

# **Amendment of the Environmental Protection Law in Vietnam with a focus on Enhancement of the Environmental Impact Assessment System**

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## *Abstract*

*In Vietnam, environmental impact assessment (EIA) is considered as a legal tool to contribute to protecting the environment. EIA was stipulated in the first Law on Environmental Protection (LEP) in 1993 and has remained and been improved in the LEP in 2005 and 2014. Until now, a number of EIA reports have been approved by the competent authorities. The Ministry of Natural Resources and Environment (MoNRE) in its statutory power has appraised and approved more than 1,200 EIA reports and plans for environmental rehabilitation and restoration from 2015 to 2019.<sup>1</sup> MoNRE's EIA approval provides the basis for approval of investment projects. However, although the LEP 2014 was amended and supplemented to meet the requirement of socio-economic development and environmental protection, but it still had some limitations such as continuous EIA together with the life cycle of the investment projects; ineffective consultation of stakeholders to develop the EIAs; inappropriateness of EIA provisions between LEP and other relevant laws, etc. LEP 2020 was adopted not only to solve these obstacles, but also had a big chance to improve the EIA system. This article focuses on some essential amendments of LEP 2020 in the context of enhancement of the EIA system to protect the environment more effectively.*

In Vietnam, environmental impact assessment (EIA) is an important legal tool for reviewing and forecasting environmental impacts of potential investment projects. This is an indispensable requirement to provide scientific evidence for governmental authorities for subsequent approval of investment projects. EIA was firstly regulated in the Law on Environmental Protection (LEP) in 1993<sup>2</sup> and remained in LEP in 2005 and in 2014 with some improvement in both scope and content. In LEP 1993, EIA was regulated in two articles with general regulations only on EIA. Three types of EIA were stipulated in LEP 2005, which were strategic environmental assessment, EIA and environmental protection commitment. Beside the improvement of the EIA content, the environmental protection commitment was replaced by environmental protection planning in LEP 2014. Until now, EIA regulations have contributed to prevent environmental damage in Vietnam. However, EIA regulations in these laws still faced some obstacles, which limited the effectiveness

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<sup>1</sup> Report No. 37 / BC-TNMT of the Minister of Natural Resources and Environment dated April 5, 2020 promulgating the Report on 5-year implementation of the Law on Environmental Protection 2014.

<sup>2</sup> This Law was approved by the IXth National Assembly of the Socialist Republic of Vietnam at its fourth session dated on 27th December, 1993.

of environmental management. In 2020, the Vietnam National Assembly approved the LEP<sup>3</sup> to replace the LEP 2014, which is a milestone to enhance the EIA system in Vietnam with some essential improvements as follows.

*First*, there are big changes in the lifecycle of the EIA reports. From the beginning, EIA was considered as a forecasting tool to protect the environment through evaluation of the impacts of investment projects or activities causing potential negative impacts to the environment as well as solutions attached to reduce their influence.<sup>4</sup> The content of EIA report regulated in LEP 2014 provided for the legal foundation to control the operation of production and business of organizations or individuals, after being approved by the competent authorities. It means that the EIA reports are contemporaneous with the project duration. Concretely, LEP 2014 provided that project owners, after being granted approval of the EIA report, must comply with all the measures specified in their EIA reports.<sup>5</sup> In other words, the approved EIA reports provide the basis for subsequent inspection and examination and the basis for the project owner to organize implementation of environmental protection measures during the project operation as specified in the EIA report.<sup>6</sup> Violation of the content of these EIA reports is punished according to the Law on Administrative Violation Handling or Criminal Law or civil liability compensation based on the Civil Code. The implementation of these regulations, however, revealed some limitations because it was difficult for EIA to foresee all of the real activities after operations commenced, including their potential negative impacts. To deal with this issue, LEP 2020 stipulates the correct role of the EIA tool in the project building period. When projects are put into operation, the EIA report has been replaced by an environmental license, or environmental registration. The approved EIA reports are also provided as the foundation for other permissions or environmental permissions. Specifically, the decision on approval of the EIA appraisal result serves as the basis for a competent authority to perform subsequent tasks such as (i) issuing and adjusting the mineral mining license for mining projects; (ii) approving oil and gas exploration and field development plan for oil and gas exploration and extraction projects; (iii) approving feasibility study reports for public-private partnership investment projects; and (iv) issuing environmental licenses, etc.<sup>7</sup>

*Second*, for the first time LEP 2020 provides detailed criteria to sort types of investment projects serving for identifying an investment project which must prepare an EIA report

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<sup>3</sup> Law on Environmental Protection was approved by the XIV National Assembly of the Socialist Republic of Vietnam at its 10th session on November 17, 2020, which takes effect on January 1, 2022.

