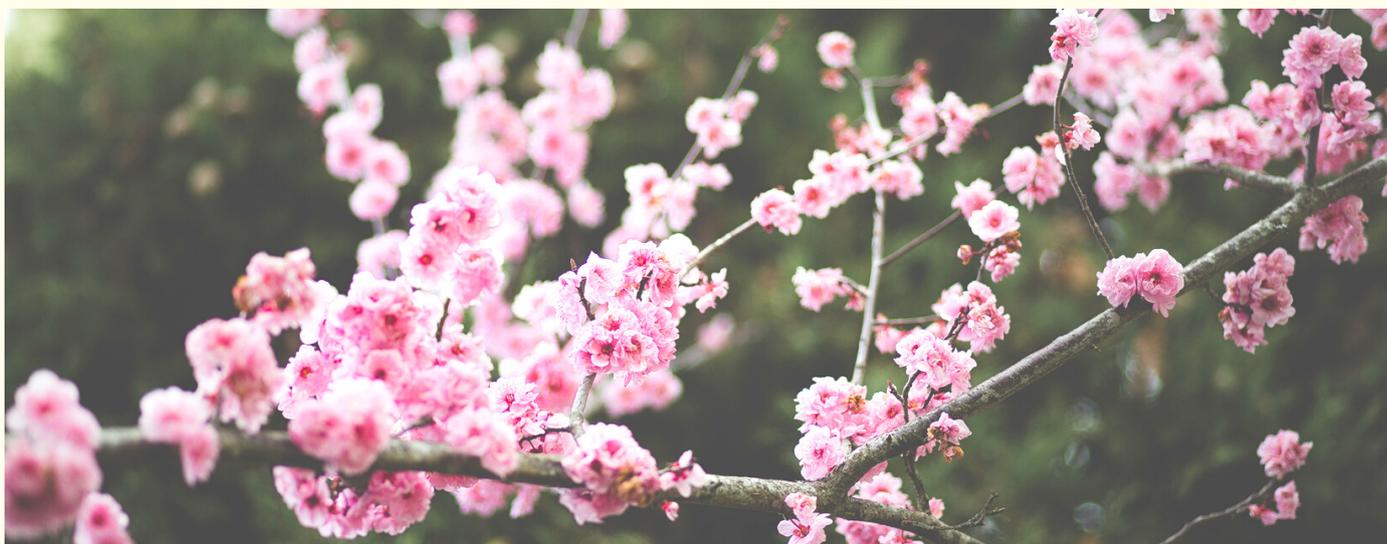


LEGAL NEWSLETTER

NHQuang&Associates



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2021 New Year Message

From Mr. Nguyen Hung Quang

- Managing Partner

In 2021, Vietnam's economy is predicted to have new opportunities and challenges, such as the promulgation of major policies of the 13th National Party Congress, the new personnel of the state apparatus in the new tenure, the prevention of diseases and natural disasters, the impact of new-generation free trade agreements, changes in investment trends resulting from epidemics and protectionism policies in countries. Besides, the global consumer trends continue changing stemming from global anti-pandemic measures and the strong development of information technology.

With the above realizations and the aim of continuous innovation and creativity in providing legal services, NHQuang&Associates would like to introduce the new interface and style of the monthly Legal Newsletter in our first issue in 2021. The core values and strengths of the Newsletter are still maintained, such as in-depth analysis of legal issues and regulations, major policies, or the doctrine of legal regulations, generalizing and predicting the impact of new or amended legal regulations. The lawyers of NHQuang&Associates expect that with the new interface of the Legal Newsletter, our Customers can quickly update legal issues and grasp the core issues, major policies, or the doctrine of regulations necessary for your business operation.



NOTABLE ACTIVITY IN JANUARY 2021

On January 27, 2021, on behalf of the Research Team, Lawyer Nguyen Hung Quang presented the Report on *Comparative Analysis of Mechanism for Ensuring Judicial Integrity to Promote Business Environment in Some Countries and Lessons for Vietnam* in the workshop of the same name organized by the Central Committee for Internal Affairs in collaboration with the United Nations Development Program in Vietnam (UNDP).



The presentation of Mr. Nguyen Hung Quang focuses on comparative analysis of mechanism for ensuring judicial integrity assurance to promote business environment in some countries and lessons for Viet Nam, recommendations to improve policies, legislation, and mechanisms to ensure compliance with judicial integrity. The workshop participants discussed and offered some feedback, recommendations to improve the content of the Report.

