

Vietnam: Major changes in the new Environmental Protection Law

In brief

The National Assembly of Vietnam, at its recent 10th meeting, has adopted the new Law on Environmental Protection ("**New Law**") following the proposal of the Ministry of Natural Resources and Environment of Vietnam (MONRE).¹ The New Law represents the most significant modernization of the environmental law regime of Vietnam since the first law on environmental protection in 1993. It will take effect on 1 January 2022 and will replace the current 2014 Law on Environmental Protection ("**Current Law**").

Key takeaways

Vietnam is moving in the direction of harmonizing its laws with international rules and practices. The New Law provided much more details for implementation, as opposed to simply providing overarching regulations and policies. New legal requirements and procedures were also introduced which businesses will be expected to familiarize themselves with, from waste management to environmental permits.

Compared to the Current Law, the New Law proposes, among other things, the following important legal changes:

- A new master license is proposed to replace a number of environmental permits ("**Environmental License**"), as well as a new procedure for environmental registration, with a goal on downsizing administrative procedures by 40%.
- A narrower range of projects (i.e., those that use large areas of land/water and produce adverse effects on the environment/landscape, as well as those that generate large quantities of waste) may be subject to an environmental impact assessment report (EIAR), but businesses will be subject to more responsibility to supplement, complete and comply with the environmental requirements of their EIARs.
- A wider range of wastes and environmentally harmful products/goods may be subject to environmental protection taxes as opposed to current regulations; this is likely to include some categories of industrial wastewater. Businesses will additionally be subject to recycling or monetary compensation obligations with regard to certain products and packaging.
- The first introduction of a concrete policy on an emissions trading system and carbon tax. In theory, businesses would be allocated their own emissions quota that can be sold, gifted or transferred on a market-based trading system.

In depth

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The Environmental License and environmental registration

Environmental License

As a major change to the regulatory regime, the New Law would replace different types of environmental and waste discharge permits and incorporate their respective contents into a single and consolidated Environmental License. Under the Current Law and other relevant laws, there are different types of environmental permits, including the plan for environmental protection, certificate of completion of environmental protection works, wastewater discharge permits, certificate of eligibility for environmental protection for importing waste materials, hazardous waste treatment license, registration for the owner of hazardous waste sources, and industrial gas emission permit. These permits may be applicable to a single project under separate procedures¹ with multiple state agencies without an effectively connected or coordinated process of handling these procedures. The proposed change of the New Law is aimed at streamlining these requirements.

Currently, low-risk projects that are not subject to the requirement for an EIAR must obtain a certificate for an environmental protection plan (EPP). However, the New Law replaces this procedure with either an Environmental License or environmental registration (as discussed further below).

Under the New Law, the new Environmental License must be obtained before the relevant project achieves its commercial operation or, in case the relevant project has already been in operation, within a period of 36 months from the effective date of the new Law on Environmental Protection (i.e., 1 January 2022).

An exception to this is when such project had previously already been granted with the permits and licenses that would make up the Environmental License. The New Law provides that any existing environmental permits and licenses would continue to be effective until its expiry date or for a period of five years from the effective date of the new Law on Environmental Protection (in case there is no expiry date under the existing permit).

Under the New Law, an Environmental License has a maximum term of 10 years, which can be renewed. However, for projects with high-risk of impacting the environment – the so-called Class I projects (as discussed further below), the life of the Environmental License would be shortened to seven (7) years.

Environmental registration

Together with the concept of the Environmental License, the New Law introduces the concept of “environmental registration.” This is defined as a procedure to register with the commune-level People’s Committee certain information of the project, such as: the material/chemical employed during manufacturing; the volume of wastes; measures to treat and collect such wastes and other environmental commitments.

Environmental registration would be required for projects that generate wastes which do not reach the level by which an Environmental License is required (including projects that achieved operation before the effective date of the New Law). Projects that are producing no wastes or low levels of wastes that are treated on-the-spot will **not** be subject to environmental registration requirements. If applicable, this registration procedure must be completed within a period of 24 months from the effective date of the New Law.

Under the New Law, environmental registration is also required for new projects that: (i) generate wastes but not at the level where an Environmental License must be obtained; and (ii) are subject to the EIAR. This registration must be done before the relevant individual or organization may put their project into operation.

Amendments to environment impact assessment

¹ These are laid out in several laws, including the Current Law, the Law on Water Resource (2012) No. 17/2012/QH13 and the Law on Irrigation (2017) No. 08/2017/QH14.

