GUIDELINES FOR PREPARING DOCUMENTS FOR CAPITAL CONTRIBUTION AND SHARE PURCHASE IN VIETNAMESE BUSINESSES

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1. OBJECT

Foreign investors under Article 19, Clause 3 of the Investment Law 2020 include:

+ Foriegn Individuals

+ Foreign Organizations

1.1.Foreign Individual

Nationality

Foreign Nationality

Age

Adults (from 18 years old and above)

Legal capacity

Full legal capacity

Not subject to criminal prosecution, or penalties

No criminal prosecution, not in detention, not serving a prison sentence, not subject to administrative penalties, or not under a court order prohibiting assuming positions, practicing certain professions, or doing specific jobs.

Profession

Not officials, public employees, civil servants, officers, non-commissioned officers, soldiers, leaders, or managers in state-owned enterprises, etc.

1.2. Foreign Organizations

100% Foreign Capital Organization

- Economic organizations established under foreign laws
- Legal capacity: Civil legal capacity
- Not prohibited from operating in certain specific fields

1.3. Economic Organizations with Foreign Capital Investment:

a) Foreign investors holding over 50% of charter capital or majority members in the case of economic organizations like joint-stock companies;

b) Foreign economic organizations specified in point a holding over 50% of charter capital.

c) Foreign investors and economic organizations specified in point a holding over 50% of charter capital.

When foreign investors contribute capital, purchase shares, or acquire contributed capital portions of economic organizations, they must meet the legal conditions, such as:

- Meeting market access conditions for foreign investors
- Ensuring national defense, security
- Regulations on land, land use conditions, and conditions for land use rights in islands, communes, wards, border towns, communes, wards, border towns near the sea.

- Form of Capital Contribution

a) Purchase of first-time issued shares or additional shares of joint-stock companies;

b) Contribution to Limited Liability Companies, Partnerships;

c) Contribution to other economic organizations not covered in points a and b of this clause.

- Forms of Purchasing Shares, Contributed Capital Portions:

a) Purchase shares of joint-stock companies from the company or shareholders;

b)Purchase contributed capital portions of members of limited liability companies to become members of the limited liability company;

c)Purchase contributed capital portions of members of partnerships to become contributing members of the partnership;

d) Purchase contributed capital portions of members of other economic organizations not covered in points a, b, and c of this clause.

2. INFORMATION REQUIRED FROM CLIENTS

Information about the Investor

1. Name, nationality, legal documents, address, phone number
2. Information about the legal representative if the investor is an organization
3. Number of shares, the intended value of the planned capital contribution
4. Expected transaction value of the capital contribution contract, share purchase, contributed capital portion purchase

INFORMATION ABOUT THE INTENDED CONTRIBUTING ECONOMIC ORGANIZATION

- Business name;
- Business registration number;
- Business type and organizational structure;
- Head office address, phone number, email (if available);
- Information about the Certificate of Land Use Rights in islands, communes, wards, border towns; communes, wards, border towns near the sea; other areas affecting national defense, security (if available);
- Business sector;
- Charter capital;
- Existing ratio of foreign investor ownership in the economic organization;
- Information about owners, members, founding shareholders, list of owners, members, and shareholders who are foreign investors (if available).

Information about the Economic Organization after Receiving the Capital Contribution/Shares/Contributed Capital Portion

- Company's name
- Authorized capital
- Ownership ratio of foreign investors
- Business lines, write CPC codes for conditional professions applicable to foreign investors
- Information about investment projects of economic organizations (if any)
- Explanation of meeting market access conditions for foreign investors (if any)

3. SECTOR:

Market Access Requirements:

For industries or sectors that haven't been granted market access, foreign investors are not allowed to invest or conduct business activities (Example: fishing or seafood exploitation).

For sectors with conditional market access (e.g., advertising services, educational services), foreign investors can invest and conduct business activities when they meet the following conditions:

- *Ownership ratio of foreign investor's charter capital in the economic organization.*
- *Investment form.*
- *Scope of investment activities.*
- *Investor's capacity; partners involved in the investment activities.*
- *Other requirements stipulated in laws, resolutions of the National Assembly, ordinances, resolutions of the Standing Committee of the National Assembly, decrees of the Government, and international agreements of which the Socialist Republic of Vietnam is a member.*

3. SECTOR

Meet the business condition:

- In cases where after contributing capital, purchasing shares, or acquiring contributed capital portions, the investor wants to add additional sectors to the economic organization, apart from market access conditions, the investor should note that certain sectors require separate licenses from specialized regulatory authorities before commencing actual business operations.

