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The remarkable legal issues in the
Law on Enterprise 2020

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Right at the beginning of 2021, a series of important legal documents have come into effect. One of the essential documents that should be brought to attention is the Law on Enterprises No. 59/2020/QH14, enacted by the National Assembly of Vietnam on June 17, 2020 (the “NEW LOE”), and replacing the Law on Enterprises 2014 (the

“CURRENT LOE”) as of January 1, 2021. The new LOE promises to constitute a more streamlined, less bureaucratic and less burdensome legal framework.

In this legal update, we would like to highlight the remarkable changes in the new LOE.

→ The remarkable legal issues in the Law on Enterprise 2020

Key Issues

Notifiable changes applying to all kind of companies

i. Clearly allocating the duties of legal representatives in companies

The Legal Representative represents the company in exercising its rights and performing its obligations arising out of the transactions of the company.

As provided in the current LOE, in case a company has more than one legal representative, the company charter must clearly allocate the individual duties of each legal representative and define the specified number of managerial positions, rights and obligations of a legal representative. However, the law is still silent on how the provisions of the law may be applied in case the company charter does not allocate the duties between the legal representatives.

Since each legal representative is authorized to conclude a specified transaction, which makes it difficult for a third party to determine the authority of a legal representative in the company, the new LOE addresses this issue by stipulating that in case the charter does not define the allocation of duties between the legal representatives, each of the legal representatives shall fully represent the company and take joint responsibility for any damages to the company as prescribed by civil laws and other relevant laws.

ii. Providing a more flexible capital contribution time limit

The current LOE stringently requires the Charter Capital to be fully paid within 90 days from the day

of ERC issuance, with this rule applying to all kinds of assets to be contributed. If the capital to be contributed are assets or property, this provision encounters many practical obstacles since administrative procedures upon transferring ownership may take months, or even years in some cases.

However, according to the new LOE, the time limit for capital contribution is changed. The 90-day threshold remains, but the time requirement for transporting or importing assets contributed as capital, and for conducting administrative procedures for the conversion of ownership is excluded.

This is a reasonable adjustment which creates more favorable conditions for investors in the company.

iii. Amendment to the regulation on digital signatures and company stamps

Although e-transaction is widely applied in the activities of the State agencies as well as in civil transactions, business, commerce and other sectors prescribed by law, digital signatures are yet to be officially recognized in practice by the relevant authorities, except for some limited cases such as public documents, tax declaration, customs declaration and social insurance. The new LOE addresses such concerns by clarifying that companies may now use the digital signatures with the same legal validity as the traditional stamp.

Worthy of note, in accordance with the Vietnam laws, the digital signatures must be created by the public digital signatures

certification organizations, or must obtain a license to use foreign digital certification in Vietnam issued by a competent authority (the Ministry of Information Technology and Communications).

One other fundamental change refers to the traditional company stamps. Under the current LOE, a company is required to announce a company stamp sample to the business registration agency before using. Such procedure is no longer required in the new LOE. The company has the full authority to decide about the type, quantity, form and contents of the company stamp, and shall be self-responsible for using the company stamp. The management and retention of the company stamp shall be implemented in line with the company charter.

iv. Expansion of the scope of the related person in the company

“Related person” means any individual or organization directly or indirectly related to a company. The definition of “related person” is an important legal issue, since most of the contracts and transactions of a company with related persons must obtain the approval of the Members’ Council or the President of the company, the Director or General Director and Controllers, General Meeting of Shareholders (the “GMS”) or the Board of Management (the “BOM”) on case by case basis.

The new LOE has expanded the scope of definition for the related person, including “father-in-law, mother-in-law, son-in-law, daughter-in-law” as persons with family relationship; and added “legal representative, Controller(s)” as affiliated persons.

This change brings substantially greater transparency to the management of the company.

Legislative changes applying to the Limited Liability Company (“LLC”)

i. Adjustment of the organizational and managerial structure of single-member Limited Liability Companies

According to the new LOE, the single-member limited liability company (the “SINGLE-MEMBER LLC”) owned by the organization can opt for one of the following organizational and managerial structures:

- a. President of the company, Director or General Director;
- b. Members’ Council, Director, or General Director.

This means, the controller is no longer required for the single-member LLC owned by the organization, while this position has been part of the requirements under the current LOE.

Furthermore, the single-member LLC company must have at least one (1) legal representative holding the position of the Chairman of the Members’ Council or the President of the Company or the Director or General Director. In case the Company Charter does not indicate such provision, the Chairman of the Members’ Council or the President of the Company shall be legal representative of the Company.

ii. New regulation on Multiple-Member Limited Liability Company

The organizational and managerial structure of a multiple-member LLC under the current LOE comprises Members’ Council, Chairman of Member’s Council, Director or General Director. If the multiple-member LLC has more than eleven (11) members, it is required to have the Controllers or Board of Controllers. Such obligation is no longer required under the new LOE, except for multiple-member LLCs being a State-owned company or any subsidiary of a State-owned company. Otherwise, the company may decide to adopt the Controller or Board of Controllers based on their own decision.

iii. Clarified regulation on the issuance of bonds of Limited Liability Companies

The current LOE only provided a vague provision to limit the right of the LLC to issue shares. It has also been silent as to the rights of the LLC in the issuance of bonds. Until 2018, in a guidance decree on the issuance of corporate bonds, the right of the LLC to issue corporate bonds has been generally recognized. The new LOE reaffirms that an LLC is allowed to issue bonds, while it may not issue shares unless it is converted into a JSC.

