

NEW POINTS OF LAW ON INVESTMENT 2020



Mr. PHAM TUAN ANH

Deputy head of Foreign Economic Relations
Division of Ho Chi Minh City Department of
Planning and Investment (DPI)

LAW ON INVESTMENT 2020 AND GUIDING DOCUMENTS

LAW ON INVESTMENT NO. 61/2020/QH14

- Passed: 17/6/2020
- Come into effect: 01/01/2021 (Articles on ĐTM áp dụng từ 01/9/2020)
- Dec và Thông tư: đang xây dựng, dự kiến có hiệu lực 01/01/2021.

LAW ON INVESTMENT AND GUIDING DOCUMENTS

AMEND DIRECTLY:

- Law on Housing: bank guarantee, investor identification, does not require only residential land.
- Law on Real Estate Trading of Vietnam: equity 20 billions, transfer projects under the Investment Law.
- Law on Environmental Protection: when advocating or issuing an IRC, only preliminary assessment is required.
- Law on Enterprise Income Tax: special offers (1.5 times the tax rate and 15 years period, exempted for up to 6 years, reduced 13 years).
- Amend a number of other laws to deactivate business investment conditions

Fundamental changes

1. The application of Law (Article 4)
2. Conditional Business lines (Articles 6, 7, 8)
3. Incentives in investment (Articles 13, 15, 16, 17, 18 20)
4. Amend regulations relating to procedures to foreign investors (Articles 9, 22, 23, 24, 26)
5. Forms of investment supports (21-28)
6. Investment Policies (29, 31, 32, 33, 34, 35, 36)
7. Procedures for insurance of IRC (37, 38, 39, 40)
8. Adjustment of investment project (41)
9. Deploying (41-50)
10. Others

1. Application of Law

1. Scpoe of application priority:

Lines of business, procedures, investment guarantee

2. Procedural exception applies:

- State capital in an enterprise;
- Public investment, PPP investment;
- Deploy construction projects, houses, urban;
- Credit institutions; insurance, oil and gas business.

2. CONDITIONAL BUSINESS LINES

1. Prohibit: firecrackers, debt collection
2. Legalize some conditional industry regulations (definition, form ...)
3. Modify and supplement the conditional business lines.

3. INCENTIVES IN INVESTMENT

1. Criteria: disburse 6,000 billion in 3 years and revenue 10,000 billion after 3 years or 3,000 employees.
2. Using the disabilities
3. Incentives for creative startups, supply chains
4. Not applicable for commercial housing construction;
5. Additional special incentives:
 - R&D 3000 billions (disbursed 1000 billion in 3 years),
 - National Center for Innovation
 - 30,000 billion in 3 years
 - Level: exempted from 6, reduced 50% in 13 years (exempted from 4, reduced 9), the rate was 1.5 times.

1. Definition "Market access conditions"
2. Opt-out: if not specified, the same as in the country..
3. Announce the List of industries and trades that limit market access for foreign investors
4. Eliminate IRC: setting up a small and medium-sized creative start-up business and a creative startup investment fund in accordance with the law on SME support.
5. Rate: 51% -> 50%
6. Additional conditions for M&A: defense, security; land in islands, communes, wards, border towns, coastal communes, wards or towns.
7. In case of registration: buy an enterprise using sensitive land.

4. FOREIGN INVESTMENT



6. INVESTMENT POLICIES

1. **Sequence:** Policy -> Auction, bidding, investor approval.
2. **Approve investors when:**
 - Having land use rights, except for land acquisition (Article 62)
 - Receiving transfer, capital contribution, or lease of agricultural land use rights for implementation of investment projects for non-agricultural production and business other than those in the case of land expropriation by the State in accordance with the law on land;
 - Investment projects in industrial parks and high-tech zones;
 - Not subject to auction, bidding as prescribed by law.

6. INVESTMENT POLICIES (Con)

1. Prime Minister

Drop 5000 billion; video games with prizes; airports of 1 million tons or more, seaports of class I 2,300 billion.

