

# 2014 LAW ON ENTERPRISES

## KEY CHANGES FOR MULTIPLE MEMBER LIMITED LIABILITY COMPANY

As at March 2015

The new Law on Enterprises (**2014 LOE**) was passed by the National Assembly of Vietnam on 26 November 2014 and will become effective from 1 July 2015. The new law introduces a number of changes to the regulatory framework applicable to companies operating in Vietnam. We set out below a summary of the key changes relevant to multiple member limited liability companies (**MLLC**).

### Corporate features

- 1 Instead of only one, companies **can have multiple legal representatives** each of whom alone may represent the company. The number of legal representatives must be specified in the charter. Although the law does not specifically state that **all** legal representatives must be registered and named in the company's enterprise registration certificate (**ERC**), we expect that this will be required to allow verification by third parties.
- 2 Companies **can have multiple corporate seals and decide on their form and content**. Corporate seals must be registered with the business registration office and their samples must be posted on the National Enterprise Registration Information Portal (the website portal is currently being developed).
- 3 **Charter capital of MLLCs must be contributed within 90 days from the date of issuance of the ERC**. It is not entirely clear whether this deadline applies only to the original charter capital of MLLCs at the time of establishment or also to subsequent capital increases.
- 4 MLLCs **can no longer register an increase/ decrease of the charter capital as the result of an increase/ decrease in the company's assets**. The charter capital can only be increased/ decreased together with payment of the amount of increase/decrease from or to its members.
- 5 MLLCs set up as **foreign invested enterprises must have investment registration certificates and ERCs**, instead of the current single investment certificates. Existing foreign invested MLLCs do not have to re-register to obtain these two new documents and can continue to operate under their existing investment certificates.
- 6 **Generally MLLCs no longer have to register their business lines in their ERCs** pursuant to the new principle of freedom of business. However, it is unclear how this principle will apply to foreign invested companies which may still be restricted to conducting only the registered business lines set out in their investment registration certificates.

### Management rules

- 7 **Members' Council of a MLLC (MC) now decides on all 'developmental' investment projects** of the company, not just those with value of 50% or more of the total assets of the company as provided under the 2005 law.
- 8 A corporate member of an MLLC **owning at least 35% of the charter capital may appoint up to 3 authorized representatives to the MC**, unless otherwise specified in the charter of the company.

The appointment of the authorized representatives is no longer required to be notified to the business registration office.

- 9 **Quorum for the first MC meetings and approval threshold for circular resolutions by the MC and approval threshold for related party transactions** have been **reduced from 75% to 65%**. The voting thresholds at the MC meetings remain unchanged at 75% for certain major decisions and 65% for other decisions.
- 10 **Electronic facilities are officially recognized for MC meetings.** Participation and voting at MC meetings may be conducted by online conference and electronic voting. Meeting minutes of MC may be recorded or kept in digital form.
- 11 **The general director is required to have qualification and experience** in business management or the main business lines of the company even if he/ she is a member of the company. Previously an unqualified owner of 10% or more of the charter capital could be a general director.
- 12 **A wider scope of managers of the MLLCs is subject to directors' duties** (eg. to act for the benefit of the company, to disclose related interests and not to abuse power for personal benefit). The scope of managers includes the chairman, the general director, the legal representative, the inspectors and other managerial personnel of the company. These persons (except for the inspectors) can be sued by the company's members for a failure to perform their duties.
- 13 Managers of MLLCs must **disclose details of their related companies to the MLLC** and the MLLC must keep a record of these related companies available for inspection by the company's members and managers. Related companies include companies in which the managers of MLLCs have an equity interest or their related persons have 10% or more equity interest.
- 14 Companies must **notify the business registration office of changes in the information of** their general director and inspectors within 5 days and of changes in content of its ERC within 10 days and must publish its ERC contents in the National Enterprise Registration Information Portal.

### Transitional issues

- 15 Existing MLLCs can continue to operate under their existing ERCs or investment certificates and there is no requirement for MLLCs to re-register in order to operate under the 2014 LOE. MLLCs may amend the company charter if they want to apply new rules under the 2014 LOE.
- 16 Guiding regulations are expected to be issued before 1 July 2015 (when the new LOE becomes effective) to implement the changes and hopefully clarify ambiguities under the 2014 LOE. We will continue to monitor this process and keep you posted on any important changes.