<sup>4</sup> LEP in 1993, Art.2 (11).

<sup>5</sup> LEP in 2014, Art.26 (1).

<sup>6</sup> <http://www.monre.gov.vn/Pages/mot-so-bat-cap-trong-danh-gia-tac-dong-moi-truong-hien-nay.aspx>

<sup>7</sup> LEP in 2020, Art.36 (1).

or not. In LEP 2020, the criteria for investment project classification are based on three main elements including: (i) scale, capacity and type of production, business and service; (ii) area of land, land with water surface, and sea used; scale of extraction of natural resources; and (iii) sensitive environmental factors including high density residential areas; water source used for supply of domestic water; wildlife sanctuaries prescribed by the law on biodiversity and fisheries; types of forests prescribed by the law on forestry; other tangible cultural heritage and natural heritage sites; land meant for growing wet rice during two or more cropping seasons; important wetlands; migration and relocation requirements; and other environmentally sensitive factors.<sup>8</sup> Accordingly, investment projects are classified into four Groups: I - high risk of adverse impacts on the environment, II - risk adverse impacts on the environment, III - low risk, and IV - no risk of adverse impacts on the environment.<sup>9</sup> Based on these Groups, two types of EIA are identified, which are preliminary environmental impact assessment (PEIA) and EIA.

Only investment projects with a high risk of adverse environmental impacts (Group I) must formulate a PEIA. This regulation aims to overcome the limitations and shortcomings of the current law to reduce administrative procedures for many investors in order to save time and money. Other projects which do not belong to Group I do not have to make a PEIA. Almost all investment projects belonging to Group II and all investment projects under Group I are subject to EIA requirements while Group III and IV are not under any EIA obligations. This is a new point in comparison with the LEP in 2014 or 2005 which regulated that investment projects that are not identified as projects that require an EIA are subject to a requirement for formulation of an environmental protection plan or provision of environmental protection plan respectively.<sup>10</sup> These regulations avoid abuse of the application of EIA for all kinds of investment projects which have no or low risk of adverse environmental impacts as regulations in LEP 2014 or LEP 2005 required.

*Third*, LEP 2020 introduces the PEIA as one kind of EIA. It is the first time that PEIA has been regulated in the LEP to ensure consistency with other laws as well as to enhance the preventive measures to protect the environment. Before LEP 2020 was approved, three other laws included PEIA. The Investment Law<sup>11</sup> and Law on Public–Private Partnership Investment in 2020<sup>12</sup> stipulate that "preliminary environmental impact assessment" is part

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<sup>8</sup> LEP in 2020. Art.28 (1).

<sup>9</sup> LEP in 2020. Art.28 (2,3,4,5,6).

<sup>10</sup> LEP in 2014, Art. 29 (1) and LEP in 2005, Art. 24.

<sup>11</sup> The Investment Law was approved by the XIV National Assembly of the Socialist Republic of Vietnam at its 9th Session on June 17, 2020.