Combine the policy under the Housing Law (50ha or more, under 50ha over 15,000 people in urban areas, over 100ha or more or over 10,000 people in rural areas, relic protection project).

Projects of 2 provinces or more.

- Excluding the assignment, lease, or change of purpose of households and individuals not subject to the policy under the Land Law.
- Housing and urban projects below the level of the TTg rate;
- Projects (regardless of land size or population) in restricted areas or historic inner cities (defined in urban planning schemes) of special-grade urban areas.
- Golf course project;
- Investment projects of foreign investors, foreign-invested economic organizations implemented in islands, communes, wards or townships; coastal communes, wards and towns; other areas affecting national defense and security.
- (in the area, in accordance with the plan, the Management Board approves)

2. PROVINCE COMMITTEE

6. INVESTMENT POLICIES (Con)

■ **1. File**

- Commitment to bear all costs and risks if the project is not approved;
- Preliminary environmental impact assessment;
- If there is a Pre FS, submit it instead of the Proposition.

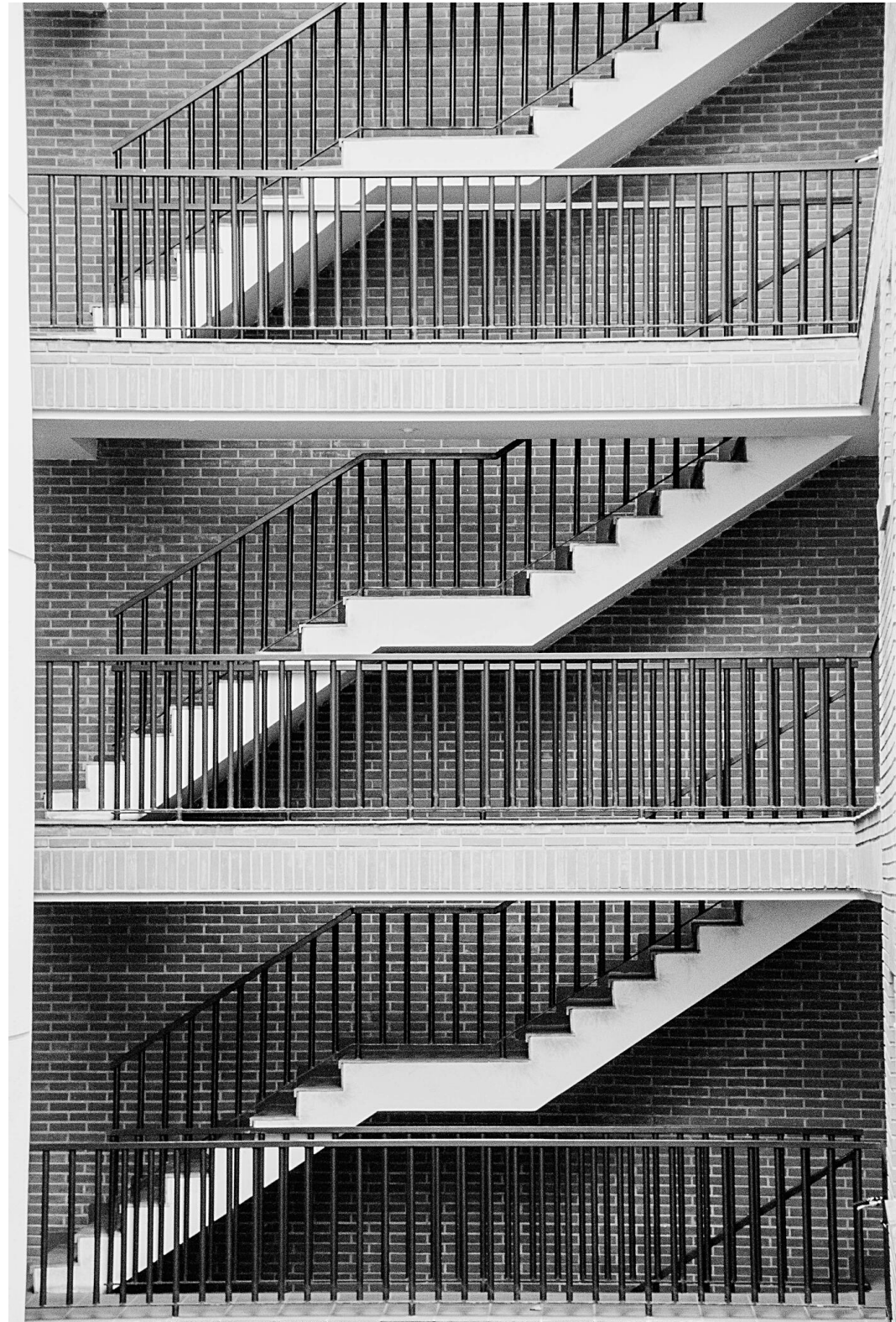
■ **2. Assessment content:**

- Urban development objectives and orientations, housing development programs and plans;
- Preliminary investment phasing plan ensures synchronous requirements;
- Preliminary structure of housing products and the reserve of land for social housing development;
- Preliminary construction investment plans, urban infrastructure management inside and outside the project scope for investment projects on housing construction, urban areas.

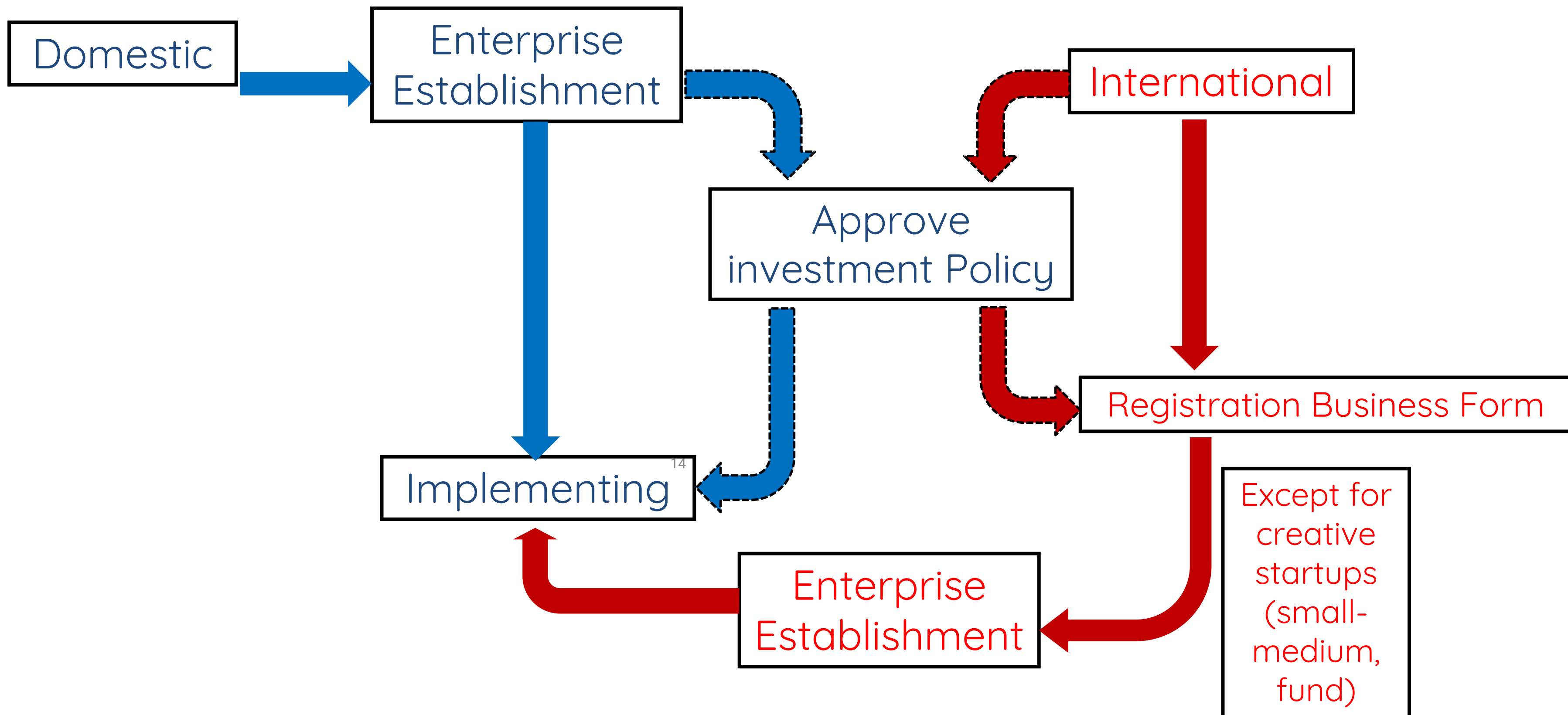
6. INVESTMENT POLICIES (Con)

