



Provisions on Investment Registration Certificates Upon Establishment of Enterprises and Cooperatives in Vietnam-Shortcomings and Recommendations for Improvement*

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Abstract

An investment registration certificate in Vietnamese law is a written or electronic document that records the investor's registration information on the investment project. This Certificate is a mandatory prerequisite for foreign investors to establish or participate in establishing economic organisations in Vietnam, including companies and cooperatives. The methodology employed in this study is qualitative research. This study uses the literature approach and the Statute approach. This rule has a few exceptions, but it is usually required. Nevertheless, the Law on Investment, the Law on Enterprises, and the Law on Cooperatives all contain several illogical and inconsistent provisions for the most part. Because of this, the application of the law becomes more complex. Therefore, to enhance the Vietnam Law on Investment, it is essential to continue improving, revising, and supplementing the provisions of the Vietnam Law on Investment, the Vietnam Law on Enterprises, and the Vietnam Law on Cooperatives.

Keywords: Investment Registration Certificate; Law on Investment; Law on Enterprises, Law on Cooperatives, The Establishment of Enterprises, The Establishment of Cooperatives

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A. INTRODUCTION

In compliance with Vietnamese legislation, an economic organisation “is an organisation established and operating under the law of Vietnam, including enterprises, cooperatives, unions of cooperatives and other organisations which carry out business investment activities.” ([Clause 21, Article 3 of the Law on Investment 2020](#)) According to this definition, economic organisations in Vietnam are mainly enterprises, cooperatives, and unions of cooperatives.

In accordance with the prevailing Law on Investment and accompanying advisory papers, foreign investors must have a project and carry out procedures for granting an investment registration certificate to establish an enterprise or cooperative in Vietnam, except for the establishment of innovative SMEs and innovative start-up investment funds under the law on support for SMEs. ([Point c, Clause 1, Article 22 of the Law on Investment 2020](#)) Moreover, a foreign-invested economic organisation in Vietnam is required to have a project and carry out procedures to be granted an investment registration certificate in the following cases: a) This economic organisation has a foreign investor holding more than 50% of the charter capital or has a majority of partnership members being foreign individuals for the economic organisation being a partnership; b) This economic organisation has an economic organisation specified at Point a above, holding more than 50% of the charter capital; c) This economic organisation has a foreign investor and the economic organisation specified at Point a above, holding more than 50% of the charter capital. ([Clause 1, Article 23 of the Law on Investment 2020](#))

In addition, to attract foreign direct investment, the Law of Vietnam expands the choice of Vietnamese investors with foreign nationality. ([Department of Foreign Investment, 2023](#)) However, suppose the investor is a Vietnamese citizen with a foreign nationality and chooses to apply the investment conditions and procedures prescribed for foreign investors. In that case, he/she must follow the procedures to be granted an Investment Registration Certificate when establishing an enterprise or cooperative in Vietnam. ([Clause 2, Article 16 of Decree No. 31/2021/ND-CP](#))

The Law on Investment also stipulates the competence to grant an Investment Registration Certificate in addition to the cases where procedures are compulsory to obtain an Investment Registration Certificate. Accordingly, for investment projects in industrial parks, export processing zones, hi-tech zones, and economic zones, the Management Board of industrial parks, export processing zones, hi-tech zones, and economic zones shall issue investment

registration certificates. For the following projects, investment registration authorities where the investor invests, places or plans to place an executive office to implement the investment project will have the authority to issue investment registration certificates: a) Investment projects implemented in 02 or more provincial-level administrative units; b) Investment projects implemented both inside and outside industrial parks, export processing zones, hi-tech zones, and economic zones; c) Investment projects in places that have not been established or are not under the jurisdiction of the Management Board of industrial parks, export processing zones, hi-tech zones or economic zones. ([Clause 3, Article 30 of the Law on Investment 2020](#))

