

2014 LAW ON ENTERPRISES

KEY CHANGES FOR SHAREHOLDING 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 shareholding companies (**SC**).

Corporate feature

- 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 SLLCs set up as **foreign invested enterprises must have investment registration certificates and enterprise registration certificates (ERC)**, instead of the current single investment certificates. Existing foreign invested SCs do not have to re-register to obtain these new documents and can continue to operate under their existing investment certificates.
- 4 **Generally companies 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 only to conducting the registered business lines set out in their investment registration certificates.
- 5 The charter of a SC can stipulate **restrictions on the transfer of shares** and such restrictions are effective only if clearly set out in the corresponding shares certificates.
- 6 SCs can now **issue corporate bonds** even when the average three-year after-tax profit rate is not higher than the proposed coupon rate as the existing restriction has been removed.
- 7 The company must **pay dividends in full within 6 months** from the completion date of the annual meeting of the General Meeting of Shareholders (**GMS**).

Management regulations

- 8 SCs with more than 11 investors or with corporate investors holding more than 50% of the shares can have **an Inspection Committee or a new alternative of an internal auditing committee** sitting under the Board of Management (**BOM**). In the latter case, at least 20% of the BOM members must be independent members.
- 9 **Quorum for meetings of the GMS and the BOM are reduced**. In particular, SCs can conduct GMS with 51% (previously 65%) quorum for the first meeting and 33% (previously 51%) quorum for the second meeting. As for the BOM meetings, if the first meeting is not attended by 75% of the total BOM members, the second meeting can proceed with a quorum of 50% of the total BOM members.

- 10 **The GMS now decides on investment with value of 35% (previously 50%) or more** of the total assets of the company while the BOM's power is reduced accordingly to approve investment valued less than 35% of the total assets of the company.
- 11 **The voting thresholds for GMS to pass resolutions are reduced** from 65% to 51% for general matters; from 75% to 65% for important matters (e.g. total number of shares, change in business lines, reorganization or dissolution.); and from 75% to 51% for circular resolutions.
- 12 The **scope of related party transactions subject to special approval process has been extended** so that transactions with shareholders owning more than 10% (previously 35%) of the total ordinary shares (and with their authorised representatives or related persons) will be captured.
- 13 **BOM members are required to have qualification and experience** in business management or the main business lines of the company even when they are shareholders of the company.
- 14 **Cumulative voting is still the default method for appointment of BOM members** but SCs are also allowed to provide for a different method in their charter.
- 15 **Electronic facilities are officially recognized for GMS and BOM meetings.** Participation and voting at GMS and BOM meetings may be conducted by online conference and electronic voting. Meeting minutes of GMS and BOM may be recorded or kept in digital form. In case of discrepancy between the English and the Vietnamese versions of the meeting minutes, the Vietnamese version shall prevail.
- 16 **Managerial personnel of SCs can hold concurrent positions in other companies.** A BOM member of an SC can concurrently be a BOM member of other companies. A general director of an SC is no longer prohibited to hold a general director position in other companies.
- 17 **The head of the inspection committee of SCs must be a professional accountant or auditor** working full time at the company, unless the charter requires higher standards. Inspectors must not hold managerial position(s) in the company. All inspectors of listed SCs must be professional accountant or auditor.
- 18 **Managers of SCs must disclose details of their related companies to the SC.** The SC must keep a record of these related companies together with a record of its related persons and transactions available for inspection by the company's shareholders and managers and make notification to the shareholders at an annual meeting of the GMS. Related companies include companies in which managers have an equity interest and companies in which their related persons jointly or separately have 10% (previously 35%) or more equity interest.
- 19 All SCs must **notify the business registration office of changes in the information** of their BOM members, inspectors, and general director (within 5 days) and of changes in the content of its ERC (within 10 days). All SCs must **publish on the National Enterprise Registration Information Portal** its ERC content, business lines and list of founding and foreign shareholders **and on the company website (if any)** its Charter, managers resumes, annual financial statement and annual assessment reports of BOM and inspection committee. The existing requirement to notify any change in the ownership of major shareholders having 5% or more of the total shares has been removed.
- 20 Unlisted SCs must also notify the business registration office when there is a change in the **ownership of foreign shareholders** (within 10 days) and any changes in certain information about the foreign shareholders including name, citizenship, passport number and registered address (within 3 working days).

Transitional issues

- 21 Existing SCs can continue to operate under their existing ERCs or investment certificates and there is no requirement for SCs to re-register to operate under the 2014 LOE. Shareholders of SCs may amend the company charter if they want to apply new rules under the 2014 LOE.
- 22 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.