

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 Law².

To conform with these new changes, the simplification of administrative procedures in the conditional sectors should harmonized between the needs state management and business freedom rights of individuals and organizations. Therefore, the conditions of these sectors should be reviewed to ensure favorable conditions of procedures implementation for individuals and organizations.

¹ Annex 4 of the 2014 Investment Law.

² Investors are authorized to invest in conditional sectors in which the law does not prohibit.

As analyzing above, to match the spirit of the new investment law, the simplification of administrative procedures in the field of conditional sectors will be implemented in two directions:

- Removing unnecessary administrative procedures and simplifying the others (simplified dossier content or reduced cost and time of implementation, etc.) to take favorable conditions to individuals and organizations to doing business in conditional sectors, thereby contributing to improve the investment and business environment toward more transparency, effectively and efficiency.
- Proposing to amend legal documents prescribed administrative procedures relating to conditional sectors which are contrary to the 2014 Investment Law. Accordingly, 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 conditions³.

³ Article 7(3) of the 2014 Investment Law.

I. Government's goals of administrative procedures reform (APR)

At the beginning of 2015, the Government has made drastic direction to promote the administrative procedures reform in 2015 through the issuance of the Resolution 01/NQ-CP dated Jan 3, 2015 on tasks and solutions to implement the economic development plans and estimated state budget in 2015; the Resolution 19/NQ-CP dated Mars 12, 2015 on tasks and solutions to improve business environment, enhancing national competitiveness capacity during the period of 2015-2016 and the Decision 08/QD-TTg dated Jan 6, 2015 of the Prime Minister on national plan of administrative procedures simplification in 2015.

1. Key tasks of APR in 2015 under the Resolution 19/NQ-CP

The Resolution 19/NQ-CP has allocated to the ministries, branches and localities to implement eight groups of tasks⁴, including:

- Improving institutions of transaction and registration of security transaction and promoting socialization of public services;
- Pushing up APR through reviewing, simplifying and removing unnecessary procedures;
- Publicity and transparency of administrative procedures;
- Establishing information systems to collect feedbacks, recommendations relating to the implementation of administration procedures of individuals and organizations;
- Application of information technologies in the state management, especially in settling administrative procedures;
- Implementing uniform and efficient the single window and multi-level single window mechanism to settle administrative procedures;
- Strengthening inspection in settling administrative procedures.

In addition, the Resolution 19/NQ-CP allocated to 18 ministries to host the implementation of 40 task groups, including the Ministry of Industry and Trade (the MOIT). Accordingly, during the period 2015-2016 the MOIT is hosted the implementation of tasks below:

- Reviewing and evaluating legal provisions on the management of goods export/import subject to specialized management (through license for export or import; inspection of standard, quality and quarantine; export and import services); Amending and supplementing an uniform list of export/import goods regulated standards, methods of quarantine and inspection of good quality.⁵
- Reviewing and developing legal documents to guide the implementation of the Decree 187/2013/ND-CP relating to the list of export/import goods under the management of ministries toward promoting APR and simplification of procedures.⁶
- Amending and supplementing the Decrees 108/2008/ND-CP, 26/2011/ND-CP and the Circular 40/2011/TT-BCT relating to chemical declaration toward strengthening the

⁴ Section III of the Resolution 19/NQ-CP

⁵ Article 3 of Section III of the Resolution 19/NQ-CP

⁶ Article 7 of Section III of the Resolution 19/NQ-CP

implementation of procedure through electronic method; amending the list of chemicals subject to declaration; adding exemptions of declaration.⁷

- To further simplify the procedures relating to the issuance of certificates of origin (C/O); performing the declaration of C/O through internet and connecting to the National Single window.⁸

- Amending and supplementing the Circular 32/2009/TT-BCT relating to the formaldehyde test in textile products.⁹

- Amending and supplementing the MOIT's Decision 11039/2014/QD-BCT toward annulling previous MOIT's legal documents relating to the list of good required to check quality, standard and food safety; providing detailed goods under the list of export/import goods; specifying methods of management as well as agencies related to inspection of goods in the above list.¹⁰

To implement these above tasks, the MOIT has promulgated the Decision 3493/QD-BCT dated April 13, 2015 on action plan to implement the Resolution 19/NQ-CP dated Mars 12, 2015 on tasks and solutions to improve business environment, enhancing national competitiveness capacity during the period of 2015-2016. The Decision assigned specific tasks to the MOIT's agencies in order to implement the MOIT's tasks in the Resolution 19/NQ-CP.