However, comparing the above provisions of the Law on Investment with the requirements of the Law on Cooperatives and the Law on Enterprises, some unclear, incomplete, and unreasonable points still exist in these laws. ([Ly, 2023](#)) Therefore, to facilitate investors and attract investment in the establishment of enterprises and cooperatives in Vietnam, the Law on Investment 2020, the Law on Cooperative 2023, and the Law on Enterprise 2020 need to be further amended and supplemented to agree with each other or clearly state the priority legal validity when there are differences among the Law on Investment and these laws. ([Hang, 2023](#))

B. METHODS

The methodology employed in this study is qualitative research. This study uses the Literature Approach. The author examines many literary sources, including pertinent legislation, governmental regulations, and scholarly papers concerning the processes for registering investments and forming commercial entities and cooperatives in Vietnam. The objective is to comprehend the relevant legislation and pinpoint inadequacies in capital registration. A legal strategy is also employed. This study employs legal analysis, focusing on Vietnam's national rules about investment registration and the formation of commercial entities and cooperatives. The author assesses the alignment of this legislation with international standards and stakeholder interests through this technique. This study seeks to uncover weaknesses in the regulation of investment registration certificates in Vietnam by employing a combination of these two methodologies and to offer recommendations for enhancing the effectiveness of the registration process.

C. RESULTS AND DISCUSSION

1. Regarding the mandatory conditions for obtaining an investment registration certificate when the investor is a Vietnamese citizen and has a foreign nationality and a foreign-invested economic organisation

a. Shortcomings

According to the Law on Investment 2020, “domestic investors are individuals with Vietnamese nationality, economic organisations without foreign investors as members or shareholders.” ([Clause 20, Article 3 of the Law on Investment 2020](#)) “A foreign investor is an individual with a foreign nationality or an organisation established under foreign law that carries out investment and business activities in Vietnam.” ([Clause 19, Article 3 of the Law on Investment 2020](#)) However, besides domestic and foreign investors, the Law on Investment 2020 and the guidance document stipulate two more investors. In detail, the investor is a Vietnamese citizen with a foreign nationality and is a foreign-invested economic organisation.

Accordingly, “For business investment activities conducted in Vietnam, investors who are Vietnamese citizens and have foreign nationality are entitled to apply market access conditions and investment procedures as prescribed for domestic investors or foreign investors. In case of choosing to use market access conditions and investment procedures as prescribed for domestic investors, investors who are Vietnamese citizens and have foreign nationality shall not be entitled to exercise the rights and obligations prescribed for foreign investors.” ([Clause 2, Article 16 of Decree No. 31/2021/ND-CP](#))

Under the provisions mentioned above, Vietnamese citizens with foreign nationality and foreign-invested economic organisations are considered notable investors in the field of investment. Although they have Vietnamese nationality, they are not called domestic investors or foreign investors. Therefore, depending on each specific case, these investors can apply the provisions on conditions and carry out investment procedures as domestic or foreign investors. In other words, depending on the case, these investors must follow the guidelines for granting investment registration certificates.

Indeed, the Law on Vietnamese Nationality defines the principle of nationality as: “The State of the Socialist Republic of Vietnam recognises that Vietnamese citizens have a single nationality, Vietnamese nationality, unless it is otherwise provided for by this La.” ([Article 4 of the 2008 Law on Vietnamese Nationality](#))

In other words, no matter how many nationalities an individual has, including Vietnamese nationality, the State only recognises one nationality as Vietnamese nationality in its legal relations in Vietnam. (Khanh, 2023) Therefore, if the investor is a Vietnamese citizen with a foreign nationality, the State of the Socialist Republic of Vietnam shall only identify that investor as a Vietnamese citizen. (Linh, 2008) In addition, the law of Vietnam differs from other countries in terms of the criteria for determining a legal entity's nationality. (Khanh, 2022) It defines: "A legal entity established under the law of Vietnam is a Vietnamese legal entity." (Article 80 of the 2015 Civil Code) At the same time, the Commercial Law 2005 also affirms: "Foreign-invested enterprises established in Vietnam by foreign traders under the provisions of the law of Vietnam or international treaties to which the Socialist Republic of Vietnam is a contracting party shall be regarded as Vietnamese trader." (Clause 4, Article 16 of the 2005 Commercial Law)

Since then, foreign-invested enterprises and cooperatives established in Vietnam have been identified as economic organisations with Vietnamese nationality, although their members and shareholders are foreign investors. Therefore, in terms of nationality, both Vietnamese citizens with foreign nationality and foreign-invested economic organisations established in Vietnam have Vietnamese nationality and are domestic investors.

