

## FRASERS NEWSLETTER - AUGUST 2019

In this edition of our newsletter we report on the following:

- (i) New business activities entitled to investment incentives (with specific focus on **SMEs, start-ups and incubators**);
- (ii) Draft Decree amending business conditions under the management of the Ministry of Industry and Trade with respect to a number of important sectors (such as **electricity, coal and minerals**); and
- (iii) New measures encouraging the construction of apartments and social infrastructure facilities serving workers in **industrial parks and economic zones**.

### 1 **Draft Decree amending certain provisions of Decree No. 118/2015/ND-CP implementing the Law on Investment (focusing on SMEs, start-ups and incubators)**

The Government recently issued a Draft Decree (**Draft Decree**) amending certain provisions of Decree No. 118/2015/ND-CP implementing the Law on Investment which aims to encourage the business environment of start-ups and small and medium-sized enterprises (**SMEs**) by proposing to add the following business activities to the list of industries and trades entitled to receive investment incentives:

- (i) Business investment in products distribution chain of SMEs;
- (ii) Business investment in establishment of SMEs incubators;
- (iii) Business investment in technical facilities supporting SMEs; and
- (iv) Business investment in co-working spaces for SMEs and start-ups.

In accordance with the relevant legislation, applicable investment incentives shall comprise (a) corporate income tax incentives, (b) import duty incentives and (c) exemption and reduction of land rent.

### 2 **Draft Decree amending business conditions under the management of the Ministry of Industry and Trade with respect to a number of important sectors (such as electricity, coal and minerals)**

On 5 August 2019, the Government issued a Draft Decree amending some decrees in relation to business conditions under the management of the Ministry of Industry and Trade (**MOIT**) (**Draft Decree**). The Draft Decree introduces several changes in relation to a number of important sectors, including, among others, electricity, coal and minerals.

(i) **In relation to the coal and minerals sectors:**

The Draft Decree introduces the following new conditions for exporting and importing coal and minerals (in addition to the current conditions provided in Article 1 of Decree 77/2016/ND-CP of the government dated 1 July 2016 amending and supplementing several articles on business conditions for international trading, chemicals, industrial explosive materials, fertilizers, gas industry, and food industry under the management of Ministry of Industry and Trade):

- (a) coal and minerals must have been processed and must meet the quality standards provided for in the relevant Appendix of the Draft Decree;
- (b) coal and minerals must have lawful origins, including:
  - being mined or extracted from mines, mine sites or landfills having a certificate of mining or exploitation issued by relevant authorities;
  - being legally imported (the relevant declaration of imported goods must be certified by the border-gate customs); or
  - being confiscated and cleared by the relevant authorities.
- (c) With respect to the export of minerals containing 0.05% or more of thorium or uranium by weight, traders must also obtain the permit for exporting radioactive materials issued by the Ministry of Science and Technology in accordance with the laws on atomic energy.

(ii) **In relation to the electricity sector:**

The Draft Decree provides further clarification on certain conditions currently imposed on electricity companies' personnel by Decree No. 137/2013/ND-CP dated 21 October 2013 of the Government providing detailed guidance on the Law on Electricity (**Decree 137**) and Decree No. 08/2018/ND-CP dated 15 January 2018 of the Government amending some decrees in relation to business conditions under the management of the MOIT (**Decree 08**).

Business conditions for services related to hydropower plants (such as consultancy on the building of hydropower plants or plants construction supervision) are now also applied to wind power and solar power plants related services, as prescribed under this Draft Decree.

In addition, the specific conditions applicable to consultancy business activities in the electricity power sector (based on a classification table on the scale of these projects currently provided in relation to hydropower plants, thermal power plants (coal, gas, oil, biogas and hard waste), wires systems and transformer stations) are now extended by the Draft Decree also to consultancy business activities in relation to wind power plants and solar power plants.

The Government has not yet announced the targeted effective date of the Draft Decree.

**3 Circular No. 43/2019/TT-BTC guiding Article 24.4 Decree No. 82/2018/ND-CP on the management of industrial parks and economic zones**

New Circular No. 43/2019/TT-BTC issued by the Ministry of Finance on 12 July 2019, guiding Article 24.4 of Decree No. 82/2018/ND-CP dated 22 May 2018 of the Government regulating management of industrial zones (**IZs**) and economic zones (**EZs**) (**Decree 82**), came into effect on 26 August 2019 (**Circular 43**).

Article 24.4 of Decree 82 states that reasonable expenses for investment in construction, operation or lease of apartments and social infrastructure facilities servicing workers working in IZs and EZs of enterprises with investment projects in such IZs or EZs shall be deductible when determining taxable income for corporate income tax (**CIT**) of such enterprises (**Deductible Expenses**). Accordingly, Circular 43 provides further guidance on such Deductible Expenses as follows:

- (i) Value of fixed assets is calculated into construction value and its depreciation is deemed as Deductible Expense when determining CIT provided that the relevant assets satisfy the conditions on fixed assets provided for in the regulations issued by Ministry of Finance on

the regime on management, use and calculation of depreciation of fixed assets (currently being Circular No. 45/2013/TT-BTC of the Ministry of Finance, dated 25 April 2013 on the said matters);

- (ii) Expenses other than those prescribed in item (i) above are deemed as Deductible Expenses when determining CIT in accordance with the provisions of the Law on CIT.

It should be noted that such expenses for investment in construction, operation or lease of apartments and social infrastructure facilities servicing workers working in IZs and EZs of enterprises with investment projects in such IZs or EZs incurred after 10 July 2018 (being the effective date of Decree 82) shall be treated in accordance with Decree 82 alongside with the aforesaid guidelines under Circular 43.

We trust that you find this edition of our newsletter an interesting read and welcome any feedback or comments you may have on any of our topics. Our address for comments is [legalenquiries@frasersvn.com](mailto:legalenquiries@frasersvn.com).

Whilst we aim to provide a useful update on new legislation, Frasers' Newsletter does not constitute formal legal advice. Should you feel that you require further information on any of the issues in this edition of the Newsletter, please contact us at the address above or via your usual Frasers' legal adviser.

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