■ 3. Procedures:

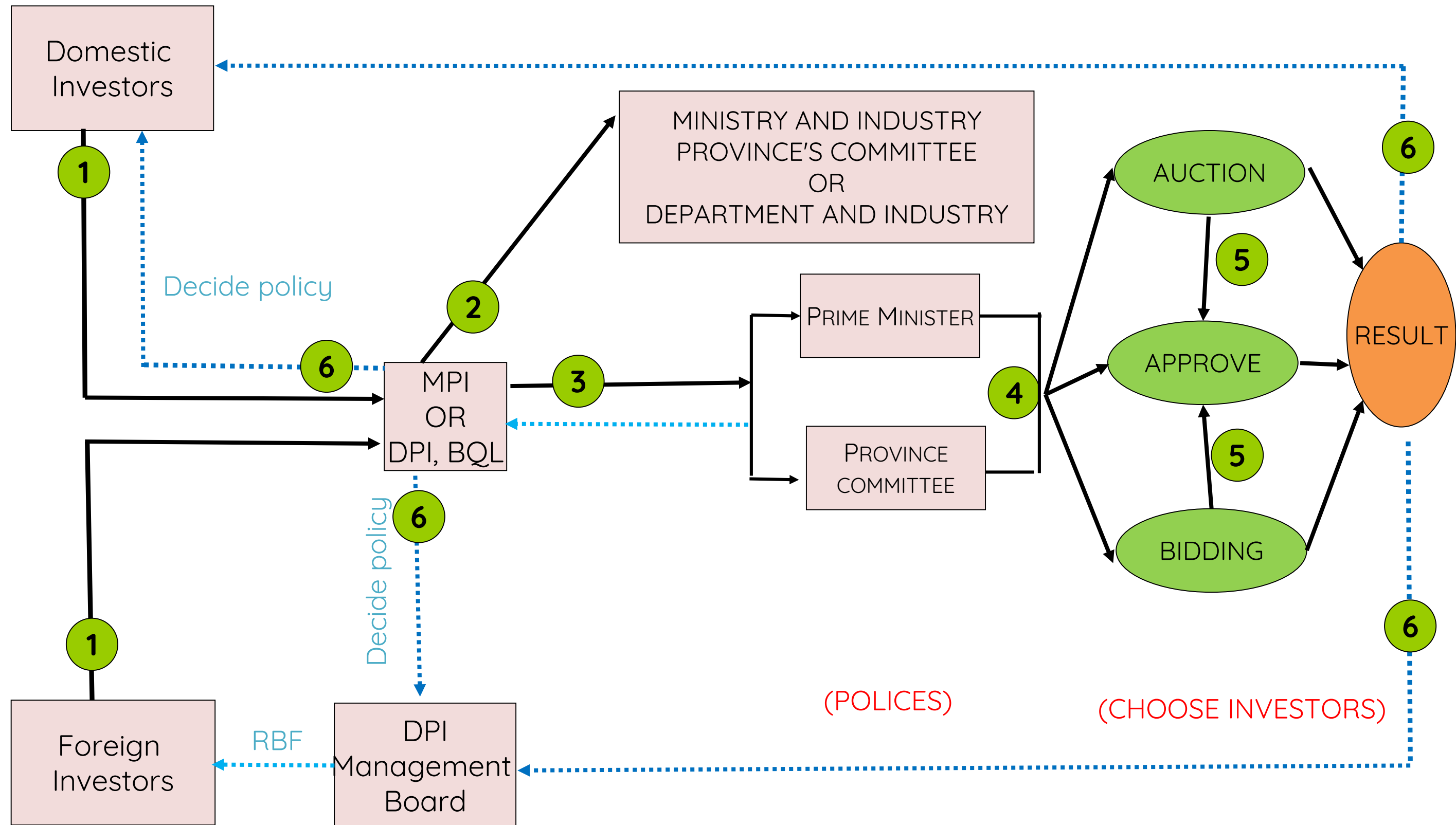
- National Assembly, Prime Minister filed at MPI
- Content of investment policies:
 - Project implementation objectives, location, scale, schedule and duration;
 - Investor or form of investor selection and special mechanisms and policies (if any) to implement investment projects.