However, in the field of investment, the Law on Investment 2020 and the guiding document only consider domestic investors when the investor is an individual with only Vietnamese nationality (not concurrently having foreign nationality), and the organisation does not have foreign investment. In contrast, a foreign investor is an individual with only foreign nationality (not concurrently having Vietnamese nationality) and an organisation established under foreign law to carry out investment and business activities in Vietnam." Thus, it can be said that the Law on Investment does not recognise Vietnamese citizens with foreign nationality and foreign-invested economic organisations as domestic investors. However, these individuals and organisations have Vietnamese nationality. This is considered one of the exceptions in the principle of single nationality of the 2008 Law on Nationality mentioned above. However, in the field of investment in the establishment of economic organisations, some relevant laws have not yet updated this exception and only require an Investment Registration Certificate for foreign investors. In other words, Vietnamese citizens with foreign nationality and foreign-invested economic organisations have not mentioned the obligation to carry out procedures for granting investment registration certificates in cases where they must carry out procedures for granting investment registration certificates by the law on investment.

Specifically, Clause 1, Article 30 of the Law on Cooperatives 2023 stipulates the conditions for becoming an official member or contributing member of a cooperative, including a) a Vietnamese citizen who is aged 18 or older and has full capacity for civil acts; b) an individual that is a foreign investor possessing a valid investment registration certificate as prescribed by the Law on investment”

In addition, Clause 5 of this Law further stipulates: “To become an official member or contributing member of a cooperative, an individual that is a foreign investor or a foreign-invested organisation shall be required to meet: 1) Market access conditions for foreign investors laid down in the Law on investment and relevant laws; 2) Conditions for ensuring national defence and security by the law on investment.”

The above provisions make it understandable that under the Law on Cooperatives, all individuals with Vietnamese nationality are not required to obtain an Investment Registration Certificate when establishing a cooperative in Vietnam. At the same time, all foreign-invested economic organisations participating in establishing cooperatives must also meet “market access conditions for foreign investors” or “market access conditions applicable to foreign investors” by the law on investment and relevant regulations. Meanwhile, as analysed in the above section, investors who are Vietnamese citizens and have foreign nationalities and investors who are economic organisations with foreign investment are divided into two groups: The group complies with the investment conditions and procedures as prescribed for domestic investors (i.e., it is not required to have an Investment Registration Certificate) and the group complies with the investment conditions and procedures as prescribed for foreign investors (i.e., it is required to have an Investment Registration Certificate).

Similarly, from Articles 20 to 22 of the Law on Enterprises 2020 on enterprise establishment dossiers, there is only one provision related to “Investment registration certificate for foreign investors by the Law on Investment”. Therefore, when choosing the investment conditions and procedures as a foreign investor and a foreign-invested economic organisation, a Vietnamese citizen with a foreign nationality shall comply with the conditions and procedures prescribed for foreign investors. At that time, the laws, as mentioned earlier, lacked the requirement for an Investment Registration Certificate in the enterprise establishment dossier.

b. Solutions for improvement

From the above analysis, the Law on Investment 2020, the Law on Cooperatives 2023, and the Law on Enterprises 2023 should add specific provisions for Vietnamese citizens with foreign nationality and foreign-invested economic organisations. Specifically:

- For the Law on Investment 2020: As analysed above, an investor who is a Vietnamese citizen and has a foreign nationality may select to apply investment conditions and procedures as prescribed for domestic investors or as prescribed for foreign investors, which is only specified in the sub-law document, Decree No. 31/2021/ND-CP guiding the Law on Investment. Hence, many relevant laws consider this investor to be only a domestic investor, and there are no provisions in cases where they choose to apply the same provisions as foreign investors. Therefore, the Law on Investment 2020 should include this provision directly instead of in the Decree.
- For the Law on Cooperatives 2023: Clause 1, Article 30 of the Law on Cooperatives 2023 on conditions to become an official member or contributing member of a cooperative should be amended and supplemented as follows: “a) An individual who is a Vietnamese citizen not concurrently having a foreign nationality or an individual who is a Vietnamese citizen concurrently having a foreign nationality and chooses to apply the conditions and procedures for investment in the establishment of a cooperative as a domestic investor, must be aged 18 or older and has full capacity for civil acts; b) An individual who is a foreign investor or a Vietnamese citizen concurrently having a foreign nationality and chooses to apply the investment conditions and procedures as a foreign investor, must have a valid investment registration certificate as prescribed by the Law on investment.”

In addition, for investors who are foreign-invested economic organisations, the Law on Investment 2020 only stipulates that they must comply with investment conditions and procedures, such as investment conditions and procedures of foreign investors, in three cases. However, the Law on Cooperatives 2023 requires all foreign-invested economic organisations to meet the same conditions as foreign investors. Thus, Clause 5, Article 30 of the Law on Cooperatives 2023 should be clearly defined as follows:

“To become an official member or contributing member of a cooperative, an individual who is a foreign investor, a Vietnamese citizen concurrently having

foreign nationality and choose to apply as a foreign investor or a foreign-invested economic organisation in cases where they must carry out the procedures for granting investment registration certificates under the provisions of the Law on Investment shall be required to meet: a) Market access conditions for foreign investors laid down in the Law on investment and relevant laws; b) Conditions for ensuring national defence and security under the law on investment.”

However, the Law on Investment 2020 stipulates: *“Where a law promulgated after the effective date of this Law contains provisions on investment contradicting provisions of this Law, the former is required to specify the cases to which its provisions apply and the cases to which this Law applies.”* ([Clause 4, Article 4 of the Law on Investment 2020](#)) Therefore, if the Law on Cooperatives 2023 contains any provision different from the Law on Investment, it must have specific provisions on these other contents that will be applied more priority to the Law on Investment; otherwise, these other provisions will not be used, but must prioritise the application of the Law on Investment.

In other words, the Law on Cooperatives 2023 was promulgated after the effective date of the Law on Investment 2020, so the Law on Cooperatives may differ from the Law on Investment. However, this Law must confirm the legal validity of such provisions that are higher than the Law on Investment, then those provisions may apply. However, in the Law on Cooperatives, there is no provision to determine the legal validity of these other provisions. Hence, to keep the applicable provisions different from the Law on Investment 2020, Article 114 of the 2023 Cooperation Law must supplement the provisions on the legal validity of other provisions between the 2023 Cooperative Law and the Law on Investment 2020.

For the 2020 Enterprise Law: Because the 2020 Enterprise Law was promulgated before the effective date of the Law on Investment 2020, it is necessary to prioritise the application of the Law on Investment in case of any different provision on investment conditions and procedures between these two laws. Therefore, the content of Articles 20 to 22 of the 2020 Enterprise Law lacks two cases where an investment registration certificate is required; the business registration authority must also apply the Law on Investment to request investors to carry out procedures for granting investment registration certificates. However, to make the application more convenient and more accessible for investors to grasp the requirements of the enterprise establishment dossier, the Law on Enterprises should add two more cases where an investment registration certificate is required in the enterprise establishment dossier. That is when a Vietnamese citizen with a foreign nationality chooses investment conditions and

procedures as a foreign investor and a foreign-invested economic organisation under three cases required to carry out procedures for granting investment registration certificates as prescribed in Clause 1, Article 23 of the Law on Investment 2020.