Classification of projects subject to the EIAR

Similar to the Current Law, to determine the environmental requirements applicable to a business, the New Law would classify investment projects based on the following criteria:

- (i) their size and production capacity;
- (ii) their demand for land and sea area as well as the extent of resources usage.

However, the New Law also introduced a new criteria: the so-called “environmental sensitiveness” of a project. The term is not yet extensively explained in the New Law, but includes things such as the project’s impact in relation to an urban area, a conservation area, forest areas, cultural and natural heritage, agricultural lands, as well as the project’s requirement to relocate existing households.

From the above three broad criteria, projects will be officially classified under Class I, Class II, Class III and IV. Class I is considered the highest environmental risk.

Accordingly, only Class I and certain types of Class II projects would be required to obtain the EIAR approval, as summarized below:

Is the project within the list of projects with environmental risk?	Scale and capacity	Environmental sensitiveness?	Does the project demand land/sea area?	Does the project change land zoning?	Does the project require relocation and resettlement?
Yes	Large	No	N/A	N/A	N/A
Yes	Medium	Yes	N/A	N/A	N/A
No	Large	Yes	N/A	N/A	N/A
N/A	N/A	No	Yes (large or medium scale)	N/A	N/A
		Yes	Yes (medium or small scale)		
N/A	N/A	Yes	N/A	Yes (at all scales)	N/A
N/A	N/A	N/A	N/A	N/A	Yes (medium to large scale)

Given the vagueness of the above criteria, there will be subsequent decree or circular to add clarifications to the new classification system. In any case, the policy discussions leading up to the passing of the New Law suggested that the aim was to potentially reduce the range of projects subject to the EIAR.

Specific requirements and a new approach for the EIAR

In replacement of the standard EIAR approval, the New Law proposes that the relevant investors obtain an "Approval of the EIAR Evaluation Results," which forms the basis for issuing the relevant investment approvals and Environmental Licenses. The investor would then be expected to make changes to its investment project and the EIAR by itself on the basis of the "Approval of the EIAR Evaluation Results."

This differs from the Current Law's approach, which prevents the investor from obtaining the requisite EIAR approval unless every single amendment stipulated by the relevant evaluating authorities have been incorporated into the EIAR. The New Law's approach would place more responsibilities on the investor to supplement and comply with the contents of its EIAR.

In addition, during the preparation of an EIAR, the New Law requires the investor to consult with the relevant authorities and the communities affected by their project to obtain their opinions. Unlike the Current Law's regulations (which contains little guidance), the New Law states that the consulted entities must respond to the investor within the “prescribed time limit.” The exact number may be specified in a subsequent decree. However, an issue in the Current Law is left unaddressed, namely, businesses may have to carry out multiple consultations because, under the Construction Law, they already have to obtain the opinions of the relevant communities and authorities when preparing their construction master plans.

Certain procedures that were previously elaborated on in the Current Law's guiding decrees have now been proposed to be detailed in the New Law, including the official approval of the EIAR and a trial run of the waste treatment works.

Preliminary environmental impact assessment and the EIAR

Currently, the (2020) Investment Law requires a "preliminary environmental assessment" for projects that are

subject to investment policy approval. However, the Current Law does not specifically mention this procedure. The New Law now provides a clear provision for these two procedures.

Specifically, only “Class I” projects (i.e., projects with the highest environmental risk) would be subject to the “preliminary environmental assessment.”

This procedure would be conducted concurrently with investment policy approval procedures for the project under the relevant investment laws. The range of projects subject to the “preliminary environmental assessment” requirement is significantly narrowed under the New Law.

Economic tools and market mechanisms

Environmental taxes

Currently, the Environmental Protection Tax Law requires producers or importers of limited categories of commodities to pay a direct tax upon the sale or import of every unit of such commodities. These categories include: (1) gasoline, oil and lubricants; (2) coal; (3) HCFC gas; (4) plastic bags; (5) herbicides; (6) termiticides; (7) forest products preservatives; (8) and sterilizers.

The New Law imposes such tax on products and goods that are harmful to the environment through usage. The rate of tax would depend on the potential environmental impact of such goods or products.

No further guidance has yet been provided on this, but the MONRE will work with the Ministry of Finance to publish the list of goods and products subject to environmental protection taxes. It is expected that the environmental taxes would apply to a wider range of goods and products.