Participating in the workshop were representatives of the Central Committee of Internal Affairs, the local Committee of Internal Affairs, UNDP, the Judicial Committee of the National Assembly, the Supreme People's Court, the Ministry of Public Security, and the Vietnam Chamber of Commerce and Industry.

*Provide
professional legal
services*

*Meet the needs of
domestic and
international
clients*

*Advance the judicial
system and justice*

*Serve national
development*

NOTABLE CHANGES OF LAW ON INVESTMENT 2020

GIA KHANH

Inheriting the achievements as well as overcoming limitations of the Law on Investment 2014 after nearly 6 years of implementation, the Law on Investment 2020 was adopted by the National Assembly and came into force on January 01, 2021. In this Legal Newsletter, NHQuang&Associates will analyze a few outstanding new features of this Law.

Conditional business lines reduced to 227, debt collection services officially banned

Firstly, with the purpose of ensuring the right to free business of individuals and enterprises in conditional or non-prohibited fields, the Law on Investment 2020 has reduced the number of conditional business lines to 227, compared with 243 under the Law on Investment 2014, Law No. 03/2016/QH14 amending and supplementing Article 6 and Appendix 4 on the list of conditional business lines of the Law on Investment 2014.

Specifically, some removed conditional business lines that can be mentioned include: Services of commercial arbitration organizations; Franchising; Logistics; Electricity export and import.



According to the Ministry of Planning and Investment, the removed business lines are those not directly relative to or not proven to have direct effects on national security, safety, social ethics, or those that have already been governed by technical regulations and standards.

In addition, the Law on Investment 2020 supplements several conditional business lines such as: payment services without payment accounts of customers; insurance brokerage and insurance auxiliary services; data center services; architectural services. The supplementation of the conditional business lines, as explained by the Ministry of Planning and Investment, aims to provide compatible regulations with international treaties to which Viet Nam is a signatory, relevant legal documents or to ensure the social security and order.

Secondly, the Law on Investment 2020 categorizes the debt collection service as a prohibited business line. The de facto provision of this service is to blame for this prohibition, where several organizations and individuals fail to comply with the provisions of laws (previously, the conditions for debt collection services were specified in Decree 104/2007/ND-CP), negatively affecting the social order, security, and safety. Some even abuse the regulations to form gangs for extortion or usury. However, it is also said that such removal will largely impact the enterprises that conduct this business with full legal compliance as well as the enterprises that use debt collection services regularly to avoid the enormous expenses for pursuing a lawsuit claiming property at Courts.

Investment incentives significantly extended

The Law on Investment 2020 has remarkably broadened the scope of investment incentives through preferential mechanisms including incentive business lines, incentive forms, and incentive beneficiaries, specifically:

- *Expanding the list of business lines subject to investment incentives:* It focuses on important fields which contribute to the socio-economic development such as higher education, manufacture of products resulted from science and technology; manufacture of medical equipment; manufacture of goods and provision of services which create or participate in a value chain or industrial cluster; and so on. The supplement of such fields aims at improving the quality of investment projects, creating a driving force to attract new investment waves into Viet Nam. In the coming time, this regulation will help enterprises in the above-mentioned areas enjoy incentives in corporate income tax, land rent, etc. to effectively mitigate the impact of COVID-19, as well as enhance the competitiveness of small and medium enterprises.
- *Adding forms of investment incentives:* Besides the 3 available investment incentive forms listed in the Law on Investment 2014, the form of "accelerated depreciation, increasing the deductible expenses upon calculation of taxable income" has been added to the list of investment incentive forms.
- *Adding the group of projects treated with "special investment incentives":* Replacing the provision on "Expanding investment incentives" in the Law on Investment 2014, the Law on Investment 2020 enables the Government to decide the application of special incentives and supports to boost some investment projects that contribute large impacts to the socio-economic development, applicable to: innovation centers, research and development centers, projects in the business lines eligible for special incentives with large investment capital and high disbursement rate; national innovation center established under the Prime Minister's decision. In the case where it is necessary to encourage the growth of any particularly important investment project or special administrative-economic unit, the Government shall submit to the National Assembly to decide the application of investment incentives other than those specified in the Law on Investment 2020 and other laws. This regulation requisitely requires prompt guidance by competent authorities to instantly attract huge domestic and foreign investors' engagement in the implementation of key projects and projects with great impact on socio-economic development. Nevertheless, there has not been any specific guidance yet from the Government.