2. Key tasks of APR in 2015 under the Decision 08/QD-TTg of the Prime Minister

The Decision 08/QD-TTg set out two main tasks of APR, including: (i) the plan to simplify administrative procedures in 2015; and (ii) Standardizing 100% administrative procedures at all government levels; publicating administrative procedures on the national database; and listing it at the reception of all government agencies.

For the first task, the Decision 08/QD-TTg delivered to nine ministries to implement the simplification of 13 groups of administrative procedures. The MOIT is not among 9 above ministries because it has implemented the simplification of administrative procedures in 2014. Therefore, the MOIT should only perform the second task that is standardizing its administrative procedures at all government levels; publicating administrative procedures on the national database; and listing it at the reception of all government agencies.

For the second task, the Decision 08/QD-TTg set specific deadlines as well as stage of completion. According to which, the MOIT must complete the overall list of its administrative procedures before April 30, 2015; thus, collected feedback from local agencies, thereby amending the list and promulgating a decision to publicate it before Avril 31, 2015; finally, completing the listing at the reception of all government agencies before December 31, 2015.

To implement the task, the MOIT has promulgated the Decision 2152/QD-BCT dated Mars 11, 2015 on action plan to standardize the MOIT's administrative procedures. The plan setted out specific tasks to implement the Decision 08/QD-TTg in order to ensure these procedures

⁷ Article 7 of Section III of the Resolution 19/NQ-CP

⁸ Article 7 of Section III of the Resolution 19/NQ-CP

⁹ Article 7 of Section III of the Resolution 19/NQ-CP

¹⁰ Article 7 of Section III of the Resolution 19/NQ-CP

are standardized on name, content, number, competent as it regulated in the related legal documents.

II. Situation of the MOIT's implementation of the APR until the third quarter of 2015

As of October 10, 2015, the total administrative procedures under the management of the MOIT is 361 procedures¹¹, in which 26 are under the Electricity Regulatory Authority, 55 under the Export-Import Department, 54 under Domestic Market Department, 30 under the Light Industry Department, 45 under the Chemicals Agency, 27 under the Industrial Safety Techniques and Environment Agency, 19 under the Vietnam Competition Authority, 29 under the Science and Technology Department, 17 under the Vietnam Trade Promotion Agency, 15 under the Planning Department, 12 under the Vietnam E-Commerce and Information Technology Agency, 4 under the Agency for Industrial Promotion, 7 under the General Department of Energy, 3 under the Heavy Industry Department, 2 under the Remuneration and Rewards Department.

In order to implement the previous Resolution 19/NQ-CP in 2014¹² on tasks and solutions to improve business environment, enhancing national competitiveness capacity, the MOIT has promulgated the Decision 9802/QD-BCT dated October 30, 2014 to approve the overall plan to simplify the MOIT's administrative procedures in 2014 (hereinafter referred to as the Decision 9802), whereby 87 administrative procedures would be simplified (including removing 30 and simplifying 57), equivalent to the simplification of 24% of total amount of administrative procedures at ministry level.

1. Result of the implementation of the Decision 9802

To implement the above plan, the Minister of the MOIT promulgated the Directive 06/CT-BCT dated April 20, 2015 on accelerating the APR of the MOIT in the period 2015-2016, including specific tasks of each agency.

Accordingly, the MOIT has amending a series of its legal documents relating to the above plan such as the Circular 06/2015/TT-BCT dated on April 23, 2015 on amending and supplementing a number of circulars of the MOIT in the areas of chemicals, electricity and commodity trading to simplify 9 administrative procedures listed in the plan.

Thus, up to this time, the MOIT has completed the simplification of 84 administrative procedures referred to the Decision 9802, **reaching 97% completion rate**. Among the 3 remaining procedures, 2 related to gas trading sector is amending at decree level and 1 related to energy sector is amending the Decision of the Prime Minister on the mechanism to develop projects of wind power plants¹³. Therefore, these 3 remaining procedures will be placed on the new MOIT's plan to simplify the administrative procedures.

