

Special Alert

August 2022

www.indochinecounsel.com

State Policy on Incentives and Assistance for Innovation Start-up SMEs

Start-up enterprises play an important role for sustainable development of the country's economy as many of them are small and medium sized enterprises ("**SMEs**"). In addition, the sector of an innovation start-up enterprise has only recently entered the purview of the Government and the National Assembly. The State has provided special policies for the assistance of and incentives to encourage Start-up SMEs that primarily focus on technological advancement and research ("**Innovation Start-up SMEs**") that need assistance of all resources for building their reputation and position in the market.

Policies of assistance to Innovation Start-up SMEs are provided in the Law on Assistance to Small and Medium Enterprises No. 04/2017/QH14 dated 12 June 2017 (the "**Law on Assistance to SMEs**"), which are specified in Decree No. 80/2021/ND-CP dated 26 August 2021, providing details and guidance for implementation of a number of Articles of Law on Assistance to SMEs ("**Decree 80**") and Circular No. 06/2022/TT-BKHDT dated 10 May 2022, guiding a number of Articles of Decree 08 ("**Circular 06**").

Certain remarkable provisions relating to the assistance available to Innovation Start-up SMEs are discussed below.

What exactly are Innovation Start-up SMEs?

The Law on Assistance to SMEs defines an Innovation Start-up SME as an SME established to implement their business ideas based on the exploitation of intellectual property, technology, and new business models and are capable of rapid and scalable growth. Furthermore, Article 20 of Decree 80 states that an SME will be identified as an Innovation Start-up SME if it:

- (i) produces, trades products created from IP patents, utility solutions, industrial designs, integrated circuit (“IC”) designs, computer software, mobile phone applications, cloud computing, new animal breeds, plant varieties, and aquatic organism breeds;
- (ii) produces, trades products created from trial production projects, prototypes, and technology completion; produces, trades products that win national or international prizes for entrepreneurship, start-ups, and science and technology prizes in accordance with the laws and regulations on science and technology prizes; and
- (iii) has new technological solutions or business models that might increase the enterprise’s revenue by at least 20% in two consecutive years on the basis of analysis of market share, prospective development of the products, and competitiveness of the enterprise.

Eligible Investors in Innovation Start-up SMEs

Under Article 18 of the Law on Assistance to SMEs, investors of Innovation Start-up SMEs may include venture capital funds that are established to make both domestic and foreign private investors, domestic and foreign organizations and individuals doing business via contribution of capital for the establishment of Innovation Start-up SMEs, purchase of shares or stakes of Innovation Start-up SMEs subsequent to founding, wherein the venture capital funds used for investing in Innovation Start-up SMEs shall be operated in accordance with the following conditions: the rate of the investment shall not exceed 50% of charter capital of Innovation Start-up SMEs after receiving such investment, and the private investors who have financial ability and be responsible for their contribution in the venture capital funds.

Once these investors have invested in Innovation Start-up SMEs they will be entitled to enjoy prescribed CIT exemptions and reductions in respect of earned income from their investment in Innovation Start-up SME.

How does an Innovation Start-up SME qualify for Government assistance?

There are three specific qualifications that must first be met for an Innovation Start-up SME to receive any of the above assistance. They include:

- (i) has been put into operation for up to five (5) years from the day on which its first ERC is issued;
- (ii) has not initiated public offering of its securities (in cases of a joint-stock company); and
- (iii) duly selected in accordance with provisions of Article 21 of Decree 80, which follow:
 - enterprises that won a national or international prize for startups or have startup-related products or projects, or are granted patents; or are granted science and

- technology enterprise certificate, high technology enterprise certificate or high technology-applying enterprise certificate;
- or enterprises that have been invested in or will be invested in under commitment of startup investment funds; receive assistance or will receive assistance from co-working spaces, startup assistance organizations, service providers, incubation facilities, business promotion facilities, startup centers as prescribed by investment laws; and
- or enterprises that have been selected by the Council established by assistance organizations.

What assistance for Innovation Start-up SMEs is available?

