

New law on environment protection in Vietnam

On 17 November 2020, the National Assembly passed a new law on environment protection (**Environment Protection Law 2020**) which will take effect from 1 January 2022 and replaces the old Environment Protection Law 2014. Below are some of notable new points of the Environment Protection Law 2020.

1. New detailed criteria for classification of projects

- Environment Protection Law 2020 provides several environment criteria to classify investment projects including (1) scale, capacity, and type of production, business or services; (2) the area of land use, of land with water surface and/or of sea area, the scale of exploitation of natural resources; and (3) sensitive environmental factors. Such criteria will help determine which project is subject to environment impact preliminary assessment (**EIPA**), environment impact assessment (**EIA**) and environment permit.
- Previously, the Environment Protection Law 2014 only provided general criteria such as projects subject to the decision on investment intentions made by the National Assembly, Government and the Prime Minister; or projects that use land parcels situated in wildlife sanctuaries, national parks, historical – cultural monuments, world heritage sites, biosphere reserves, scenic beauty areas that have been ranked; or projects that can cause adverse effects on the environment. Environment criteria under Environment Protection Law 2020 has specified and narrowed scope of projects subject to environment licenses and approvals.
- One new environment criterion under Environment Protection Law 2020 is the sensitive environmental factor. Such factors include, among others, concentrated residential areas, sources of water used for domestic water supply, natural conservation zones, the type of any forest, physical and cultural heritage and other natural heritage, land for wet rice cultivation of two or more crops; important wetlands; requirements on relocation and resettlement.
- Based on the environment criteria above, a project will be classified into one of four groups: project group with high risk of an adverse impact on the environment, or project group with risk of an adverse impact on the environment, or project group with minor risk of an adverse impact on the environment, or project group without risk of an adverse impact on the environment. A detailed list of investment projects in each group was attached in the draft decree of the Government guiding the Environment Protection Law 2020 (see [here](#)). The table below summarize environment criteria applicable to each group as well as the main environment requirements for each group under the Environment Protection Law 2020.

Group / Risk of an adverse impact on the environment	Type	Criteria on environment for classification of investment projects						Subject to EIPA	Subject to EIA	Subject to environment permit
		Production, business or services with a risk of causing environmental pollution	Scale and capacity	Use of land, water surface, sea	Exploitation of natural resources	Sensitive environmental factors	Others			
Group I / High	1	Yes	Large	N/A	N/A	N/A	N/A	Yes	Yes	Yes ⁽¹⁾
	2	Yes	Medium	N/A	N/A	Yes	N/A	Yes	Yes	Yes
	3	No	Large	N/A	N/A	Yes	N/A	Yes	Yes	Yes
	4	N/A	Large or medium	Yes	N/A	Yes	N/A	Yes	Yes	Yes
	5	N/A	Large or medium	N/A	Yes (mineral or water resources)	Yes	N/A	Yes	Yes	Yes
	6	N/A	Large or medium	Yes (conversion of land use purpose)	N/A	Yes	N/A	Yes	Yes	Yes
	7	N/A	N/A	N/A	N/A	Large scale relocation [migration] or resettlement	N/A	Yes	Yes	Yes
	8	N/A	N/A	N/A	N/A	N/A	Projects providing hazardous waste treatment services, or importing scrap from abroad for use as raw production materials	Yes	Yes	Yes
Group II / Medium	1	Yes	Medium	N/A	N/A	N/A	N/A	No	No	Yes
	2	Yes	Small	N/A	N/A	Yes	N/A	No	No	Yes
	3	No	Medium	N/A	N/A	Yes	N/A	No	No	Yes
	4	N/A	Medium or small	Yes	N/A	Yes	N/A	No	Yes	Yes
	5	N/A	Medium or small	N/A	Yes	Yes	N/A	No	Yes	Yes
	6	N/A	Small	Yes (conversion of land use purpose)	N/A	Yes	N/A	No	Yes	Yes

⁽¹⁾ Only investment projects of Group I, Group II and Group III which generate wastewater, dust and emissions discharged into the environment which must be treated, or which generate hazardous waste which must be managed in accordance with the regulations on waste management when [the projects are] put into official operation.