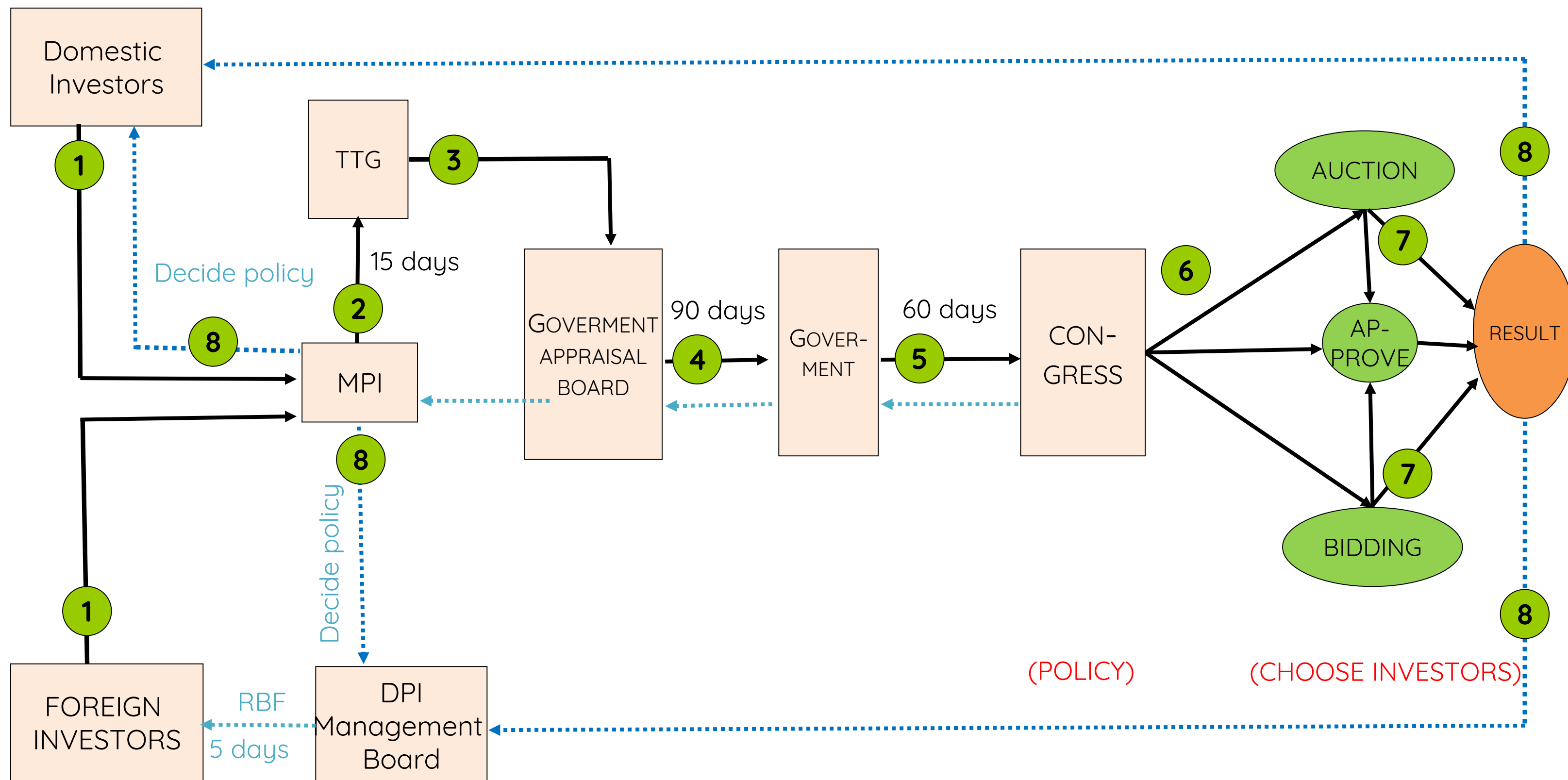
INVESTMENTS PROCEDURES



PROJECT IMPLEMENTATION ORDER (PPC AND TTG)



IMPLEMENTATION PROCEDURES (NATIONAL ASSEMBLY)



1. The certificate will not be issued:

Establish a small and medium-sized creative start-up business and a creative startup investment fund in accordance with the law on SME support.

2. Requirements:

- Not in the industry, the industry banned from business investment
