

Foreign Investment Registration in Vietnam

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On November 26, 2014, the National Assembly of Vietnam passed an amended version of the Law on Investment (“**2014 LOI**”), replacing the 2005 versions of the law. The 2014 LOI took effect on July 1, 2015. This law and subsequent follow-on legislation form the principal legal framework for foreign investment in Vietnam. This article aims to provide a broad overview of foreign investment registration in Vietnam.

Foreign Investment Registration for New Projects

To start, investors should note that foreign investment registration in Vietnam is complicated and time-consuming. Foreign investors are not allowed to incorporate a company without first obtaining foreign investment approval by way of an application dossier for an Investment Registration Certificate (“**IRC**”). After the IRC is received, the investor may incorporate by submitting an application dossier for an Enterprise Registration Certificate (“**ERC**”). Vietnam became a member of the WTO in 2007 and, in acceding to the WTO, has agreed to open specific sectors of the economy to foreign investment. The ability to invest in industries that were not committed to by Vietnam in the WTO will depend on domestic law. The process of obtaining an IRC involves submitting a business plan or feasibility study in conjunction with the legal basis for foreign investment. The licensing authorities will assess the IRC application dossier for foreign investment limitations, the adequacy of capital contributions, and the feasibility of the proposed business plan, and require the investor to provide considerable detail and justification. The licensing authorities often require multiple correspondences with counsel and revisions to the application dossier, which prolongs the process.

Under the 2014 LOI, the first step in investment registration is to determine whether a Decision on Investment Policy (“**DIP**”) is needed and who has the authority to issue a DIP, which is ascertained as follows:

1. *National Assembly* – Projects which have a significant impact on the environment, e.g., nuclear power plants and conversion of land use purpose of a national park of 50 hectares or more; and, projects involving the relocation of 20,000 or more people in mountainous areas or 50,000 or more in other areas;
2. *Prime Minister* – Projects which involve the relocation of 10,000 or more people in mountainous areas or 20,000 or more in other regions; construction and operation of airports and seaports; exploration, production, and processing of petroleum; casinos and other businesses involving

betting; production of cigarettes; development of infrastructure in industrial zones, export processing zones and functional areas of economic zones; construction and commercial operation of golf courses; telecommunications involving the building of network infrastructure; and, and project with the investment capital of VND5,000 billion (approximately USD240 million); and,

3. *People's Committee* – Projects in which the state allocates or leases land without auction, tender, or transfer; projects involving conversion of land-use purposes; and projects utilizing technology on the technology transfer restricted list.

The lists mentioned above are not exhaustive.

Once a favorable DIP is issued, the IRC is to be issued within five working days by the Department of Planning and Investment (“**DPI**”) with the jurisdiction of the matter. If the project is not subject to a DIP, then the law states that the DPI is to process the dossier within 15 calendar days of the filing of a completed dossier.

The DPI processes most applications for ICs. However, when an investment activity falls within the jurisdiction of certain ministries, such as trade, communication, or health, the DPI normally contacts those ministries for their input and opinions. Sometimes multiple ministries may have to be consulted. These consultations are time-consuming processes involving the submission of formal requests from the DPI, along with the delivery of any necessary supporting documents. Due to large part to this reason, as a matter of practice, the authorities routinely go beyond the legally prescribed timeframes, with IRCs usually taking one to three months from the date of filing to approval.

Foreign Investment Registration for Investment into Existing Vietnamese Entities

Under the 2014 LOI, another option for foreign investors is to take an equity stake in existing domestic companies or entities. Foreign investment registration will be required if, after the acquisition, the target entity would be 51% or more foreign-owned or if the target entity is involved in commercial activities that are categorized as “conditional” to foreign investors.

For those cases where foreign investment registration is required, the investor shall submit an application dossier for approval of the investment to the relevant DPI (“**DPI Approval**”). The law states that such dossiers shall be processed within 15 calendar days of the submission. As with the case of IRCs, in reality, processing dossiers for DPI Approval takes typically from one to three months from the date of filing to approval because the process is similar to that of the IRC, including the need to consult with and seek consent from relevant government ministries. After the DPI Approval is obtained, the investor may register its equity interest in the target entity by applying to amend the target entity’s ERC. The investor would not need to apply for a separate IRC.

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