<sup>12</sup> This Law was approved by the XIV National Assembly of the Socialist Republic of Vietnam at its 9th Session on June 18, 2020.

of the content of the application on investment project proposals, which comply with the provisions of the law on environmental protection,<sup>13</sup> although LEP 2014 had not included this regulation yet. Furthermore, according to the provisions of the Law on Public Investment in 2019,<sup>14</sup> PEIA is part of the content of the report for application of the investment project proposal.<sup>15</sup>

As for the regulation that all public investment project proposals must have a PEIA, in fact there are many small-scale projects that only purchase assets, equipment, and media activities, which also have to develop a PEIA, although it is not really necessary.<sup>16</sup> In reality, only large-scale investment projects with a high potential risk of environmental damage should be required to conduct PEIA as an environmental management tool to screen investment projects in the process of considering and approving investment policies. For these reasons, it was necessary to complement PEIA in LEP 2020. At the same time, LEP 2020 replaces relevant regulations in the Law on Public Investment for synchronizing the overall legal system in the different implementation clauses.<sup>17</sup>

*Fourth*, LEP 2020 provides for effective consultation of stakeholders in the development of EIA reports. The role of residential communities in consultation to develop the EIA report are enhanced in the process of EIA development. In LEP 2014, the consultation of residential communities and organizations concerning to formulate the EIA report was stipulated, but it was a general provision.<sup>18</sup> To ensure the real consultation of residential communities and individuals under direct impact of the proposed investment project and agencies and organizations directly related to the investment projects, the responsibility of the project owner to consult with the residential community is regulated in detail in the process of development of the EIA report in LEP 2020. LEP 2020 stipulates subjects to be consulted, main contents of consultation, and forms of consultation in the EIA development process.<sup>19</sup> In addition, the investment project owner is advised to consult various experts during the EIA development.<sup>20</sup> This is a new regulation to encourage the advice of experts to formulate higher quality EIA reports.

The consultation result is important for the investment project owner to work out solutions for minimizing environmental impacts and to complete the EIA report. For this reason,

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<sup>13</sup> Investment Law in 2020, Art.33 and Law on Public – Private Partnership Investment in 2020, Art. 14 (3d).

<sup>14</sup> The Law on Public Investment is approved by the XIV National Assembly of the Socialist Republic of Vietnam at its 7th Session on June 13, 2019.

<sup>15</sup> Law Public Investment in 2019, Art.30 (2g), Art.31 (6).

<sup>16</sup> <http://www.monre.gov.vn/Pages/sua-doi-luat-bao-ve-moi-truong-dau-la-diem-moi-trong-danh-gia-tac-dong-moi-truong.aspx>

<sup>17</sup> LEP in 2020, Art. 169 (3).

<sup>18</sup> LEP in 2014, Art.21 (2).

<sup>19</sup> LEP in 2020, Art.33 (1,2,3,4).

<sup>20</sup> LEP in 2020, Art. 33 (2a).

the Law also regulates the responsibilities of owners in relation to the consultation result. The consultation result must be processed and fully and truthfully present comments and propositions made by consultees and entities interested in the investment project (if any).<sup>21</sup> If the comments or propositions are objections, the investment project owner is required to provide a clear explanation.<sup>22</sup> The investment project owner must take legal responsibility for the consultation contents and results specified in the EIA report.<sup>23</sup>

*Fifth*, the information related to the EIAs is regulated to become more transparent. During the process of EIA development to enable consultation with the public, the draft EIA report must be published on websites to collect comments.<sup>24</sup> After obtaining the decision on approval of the EIA, the appraisal result (except for information classified as state or enterprise secrets), the investment project owners must provide the environmental information to the environmental protection authority through the environmental information system and database or submit reports as prescribed by law.<sup>25</sup> Furthermore, for the first time, publishing the list of EIA report appraisal boards has been regulated to encourage the responsibilities of the members of appraisal boards as well as supervising by the public.<sup>26</sup>

*Sixth*, the power of appraisal and approval of EIA has been assigned in a more suitable way. Besides MoNRE, LEP 2014 also authorizes other ministries to appraise EIA reports for projects under their management sectors. The current decentralization leads to a lack of independence in the appraisal process because it is difficult for ministries to contradict projects that they have included themselves in development planning.<sup>27</sup> LEP 2020 has strongly decentralized to localities to appraise EIA reports and removed the power of some ministries. In LEP 2014, ministries and ministerial agencies except MoNRE shall be responsible for appraising the EIA report in respect of investment projects that shall be permitted under their decision and approval.<sup>28</sup> As a result, many ministerial agencies became involved in the management of EIA as well as limitations of local authorities in carrying out this assignment.<sup>29</sup> To improve this issue, Provincial People's Committees are assigned to organize appraisal of EIAs for investment projects within their provinces, which includes investment projects under the decision and approval of ministries and ministerial agencies except investment projects under the power of appraisal of MoNRE

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<sup>21</sup> LEP in 2020, Art.33 (5).