- *Adding beneficiaries of investment incentives:* Some can be mentioned as (i) Social housing investment projects; (ii) Projects employing disabled workers; (iii) Technology transfer projects; technology incubators, science and technology business incubators under laws on high technology, on science and technology; (iv) Projects of creative start-up, innovation centers, research and development centers, etc. These amendments are to create uniformity and consistency among the new Law and the Law on Corporate Income Tax, the Law on Persons with Disabilities and the Law on Support for Small and Medium Enterprises.

Opportunities for the mergers and acquisitions (M&A) market

One crucial new point of the Law on Investment 2020 relating to the investment activities via M&A is the provision on division and separation of investment projects. Clause 1, Article 41 of the new Law allows a project to be divided or separated into multiple projects. Thus, besides the traditional forms of capital contribution, share purchase, project transfer, investors now have more options to restructure their investment projects. Previously, if an enterprise implementing a project wants to restructure through enterprise division or separation, it must carry out the procedures for dividing the activities, rights, and

obligations of project implementation after restructuring. Meanwhile, it is too difficult to fulfill the procedure for adjusting the Investment Registration Certificate. A new door has been opened by Law on Investment 2020, which allows investors to carry out corporate division or separation procedures in parallel with dividing or separating respective investment projects. As such, the legal conditions and procedures for restructuring foreign-invested enterprises are clearer, as assessed. It is expected that the upcoming draft Decree guiding the Law on Investment 2020 will provide more specific instructions for the implementation of this regulation.

Furthermore, the Law on Investment 2020 has introduced a broader definition of "investment capital", accordingly, investment capital includes money and other assets under civil law and international treaties to which Viet Nam is a state party, which are used to conduct business investment activities. For foreign investors, such expansion of the "investment capital" scope has built up consistency in the regulations between domestic laws, international agreements, and practices. They now can diversify their investment forms, especially promoting non-cash investments.

Market access conditions for foreign investors

Market access conditions for foreign investors is a key new point of the Law on Investment 2020. Accordingly, foreign investors must satisfy these conditions to invest in the lines subject to the List of business lines restricted from market access for foreign investors in Clause 2, Article 9. The list contains: (i) business lines not yet permitted for market access; and (ii) business lines permitted for market access with conditions. As expected by the Ministry of Planning and Investment, the former includes the business lines that Vietnamese laws and international treaties on investment do not permit foreign investors to invest in or do business on; the business lines that affect national defense and security; and state monopoly business lines. The list of business lines permitted for market access with conditions includes those for which international

treaties and Vietnamese laws have regulations on treatment discrimination against foreign investors regarding market access conditions.

The brand-new regulations on market access conditions of foreign investors require them to satisfy certain criteria when setting a foothold into Vietnamese market through capital contribution, share purchase or economic organization establishment. This regulation is also a great support to investors since the conditions on investment restriction and market access shall be specified for each investment field.

From our point of view, the Law on Investment 2020 has opened the opportunities for investment activities in modern business lines with high growth prospects and necessary for the orientation of high-tech economic development in a sustainable manner, attracting foreign capital sources and extensively promoting domestic enterprises' advantages in implementing international trade commitments. Currently, there have been no specific instructions issued by the Government and competent agencies, the application of the new provisions is still limited. It is expected that in January 2021, a Decree guiding the implementation of the Law on Investment will be promulgated. As a participant in the research and development of the Law on Investment, NHQuang&Associates will update and analyze the upcoming guiding documents of the new Law to facilitate our corporate clients' efficient application of new regulations.

SOME NEW POINTS OF SECURITIES LAW 2019

PHUONG UYEN

After nearly 10 years of implementation, the Securities Law 2006 which was amended and supplemented in 2010 (**Securities Law 2006 amended in 2010**) has revealed shortcomings and it is now no longer suitable with the development of the economy as well as compatible with the changes of relevant legal documents. Therefore, on November 26, 2019, the National Assembly passed the Securities Law 2019 to replace the Securities Law 2006 amended in 2010 and officially came into effect on January 1, 2021. Some notable new points in the Securities Law 2019 include:

Changing the conditions to become a public company: Accordingly, a joint stock company is a public company if it is subject to one of the following two cases: (i) Having at least VND30 billion of charter capital contributed and at least 10% of the voting shares held by at least 100 non-major shareholders; or (ii) Having successfully conducted an initial public offering (**IPO**) in accordance with the law.

