**DO WE NEED LEGAL CAPITAL FOR THE REAL ESTATE BUSINESS?**

In the business registration process, in addition to general business lines and some specific industries, individuals and organizations that want to do business are required to meet the requirements on business type, capital, and business requirements, sub-licenses, etc., according to the provisions of law.

To do real estate business, individuals and organizations need to meet some of the following requirements:

**Before the Law on Investment 2020 takes effect (before January 1, 2021)**

According to the provisions of Article 10 Law on Real Estate Business 2014, individuals and organizations that want to do real estate business are required to (i) establish an enterprise, except for the case “Any organizations, households and individuals who conduct small-scale or irregular transactions of real estate sale, transfer, lease-out, and lease purchase shall not be required to set up enterprises, but they shall make tax declaration as prescribed.” and (ii) **have a legal capital not less than VND 20 billions.**

Therefore, before the Law on Investment 2020 takes effect (January 1, 2021), enterprises are required to meet the legal capital requirements of not less than 20 billion VND.

**After the Law on Investment 2020 takes effect (from January 01, 2021)**

Accordingly, the condition of charter capital has been abolished. Specifically, under the provisions of Article 75.2 of the Law on Investment 2020, amending Article 10 Law on Real Estate Business 2014 as followsAccordingly, the condition of charter capital has been abolished. Specifically, according to the provisions of Article 75.2 Law on Investment 2020, amending Article 10 Law on Real Estate Business 2014 as follows:

*“Any organization or individual engaged in real estate business must establish an enterprise or cooperative (hereinafter referred to as “the enterprise”), except for the cases mentioned in Clause 2 of this Article.”*

Then, from the time the Law on Investment 2020 takes effect from January 01, 2021, individuals and organizations that want to do real estate business only need to establish businesses in accordance with the law, except organizations and households and individuals sell, transfer, lease, lease-purchase real estate on a small scale, irregularly.

**Whether legal capital is the same as the charter capital?**

These are two different concepts, all established companies are required to have charter capital but not all companies need legal capital.

According to Clause 34, Article 4 of the Law on Enterprise 2020: “*Charter capital means the total value of assets contributed or undertaken to be contributed by members of the company and/or the owner of the company when establishing a LLC or partnership; or means the total aggregate par value of shares sold or registered for subscription when establishing a shareholding company.*”

The Law on Enterprises 2020 has abolished the legal capital definition, but we can understand that legal capital is the minimum amount of capital required by law to establish a business. Legal capital will be clearly defined on each specific industry and required in mandatory.

It can be seen that the basic difference is that when establishing an enterprise with a line of business which does not require legal capital, members and shareholders can contribute or commit to contribute to a certain period within the number of registered capital (the law does not stipulate a minimum or maximum charter capital). However, if the enterprise wants to do business in the line requiring legal capital, the enterprise must fully contribute a minimum capital equal to the amount of capital prescribed by law when doing that line of business.

**Procedures for setting up a real estate business**

Submit 01 sets of documents to the Business Registration Office of the Department of Planning and Investment of the province/city where the head office is located.

Documents include:

* Application form for registration of business establishment - real estate business line VSIC 6810 (under the form in Decree No. 122/2020/ND-CP);
* Company Charter;
* List of members (for multi-member limited liability company and partnerships), list of founding shareholders and list of shareholders who are foreign investors (for joint-stock companies);
* Copies of documents:
	+ Legal documents of individuals for members, shareholders being individuals, legal representatives;
	+ Legal documents of the organization for members, shareholders being an organization and the document appointing an authorized representative; legal documents of individuals for authorized representatives of members, founding shareholders, shareholders being foreign investors that being organizations;
	+ For members and shareholders being foreign organizations, copies of legal documents of the organization must be consular legalized;
	+ Investment registration certificate for foreign investors (According to Clause 19, Article 3 Law on Investment 2020 “*foreign investor means an individual holding a foreign nationality or an organization established under foreign laws and carrying our business investment activities in Vietnam*.”
* Power of attorney for business establishment registration (in case of authorization to another person) - accompanied by a copy of the Citizen Identity card or the identification card of the authorized representatives.

Processing time: 03-05 working days

Result: Enterprise Registration Certificate

Some other procedures businesses need to perform after establishment: Engrave a seal, make tax registration with the tax authority, register a bank account for the company, etc.

***Nguyen Thi Thuy An (Anna)***

***ADK & Co Vietnam Lawyers Law Firm***