<sup>22</sup> LEP in 2020, Art.33 (5).

<sup>23</sup> LEP in 2020, Art.33 (5).

<sup>24</sup> LEP in 2020, Art.33 (4).

<sup>25</sup> LEP in 2020, Art. 37 (5) and Art.114 (3c).

<sup>26</sup> LEP in 2020, Art.34 (11).

<sup>27</sup> <https://vinacee.com/nhung-bat-cap-trong-danh-gia-tac-dong-moi-truong-tai-viet-nam>

<sup>28</sup> LEP in 2014, Art.23 (2).

<sup>29</sup> Minh Tuyen Pham, Legal framework for environmental impact assessment in Vietnam: the challenges between the regulations and practice. E3S Web of Conferences 164, 11008 (2020); available at: <https://doi.org/10.1051/e3sconf/202016411008>.

and the Ministry of National Defense and Ministry of Public Security.<sup>30</sup> In addition, Ministries and ministerial agencies are responsible for coordinating with the People's Committees of provinces to evaluate the EIA reports on investment projects within their competence.<sup>31</sup> These regulations ensure unified management in the locality, facilitate the inspection, supervision, and licensing in the future and in accordance with the decentralization trend for the local authorities.<sup>32</sup>

In conclusion, together with Vietnam's economic development growth, increased pollution is threatening the environment and affecting human health as well as sustainable development. The LEP 2020 was issued to go step by step in the progress of improvement to prevent, reduce and control the adverse impacts of production and business activities to the environment. The EIA system has been enhanced to satisfy the demand of the state management agencies to ensure both economic development and environmental protection. LEP 2020 has entailed a comprehensive improvement to limit the obstacles, which were identified during implementation of EIA provisions in LEP 2014, such as supplement of PEIA, identifying criteria to create a basis for categorizing investment projects serving for identify, etc. To achieve the aim of state management agencies to effectively protect the environment, the EIA regulations in LEP 2020 shall be guided and effectively implemented.

## References

1. Minh Tuyen Pham, Legal framework for environmental impact assessment in Vietnam: the challenges between the regulations and practice. E3S Web of Conferences 164, 11008 (2020);
2. MONRE, Report No. 37 / BC-TNMT of the Minister of Natural Resources and Environment dated April 5, 2020 promulgating the Report on 5-year implementation of the Law on Environmental Protection 2014.
3. MONRE, "Một số bất cập trong đánh giá tác động môi trường hiện nay" (Some Shortcomings in the Current Environmental Impact Assessment), available at: <http://www.monre.gov.vn/Pages/mot-so-bat-cap-trong-danh-gia-tac-dong-moi-truong-hien-nay.aspx>
4. "Sửa đổi Luật Bảo vệ môi trường: Đây là điểm mới trong đánh giá tác động môi trường?" (Amending Law on Environmental Protection: What is new in environmental impact assessment?), available at: <http://www.monre.gov.vn/Pages/sua-doi-luat-bao-ve-moi-truong-dau-la-diem-moi-trong-danh-gia-tac-dong-moi-truong.aspx>
5. Vietnam Environmental Administration, "Những điểm mới mang tính đột phá của Luật Bảo vệ môi trường 2020" (New breakthroughs of the Law on Environmental Protection in 2020), available at: <http://cem.gov.vn/tin-tuc-moi-truong/nhung-diem-moi-mang-tinh-dot-pha-cua-luat-bao-ve-moi-truong-2020>
6. <https://vinacee.com/nhung-bat-cap-trong-danh-gia-tac-dong-moi-truong-tai-viet-nam>

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<sup>30</sup> LEP in 2020, Art.35 (3).

<sup>31</sup> LEP in 2020, Art. 35 (3).

<sup>32</sup> <http://cem.gov.vn/tin-tuc-moi-truong/nhung-diem-moi-mang-tinh-dot-pha-cua-luat-bao-ve-moi-truong-2020>