

# Legal Alert

March 2022

## New regulations on environmental protection

The Law on Environmental Protection 2020 ("**LEP 2020**") took effect from 1 January 2022. In order to implement LEP 2020, the Government and the Ministry of Natural Resources and Environment ("**MONRE**") have recently issued many guiding legal documents, the most important of which are Decree 06/2022/ND-CP on mitigation of greenhouse gas ("GHG") emission and protection of ozone layer, effective from 7 January 2022 ("**Decree 06**") and Decree 08/2022/ND-CP guiding LEP 2020, effective from 10 January 2022 ("**Decree 08**").

### 1. Notable changes in the new regulations on environmental protection

#### 1.1. **Changing the environmental criteria for classifying and monitoring investment projects: projects with high risk of adverse environmental impact are more strictly controlled, while environmental licensing procedures are reduced for lower risk projects**

Unlike the general criteria stipulated in the previous environment regulations to determine the applicable environmental requirements (such as environmental impact assessment, environmental protection plan), LEP 2020 and Decree 08 provide more detailed regulations. Investment projects are now classified into 04 groups, i.e. Group I, II, III and IV, with Group I being projects with the highest risk of adverse impact on the environment. The classification is based on the following factors:

- Scale, capacity and type of business;
- Areas of land, land with water surface and marine zones in use; scale of exploitation of natural resources; and
- Sensitive environmental factors (e.g., *projects in industries with high risk of causing environmental pollution and located in the urban area; projects discharging wastewater into water supply sources*).

The environmental requirements applicable to each group of investment projects are as follows:

| Group of investment projects / Risk level of adverse environmental impact | Environmental requirements                  |  |   |   |
|---|---|--|---|---|
|   | Preliminary environmental impact assessment | Environmental impact assessment                        | Environment Licence   | Environment Registration  |
| <b>Group I</b> – High risk  | <b>Yes</b>                                  | <b>Yes</b>   | <b>Yes</b> , if generating wastewater, dust, exhaust gas that must be monitored or hazardous waste that must be managed | <b>Yes</b> , if generating waste not subject to Environment Licence |
| <b>Group II</b> – Medium risk   | No  | <b>Yes</b> , if having sensitive environmental factors |   |   |
| <b>Group III</b> – Minor risk   | No  | No   |   |   |
| <b>Group IV</b> – No risk   | No  | No   | No  |   |

### **(a) Preliminary Environmental Impact Assessment ("PEIA")**

PEIA is a newly added procedure in LEP 2020 and is in line with the Law on Investment 2020.

PEIA is only applied to investment projects in Group I and must be performed when conducting a pre-feasibility study for investment in construction and/or for projects requiring investment policy approval.

### **(b) Environmental Impact Assessment ("EIA")**

- LEP 2020 clearly provides that investment projects in Group I and Group II having sensitive environmental factors are subject to EIA. According to MONRE, this provision will reduce by 20% the investment projects currently subject to EIA.
- Investors are required to prepare the EIA report simultaneously with the feasibility study report and submit the same to the competent authority for appraisal before the feasibility study report is approved.
- A highlighted change of LEP 2020 is that investors will be granted with the ***Approval on the appraisal results of the EIA report***, which will form the basis for issuing relevant investment approvals/decisions and Environment Licence. Then investors are responsible to make changes to the investment projects as well as the EIA report in accordance with the requirements stated in the ***Approval on the appraisal results of the EIA report***. This approach is considered to conform with international custom and will remove the additional step of having to revise and re-submit the EIA report before obtaining the ***Approval on the EIA report*** as prescribed in the former LEP 2014.
- Further, LEP 2020 abolishes the provisions on environmental protection commitment and environmental protection plan. The transitional provision of LEP 2020 stipulates that the results obtained by the investment projects before the effective date of LEP 2020 for the EIA report, environmental protection commitment and environmental protection plan, will be considered as equivalent to the ***Approval on the appraisal results of the EIA report*** for the purposes of the issuance of the Environment Licence.

### **(c) Environment Licence**

- This licence is introduced in LEP 2020 and will replace various environmental sub-licences/ requirements relating to waste discharge/management and the import of scrap from overseas issued under the previous regulations. Environment Licence will have a validity of 7 to 10 years, depending on the project group. This is a significant change and will reduce administrative procedures by approximately 40%.
- Investment projects that are required to obtain Environment Licence must obtain it (i) prior to trial operation of the waste treatment facilities for projects requiring an EIA, or (ii) for others prior to the investment approvals/decisions or construction permit being granted.
- Projects that have been put into operation will need to obtain Environment Licence within **36 months** from the effective date of LEP 2020. Projects granted with the approvals/sub-licenses under the former regulations, will be allowed to continue until expiry of the approvals/ sub-licences or until the end of 5 years from the effective date of LEP 2020 if such approvals/sub-licences have no expiry date.

