

New Regulations of Investment Law 2014

After 8 years of implementing the Investment Law 2005, on 26 November 2014, the National Assembly enacted Investment Law 2014 with 7 chapters and 76 articles (amending 31 articles, supplementing 9 new articles, and removing 31 articles), providing for the business investment activities in Vietnam and business investment activities from Vietnam to foreign countries, and taking effect on 1 July 2015.

Firstly, the most notable reform of the new Investment Law is the change in approach method for legislating. By this day, the approach method was positive list approach, meaning whatever is permissible, then it is recorded in laws. The new approach method is negative list approach, which is an advanced and transparent approach method as this means whatever is restricted, then it is recorded in laws; for the rest, corporations and investors are allowed to conduct business and investment activities in accordance with the laws.

Secondly, in respect of some basic definitions, the Investment Law 2014 amends a number of concepts in comparison with Investment Law 2005, and simultaneously supplements a number of definitions on the basis of codifying previous regulations. Specifically:

- The new Law amends the definition of “Business investment” that means the expenditure of capital by an investor to conduct business activities via establishment of an economic organization; investment by capital contribution, purchase of a portion of capital contribution or shares in an economic organization; investment on the basis of a contract or implementation of an investment project.
- The Investment Law 2014 confirmed that “Foreign investor” must be an individual with foreign nationality or an

organization established in accordance with foreign laws conducting business investment activities in Vietnam. [So the Law ignored statelessness people => "Foreign investor" should be defined as an entity that is not national of Vietnam...]

- The new definitions of "new investment project" and "expanded investment project" are supplemented by the Law to create an important legal basis to apply the investment procedures and investment incentives in accordance with the provisions of Investment Law and relevant laws. Accordingly, a new investment project is the project conducted for the first time or project operating independently with the current project; an expanded investment project is the investment project developing the current project to expand the scale, increase the power and business capacity, renew technology, improve the quality of products, and reduce the environmental pollution.

- PPP Contract is supplemented as one of the investment forms in accordance with the new Investment Law. Specifically, an investor or project enterprise signing a PPP contract with competent State authorities for implementation of an investment project for new construction or renovation, upgrading, expansion, management and operation of technical infrastructure facilities or for provision of public service. The fields, conditions, and procedures for the implementation of investment projects in the form of PPP contract shall be detailed in the Government's decree providing guidelines for the implementation of the new Investment Law.

- In addition, the Investment Law 2014 removed a number of definitions such as "direct investment" and "indirect investment".

Thirdly, the Law also amends and supplements industries and trades in which business investment is prohibited, and list of industries and trades in which business investment is conditional. Article 6 of Investment Law 2014 provides for a total of 6 industries and trades in which business investment is prohibited, clarifying the provisions of conducting

business freely of citizens. Therefore, the number of industries and trades in which business investment is prohibited has been reduced dramatically compared to previous regulations (from 51 to 6). The number of industries and trades in which business investment is conditional is also narrowed to 267 industries and trades (Appendix 4 of Investment Law 2014).

Fourthly, an amended content, which is welcomed by the investor, is investment procedures and State management on investment activities. Currently, the procedures for issuance of the Investment certificate apply too widely, including all foreign investment projects and several domestic investment projects, including even projects on conducting trade activities or providing ordinary services only and not falling into conditional investment fields. Meanwhile the current laws have detailed the business conditions for and management of these activities, the issuance of Investment certificates for the above-mentioned projects not only imposes more administrative procedures on the investors, but also leads to the duplication in the State management activities.

Investment Law 2014 uses the definition of "Investment registration certificate" alternating the "Investment certificate" to reflect the purposes and nature of this document being the recognition for registration by the investor of the implementation of an investment project, but not the State's confirmation that the investor has implemented the project.