¹¹ There are 8 administrative procedures in the export-import sector implemented by the Vietnam Chamber of Commerce and Industry.

¹² The Resolution 19/NQ-CP dated Mars 18, 2014 on tasks and solutions to improve business environment, enhancing national competitiveness capacity.

¹³ The draft Decision to amend the Decision 37/2011/QD-TTg of the Prime Minister dated Jun 29, 2011 on the mechanism to develop projects of wind power plants was submitted to the Government.

2. Result of the implementation of the APR tasks under the Decision 08/QD-TTg

To implement the key tasks of the Decision 08/QD-TTg, the Minister of the MOIT has promulgated the Decision 2152/QD-BCT dated Mars 11, 2015 on action plan to standardize overall MOIT's administrative procedures. The plan has specified actions and time table to ensure that 100% MOIT's administrative procedures are standardized and publicated as requirements of the Decision 08/QD-TTg.

Till to this time, the MOIT has completed the standardization of overall MOIT's administrative procedures on both name and content. Specifically, the Minister of the MOIT has promulgated the Decision 4204/QD-BCT dated April 27, 2015 on overall list of the MOIT's administrative procedures which includes 392 administrative procedures implemented at all four government levels (central, provincial, district and commune), in which 279 at central level, 99 at provincial level, 11 at district level and 3 at commune level. Then, in order to standardize the content of all administrative procedures in conform with the plan of administrative procedures (Decision 9802), the MOIT has reviewed and promulgated the Decision 8873/QD-BCT dated Avril 24, 2015 on list of the MOIT's administrative procedures with content standardized (content of all procedures are included). The Decision has also publicited to individuals and organizations about the entire list through posting it to the website of the MOIT¹⁴. The MOIT is the first ministry who complete this operation.

III. Proposed plan to simplify the MOIT's administrative procedures in 2015

A. Orientations of procedure simplification

As mentionned above, the Government focused the APR during the period 2015-2016. It raised requirements of reform and simplification of administrative procedures system at national scale.

Therefore, the Minister of the MOIT has promulgated the Decision 11973/QD-BCT dated December 29, 2014 on plan to simplification of the MOIT's administrative procedures in 2015, which focus to simplificate administrative procedures in areas such as inspection of steel quality, trade promotion and international trade.

To implement the Resolution 19/NQ-CP Mars 12, 2015 of the Government on tasks and solutions to improve business environment, enhancing national competitiveness capacity during the period of 2015-2016, the MOIT has promulgated the Decision 3493/QD-BCT dated April 13, 2015 on action plan to implement the Resolution 19/NQ-CP dated Mars 12, 2015 on tasks and solutions to improve business environment, enhancing national competitiveness capacity during the period of 2015-2016, which emphasizes many tasks of reform and simplification of the MOIT's administrative procedures.

Beside, to implement the key tasks of the Decision 08/QD-TTg, the Minister of the MOIT has promulgated the Decision 2152/QD-BCT dated Mars 11, 2015 on action plan to standardize overall MOIT's administrative procedures. The plan has specified actions and time table to ensure that 100% MOIT's administrative procedures are standardized and publicated as requirements of the Decision 08/QD-TTg.

¹⁴ www.moit.gov.vn

Another source to perform the plan to simplify the MOIT's administrative procedures is the conformity of the MOIT's administrative procedures with the 2014 Investment Law. Basing on the review of previous report, this report will collect and suggest an entire plan to simplify the MOIT's administrative procedures in 2015 as below.

B. Suggestions to simplify MOIT's administration procedures in 2015

B1. Simplification of administrative procedures under the MOIT's decision 11973/QD-BCT

1. Procedures relating to steel quality inspection

1.1. Granting Decision on steel quality inspection in export country under the Joint Circular No 44/2013/TTLT-BKHCHN-BCT

Remove the procedure "Granting Decision on steel quality inspection in export country" through transfer the inspection activities from government agencies (the MOIT) to private testing organizations.