### **(d) Environment Registration**

- This new requirement applies to projects/businesses that generate waste but are not subject to Environment Licence, except for those that only generate small quantities of waste that are treated by an on-site treatment facility or monitored according to local government regulations. The exception will narrow down the range of projects/businesses subject to the Environment Registration as opposed to the former regulations that required all projects not subject to the EIA requirement to have an Environment Protection Plan.
- Projects must conduct the Environment Registration procedure (i) before official operation commences if they are subject to EIA requirement, or (ii) otherwise before obtaining a construction permit or discharging waste into the environment. Businesses that commenced operation before 1 January 2022 must conduct the Environment Registration (if required) within **24 months** from the effective date of LEP 2020.

## **1.2. Fostering the Extended Producer Responsibility ("EPR") – Manufacturers and importers are responsible for waste treatment and recycling of products/packaging**

EPR is an environment policy extends the responsibility of the manufacturer of a product to the disposal stage of a product's life cycle. According to LEP 2020 and Decree 08, manufacturers and importers, must be responsible for waste treatment and recycling of products/packaging. However, manufacturers and importers of products/packaging for the export, temporary import for re-export, research, study, testing purposes; manufacturers with annual revenue of less than VND30 billion; and importers with annual import value of less than VND20 billion are exempted from this requirement.

### **(a) Waste treatment responsibility**

- **From 2022**, manufacturers and importers of products (*including: pesticides/insecticides containers, chewing gum, cigarettes, single-use products and products with synthetic resin ingredients*) are responsible for making financial contributions to the Vietnam Environmental Protection Fund (“**VEPF**”) to support waste treatment activities.
- The contribution rate is stipulated in Decree 08 according to the type of product, based on either per unit or calculated on 1% of production/import revenue. The rate will be increased every 5 years. Manufacturers and importers are required to self-declare to VEPF (prior to 31<sup>st</sup> March every year) the contribution amount, calculated based on the quantity of products/packaging manufactured/imported in the previous year; prior to transferring the contribution amount into VEPF’s bank account which will need to occur before 20<sup>th</sup> April and 20<sup>th</sup> October of the same year.

### **(b) Recycling responsibility**

- Manufacturers and importers of the applicable products/packaging for sale in the Vietnam’s market shall have recycling responsibility according to the below roadmap and rates:

| Products   | Recycling roadmap   | Mandatory recycling rates (*) |
|--|---------------------|-------------------------------|
| 1. Packaging ( <i>i.e., commercial packaging of food, cosmetics, drugs, fertilizers, animal feed, veterinary drugs, detergents, cement</i> ) | From 1 January 2024 | 10-22%                        |
| 2. Batteries   |                     | 8-12%                         |
| 3. Lubricants  |                     | 15%                           |
| 4. Tubes, tyres  |                     | 5%                            |
| 5. Electrical/electronic equipment   | From 1 January 2025 | 3-15%                         |
| 6. Means of transportation   | From 1 January 2027 | 0.5-1%                        |

(\*) This rate will apply for the first 3 years and then be increased every 3 years

- Manufacturers and importers can fulfill their recycling responsibility by:
  - recycling*, by either self-recycling (after satisfying environmental protection requirements) or subcontracting other licensed recycling entities. In this case, manufacturers and importers shall register recycling plan and report on recycling results to MONRE on annual basis;
  - making a financial contribution to the VEPF*. The amount that manufacturers and importers have to contribute is calculated based on (i) the quantity of products/packaging produced and imported in the year, (ii) the mandatory recycling rate of each type of product/packaging and (iii) a fixed recycling cost (Fs) which will be announced by the Government every 3 years.

To enforce EPR regulations, MONRE will:

- establish the **National EPR Council**, tasked with the duty of consulting, supervising and supporting the implementation of EPR in accordance with regulations. Members of the National EPR Council will comprise of representative(s) of MONRE, Ministry of Finance, Ministry of Industry and Trade, Ministry of Health, Ministry of Agriculture and Rural Development, manufacturers, importers, recycling and waste treatment entities, and relevant social and environmental organizations.
- establish and operate the **National EPR Portal**, and link it to the data from tax, customs, business registration and related databases to ensure the reporting and declaration by the manufacturers or importers in compliance with the regulations.