Supplementing the conditions applicable to public offering: The new law separates the conditions for initial offering of joint stock companies and those for follow-on



public offering (**FPO**) of public companies in terms of business operations, issued shares, contributed charter capital level and the percentage of shares offered. For instance, under the conditions of business operations, in the case of IPO, an enterprise must be profitable for 2 consecutive years preceding the year when it registers the offering and must not have accumulated losses up to the year of offering registration; meanwhile, in the case of FPO, the enterprise only needs to be profitable for the year immediately preceding the year of offering registration and not have accumulated losses up to the year in question.

Adding a number of prohibited acts such as using one or more trading accounts of oneself or others to buy or sell securities in order to create artificial demand or supply; combining spreading fake rumors and providing misinformation to the public to manipulate securities prices;

using clients' accounts or assets without their authorization or against the law or abusing clients' trust to appropriate their assets.

Renewing the mechanism of establishing securities companies and securities investment fund management companies: The Securities Law 2019 has separated the registration of securities trading and enterprise registration into 2 steps. Accordingly, after being licensed by the State Securities Commission to establish and operate securities trading, securities companies and securities investment fund management companies must register their business at the business registration agency under Enterprise Law. Previously, the License for establishment and operation of securities companies, securities investment fund management companies was also the Business Registration Certificate.

Some comments and recommendations

Firstly, raising the conditions for public offering of securities, such as raising the minimum level of charter capital contributed to VND30 billion at the time of offering registration, opening an escrow account to receive payments for the offered shares are the changes made in line with international practices, as well as the size of the securities market. Amendment and supplementation of the above conditions will contribute to improving the quality, stability, and transparency of public companies' information.

Secondly, at present, the nature and extent of violations in the field of securities are increasingly complex and sophisticated, greatly affecting the operation of the securities market, seriously threatening the interests of investors. Therefore, the addition of prohibited acts in securities trading activities will contribute to preventing and deterring violations, while ensuring compatibility with regulations of the Criminal Code on criminal acts in the field of securities.

Thirdly, the separation between the mechanism for enterprise establishment and for registration of securities trading will overcome the limitations of the Securities Law 2006 amended in 2010, creating the legal framework that enables regulatory authorities to terminate securities trading activities in the case that securities trading enterprises violate the conditions for maintaining professional operations; meanwhile, they still have a legal status to handle outstanding obligations with related parties. At the same time, this regulation helps to integrate the information related to establishment and changes in operations of securities trading enterprises on the national information system on business registration, thereby assisting in seeking public information about such enterprises.

In general, the new points in the Securities Law 2019 aim to protect rights and interests of the investors (including minority shareholders), improve the quality of securities offered and enterprises' responsibilities to investors and communities. Enterprises need to update new regulations to ensure their business is consistent with the law. For securities trading enterprises that have been licensed to establish and operate securities trading before the effective date of the Securities Law 2019, it is necessary to ensure that they meet the licensing conditions specified in the transition clause in order to maintain their normal operation.

NHQuang&Associates will continue our update and analysis when the guiding documents for implementation of the Securities Law are issued in the coming time.



01 Year of operation

195 Researches, articles, papers in both Vietnamese and English

14.000 Downloads

SOME NEW POINTS OF THE LAW ON ENVIRONMENTAL PROTECTION 2020

NGOC HA

After more than 5 years of implementation, besides the contributions in creating positive changes in environmental protection, the Law on Environmental Protection 2014 (LEP 2014) has also revealed deficiencies, shortcomings and overlaps with other legal provisions such as the Law on Investment (LOI), the Law on Public Investment. To overcome the limitations of LEP 2014 and generate new mechanisms in environmental protection, the Law on Environmental Protection 2020 (LEP 2020) was approved by the National Assembly on November 17, 2020. In this article, we will analyze some new points of LEP 2020 that may directly affect businesses:

Firstly, amending, supplementing the regulations on environmental impact assessment (EIA)

