

June, 2025 No.101

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Vietnam

Special Investment Procedure under the Amendment to the Law on Investment

1月に施行された投資法等を改正する法律第57号により、一定のハイテク分野等における直接投資について許認可手続が簡易化された。今回の適用対象は限定されているが、この制度は、これまでのベトナムにおける厳格な事前審査制から事後チェック制への移行を示唆するようにも思える。本稿では新たに導入された特別投資手続の内容を紹介する。

Background

The National Assembly of Vietnam passed the Law No. 57/2024/QH15 on 29 November 2024 to amend the Law on Planning, Law on Investment, Law on Public-Private Partnership Investment, and Law on Bidding, which came into effect as of 15 January 2025 ("**Law 57**"). Although Law 57 only amends several points of the existing Law on Investment ("**LOI**"), it is expected to have a significant impact on the investment environment in Vietnam. This is the first time that Vietnam has introduced a special investment procedure applicable to investment projects. On 10 February 2025, the Government issued Decree 19/2025/NĐ-CP to set out detailed provisions on the special investment procedure, which came into force on the same day.

Special investment procedure ("SIP**")**

Law 57 supplements Article 36.a of the LOI, which sets out the conditions and content of the SIP. Except for the projects of which the investment policies must be approved by the National Assembly pursuant to Article 30 of the LOI, investors may choose to register their investment projects under the existing normal investment procedures ("**NIP**") or the SIP. In order to be eligible for the SIP, a project must meet the following conditions in terms of investment sector and location:

- **Sector, product:** The project must be (i) an investment in innovation centers, research and development (R&D) centers; semiconductor integrated circuit industry, design technology, production of components, integrated electronic circuits (IC), flexible electronics (PE), chips, semiconductor materials; or (ii) an investment in high-tech sectors which are given priority in development ("**List of High-tech Sectors**") or investment in the production of products included in the list of high-tech products ("**List of High-tech Products**"). The List of High-tech Sectors and the List of High-tech Products are decided by the Prime Minister. In this regard, the Prime Minister had issued Decision No. 38/2020/QĐ-TTg on 30 December 2020 to promulgate the List of High-tech Sectors and List of High-tech Products. The List of High-tech Sectors covers 99 sectors/technologies such as AI, IoT, blockchain, big data, geoinformatics, building information Model-BIM, photovoltaics, hydrogen energy, power microgeneration, non-traditional manufacturing, precision agriculture, smart grids etc. The List of High-tech Products covers 107 products such as blockchain equipment and software, cognitive radio

equipment and software, plant simulation for vehicles, advanced molds, molecular analysis and diagnostics system, upcycling polymers, self-healing materials, functional materials etc.

- *Location:* The investment project must be located in industrial parks, export processing zones, high technology parks, concentrated information technology parks, free trade zones, or functional areas in economic zones.

Like in the NIP, in order to register the project under the SIP, the investor must submit the investment registration dossier to the Board of Management of the industrial park, export processing zone, high technology park, or economic zone (“**BOM**”) where the project is located. The dossier must contain the documents specified in Article 33.1 of the LOI, of which the “Request for Project Implementation” must be made in the prescribed format and, in particular, for the purpose of the SIP, must include additional contents (i.e., commitments to comply with the conditions, standards and provisions of the laws on construction, environmental protection, fire prevention and firefighting; proposal for the investment project including, identification and forecast of environmental impact and measures to minimize negative impact). The BOM will review the suitability of the project with the investment sector and relevant planning authorities, legal status and experience of the investor, land use requirements, schedule of the project implementation, investor’s commitments, and investment incentives (if any). The regulatory timeframe for BOM to issue an Investment Registration Certificate (“**IRC**”) is 15 days from the date on which they receive the application.

Currently, the procedures required for the implementation of a project are not only regulated by the LOI, but also regulated by other laws, such as laws on land, construction, environment, technology transfer, fire prevention and firefighting. In order to start a project, the investors must go through multiple stages and procedures under these laws. Each procedure has its own requirements in terms of documentation, steps, and time. Some procedures must be performed sequentially, the result of one procedure being the input for another. In their Explanatory Report dated 29 August 2024 on the draft of Law 57, the Ministry of Planning and Investment¹ admitted that it takes an average of 250 to 350 days or more for investors to complete all the relevant procedures to put their investment projects into operation.