Especially, the new Investment Law removes the request for issuing the Investment registration certificate in respect of investment projects, except for:

- (a) Investment projects of foreign investors; or
- (b) Investment projects of economic organizations, which are:
 - (i) corporations of which 51% or more of their charter capitals is held by foreign investor(s) or partnerships that

have a majority of partners being foreign individuals;
(ii) corporations of which 51% or more of their charter capitals is held by economic organization(s) prescribed in paragraph a above;
(iii) corporations of which 51% or more of their charter capital is held by foreign investor(s) and economic organization(s) prescribed in paragraph (a) above.
when this organization makes investment in the establishment of an economic organization or investment on the basis of a BCC contract.

The time-limit to implement the procedures for issuing Investment registration certificate is shortened from about 45 days as before to 15 days.

Fifthly, another new point compared to Investment Law 2005 is Investment Law 2014 supplements authority of the National Assembly in the assessment and making decision on investment policy, and at the same time provides clearly for the assessment and making decision on investment policy in respect of each kind of investment projects subject to such authorities of the National Assembly, Prime Minister and provincial People's Committees.

Sixthly, with regard to investment incentives, the new Investment Law continuously confirms the principle of the investors' entitlement to investment incentives when they have investment projects conducted in the preferential investment sectors and geographical areas. Accordingly, to ensure the unity of the legislation, the preferential investment sectors and geographical areas where investments are encouraged as stipulated in the Investment Law shall be taken as the basis to apply the investment incentive forms stipulated in different laws (such as corporation income tax, import tax, and land use incentives, etc.).

However, Investment Law 2014 only provides for the sectors and geographical areas where the investments are encouraged and

principle applicable to the investment incentives; and the incentive levels shall be detailed in the relevant laws. The preferential investment sectors are supplemented with projects on new energy, clean energy, production of industrial products that support development priority, industrial products that support high technologies, or main point mechanical products; and criteria for determining a number of projects in the preferential investment sectors are also particularly specified. In addition to the investment incentives based on sectors and geographical areas, Investment Law 2014 also supplements the policy on incentives and supports for a number of enterprises and investment activities such as policy on supporting small and medium-sized enterprises, and policy on encouraging investments in agriculture and rural areas.

Seventhly, according to Investment Law 2014, foreign investor may hold an unlimited portion of charter capital in an economic organization, except for the following cases: (i) the ratio of ownership of foreign investor in listed companies, public companies, securities trading organizations and other securities investment funds is subject to the laws on securities; (ii) The ratio of ownership of foreign investors in State enterprises, which conduct equitization or convert their ownership into another form, is subject to the laws on equitization and conversion of State enterprises; and (iii) The ratio of ownership of foreign investors not covered by paragraphs (i) and (ii) is subject to other relevant laws and international treaties to which the Socialist Republic of Vietnam is a member.

Eighthly, the new Investment Law re-confirms the principle of implementing the offshore investment activities, and simultaneously states that the State encourages the investors to carry out offshore investment activities to exploit, develop and expand the market; to increase the export potential for goods and services, to earn foreign currencies, to have access to modern technologies, to improve the ability

of management and provide additional resources to socio-economic development of the country.

The offshore investment forms of the investors are also provided for more specifically than before, including 5 forms:

- (a) Establishment of an economic organization in accordance with the laws of the investment recipient country;
- (b) Performance of an offshore BCC contract;
- (c) Purchase of the whole or a part of the charter capital of an offshore economic organization to participate in management and conduct business investment activities in a foreign country;
- (d) Purchase or sale of securities or other valuable papers or investment via securities investment funds or other intermediary financial institutions in a foreign country; and
- (e) Other investment forms in accordance with the laws of the investment recipient country.

Ninthly, Investment Law 2014 also improves the provisions on compulsory purchase and requisition of assets of the investors in compliance with the Constitution, specifying the commitment of the State to equal treatment between investors in consistence with the commitments of Vietnam in international treaties.

Finally, to maintain the stability of activities of the investment projects conducted or enterprises operating before the effective date of the new Investment Law, the Law stipulates that the investors who are conducting investment projects in accordance with Investment license or Investment certificate issued prior to the effective date of this Law may continue to conduct investment projects in accordance with the issued Investment license or Investment certificate. If requested by the investor, the investment registration agencies shall issue a replacing Investment registration certificate to the investor./.