The actual assistance available to eligible candidates is stated in Decree 80 and Circular 06 as follows:

- (i) Reimbursement of up to VND20 million/year/enterprise in respect of the costs of using equipment at technical facilities, incubation facilities, and co-working spaces; and of up to VND5 million/month/enterprise in respect of the cost of leasing premises for up to a maximum of three years as calculated from the date the lease agreement was signed by the SME;
- (ii) Reimbursement of up to VND30 million/contract/year/enterprise in respect of service of advisory for establishment, transfer, exploitation, and protection of IPRs in Vietnam, services of advisory for drafting invention specification, designing industrial designs, designing the brand identification system; up to VND50 million/contract/year/enterprise in respect of service of advisory for IPRs management and development of products and services under IPRs protection in Vietnam; and up to VND50 million/contract/year/enterprise in respect of service of advisory for establishment, transfer, exploitation, and protection of IPRs in foreign countries;
- (iii) Reimbursement of up to VND10 million/contract/year/enterprise in respect of service of advisory for development and application of internal standards; up to VND50 million/contract/year/enterprise in respect of service of advisory for development and application of quality control systems; up to VND10 million/year/enterprise the cost of inspection, calibration, testing of measurement instruments, measuring standards, issuance of quantity seals of pre-packed goods according to technical measurement requirements; up to VND30 million/year/enterprise the cost of testing new products at goods testing units or organizations; up to VND50 million/contract/year/enterprise in respect of service of advisory for completion of new products, services, business models, and technologies;
- (iv) Reimbursement of up to VND100 million/contract/year/enterprise in respect of advisory for search, selection, decryption, and technology transfer;
- (v) Reimbursement of up to VND15 million/enterprise/year for costs for three employees to

participate in advanced training i.e. tuition, materials, accommodations, meals, and travel in Vietnam; up to VND100 million/enterprise/year for the same benefit for two employees conducting such training overseas; and

- (vi) Reimbursement of up to VND100 million/contract/enterprise in respect of service of advisory for successful registration on international E-commerce platforms; up to VND50 million/year/enterprise for two years as the account is successfully registered the cost of maintenance of accounts on E-commerce platforms; up to VND30 million/year/enterprise the cost of participating in trade promotion fairs on domestic events; up to VND50 million/year/enterprise the cost of participating in trade promotion fairs for overseas events; up to VND30 million/competition/year/enterprise the cost of participation in international start-up SMEs competitions, i.e., fees for participating, staying in host countries, traveling, transporting documents, products, and equipment serving competitions.

Eligibility for each of these assistance figures are subject to the size of the actual contract of the SME. Innovation Start-up SMEs may request more than one type of assistances in the same application dossier, such application may only be submitted to one assisting body at that time. Innovation Start-up SMEs may only receive reimbursement of funds for advisory services in case the advisors are included in the advisor network posted on the National Information Portal for SME assistance at <https://business.gov.vn/tu-van-vien>.

About Indochine Counsel

Established in October 2006, Indochine Counsel is a leading commercial law firm in Vietnam. Our firm is ideally positioned to assist international investors and foreign firms to navigate the legal landscape in one of Asia's most dynamic and challenging countries. We also take pride in our services offered to domestic clients in searching for opportunities abroad. With over 45 lawyers many of whom have been trained abroad and staffs in two offices, Ho Chi Minh City and Hanoi, Indochine Counsel offers expertise in a dozen practice areas and provides assistance throughout the entire life cycle of your business.

Indochine Counsel represents and advises clients on all legal aspects in the following major areas of expertise:

- Anti-trust & Competition
- Banking & Finance
- Corporate & Commercial
- Energy, Natural Resources & Infrastructure
- Intellectual Property
- Inward Investment
- Labour & Employment
- Litigation & Dispute Resolution
- Mergers & Acquisitions
- Real Estate & Construction
- Securities & Capital Markets
- Technology, Media & Telecommunications

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:



Nguyen Thi Hong Anh

Partner | Co-Head of IP & TMT
Practice Group

E anh.nguyen@indochinecounsel.com



Nguyen Trung Nghia

Legal Assistant

E nghia.nguyentrung@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam

T +84 28 3823 9640

F +84 28 3823 9641

E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam

T +84 24 3795 5261

F +84 24 3795 5262

E hanoi@indochinecounsel.com

www.indochinecounsel.com

This Special Alert is designed to provide our clients and contacts with general information of the relevant topic for reference only, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

© 2022 Indochine Counsel | All Rights Reserved.