- Have project site;
- In accordance with the planning;
- Meet the conditions of investment rate per land area, number of employees used (if any);
- Meet the market access conditions for foreign investors.



7. CERTIFICATE OF INVESTMENT REGISTRATION

3. Jurisdiction

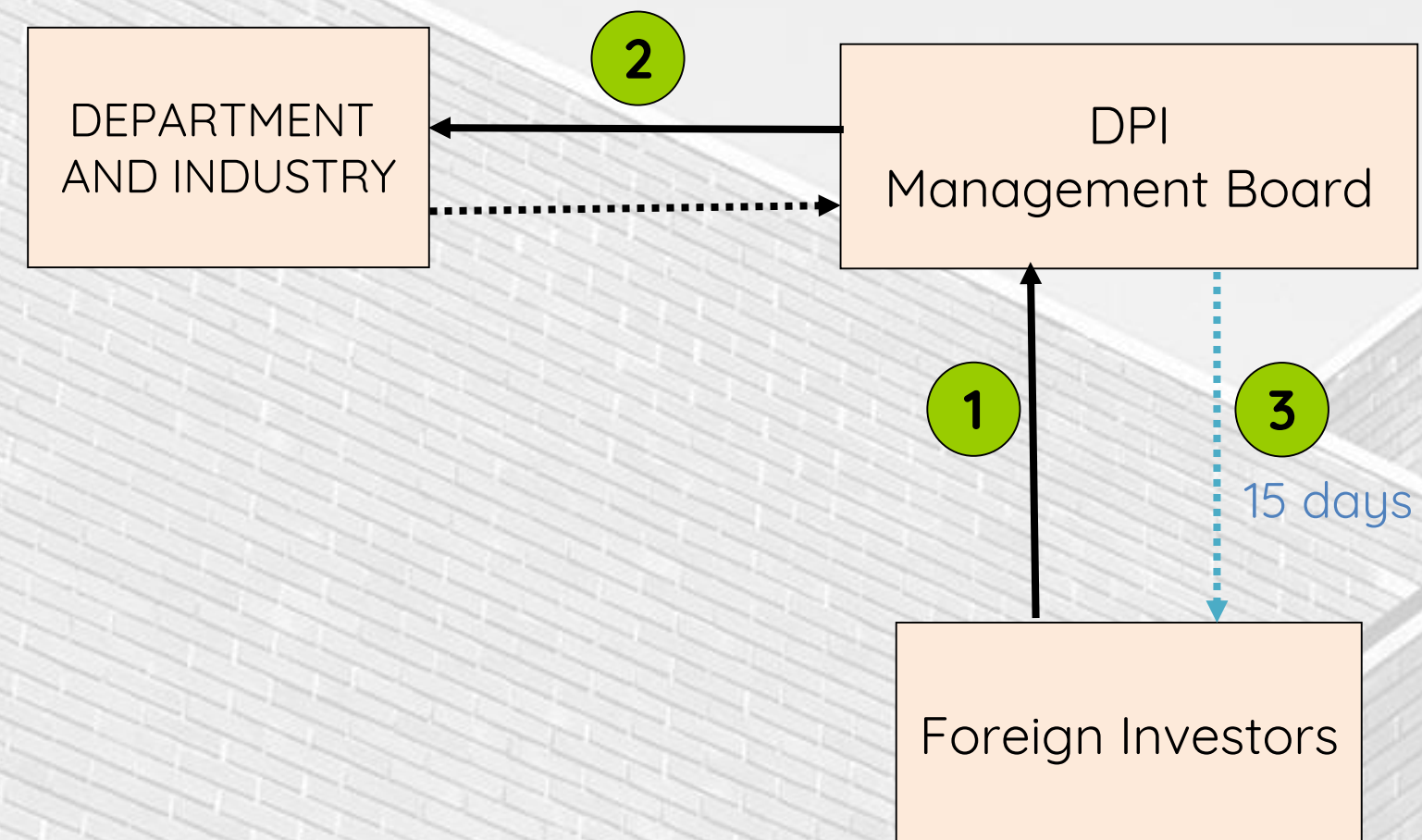
Investment registration agency where the investor executes an investment project, or locates or plans to locate an executive office:

- Performed at 02 administrative units at the provincial level or higher;
- Conducted inside and outside industrial zones, export processing zones, hi-tech zones and economic zones;
- Management boards of industrial parks, export processing zones, hi-tech zones, economic zones have not been established, or are not under the management of management boards of industrial parks, export processing zones, hi-tech zones or economic zones.

7. CERTIFICATE OF INVESTMENT REGISTRATION



PHASES OF ISSUING ORDER CERTIFICATE OF INVESTMENT REGISTRATION



8. THE ADJUSTMENT OF PROJECTS

1. Ability:

- Purposes
- Transfer of part or the whole of an investment project
- Merging projects or splitting or splitting a project into multiple projects
- Using relating-to-land rights and assets on land belonging to investment projects to contribute capital to establish enterprises or to do business
- Adjust other contents and must comply with regulations.

8. THE ADJUSTMENT OF PROJECTS

2. Policy submission:

- Objectives: to add investment intentional objectives;
- The size of the land used is over 10% or more than 30 ha, changing the investment location; Tổng vốn đầu tư từ 20% trở lên làm thay đổi quy mô;
- Extend the implementation progress of investment projects (total project investment time exceeds 12 months compared to project implementation progress;
- Duration of the investment project;
- The technology has been appraised and consulted during the investment policy approval process;
- An investor of an investment project before the project exploits, operates or changes conditions for the investor (if any).

8. THE ADJUSTMENT OF PROJECTS (cont)

3. No adjustment over 24 months

- Overcoming consequences in case of force majeure (civil, land);
- Adjusting the slow progress of being assigned land, leased land by the State, or allowed to change the land use purpose;
- Adjusting the progress of investment project implementation at the request of state agencies or state agencies that are delayed in implementing administrative procedures;
- Planning changed by state agencies;
- Change of objectives specified in the written approval of investment policy; adding targets subject to investment policy approval;
- Increasing total investment capital from 20% or more changes the scale of investment projects.

9. PROJECT IMPLEMENTATION

1. Supplement:

Bank guarantees on margin obligations to secure project performance.

2. No guarantees:

- Winning auctions and being assigned land with collection of land use fees, leased land with one-off rental payment for the entire lease term;
- The investor wins the bid.
- To be assigned or leased land on the basis of receiving the transfer of investment projects on which deposit has been made or capital contribution or capital mobilization has been completed according to schedule;
- To be assigned or leased land on the basis of receiving the transfer of land use rights and land-attached assets of another land user.