1.2. Granting Decision to exempt steel quality inspection for each shipment under the Joint Circular No 44/2013/TTLT-BKHCHN-BCT

- Reducing the implementation time from 10 working days to 7 working days.

- Removing dossier's documents as below:

+ Import contract

+ Lading

+ Quality certification

Instead, dossier must have a certifying examination of 3 previous consecutive times of testing organizations.

2. Procedures relating to international trade

2.1. Granting establishment license of representative office of foreign traders in Vietnam

- In dossier content, removing a copy of activities charter of foreign traders who are economic organizations.

- Reducing issuance time from 15 working days to 7 working days.

2.2. Granting establishment license of branches of foreign traders in Vietnam

- Reducing issuance time from 15 working days to 7 working days.

2.3. Adjusting establishment license of representative office, branches of foreign traders in Vietnam under regulations of the Decree 72/2006/ND-CP

- Reducing issuance time from 10 working days to 5 working days.

2.4. Re-granting establishment license of representative office, branches of foreign traders in Vietnam under regulations of the Decree 72/2006/ND-CP

- In dossier content, removing requirement to submit original or copy of the issued establishment license of representative office, branches of foreign traders in Vietnam (if any).

2.5. Procedures relating to extension of establishment license of representative office, branches of foreign traders in Vietnam under regulations of the Decree 72/2006/ND-CP

- Reducing issuance time from 15 working days to 5 working days.

B2. Simplification of administrative procedures in other MOIT's areas

1. Removing procedures in the electronic commerce area under the Circular 09/2011/TT-BCT as below

- 1.1. Granting digital evidence
- 1.2. Extension of digital evidence
- 1.3. Pausing digital evidence
- 1.4. Continuing digital evidence
- 1.5. Revocation of digital evidence
- 1.6. Changing key pair of digital evidence

2. Simplifying procedures in MOIT's areas as below

2.1. Inorganic fertilizer trading

- In dossier content, removing requirement of storage under Article 5(5) of the Circular 29/2014/TT-BCT¹⁵.

2.2. Industrial precursors trading

- Amending Circular 42/2013/TT-BCT toward remove document “purchase contract of industrial precursor or one of the following documents: contract; sales and purchase agreement; memorandum; invoice”. Accordingly, dossier includes: “(i) Application for export/Import of industrial precursors in the form prescribed in Appendix 2 of Circular 42/2013/TT-BCT; and (ii) Written permission for export or import of export/import countries”¹⁶.

¹⁵ 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.

¹⁶ 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

2.3. Trading in foods under the management of the MOIT

2.3.1. Re-granting food safety certificate for manufacturing establishments issued by the MOIT

- Reducing the implementation time from 10 working days to 7 working days.

Accordingly, amending Article 5(2) of the Circular 58/2014/TT-BCT as below: “Within 7 working days from the date of receipt of a valid dossier, competent authorities have re-grant the certificate. In case of refuse, authorities have send back a written notice stating the reason”.

2.3.2. Re-granting food safety certificate for trading establishments issued by the MOIT

- Reducing the implementation time from 10 working days to 7 working days.

Accordingly, amending Article 5(2) of the Circular 58/2014/TT-BCT as below: “Within 7 working days from the date of receipt of a valid dossier, competent authorities have re-grant the certificate. In case of refuse, authorities have send back a written notice stating the reason”.

2.3.3. Re-granting food safety certificate for manufacturing establishments issued by the local department of industry and trade

- Reducing the implementation time from 10 working days to 7 working days.

Accordingly, amending Article 5(2) of the Circular 58/2014/TT-BCT as below: “Within 7 working days from the date of receipt of a valid dossier, competent authorities have re-grant the certificate. In case of refuse, authorities have send back a written notice stating the reason”.

2.3.4. Re-granting food safety certificate for trading establishments issued by the local department of industry and trade

- Reducing the implementation time from 10 working days to 7 working days.

Accordingly, amending Article 5(2) of the Circular 58/2014/TT-BCT as below: “Within 7 working days from the date of receipt of a valid dossier, competent authorities have re-grant the certificate. In case of refuse, authorities have send back a written notice stating the reason”.

3. Electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy

3.1. Granting Electricity Inspector Card under the management of the Electricity regulatory Authority of Vietnam

- Amending requirement under Paragraph 1(c) of Article 12 of the Circular 27/2013/TT-BCT(“valid copies of professional diplomas or decisions of worker’s wage increase”) toward clearly defined as below:

+ Removing document “decisions of worker’s wage increase”;

+ Amending “valid copies” by “copies together with the original to collate precise details or certified copies”.

3.2. Granting Electricity Inspector Card under the management of the local department of industry and trade

- Amending requirement under Paragraph 1(c) of Article 12 of the Circular 27/2013/TT-BCT (“valid copies of professional diplomas or decisions of worker’s wage increase”) toward clearly defined as below:

+ Removing document “decisions of worker’s wage increase”;

+ Amending “valid copies” by “copies together with the original to collate precise details or certified copies”.

4. Chemical

4.1. Granting chemical production certificate under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

- Replacing a valid certificate copy of fire prevention by a commitment copy to ensure safe conditions of fire prevention. Accordingly, amending Paragraph 1(d) of Article 9 of the Circular 28/2010/TT-BCT: “đ) a valid certificate copy of fire prevention or an inspection record to ensure safety for fire prevention of fighting police agency”.

- Amending Paragraph 1(b,c,d,đ) of Article 9 toward clearly define “valid copies” by “copies together with the original to collate precise details or certified copies”.

4.2. Granting chemical trading certificate under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

- Replacing a valid certificate copy of fire prevention by a commitment copy to ensure safe conditions of fire prevention. Accordingly, amending Paragraph 1(đ) of Article 9 of the Circular 28/2010/TT-BCT: “đ) a valid certificate copy of fire prevention or an inspection record to ensure safety for fire prevention of fighting police agency”.

- Amending Paragraph 1(b,c) of Article 9 toward clearly define “valid copies” by “copies together with the original to collate precise details or certified copies”.

4.3. Granting certificate of producing and trading simultaneously chemical under the list of of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department

of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

- Replacing a valid certificate copy of fire prevention by a commitment copy to ensure safe conditions of fire prevention. Accordingly, amending Paragraph 1(d) of Article 9 of the Circular 28/2010/TT-BCT: “đ) a valid certificate copy of fire prevention or an inspection record to ensure safety for fire prevention of fighting police agency”.

- Amending Paragraph 1(b,c,d,đ) of Article 9, Paragraph 1(b,c) of Article 10 and Paragraphes 2 and 5 of Article 11 of the Circular 28/2010/TT-BCT toward clearly define “valid copies” by “copies together with the original to collate precise details or certified copies”.

4.4. Amending chemical production certificate under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

4.5. Re-granting chemical production certificate under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

4.6. Amending chemical trading certificate under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

4.7. Re-granting chemical trading certificate under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

4.8. Amending certificate of producing and trading simultaneously chemical under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of

receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

4.9. Re-granting certificate of producing and trading simultaneously chemical under the list of industrial chemicals subject to conditional production and trading

- Reducing the implementation time from 20 working days to 12 working days through amending Article 14(2) of the Circular 28/2010/TT-BCT: “Within 20 days from the date of receipt of a valid dossier under Article 9,10,11,12 and 13 of this Circular, the local department of industry and trade shall verify the dossier and issue certificate in form at Annex 5 attached to this Circular for organizations and individuals”.

B3. Method of simplifying procedures

1. Procedures relating to steel quality inspection

- Amending the Joint Circular 44/2013/TTLT-BKHCN-BCT

2. Procedures relating to international trade

- Amending the Decree 72/2006/NĐ-CP

3. Procedures relating to selectronic commerce

- Removing the Circular 09/2011/TT-BCT

4.Procedures relating to inorganic fertilizer trading

- Removing Paragraph 5 of Article 5 of the Circular 29/2014/TT-BCT

5.Procedures relating to Industrial precursors trading

Amending the Circular 42/2013/TT-BCT toward removing a document requirement in the dossier(Purchase contract of industrial precursor or one of the following document: Contracts, sale agreement, remember board, commercial invoice). Accordingly, the content of dossier includes documents as below: (i) the application of export/import industrial precursor in the form attached in Appendix 2 of the Circular 42/2013/TT-BCT; and (ii) a written permission for export/import of exporting or importing countries.