2. Regarding the criteria for determining that an investor is a foreign-invested economic organisation that must carry out procedures for granting an Investment Registration Certificate

a. Shortcomings

As analysed above, Clause 1, Article 23 of the Law on Investment 2020 requires foreign-invested economic organisations to meet the conditions and carry out investment procedures prescribed for foreign investors when this investor establishes an enterprise, cooperative, or other financial organisation in Vietnam. This requirement also means that this investor must carry out procedures to be granted an Investment Registration Certificate before establishing an enterprise, cooperative or other economic organisation in Vietnam. However, the criteria for identifying these three cases are not reasonable.

- Case a): Over 50% of its charter capital is held by a foreign investor(s) or, in the case of a partnership, most of its general partners are foreigners.
- Case b): Over 50% of its charter capital is held by a business organisation mentioned in Point A of this Clause.
- Case c): Over 50% of its charter capital is held by a foreign investor(s) and a business organisation mentioned in Point A of this Clause.

In case of a), the determination that “over 50% of its charter capital is held by a foreign investor” of an economic organisation to compel that economic organisation to comply with the investment conditions and procedures as a foreign investor (an investment registration certificate is required) is not reasonable. This is because, according to the provisions of the Law on Enterprises 2023 and the Law on Cooperatives 2023, even if foreign investors hold more than 50% of the charter capital, they cannot have the right to dominate the company. Thus, foreign investors cannot control the company in cases b) and c). Specifically:

- For multi-member limited liability companies, the 2020 Enterprise Law stipulates that the meeting of the Board of Members shall be conducted “when it is participated by several members that hold at least

65% of charter capita.” ([Clause 1, Article 58 of the Law on Enterprises 2020](#))

In addition, a resolution or decision of the Board of Members will be ratified “if it is voted for by several participants that hold at least 65% of the total stakes of all participants.” In the case of a questionnaire survey, a resolution or decision will be ratified “when it is voted for by several members that hold at least 65% of charter capital; a specific ratio shall be specified in the company’s charter.” ([Article 59 of the Law on Enterprises 2020](#))

- For a joint-stock company, the 2020 Enterprise Law also stipulates that the first General Meeting of Shareholders “shall be conducted when it is participated by several shareholders that represent more than 50% of the votes; the specific ratio shall be specified in the company’s charter.” ([Clause 1, Article 145 of the Law on Enterprises 2020](#))
- Next, important Resolutions of the General Meeting of Shareholders will be ratified “if they are voted for by several shareholders that represent at least 65% of votes of all participants.” The remaining resolutions will be ratified “when they are voted for by several shareholders that hold more than 50% of the votes of all participants.” ([Article 148 of the Law on Enterprises 2020](#)) Thus, for a joint-stock company, the decision is based on the number of votes, not on the charter capital held by shareholders. In other words, a shareholder holding more than 50% of the charter capital for a joint stock company does not mean he/she has more than 50% of the votes.
- For cooperatives, the Law on Cooperatives 2023 applies the principle of “democracy and equality in management.”. Accordingly, the highest decision-making authority of the cooperative is the General Meeting of Members. At this General Meeting of Members, each member officially attending the general meeting has one vote of equal value, regardless of the contributed capital or member position. Accordingly, “*The meeting of the General Meeting of Members shall be conducted when it is participated in by at least 50% of its total official members or total delegates appointed.*” ([Clause 7, Article 59 of the Law on Cooperatives 2023](#)) On this basis, the General Meeting of Members shall decide all issues based on the ratio of members voting for approval, not the capital ratio of members in the charter capital of the cooperative. In particular, each of the following contents will be ratified by the General Meeting of Members when it is voted for by at least 65% of total members or delegates who participate in the meeting: a)

Revisions to the cooperative or cooperative union's charter; b) Investment in or sale of distributed assets whose value is equal to or greater than 20% of total value of assets written in the latest financial statements of the cooperative or cooperative union; investment in or sale of undistributed assets; c) Changes in the management model of the cooperative or cooperative union; d) Reorganization, dissolution or bankruptcy of the cooperative or cooperative union. Other contents will be ratified when voted for by at least 50% of the members or delegates attending. ([Article 61 of the Law on Cooperatives 2023](#))