According to the Government's Submission for the Project of Law amending and supplementing articles of LEP, EIA in LEP 2014 is considered a tool to analyze and forecast environmental impacts when investors deploy their projects. Because it is only a predictive tool, the regulations on EIA have revealed shortcomings during implementation. When a project is deployed, there may be many changes EIA cannot foresee;



it is impossible to provide timely forecast in EIA. In addition, the LOI 2020 only requires investors to conduct a preliminary environmental impact assessment in the stage of project preparation while LEP 2014 requires an EIA in this phase. This inconsistency may cause difficulties for investors in implementing investment procedures in Viet Nam. From the above reasons, LEP 2020 render the following changes regarding EIA:

- *Supplementing the procedure for preliminary environmental impact assessment*: For investment projects classified as Group I, in the period of pre-feasibility study for construction investment, proposal for investment policy and request for approval of investment policy in accordance with the LOI 2020, the investors must self-conduct the preliminary environmental impact assessment. Conducting the preliminary assessment aims to identify and forecast the project's key environmental impacts based on its scale, production technology, and location of project implementation; therefrom, making analysis, assessment, and selecting methods to minimize environmental impacts of the project. At the same time, the preliminary assessment also identifies major environmental issues and scope of environmental impacts that should be noted in the EIA.
- *Amending regulations on the subject implementing EIA*: Instead of identifying subjects based on project approval authority as such in LEP 2014, Article 30 LEP 2020 has narrowed down the scope of subjects and determined them by level of impacts on the environment, including (i) investment projects in Group I which are projects with high risk of adverse environmental impacts and (ii) some investment projects in Group II which are with risk of adverse environmental impact according to points c, d, dd, e, Clause 4, Article 28, LEP 2020.

- *Specifying regulations on contents of EIA reports:* LEP 2020 adds more requirements in the main contents of EIA reports than LEP 2014, especially, an EIA report must contain the assessment and identification of possible environmental incidents; evaluate the suitability of the investment project with the national/regional/provincial environmental protection planning, laws on environmental protection and other relevant laws.
- *Changing the procedures for EIA approval:* Instead of approving EIA reports as stipulated in LEP 2014, LEP 2020 provides the approval of EIA report appraisal result as a basis for state competent agencies to appraise the feasibility study report and basic design of the project.

Secondly, supplementing the regulations on environmental permits (**EP**)

Previously, environmental-related permits are not specified in LEP 2014, but dispersedly governed in laws on irrigation, water resources, etc. This, according to the Government's Submission for the Project of Law amending and supplementing articles of LEP, requires investors to carry out various administrative procedures in terms of environment and related fields after their project is approved and before its official operation. It also causes many difficulties in state management. Therefore, LEP 2020 has integrated all kinds of environmental permits

such as wastewater discharge, exhaust gas discharge, hazardous waste treatment. into one type of permit namely EP.

The subjects that must have EP include (i) Investment projects of Group I, Group II and Group III that generate wastewater, dust, or exhaust gases discharged into environment, which must be treated; or generate hazardous waste that must be managed in accordance with the regulations on waste management upon official operation; (ii) Investment projects; concentrated production, business and service establishments; industrial clusters operating before the effective date of this Law having the same environmental criteria as the above subjects; the projects in circumstance (i) of this paragraph which are urgent public investment projects under the Law on Public Investment will be exempt from EP. Depending on each project type, the licensing authority and EP contents will define the specific requirements of environmental protection.

It is noteworthy that one of the bases to consider granting EP to a project is the assessment of endurance capacity of the environment within the project implementation area. This new regulation of LEP 2020 is added to limit the environment's tolerance to pollution sources in the area. The competent state authority shall neither approve EIA report appraisal result nor grant EP to new projects directly discharging wastewater into the surface water reaching the maximum endurance capacity as announced by competent

authority, unless the investors have a pollution treatment plan, or a wastewater treatment plan satisfying environmental technical regulations on surface water quality to generate no more pollution in the area. This regulation can directly affect the investors when they prepare to deploy projects in the areas with pollution signals.

