

## New investment law – new provisions on licensing procedures for foreign investors



**By Pham Thi Thanh Lan**

On November 26, 2014 the National Assembly of Vietnam adopted a new law on investment (2014 Investment Law) which will take effect on July 1, 2015 and replace the current 2005 Investment Law. Under this new law, there are many changes designed to open opportunities for foreign investors through new provisions on licensing procedures applicable to certain common investment forms, including investment along with setup of enterprise and investment under the way of capital contribution or shares purchase in enterprises in Vietnam.

### **Investment along with setup of enterprise**

For such investment form, the foreign investor must proceed with the procedure for issuance of an investment registration certificate (IRC) for their investment project. For mega investment projects which require government control, the foreign investor must obtain an investment policy from the competent state authority before applying for an IRC. Upon receipt of an IRC, the foreign investor can establish a foreign invested enterprise by going through the procedure of enterprise registration to obtain an enterprise registration certificate (ERC) under the new 2014 Enterprise Law.

Compared with the procedure for issuance of an investment certificate (IC) under the current 2005 Investment Law, the licensing procedure for an IRC is much simpler and has been slashed from 30-45 days down to 15 days. The required application documents are stipulated transparently under the law. In case of refusal, a written notification to the foreign investor must be returned and must cite specific reasons. Notably, the competent IRC-issuing authority for investment projects outside of industrial zones, export-processing zones, high-tech and economy parks will be the provincial Department of Planning and Investment (DPI), instead of the People's Committees as required under the current law.

### **The foreign investor to contribute capital or purchase of shares or portion of capital contribution (M&A transaction) to enterprises in Vietnam**

The 2014 Investment Law confirms plainly that the foreign investor is no longer required for any IC when conducting M&A transactions (capital contribution or shares purchase in Vietnamese enterprises in Vietnam). Such M&A activity is only required to be registered with the competent DPI in case such M&A activity is made into conditional investment sectors applicable to foreign investors, or as a result of such M&A, the foreign investors and/or deemed foreign investors with 51 percent foreign ownership may hold more than 51 percent equity of the target. In these cases, the DPI will have only

15 days, compared with 30 days or more in practice under the current law, to consider the compliance with the regulations on investment conditions, ratio of foreign ownership in the target company, and must notify the investor of such results, including the reasons in case a negative notice is given.

In summary, the above major change is identified as a new step to open up and simplify administrative procedures for foreign investment activities in Vietnam. It is expected to save precious time and cost for foreign investors when joining the local business market.

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