Furthermore, the new LOE also provides a detailed sequence as well as procedures for the private placement of bonds, and the assignment of privately placed bonds. The new LOE also lists the additional conditions linked to the private placement of bonds, such as fully

satisfying the conditions on financial safety ratios and prudential ratios during operation, having the audited annual financial statements for the year immediately preceding the year of issuance.

Legislative changes applying to the Joint Stock Company (“JSC”)

i. Regulated procedure to offer private shares

The current LOE provided that a JSC has to notify the offering of shares to the business registration agency within five (5) working days from the date of the decision to privately offer shares. This provision has been repealed, which means in case a JSC plans to offer new shares, such company is no longer obliged to notify the business registration agency for private share placement. This amendment is welcome to reduce paperwork.

However, more restrictive conditions have been promulgated for non-public JSCs. For instance, the placement may not be made via mass media, is restricted to less than one hundred addressees, excluding institutional securities investors, or is only placed with institutional securities investors.

Besides, the new LOE also stipulates pre-emptive rights for subscribing for the new shares to be granted to existing shareholders. Only after shareholders and transferees of priority rights for a subscription do not subscribe, the remaining shares shall be sold to other third parties, save for the case of merger or consolidation.

ii. Enhanced protection for Minority Shareholders in Joint Stock Companies

Firstly, under the new LOE, a shareholder or a group of shareholders holding five (5) or more percent (which is significantly lower than the previous threshold of ten (10) percent under the current LOE) of the total ordinary shares is entitled to access, consult and extract from the essential corporate documents (except for data relating to commercial secrets or business secrets) of the company, to request to convene a GMS in particular cases or to implement the legitimacy surveillance right of the minority shareholders according to the laws.

iii. Repealed obligatory minimum period for holding shares for shareholders or groups of shareholders

Firstly, the new LOE repealed the obligatory minimum period for minority shareholders to hold shares. Under the current LOE, minority shareholders needed to hold their shares for six (6)

consecutive months to exercise their rights; a requirement exclusively addressed to minority shareholders. However, there is no such requirement for the minority shareholders in the new LOE.

Secondly, as provided in the new LOE, the shareholder or group of shareholders holding at least one (1) percent of total shares is entitled to immediately (previously, a minimum term of six (6) consecutive months needed to be observed) initiate the legal action for a refund of benefits or a payment of compensation.

Thirdly, in case a resolution or decision of the BOM is unlawful or contrary to the resolutions of the GMS or company, thereby causing loss to the company, a shareholder of the company has the right to take recourse to a court to suspend the implementation of or to rescind such resolution or decision right away, while according to the current LOE, a shareholder has only been entitled to exercise their rights if they had been holding their shares for at least one year.

iv. New regulations to protect the Preference Shareholders in Joint Stock Companies

The provisions of the new LOE aim at protecting the rights of the Preference Shareholders by defining a new regulation on the threshold for a resolution of the GMS, which is less favorable for the Preference Shareholders, to be approved. Accordingly, a resolution of the GMS which results in an adverse change of rights and obligations of a Preference Shareholder, may only be passed in the following cases: (a) if it is agreed by the attending Preference Shareholders of the same type owning 75 or more percent of the total amount of preference shares of such type or (b) if it is agreed by the Preference Shareholders of the same type owning 75 or more percent of the total amount of preference shares of such type, if such resolution is passed by written survey.



v. Amended term of office for the Independent Member in the JSC

A JSC may have one of the two following organizational structures: (i) GMS, BOM, Board of Controllers (only required in some cases) and General Director; or (ii) GMS, BOM and GD. The latter case requires at least 20 percent of the BOM members to be Independent Members, and must have an Audit Committee affiliated to the BOM. Contrary to the current LOE, the new LOE limits the term of office of Independent Members to two (2) consecutive terms of office, while the term of office for the BOM remains the same, i.e., unlimited terms. This new regulation may increase transparency in the management of the JSC during its business operations.

To conclude

The new LOE gradually corrects the revealed shortcomings of the current LOE, promising a positive impetus for the legal framework in Vietnam.

Rödl & Partner Vietnam accompanies and assists clients of all kinds in their business activities in Vietnam.

Contact for more information



Stefan Ewers
LL.M. (Melbourne)
Partner
Head of Ho Chi Minh City Office
Phone: +84 2873 072 788
stefan.ewers@roedl.com

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Publisher:

Rödl & Partner
5th Floor, Friendship Tower
31 Le Duan Street, District 1
Ho Chi Minh City, Vietnam
T +84 2873 072 788
www.roedl.de
www.roedl.com

Responsible for the content:

Rödl & Partner (Vietnam)
hochiminhstadt@roedl.com
5th Floor, Friendship Tower
31 Le Duan Street, District 1
Ho Chi Minh City, Vietnam

Layout/Type:

Rödl & Partner (Vietnam)
hochiminhstadt@roedl.com

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