Registration of an investment project under the SIP allows investors to “skip” the following relevant procedures: Investment Policy Approval procedure (“**IPA**”), technology assessment, preparation of environmental impact assessment reports, preparation of detailed design, issuance of construction permits, and procedures for approval, acceptance and licensing in the areas of construction, fire prevention and firefighting. Please refer to the table below for further details:

Requirements	NIP	SIP
IPA	Yes	No
Construction permit; Fire prevention and fighting approval	Yes	No (at least 30 days prior to the commencement of the project’s construction, the investor shall submit to the local construction management authority and the BOM a Notice of Construction Commencement, together with the Economic and Technical Report on Construction Investment that has been duly prepared, reviewed and approved by the investor; and a report issued by a qualified agency

¹ As part of the Government’s reform program, Ministry of Planning and Investment has been incorporated into the Ministry of Finance.

		to assess the construction safety, environmental protection, fire prevention and fighting, and compliance with technical standards and regulations of the project). ²
Environmental impact assessment	Yes	No
Environmental Permit	Yes	Yes
Environmental registration	Yes	Yes
Guarantee for the project using land allocated by or leased from the State, or where the purpose of use of the land is changed.	<p>Yes</p> <p>Investors shall make a deposit or submit a bank guarantee certificate after obtaining IPA or a Decision approving the investor or a Decision approving the auction results, and before performing the compensation, support and resettlement plan as approved by the competent authority;³ or before the issuance of a decision on land allocation, land lease, or permission to convert the land use purpose.⁴</p> <p>The refund of 50% of the deposited amount or the reduction of 50% of the guarantee will be made when the investor has obtained a decision on the land allocation, land lease, permission to change the purpose of land use and has obtained a construction permit or other approval to carry out construction activities (if any). The balance, plus interest, will be refunded upon acceptance of the construction works.</p>	<p>Yes</p> <p>Investors shall make a deposit or submit a bank guarantee certificate after obtaining IRC, and before performing the compensation, support and resettlement plan as approved by the competent authority;⁵ or before the time of issuance of the land lease decision, permission to change land use purpose;⁶ or within 30 days from the date of issuance of the IRC.⁷</p> <p>The refund of 50% of the deposited amount or the reduction of 50% of the guarantee will be made when the investor submits a Notice of Construction Commencement to the BOM. The balance, plus interest, will be refunded upon acceptance of the construction works.</p>

² The content and assessment of the Economic and Technical Report on Construction Investment are regulated by the Construction Law and its implementation regulations.

³ If the investor does not make an advance payment for compensation, support and resettlement.

⁴ If the investor has made an advance payment for compensation, assistance and resettlement, or if the investor is selected to implement the project through an auction of land use rights and leases land from the State and pays annual land rent.

⁵ If the investor does not advance payment for compensation, support and resettlement.

⁶ If the investor has advanced payment for compensation, support and resettlement money.

⁷ If the State has advanced the payment for compensation, support, resettlement and recovered the land.

The supervision and management of investment projects registered under the SIP by the state authorities will be changed from a pre-control mechanism to a post-control mechanism. Investors will be responsible for implementing their projects in accordance with the IRCs, their commitments in relation to construction, environmental protection, fire prevention and firefighting. If an investment project fails to meet the conditions, standards and technical regulations to which its investor has committed, the competent state authorities may consider imposing administrative sanctions, suspending or terminating the project.

Conclusion

The SIP will significantly simplify and shorten the time and efforts required for investors to set up their investment projects. In the future, this is expected to increase Vietnam's competitiveness in attracting foreign investment in high-tech sectors.

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Philippines

Philippine Supreme Court ruling: Employment relationship arises upon acceptance of job offer

2025年4月2日、フィリピン最高裁は、雇用主からの採用オファーの受諾によって、雇用契約締結前であっても法的な雇用関係が成立しうるとの判断を示した。この判決は人事実務に大きな影響を与える可能性があることから本稿で詳説する。

The case of *Paolo Landayan Aragonés v. Alltech Biotechnology Corporation, et al.* (G.R. No. 251736), decided by the Philippine Supreme Court on April 2, 2025, represents a significant development in Philippine labor law. The Court held that the acceptance of a job offer is sufficient to establish an employer-employee relationship. This decision sets an important precedent expected to influence human resource practices, particularly regarding the drafting of offer letters and handling of job offer withdrawals.

Case Background

In April 2016, Alltech Biotechnology Corporation (“**Alltech**”) offered Paolo Landayan Aragonés (“**Aragones**”) the position of Swine Technical Manager–Pacific. Aragonés accepted the offer by signing the offer letter, which specified a commencement date of July 1, 2016, and required him to execute formal employment contract on his first day. Relying on this commitment, Aragonés resigned from his prior employment.

However, in May 2016, Alltech allegedly undertook a global restructuring program that led to the elimination of several roles, including the one offered to Aragonés. In June 2016, Alltech informed Aragonés via letter that the position had been made redundant and extended a goodwill payment equivalent to one month’s salary. Aragonés did not respond to the offer and instead filed a labor complaint, alleging, among other things, non-payment of wages.