6. Procedures relating to trading in foods under the management of the MOIT

- Amending Paragraph 2 of Article 5 of the Circular 58/2014/TT-BCT

7. Procedures relating to electricity generation, transmission, distribution, wholesaling, retailing, import, and consultancy

- Amending Paragraph 1(c) of Article 12 of the Circular 27/2013/TT-BCT

8. Procedures relating to chemical

- **Amending Articles of the Circular 28/2010/TT-BCT as below**

- Amending Paragraph 2 of Article 14

- Amending Paragraph 1(d) of Article 9

- Amending Paragraph 1(b,c) of Article 10

- Amending Paragraph 1 and Paragraph 7 of Article 11

C. Recommendation to amend legal documents in accordance with the 2014 investment law

1. Industrial explosive trading (including destruction thereof) and Business operations using industrial explosives and explosive precursors

1.1. Transportation of industrial explosive

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.

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

1.2. Storage of industrial explosive; Conditions of individuals related directly to industrial explosives and explosive precursors

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.

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

2. Gas trading

2.1. Producing and processing LPG

Article 6 of Circular 12/2010/TT-BKHCHN regulated business investment conditions of producing and processing LPG, thereby inconsistent with the 2014 Investment Law.

Recommendation: Amending Circular 12/2010/TT-BKHCHN toward bringing all business investment conditions to the Decree level.

2.2. Producing and repairing LPG cylinders

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.

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

2.3. Testing LPG cylinders

Article 43 of Circular 41/2011/TT-BCT regulated conditions to issue certificate of testing and repairing LPG cylinders, thereby conflict with the 2014 Investment Law.

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

3. Inorganic fertilizer trading

3.1. Inorganic fertilizer production

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.

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

4. Trading in foods under the management of the MOIT

4.1. Certificate of food advertising content under the management of the MOIT

Article 3 of Circular 40/2012/TT-BCT stipulated conditions to certificate of food advertising content under the management of the MOIT, thereby inconsistent with the 2014 Investment Law.

Recommendation: Amending Circular 40/2012/TT-BCT toward bringing all business investment conditions to the Decree level.

5. Industrial precursors trading

5.1. Import-export industrial precursors

Dossier content of industrial precursor export and import regulated in Circular 42/2013/TT-BCT are not conformity 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

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.

6. Goods trading and activities directly related goods trading of foreign investors

6.1. Goods trading and activities directly related goods trading of foreign investors in Vietnam

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/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 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

6.2. Setting up retail establishment in addition to the first establishment of foreign investors

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/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.

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.

7. Explosive precursor trading

7.1. Explosive precursor production

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.

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

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

8.1. Producing and trading Chemicals in the list of industrial chemicals subject to conditional production and trading

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.

Recommendation: Amending Circular 28/2010/TT-BCT toward bringing all business investment conditions to the Decree level.

8.2. Producing and trading chemicals in the list of industrial chemicals restricted from production or trade

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.

Recommendation: Amending Circular 28/2010/TT-BCT toward bringing all business investment conditions to the Decree level.

9. Temporary import for re-export of frozen food

9.1. Temporary import for re-export of frozen food

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.

Recommendation: Amending Circular 05/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

10. Temporary import for re-export of goods subject to special excise tax

10.1. Temporary import for re-export of goods subject to special excise tax

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.

Recommendation: Amending Circular 05/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

11. Temporary import for re-export of goods on the List of used goods

11.1. Temporary import for re-export of goods on the List of used goods

Article 3, 11 Circular 05/2014/TT-BCT regulated the list of temporary imported goods for re-export being changed to other border gate with provision in conflict with the Investment Law 2014.

Recommendation: Amending Circular 05/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

12. Electronic commerce activities

12.1. Setting up commercial website for goods trading

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.

Recommendation: Amending Circular 47/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

12.2. Setting up website providing e-commerce services

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.

Recommendation: Amending Circular 47/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

12.3. Reliability assessment of e-commerce website

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.

Recommendation: Amending Circular 47/2014/TT-BCT toward bringing all business investment conditions to the Decree level.