	7	N/A	N/A	N/A	N/A	Medium scale relocation [migration] or resettlement	N/A	No	Yes	Yes
Group III / Minor	1	Yes	Small	N/A	N/A	N/A	N/A	No	No	Yes
	2	No	N/A	N/A	N/A	N/A	Generating waste water, dust or exhaust gas which must be treated, or generating hazardous waste which must be managed in accordance with regulations on waste management	No	No	Yes
Group IV / Nil	1	N/A	N/A	N/A	N/A	N/A	N/A	No	No	No

2. New environment impact preliminary assessment (EIPA)

- This is a new concept under the Environment Protection Law 2020. The EIPA applies to Group I projects and must be conducted during the pre-feasibility study stage of the investment in construction, of the proposal for an investment policy decision or for approval of the investment policy.
- Unlike other provisions under the Environment Protection Law 2020 which will take effect from 1 January 2022, the provision on contents of EIPA has been effective from 1 February 2021 in consistence with effect of new amendments to construction law. That means, from 1 February 2021, investors need to conduct the EIPA for their proposed investment projects as required in the pre-feasibility study stage under construction law.
- Obtainment of approval of investment policy may be more difficult because the EIPA will be reviewed by the competent authority together the application for approval of pre-feasibility study or investment policy. Currently, the law is not clear on criteria for the competent authority to review and evaluate the EIPA, it seems that the authority may have discretion to decide whether the investor's EIPA is satisfied or not.

3. Amendment to environment impact assessment (EIA)

- All projects under Group I and types 4, 5, 6 and 7 of Group II (except urgent public investment projects) are subject to EIA.
- Under Environment Protection Law 2020, timing for making and submitting the EIA report for evaluation is clearer. In particular, the investor needs to make the EIA report at the same time of making feasibility study report or equivalent document, and the EIA report must be submitted to the competent authority for evaluation before the feasibility study report is concluded on evaluation.
- The approval of EIA report under old law is replaced by a decision approving the evaluation result of EIA report under the Environment Protection Law 2020 (the **Evaluation Approval Decision**).
- After obtaining the Evaluation Approval Decision, the investor must adjust and supplement the contents of the investment project and the EIA report to match the contents and requirements for environmental protection stated in the Evaluation Approval Decision. This approach may save time of the investor to obtain Evaluation Approval Decision as they may not need to amend the EIA report before issuance of the Evaluation Approval Decision. However, it will increase the responsibilities of the investor for ensuring the consistence between the Evaluation Approval Decision and other document of the project as such the EIA report.

4. New environment permit

- This is a new concept under the Environment Protection Law 2020. The environment permit is used for discharging waste into the environment, managing waste, importing

scrap from overseas as raw material for production. That means, the new environment permit covers several permits in relation to waste and import of scrap under old Environment Protection Law 2014 and other relevant laws such as permit for discharging wastewater into water sources under Law on water resources, permit for discharging wastewater to irrigation works under the Law on irrigation, permit for hazardous waste treatment, registration of owner of hazardous waste, etc. The investor can continue using permit issued under old laws until expiry date of the relevant permit or until the end of 5 years from the effective date of the Environment Protection Law 2020 if the permit has no time limit.

- The environment permit applies to (1) investment projects of Group I, Group II and Group III which generate wastewater, dust and emissions discharged into the environment which must be treated, or which generate hazardous waste which must be managed in accordance with the regulations on waste management when the projects are put into official operation, and (2) investment projects, establishments, concentrated production, business and service zones and industrial clusters operating before the effective date of this Environment Protect Law 2020 which have the same environmental criteria as discussed at (1) above.
- The environment permit will specify environment permit scope and requirements on environment protection. The environment permit will be valid for 7 to 10 years depending on the type of projects.

5. New environment registration

- This is also a new concept under the Environment Protection Law 2020. Investment projects or production, business and services establishments, which generate waste but are not subject to environment permit, must conduct the environment registration (unless otherwise exempted).
- The Environment Protection Law 2020 specifies and narrows entities required to carry out the environment registration to those generating waste. This is a different approach in comparison to registration of environment protection plan under Environment Protection Law 2014. The environment protection plan applies to projects which are generally not subject to EIA, are determined based on scale and capacity but not the level of waste generation of such project.
- For new projects invested after the effective date of the Environment Protection Law 2020, depending on the type of projects, the environment registration must be conducted before issuance of construction permit or discharge of waste into the environment or official operation.
- For production, business, services establishment operating before the effective date of the Environment Protection Law 2020, the environment registration must be conducted within 24 months from the effective date of the Environment Protection Law 2020.

6. **Environmental audit** – This concept has been mentioned in the Environment Protection Law 2014, however, until Environment Protection Law 2020, environmental audit is provided in detail under law. Environmental audit means the systematic and comprehensive consideration and assessment of the effectiveness of environmental management and pollution control by production, business and service establishments. Entities are encouraged to conduct self-environmental audit.

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