The provisions on management in the Law on Enterprises and the Law on Cooperatives mentioned above prove that it is not appropriate for the Law on Investment 2020 to oblige economic organisations with “more than 50% of charter capital” held by foreign investors to comply with the investment conditions and procedures as foreign investors. This is because, according to the provisions mentioned above, the capital of a foreign investor with more than 50% of charter capital does not mean that the foreign investor holds the right to dominate in that economic organisation. Also, such a provision can create a distinction between Vietnamese economic organisations since a foreign-invested economic organisation is legally a financial organisation with Vietnamese nationality. ([Tung, 2014](#))

b. Recommendations for improvement

As analysed, foreign-invested economic organisations established in Vietnam are Vietnamese legal entities (according to the 2015 Civil Code) and Vietnamese traders (according to the 2005 Commercial Law). Foreign investors who are members and shareholders of this economic organisation have also had to comply with the conditions on market access and national security by the Law on Investment and other relevant provisions. Even when foreign investors are members, founding shareholders of economic organisations in Vietnam also have projects and investment registration certificates. ([Clause 1, Article 22 of the Law on Investment 2020](#)) In addition, regarding the internal governing power of an economic organisation, the ratio capital of foreign investors over 50% of charter capital in an economic organisation is not a criterion to determine the level of capital to govern the internal power of an economic organisation. That is why it is assumed that the provisions of the Law on Investment are not in line with the Law on Enterprises on the conditions required to have a registration

certificate when establishing a foreign-invested economic organisation in Vietnam. ([Nguyen, 2023](#))

Therefore, the Law on Investment should remove the requirement to have an Investment Registration Certificate for investors who are economic organisations with foreign investment when they establish or participate in establishing other economic organisations in Vietnam. This Law should only oblige this organisation to comply with conditions on industries with limited market access (without access or access to the Vietnamese market with conditions) and national security and defence when investing in establishing other economic organisations. This is because if based on the ratio of foreign charter capital ownership in an economic organisation, the change in the ratio from over 50% of foreign capital to below this level is swift, especially for public companies. Therefore, providing the ratio as a compulsory condition for foreign-invested economic organisations to implement projects and investment registration certificates when establishing subsidiaries or participating in other companies is ineffective. In addition, the ways to limit the voting and control rights of foreign investors in the economic organisation can be learned from the experience of some countries. For example, Malaysia regulates the types of shares that restrict voting rights. ([Nguyen Thi Hue, 2023](#)) Accordingly, each field may specify the number of shares with limited voting rights or an excess of no voting rights for foreign investors or foreign-invested economic organisations to participate as members or founding shareholders without having to carry out projects and procedures for granting investment registration certificates.

Therefore, to create favourable conditions for investors who are foreign-invested economic organisations and “resolutely cut unnecessary administrative procedures, increase compliance cost” ([Quang, 2023](#)), the Law on Investment should replace the Investment Registration Certificate with the written approval of the investment registration authority. In this document, the investment registration authority certifies that it is eligible for market access and does not affect Vietnam's defence security. Hence, this investor can conduct procedures for establishing enterprises and cooperatives in Vietnam.

However, suppose the Law on Investment 2020 does not remove this condition for other reasons. In that case, this Law should amend the provisions on the ratio of foreign investors' contributed capital to the total charter capital to serve as a basis for forcing foreign-invested economic organisations to meet the same investment conditions and procedures as foreign investors, including the conditions on investment registration certificates. In particular, for provisions on investment in the establishment of economic organisations, priority should be

given to the provisions of the specialised law in each field. When the specialised law does not have provisions, the general provisions of the Law on Investment shall apply. In other words, it is necessary to clearly distinguish the legal validity between the general law ([Law on Investment 2020](#)) and specialised laws (Law on Enterprises, Law on Cooperatives, and other specialised laws. ([Le Nhu Quynh, 2020](#)) When there is no specialised law, the provisions of the general law shall apply. ([Law on Investment 2020](#)) Therefore, Clause 1, Article 23 of this Law should be amended in the following direction:

“1. Unless otherwise prescribed by the specialised law, when investing in the establishment of another economic organisation, a business organisation must satisfy the same conditions and follow the same investment procedures as foreign investors if:

- a) For a limited liability company, over 65% of its charter capital, or for a joint stock company, over 50% of votes is held by a foreign investor(s) or, in the case of a partnership, the majority of its general partners are foreigners;
- b) For a limited liability company, over 65% of its charter capital, or for a joint stock company, over 50% of votes is held by a business organisation (s) mentioned in Point A of this Clause
- c) For a limited liability company, over 65% of its charter capital, or for a joint stock company, over 50% of votes is held by a business organization(s) or a foreign investor(s) mentioned in Point a of this Clause.”

For cooperatives, according to the provisions of the Law on Cooperatives 2023, “*The meeting of the GMM shall be conducted when it is participated in by at least 50% of its total official members or total delegates appointed.*” ([Clause 7, Article 30 of the Law on Cooperatives 2023](#)) However, “*Total number of official members that are foreign-invested organisations and individuals being foreign investors must be less than 35% of total official members of a cooperative.*” With these two provisions, foreign investors in general and foreign-invested economic organisations cannot hold the right to govern in the cooperative. As a result, no matter how much capital foreign investors hold in a foreign-invested economic organisation, when this organisation participates in establishing a cooperative in Vietnam, it cannot dominate the operation of the cooperative. Therefore, the Law on Investment 2020 should not include the cooperative in the group of foreign-invested economic organisations, which are required to issue investment registration certificates when the investment cooperative establishes another economic organisation.

3. Regarding the authority to issue investment registration certificates

a. Shortcomings

Article 39 of the Law on Investment 2020 assigns 2 competent authorities to issue investment registration certificates. However, for investment projects executed in at least 02 provinces or inside and outside industrial parks, export processing zones, hi-tech zones, and economic zones, the determination of the authority of the investment registration authority is really unreasonable to create favorable conditions for investors.

Specifically, Points a and b, Clause 3, Article 39 above stipulate: for investment projects that are executed in at least 02 provinces and investment projects that are executed both inside and outside industrial parks, export processing zones, hi-tech zones, and economic zones, the Law on Investment assigns to the investment registration authority of the administrative division where the investor executes the investment project, places or intends to place the head office or operating office to execute the investment project shall issue investment registration certificates. This provision is quite general and difficult to apply. For instance, a foreign investor establishes a company in A Province and executes projects in A Province and B Province. Most projects are executed in A Province (while a few are implemented in B Province). However, the operating office is located in B Province due to favourable traffic and terrain conditions. Thus, if based on the provisions of the Law on Investment, the investor must approach and carry out investment registration procedures to be granted an Investment Registration Certificate at the investment registration authority of B Province (where a few projects are executed and it is expected to set up an operating office to execute projects) and then establish a company in province A (where the company's headquarters is located). In other words, in this case, the investment registration certificate will be issued by B Province, and A Province will issue the enterprise registration certificate to establish the company.

Similarly, for projects inside and outside industrial parks, export processing zones, high-tech zones, and economic zones, the Law on Investment 2020 also assigns the investment registration authority where the investor executes the investment project and places or intends to place the head office or operating office to implement the investment project. For example, projects are mostly implemented outside the industrial park, while the minority is executed outside the industrial park (the vast majority is implemented in the industrial park). However, in order to facilitate travel and operation, the operating office should be located outside the industrial park. Therefore, based on the applicable

provisions, the Department of Planning and Investment shall issue an Investment Registration Certificate. Meanwhile, the vast majority of project activities are carried out in industrial parks where the Management Board of industrial parks does not have the right to issue investment registration certificates.