Recycling and compensation obligations

The New Law on one hand suggests the utilization of one available manufacturing process for the purpose of recycling, treating or recovering energy from waste in which waste is used as alternative raw material and fuel or is processed (waste co-processing). On the other hand, it imposes the obligation on businesses that make or import products or packaging with “recyclable value” to recycle them in accordance with the “required proportion and methods.” Exceptions include products or packaging which are: (i) exported; (ii) temporarily imported; or (iii) are imported for research and study purposes. There will likely be more guidance on the type of products and packaging subject to this recycling requirement, as well as on how to carry this out.

That said, the relevant business can choose to perform the recycling itself or contribute funding into the Vietnam Environment Protection Fund.

- If the relevant business chooses to recycle by itself, it must register a “Recycling Plan” and report annually to the Ministry of Natural Resources and Environment (MONRE).
- If it chooses to contribute funding, the amount of contribution will be determined based on the volume of products/packages or per unit.

However, if the products/package is toxic and cannot be easily recycled, the relevant business *must* contribute funding to collect, transport and treat such wastes. Exceptions include products or packaging which are: (i) exported; (ii) temporarily imported; or (iii) are imported for research and study purposes. Once again, the Vietnam Environment Protection Fund will receive the money, which is calculated per volume or per unit basis.

Reducing emissions: A new carbon market

In line with international trends, the New Law introduces new requirements on businesses discharging greenhouse gas (GHG) emissions. Every two years, the Prime Minister and the MONRE will promulgate a list of businesses that must perform the below requirements:

- prepare and maintain a database of GHG and send a report on GHG regarding this database every two years to the MONRE;
- prepare and implement an annual GHG reduction plan and report on the reduction of GHG to the MONRE as well as other relevant authorities.

Accordingly, the above businesses as well as other GHG emitters can only discharge GHG within the distributed emission limit. They can only exceed this limit by participating in the carbon market. The New Law states that businesses that wish to reduce or are unable to use up their emission quotas in Vietnam are able to sell, transfer, bid or lend their GHG quotas or carbon credit in the domestic market or international market. The MONRE would be in charge of approving a periodic and annual GHG emissions limit for Vietnam and distribute emission quotas (which would be detailed in the Environmental License) to the relevant GHG emitters.

This is a new initiative that requires significant investment and planning works going forward. Consequently, regulations that are more detailed would be expected to be published regarding the new system of domestic and international emissions trading, as well as a new system of carbon pricing.

Conclusion: More to come

The New Law's proposed changes aim to bring Vietnam closer to implementing the relevant international conventions and practices. The relevant international conventions and practices — previously mentioned in the Current Law's guiding decrees or circulars — would now be incorporated into the New Law.

Looking at the New Law from a larger perspective, it would build upon the "sustainable development" policy with procedures and actions that are more concrete, including the Environmental License, GHG quota and trading. Taking into account international trends, other measures and concepts have also been proposed and detailed under the New Law to implement sustainable development. In particular:

- Measures such as "eco-labeling" or "green credit," certifying environmental-friendly products, services or investment projects, would be actively promoted and organized for implementation by the relevant authorities.
- "Eco-diversity," which was governed separately in the 2008 Law on Eco-diversity, would now receive direct treatment in the New Law, which requires the authorities to actively monitor eco-diversity. Most noticeably, investors will have to assess and propose compensatory plans for the loss of eco-system diversity caused by the project within the EIAR (if applicable).
- "Natural heritage" preservation was previously provided under the 2001 Cultural Heritage Law. It has now been proposed to be officially recognized as an environmental concern. Most noticeably, businesses are expressly required to assess the impact on the natural heritage in preparing the EIAR for their projects.

In addition to the matters discussed above, the New Law proposes amendments and introduces new regulations in a number of other areas, such as the following:

- the management of domestic and ordinary industrial solid wastes (i.e., collection, transport, treatment and environmental restoration);
- reduction of plastic wastes; prevention and control of ocean plastic waste pollution;
- liberalization and incentives for environmental goods and services (e.g., waste management, pollution treatment, environmentally friendly technologies and environmental consultancy).

Following the promulgation of the New Law, on 12 March 2021, the Prime Minister issued Decision No. 343/QĐ-TTg outlining the next steps for further guidelines of the New Law. The first priority is the decree guiding the New Law, the draft of which is currently planned to be submitted for review and issuance by September 2021. Discussions are already underway. In the future, no less than 13 decrees and circulars will be issued by the MONRE and other government branches to further dissect the New Law.