13. Operations of commodity exchange

13.1. Operations of commodity exchange

Decree 158/2006/ND-CP regulated procedure conditions, thereby conform with the new investment 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).

Recommendation: Amending Circular 03/2009/TT-BCT toward remove all documents of dossier content which are inconsistent with the Decree 158/2006/ND-CP.

14. Commercial assessment services

14.1. Commercial assessment services

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

Recommendation: Removing Article 2, 4, 8 of Decree 20/2006/ND-CP.

15. Rice export

15.1. Rice export

Article 8 of Circular 44/2010/TT-BCT stipulated conditions of key traders, thereby conflict with the 2014 Investment Law.

Recommendation: Amending Circular 44/2010/TT-BCT toward bringing all business investment conditions to decree level.

16. Coal trading

16.1. Coal trading

Article 4 of Circular 14/2013/TT-BCT regulated conditions of coal trading, thereby conflict with the 2014 Investment Law.

Recommendation: Amending Circular 14/2013/TT-BCT toward bringing all business investment conditions to decree level.

16.2. Coal export

Article 4 of Circular 15/2013/TT-BCT regulated conditions of coal trading, thereby conflict with the 2014 Investment Law.

Recommendation: Amending Circular 15/2013/TT-BCT toward bringing all business investment conditions to decree level.

17. Mineral trading

17.1. Mineral trading

Article 4 of Circular 41/2012/TT-BCT stipulated conditions of mineral trading, thereby conflict with the 2014 Investment Law.

Recommendation:

Amending Circular 41/2012/TT-BCT toward bringing all business investment conditions to decree level.

18. 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

18.1. 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

Section II of Circular 09/2009/TT-BKHCN regulated conditions related to the procedure "Designating organization of conformity assessment", thereby conflict with the 2014 Investment Law.

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.

Section II of Circular 07/2012/TT-BCT regulated conditions to designate organizations who tested and recognized results of testing organizations, thereby conflict with the 2014 Investment Law.

Article 3 of Circular 32/2009/TT-BCT regulated conditions of testing organizations, thereby conflict with the 2014 Investment Law.

Recommendation: Amending Circular 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.

18.2. Services of energy advisory and energy audits

Article 4, Article 7, Article 9 of Circular 39/2011/TT-BCT regulated conditions of the services, thereby conflict with the 2014 Investment Law.

Recommendation: Amending Circular 39/2011/TT-BCT toward bringing all business investment conditions to decree level.

18.3. Training services of energy management and energy auditors

Article 4, Article 7, Article 9 of Circular 39/2011/TT-BCT regulated conditions of the services, thereby conflict with the 2014 Investment Law.

Recommendation: Amending Circular 39/2011/TT-BCT toward bringing all business investment conditions to decree level.

19. Multi-level marketing business (MLM)

19.1. Registration of MLM activities

Article 13(2) of Circular 24/2014/TT-BCT stipulated conditions of this procedure, thereby conflict with the 2014 Investment Law.

Recommendation: Amending Circular 24/2014/TT-BCT toward bringing all business investment conditions to decree level.

19.2. Assign training facilities of MLM

Recommendation: Amending Circular 24/2014/TT-BCT toward bringing all business investment conditions to decree level.

CONCLUSION

According to the 2014 Investment Law, the MOIT currently manage 28 conditional sectors, meaning that to doing 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.

However, 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 Law¹⁷. That means the administrative procedure reform and simplification process should ensure both business rights of people and requirements of managements. It is not an easy task.

Moreover, the draft decree guiding the implementation of the 2014 Investment Law is still not completed. It raise many difficulties in the review process, thereby affecting to the resultats of the plan to simplify the MOIT’s administrative procedures.

In addition to simplifying content of the MOIT’s administrative procedures, the MOIT is also pushing up the modernization the implementation of procedures through granting via internet. The Vietnam E-Commerce and Information Technology Agency is in charge to do it. The MOIT is aiming to granting 100% procedures relating to export-import via internet in 2020. For the other, the MOIT will develop a roadmap to upgrade at least 10 MOIT’s procedures granted via internet each year./.

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¹⁷ Investors are authorized to invest in conditional sectors in which the law does not prohibit.