- Foreign investors can engage in investment activities when they have one of the following forms: License; Certificate; Certificate; Confirmation, approval document; Other requirements that individuals, and economic organizations must meet to carry out investment and business activities without requiring written confirmation from the competent authority.

4. LOCATION

- For investments made through capital contribution, share purchase, or contributed capital portion purchase, foreign investors must comply with legal regulations regarding land, including conditions for land use rights acquisition.
- In cases where the economic organization receiving the capital contribution possesses a Certificate of Land Use Rights in islands, communes, wards, border towns, or areas near the sea that affect national defense and security, it is necessary to submit a statement to obtain opinions from the Ministry of Public Security and the Ministry of National Defense when carrying out procedures for capital contribution, share purchase or contributed capital portion acquisition.
- If the economic organization is not located in these specified areas, a written commitment stating the absence of a Certificate of Land Use Rights in areas affecting national defense and security should be prepared for consideration by the competent authorities.

5. DOCUMENT CHECKLIST

5.1. Capital Contribution, Share Purchase, Contributed Capital Portion Documents

- Registration documents for capital contribution, share purchase, contributed capital portion acquisition.
- Copies of legal documents of individuals, organizations contributing capital, purchasing shares, acquiring contributed capital portions, and economic organizations with foreign investors contributing capital, purchasing shares, acquiring contributed capital portions.
- Agreements on principles of capital contribution, share purchase, contributed capital portion acquisition between foreign investors and economic organizations with foreign investors contributing capital, purchasing shares, acquiring contributed capital portions, or between foreign investors and shareholders or members of that economic organization.
- Copy of Certificate of Land Use Rights of the economic organization with foreign investors contributing capital, purchasing shares, acquiring contributed capital portions (for cases stipulated in Point b, Clause 4, Article 65 of Decree No. 31/2021/NĐ-CP).

5.2. Documents for Changing Business Entity Type, Changing Company Ownership

5.2.1 Conversion of Single-Member Limited Liability Company to Multi-Member Limited Liability Company

- Proposal for business registration
- Company charter
- List of members
- Copies of legal documents of the legal representative according to the law
- Copies of legal documents of members
- Transfer agreement and documents proving the completion of the transfer
- Documents from the Investment Registration Agency approving the capital contribution, share purchase, and contributed capital portion acquisition by foreign investors, and economic organizations with foreign investment capital in cases where the procedures for capital contribution, share purchase, and contributed capital portion acquisition must be carried out as per the Investment Law regulations.

5.2.2 Documents for Registering Changes in Ownership of Joint-Stock Company

- Notice of change in ownership of single-member limited liability company
- Copies of legal documents of individuals in case the transferee is an individual or copies of legal documents of the organization
- Copies of legal documents of individuals for the authorized person and copies of authorization documents in case the transferee is an organization
- Copies of amended and supplemented charter of the company
- Transfer agreement for contributed capital portion or documents proving the completion of the contributed capital portion transfer
- Documents from the Investment Registration Agency approving the capital contribution, share purchase, contributed capital portion acquisition by foreign investors, economic organizations with foreign investment capital in cases where the procedures for capital contribution, share purchase, contributed capital portion acquisition must be carried out as per the Investment Law regulations.

6. TIMELINE AND SUBMISSION PROCESS

6.1 Submission of Documents for Capital Contribution, Share Purchase, Contributed Capital Portion

Foreign investors falling under the cases stipulated in Clause 2, Article 26 of the Investment Law 2020, before changing members or shareholders, must carry out procedures to register capital contribution, share purchase, or acquisition of contributed capital portions from the economic organization.

Case 1: No Certificate of Land Use Rights in areas affecting national security and defense (Point a, b, Clause 2, Article 26 of the Investment Law 2020)

Step 1: The economic organization submits 01 set of documents for registration of capital contribution, share purchase, or acquisition of contributed capital portions to the Department of Planning and Investment where the economic organization has its main office.

Step 2: Within 15 days from the date of receiving a valid dossier, the Department of Planning and Investment reviews the conditions for capital contribution, share purchase, or acquisition of contributed capital portions and informs the investor.

Step 3: After the foreign investor is approved, the economic organization carries out procedures to change members or shareholders at the Business Registration Office.