In addition, Point c, Clause 3, Article 39 also stipulates granting investment registration certificates is under the authority of the investment registration authority where an investor executes the investment project, places or intends to place the head office or operating office to implement investment projects if *“an investment project is executed inside industrial parks, export processing zones, hi-tech zones, economic zones where its Management Board is not established or not under the management of its Management Board”* This provision is redundant because, according to the applicable law, only two authorities are entitled to investment registration certificate grants, including the Department of Planning and Investment and the Management Board of industrial parks, export processing zones, hi-tech zones, and economic zones. Therefore, if the investment project is implemented in the above-mentioned zones where its Management Board is not established or the project is not under the management of its Management Board, only the Department of Planning or Investment is entitled to issue an Investment Registration Certificate. In other words, in this case, it is not necessary to determine *“where the investor implements the investment project, places or plans to place the operating office to implement the investment project”* to determine which authority has the authority to issue the Investment Registration Certificate.

b. Recommendations for improvement

From the above inadequacies, for the form of investment in the establishment of economic organisations (including the establishment of enterprises and cooperatives), Clause 3, Article 39 of the Law on Investment 2020 should be supplemented as follows:

Firstly, suppose an investment in establishing an economic organisation has a project implemented in at least 02 provinces. In that case, the competent investment registration authority shall issue an investment registration certificate as the authority where the economic organisation is expected to be headquartered. This solution will create favourable conditions for investors and investment registration authorities or business registration authorities to carry out registration procedures and manage future investments and business activities of enterprises and cooperatives. This is because the head office is where

an investor must carry out business establishment procedures when establishing a business, a cooperative, etc. In other words, for an investment project to develop an economic organisation, the investment registration authority (issuing investment registration certificate) and the business registration authority (issuing business registration certificate, cooperative registration certificate, etc.) should be in the same province.

Secondly, for the establishment of economic organisations that have investment projects inside and outside industrial parks, export processing zones, hi-tech zones, and economic zones, investors are entitled to choose the investment registration authority, which is the Management Board of industrial parks, export processing zones, hi-tech zones, and economic zones or the Department of Planning and Investment to carry out the procedures for granting investment registration certificates. Investment projects inside industrial parks, export processing zones, hi-tech zones, or economic zones where the Management Board has not been established or is not under the management of its Management Board. The Department of Planning and Investment has the authority to issue investment registration certificates.

D. CONCLUSION

The provisions related to the Investment Registration Certificate applicable to foreign investors are stipulated in the Law on Investment 2020. In particular, cases where it is compulsory to carry out procedures for granting and the authority to grant investment registration certificates are still inadequate, unclear, or inconsistent and have multi-dimensional conflicts with the provisions of relevant laws. The fact that the Law on Investment and specialised laws have different provisions on investment conditions and procedures affects the effectiveness and feasibility of well-established provisions. However, this contradiction still exists, especially between the Law on Investment, the Law on Enterprises, and the Law on Cooperatives on Investment Registration Certificate, although the Law on Investment 2020 has stipulated the priority of applying the provisions of this Law to other relevant laws. Since the 2020 Enterprise Law was promulgated before the effective date of the Law on Investment 2020, the provisions of the Law on Investment 2020 apply in case of a difference between these two Laws. However, the Law on Cooperatives 2023 was promulgated after the Law on Investment 2020 effective date.

Hence, the Law on Cooperatives must specify whether applying these different provisions is under the Law on Cooperatives or the Law on Investment.

However, there is no related provision in the Law on Cooperatives 2023. Therefore, the Law on Cooperatives should be amended and supplemented to be consistent with the Law on Investment, especially the provisions related to the Investment Registration Certificate as analysed above. In addition, the Law on Investment 2020 also has inappropriate provisions, namely the criteria for determining foreign-invested economic organisations. They must meet the conditions and carry out the procedures as foreign investors, including the conditions and procedures for granting investment registration certificates. In addition, provisions on the authority to issue investment registration certificates have not created the best conditions for investors. Therefore, in addition to institutional and political solutions to attract domestic investment as well as from the experience of some countries. It is necessary to continue to improve specific provisions on investment conditions and procedures related to the Investment Registration Certificate. Specifically, the Law on Investment 2020, the 2020 Enterprise Law, and the 2023 Cooperative Law should be further amended and supplemented in a unified and reasonable manner. It is to create the best and most favourable legal corridor for investors when investing in establishing economic organisations in Vietnam.

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