The Labor Arbiter ruled in Aragonés’s favor, finding that he had been illegally dismissed. This decision was reversed on appeal by the National Labor Relations Commission (“**NLRC**”), and the Court of Appeals later affirmed the NLRC’s ruling. Undeterred, Aragonés brought the case to the Supreme Court through a Petition for Review on *Certiorari*, contesting the conclusions of the lower tribunals.

Key Takeaways from the Supreme Court’s Decision

The Supreme Court ruled in favor of Aragonés, holding that he was an employee of Alltech and that his dismissal was illegal. The decision underscored important principles related to the formation of employment contracts, the interpretation of commencement dates, and the criteria for valid redundancy. The key takeaways are as follows:

a) *An employment contract is perfected upon mutual agreement of the parties on the terms and conditions.*

The Court reaffirmed that, like any other contract, an employment agreement is perfected when there is a clear offer, acceptance, and communication of that acceptance to the offeror. In this case, Aragonés accepted Alltech’s job offer by signing the offer letter, which was subsequently sent to and received by Alltech via email. The Court found that Alltech could not validly claim that it had revoked the job offer, as the general rule under the Civil Code, is that an offer once accepted, cannot be unilaterally withdrawn.

b) *When a commencement date in a job offer is a suspensive period, and not a suspensive condition.*

The Court recognized that the perfection of an employment contract and the actual commencement of work do not always occur simultaneously—particularly when employment is subject to a suspensive condition. It noted that in *Santiago v. CF Sharp Crew Management, Inc.* (the “**Santiago case**”), a seafarer’s employment contract that stipulated that employment would begin only upon actual deployment from Philippines contained suspensive condition, meaning the employment relationship would arise only upon the occurrence of a future, uncertain event.

However, the Court found the *Santiago* case inapplicable to the dispute between Aragonés and Alltech. It drew a clear distinction between a **suspensive condition** and a **suspensive period**. A suspensive condition refers to a

future event that may or may not happen, and upon which the effectivity of an obligation depends. In contrast, a suspensive period refers to a definite future date that is certain to arrive, merely delaying the performance of already existing obligations.

In Aragonés's case, the stipulation in the offer letter that his employment would begin on July 1, 2016, was deemed by the Court to be a suspensive period, not a condition. The period was for the benefit of both parties: to allow Aragonés to wrap up his previous employment, and to give Alltech time to prepare for his onboarding. This meant that the commencement date simply delayed the exercise of the parties' respective obligations as employer and employee until July 1, 2016; it did not make the existence of the employment relationship contingent on an uncertain future event.

The Court further clarified that the requirement to sign a formal employment contract on the first day of work did not negate the existence of an employment relationship. Under the law, no specific form is required to prove that such a relationship exists. Moreover, even assuming *arguendo* that the commencement date constituted a suspensive condition, the Court held that it was constructively fulfilled when Alltech unilaterally withdrew the job offer. Under the Civil Code, if a party voluntarily prevents the fulfillment of a condition, that condition is deemed fulfilled.

c) *Redundancy must be justified by adequate and credible evidence.*

The Court emphasized that employers must not act arbitrarily when terminating employees on the ground of redundancy. A mere declaration that a position is redundant is not sufficient; the claim must be supported by substantial evidence, such as updated staffing patterns, feasibility studies, business proposals, and documentation reflecting management's approval of the restructuring plan.

In this case, Alltech's justification for redundancy rested solely on the uncorroborated affidavit of its Vice President for Asia Pacific, which offered a broad and vague description of the company's global restructuring efforts. However, it failed to explain the basis for selecting and abolishing specific roles. As a result, the Court held that redundancy was not sufficiently established as a valid ground for termination.

Remedies granted

Given the finding of illegal dismissal, Aragonés was awarded back wages and separation pay, calculated from July 1, 2016 (the date he became entitled to demand work) until the finality of the Court's decision. Although the Court did not award moral and exemplary damages—reasoning that Alltech had acted in good faith, genuinely believing it had not terminated Aragonés but merely rescinded a job offer—it granted attorney's fees equivalent to 10% of the total monetary award, pursuant to the Civil Code.

Conclusion

The Court's decision in *Aragones v. Alltech* clarifies when a job offer constitutes a binding contractual commitment, emphasizing the significant legal implications of accepted offer letters. The ruling highlights the importance of drafting offer letters with clarity and precision and draws attention to the legal risks associated with improperly withdrawing offers—particularly in redundancy situations. As a result, employers are advised to review and update their recruitment and redundancy policies to ensure compliance with applicable legal standards.

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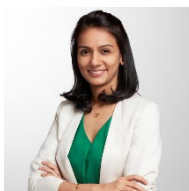


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