Thirdly, amending the regulations related to damage compensation

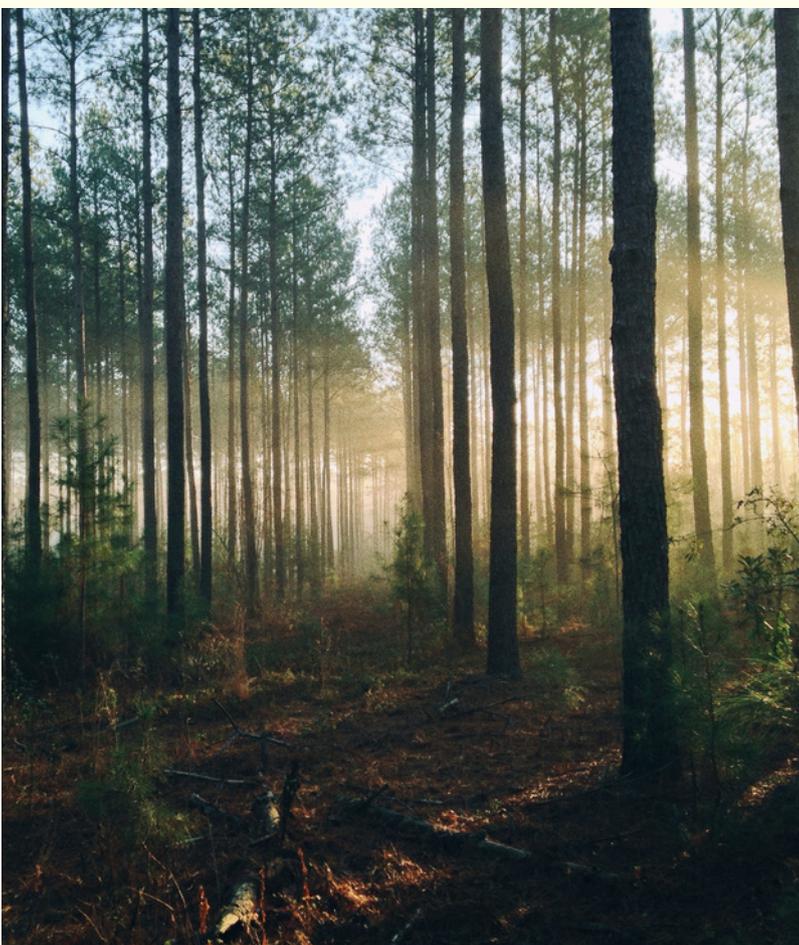
One of the most difficulties in environmental disputes is that the aggrieved party cannot prove the cause-effect relationship between environmental violations and the damage caused by the acts. To overcome this matter, LEP 2020 attributes the responsibility of proving the cause-effect relationship to the defendant, that is, the organization or individual committing the violation acts causing pollution when the case is handled at the Court. This provision aims to protect rights and interests of the aggrieved party suffering from the damage caused by the acts of environmental law violation.

At the same time, LEP 2020 also mentions for the first time the principle of determining the compensation responsibility when two or more organizations, individuals jointly cause environmental damage. The compensation responsibility is determined according to the proportion of damage in the total environmental damage caused by the parties.

Some comments and recommendations

The regulations on EIA in LEP 2020 are consistent with the LOI 2020 and the Law on Public Investment 2019. LEP 2020 also has clearer provisions than LEP 2014 regarding the requirements for EIA in the preparation and implementation of investment projects. EIA not only contains analyses and forecast about environmental impacts of a project, but also identifies environmental incidents to propose measures for minimizing negative impacts on the environment. This helps investors prevent and minimize environmental incidents that may occur during project implementation.

The unified use of one EP type is judged to facilitate investors in implementing projects and reduce costs in investment, production, and business activities. This also helps state management over environment unified and coherent.



However, this can be a challenge for the competent authorities in licensing, managing, and monitoring projects. They need to improve the professional quality of the staff processing and receiving dossiers, update modern technologies to develop a synchronous technical infrastructure for management.

In addition to the compliance with new environmental regulations, investors should also note that the responsibility to prove the cause-effect relationship between the act of violation against environmental law and the damage thereof shall belong to the defendant, which will be binding the investors and add to their responsibility in the implementation and compliance with environmental laws.

Legal documents guiding the implementation of LEP 2020 will be drafted and issued in 2021. Investors should keep updating the guidelines so that they could comply with the provisions of the law, avoiding risks in business investment activities. With our experience of engagement in the research and development of the LEP, NHQuang&Associates will continue with further updates and information when any relevant guiding document is issued in the coming time.

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