Case 2: Certificate of Land Use Rights in areas affecting national security and defense (Point c, Clause 2, Article 26 of the Investment Law 2020)

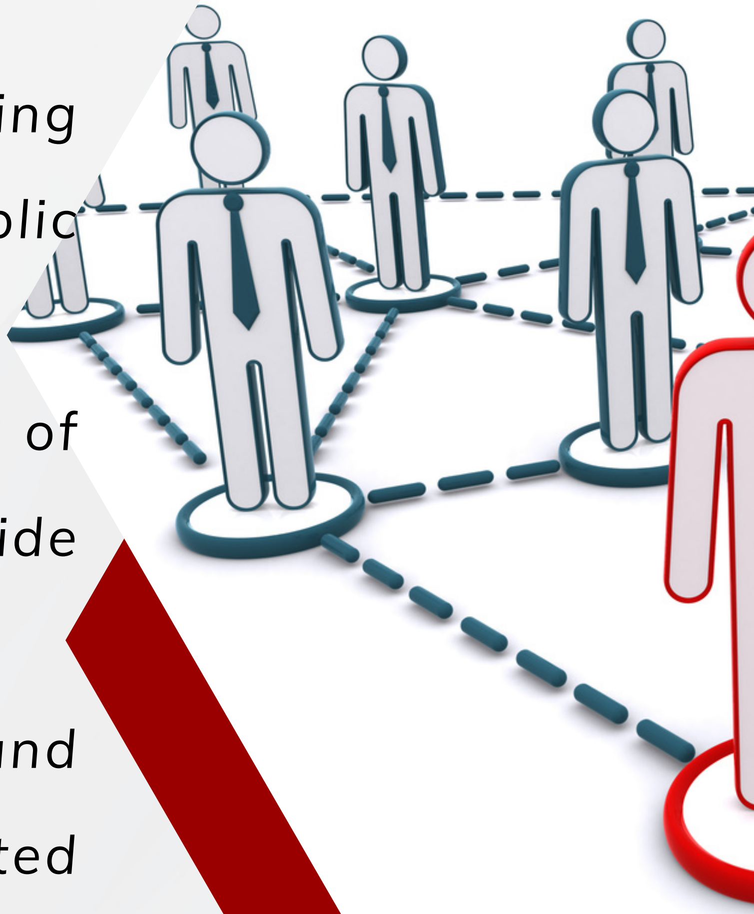
Step 1: The economic organization submits 01 set of documents for registration of capital contribution, share purchase, or acquisition of contributed capital portions to the Department of Planning and Investment where the economic organization has its main office.

Step 2: Within 03 working days from the date of receiving a valid dossier, the Department of Planning and Investment collects opinions from the Ministry of National Defense and the Ministry of Public Security regarding the fulfillment of conditions.

Step 3: Within 07 working days from the date of receiving the proposal from the Department of Planning and Investment, the Ministry of National Defense and the Ministry of Public Security provide opinions on meeting the conditions.

Step 4: Within 15 days from the date of receiving a valid dossier, the Department of Planning and Investment reviews the conditions for capital contribution, share purchase, or acquisition of contributed capital portions based on the opinions of the Ministry of National Defense and the Ministry of Public Security and informs the investor.

Step 5: After the foreign investor is approved, the economic organization carries out procedures to change members or shareholders at the Business Registration Office.



6.2. Submission of Documents for Changing Business Entity Type, Changing Ownership, Members, Shareholders of the Company

6.2.1. Change of Business Entity Type

Step 1: The company registers the conversion with the Business Registration Office within the following timeframe:

10 days from the date of completing the conversion (for the conversion of a limited liability company into a joint-stock company and the conversion of a joint-stock company into a multi-member limited liability company).

15 days from the date the company has only one shareholder or completes the share transfer (for the conversion of a joint-stock company into a single-member limited liability company).

Step 2: Within 03 working days from the date of receiving the conversion documents, the Business Registration Office re-issues the Certificate of Business Registration and updates the legal status of the company in the national business registration database.

6.2.2. Change of Ownership, Members, Shareholders of the Company

Step 1: Notify the change of members, and shareholders to the Business Registration Office where the company's main office is located within 10 days from the date of change.

Step 2: Within 03 working days from the date of receiving the notification, the Business Registration Office issues a Receipt, checks the validity of the documents, and issues a Confirmation of the registered changes to the business.

In case the documents are not valid, the Business Registration Office notifies in writing the necessary amendments and supplements for the business.

Step 3: Publicly announce the changes on the National Business Registration Portal.

YOUR CONFIDANT

THANK YOU!

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