### **1.3. New measures on reducing GHG emission and developing the carbon market**

LEP 2020, Decree 06 and other relevant documents have introduced various new and powerful measures on reducing GHG emissions with the aim of developing a low-carbon economy towards green growth and sustainable development. It is a specific plan to implement the international commitments on combating climate change that Vietnam has joined.<sup>1</sup>

<sup>1</sup>According to the official letter No. 1982/VPCP-QHQT of the Prime Minister dated 24/7/2020, Vietnam’s Nationally Determined Contribution (NDC) on GHG emission reduction: With domestic resources, by 2030, Vietnam will reduce its total GHG emission by 9% compared to the business as usual scenario and increase its contribution up to 27% with international support through bilateral and multilateral cooperation and implementation new mechanisms under the Paris Agreement

### **(a) Reducing GHG emission**

Decree 06 stipulates that the following establishments are required to implement GHG emission reduction ("Compulsory GHG reduction establishments"):

- Establishments with annual GHG emission from 3,000 tons of CO<sub>2</sub> equivalent or more;
- Thermal power plants, industrial production facilities, cargo transport companies, commercial buildings with total annual energy/fuel consumption from 1,000 tons of oil equivalent (TOE) or more;
- Solid waste treatment facilities with annual operating capacity from 65,000 tons or more.
- This list of Compulsory GHG reduction establishments is detailed in **Decision No. 01/2022/QD-TTg** of the Prime Minister (including 1912 facilities) and will be updated every 2 years.

Compulsory GHG reduction establishments must reduce GHG emission in accordance with the following roadmap

- **From 2023:** Providing information for GHG inventory (i.e., calculation of GHG emission and absorption in a specific year) per the request of competent authorities;
- **From 2024:** Conducting GHG inventory and reporting the result to the Provincial People's Committee and MONRE every 2 years;
- **From 2026:** Mandatorily implementing GHG emission reduction measures (such as technology improvement, forest restoration, etc.) pursuant to the quotas allocated by MONRE.

During the period from 2022 to 2025, Compulsory GHG reduction establishments can (voluntarily) implement the GHG emission reduction measures according to its specific conditions. However, Decree 06 has not provided any incentive mechanism for establishments if they take measures to reduce GHG emission during this period.

### **(b) Developing carbon market**

A domestic carbon market will be organised and developed in line with the GHG emission reduction roadmap and divided into 2 phases:

- From 2022 to 2027: Developing a legal framework for operating and monitoring the carbon market with pilot operation of the carbon credit exchange from 2025.
- From 2028: Officially operating the carbon credit exchange, connecting the domestic carbon market with the global one.

MONRE will announce the guiding documents on transactions related to GHG quotas and carbon credits; the Ministry of Finance will formulate and establish a carbon credit exchange and issue a financial management mechanism for the operation of the carbon market.

## **1.4. Other notable new regulations**

### **(a) Environmental Audit**

LEP 2020 introduced environmental audit provisions to regulate internal audit activities conducted by business entities or independent auditors. The purpose of this activity is to strengthen the capacity for environmental management and pollution control of the business entities. More detailed guidance on environmental audit techniques will be issued by MONRE in the near future.

### **(b) Roadmap to cut down on the production and import of plastic products**

- From 1 January 2026, Vietnam will stop manufacturing and importing non-biodegradable plastic bags with dimension smaller than 50 cm x 50 cm and film thickness less than 50 µm (*except for those manufactured for export or manufactured/imported for packing the products to be sold to Vietnam market*).
- From 1 January 2031, Vietnam will stop manufacturing and importing single-use plastic products (*except for those certified with Vietnam's eco-label*), non-biodegradable plastic packaging and products, goods containing microplastics (*except for those manufactured to export or manufactured/imported for packing the products to be sold to Vietnam market*).

## 2. What actions should enterprises take to comply with the new regulations?

Below are some suggestions that enterprises may consider to ensure their compliance with the new regulations provided under LEP 2020 and its guiding documents:

- (i) study the provisions on environmental criteria to identify which group their investment project belongs to (I, II, III or IV) and environmental requirements applicable to the project;
- (ii) review the environmental licenses/approvals that have been granted (for example, relating to discharging waste into the environment, waste management, and import of scraps from overseas etc.), checking the validity and deadline to apply for the new Environment Licence. If the project/enterprise is not subject to Environment Licence, it is necessary to check whether it is now subject to the Environment Registration, in order to proceed with the applicable procedure within the prescribed timeline;
- (iii) If manufacturing and importing products subject to waste treatment responsibility (*i.e., packages of pesticides, chewing gum, tobacco, single-use products and products with synthetic resin ingredients*), enterprises shall declare and make financial contributions to VEFP from this year;
- (iv) If manufacturing and importing products subject to recycling responsibility (*i.e., packaging, batteries, lubricants, tubes, tires, electrical and electronic equipment, means of transportation*), enterprises need to study the applicable mandatory recycling rates and measures, develop a plan and budget to implement recycling or alternatively make financial contributions to the VEFP pursuant to the provided roadmap;
- (v) If falling into the list of Compulsory GHG reduction establishments, the enterprise needs to study and implement the regulations on GHG inventory and plan to reduce GHG emission according to the roadmap;
- (vi) keep updated with the new legal regulations on environment to grasp the guidance of MONRE and related competent authorities.

If you would like to find out more about new regulations on environment or have any legal questions relevant to your business, please do not hesitate to contact us for support.

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