9. PROJECT IMPLEMENTATION (Cont)

3. No extension upon expiration (not exceeding maximum time limit):

- Using outdated technology, potentially causing environmental pollution and resource intensive;
- Assets must be transferred without compensation to the State of Vietnam or to the Vietnamese party.
- Hire an independent assessor to assess capital, quality and value.

9. PROJECT IMPLEMENTATION (Cont)

4. Transferring:

- Not being terminated;
- Foreign investors receiving transfer of investment projects, a part of investment project, must meet M&A conditions.
- Legal conditions on land (transfer of investment projects associated with the transfer of land use rights and assets attached to land;
- Laws on housing, laws on real estate business (housing construction investment projects, real estate);
- Conditions specified in the written approval of investment policy, IRC or other provisions of law;
- SOEs: laws on management and use of state capital to invest in production and business in enterprises before implementation.

9. PROJECT IMPLEMENTATION (Cont)

5. Stopping, stretching:

- Stop pausing, stretching
- Prime Minister stops: harming or threatens to harm national defense or security (MPI recommended).

6. Termination:

- The land is recovered due to the failure to put the land into use, the delay in putting it into use according to the provisions of the land law;
- No deposit or guarantee for margin obligations;
- Investing on the basis of counterfeit civil transactions in accordance with civil law;
- Procedure: Investment Registration Department makes decision to revoke IRC (after consulting the agency approving the policy)

10. OTHERS

1. INFORMATION SYSTEM

- National investment information system in the country;
- National investment promotion information system;
- National information system on industrial zones and economic zones.

2. REPORT

Eliminate month report.

3. PROMOTION

There will be specific decree

10. OTHERS (Cont)

4. ENFORCEMENT

- Using identification numbers instead of identification documents;
- In case legal documents refer to regulations on project approval decisions or investment policy decisions in accordance with the Law on Investment, the provisions on investment policy approval shall comply with regulations of this Law.

10. OTHERS (Cont)

5. Transition without policy:

- Obtain investment approval, investment policy approval or investment approval in accordance with laws on investment, housing, urban and construction before January 1, 2021;
- Not subject to investment policy approval, investment policy decision, investment approval, or investment registration certificate in accordance with the law on investment, housing, urban, construction and housing. investment in which the implementation of investment projects has been implemented in accordance with law before January 1, 2021;
- The investor has won the bid or auction before the effective date of this Law;
- To be granted investment preference certificates, investment licenses, investment certificates or investment registration certificates before January 1, 2021.

10. OTHERS (Cont)

6. Adjustment:

- If the adjustment contents are subject to guidelines, it must be policy;
- Having performed, or been approved or allowed to comply with law before July 1, 2015 and subject to security for the execution of investment projects under this Law, no deposit or guarantee is required. Bank on margin obligations. When adjusting the objectives, progress, or changing the land use purpose after January 1, 2021, a deposit must be made or a guarantee is required.

10. OTHERS (Cont)

7. Debt collection service contracts before January 1, 2021 are terminated from this date.
8. Market access conditions: if the application is more favorable, the conditions specified in the issued Investment Registration Certificate will continue to be applied.
9. If the project is slow to hand over the land, the deadline for the delayed state handover is not included in the project implementation period: applicable to the project that has not yet been handed over land.
10. The law requires the submission of a policy, if an IRC is not in the case of issuance, it is not required to submit.
11. Adjustment of industrial zone planning for housing: is applicable to localities having difficulty in allocating land fund.

10. OTHERS (Cont)

12. As of January 1, 2021, valid dossiers received and past the processing time limit but no results are returned under the provisions of the Law on Investment No. 67/2014 / QH13 and the laws amending this Law shall continue. Applicable under the provisions of the Law on Investment No. 67/2014 / QH13 and the laws amending this law.

THANK YOU

PHAM TUAN ANH

International Economics Department

Ho Chi Minh City Department of Planning and
Investment

E: tuananhphamze@gmail.com

T: 0904091143

W: www.dpi.hochiminhcity.gov.vn