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Overseas Updates

[VIETNAM] Proposed Changes Regarding Foreign Investment in Local Firms

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Vietnam has different types of certificate of incorporation for a corporate entity invested solely by domestic capital ("Local Firm") and for a corporate body with foreign investment ("Foreign Invested Firm"). In Vietnam, the certificate of incorporation for Local Firm is a business registration certificate, while for Foreign Invested Firm, it is an investment certificate. The Law on Enterprises of Vietnam defines a business registration certificate as certificate of incorporation; however in case of Foreign Invested Firm, an investment certificate replaces a business registration certificate as permission for investment, since it is necessary to separately stipulate the permission and approval procedures for foreign investment.

In accordance with the Law on Investment, if a foreigner incorporates a new firm in Vietnam or acquires a part of the equity in Foreign Invested Firm, the foreign investor only needs to get a new investment certificate or to change the existing investment certificate. However, the laws of Vietnam do not clearly state which document a foreign investor needs when he/she desires to acquire a part of the equity of Local Firm (in either acquisition of newly issued shares or transfer of the existing shares). Furthermore, local government's agencies in charge of incorporation have different positions, which cause confusion among foreign investors.

The Department of Investment Planning of each local government oversees most of the industries including manufacturing, and the Domestic Division under the above department is in charge of Local Firms, while the Foreign Division is in charge of Foreign Invested Firms. When a foreign investor acquires a part of the equity of Local Firm, it is transformed into Foreign Invested Firm. Regarding the change, the Domestic Division generally takes the position that the existing business certificate needs

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to change, while the Foreign Division insists that a new investment certificate needs to be issued. Due to the different positions of the two divisions, when a foreign investor intends to acquire a part of the equity of Local Firm in Ho Chi Minh City, the foreign investor has to change the existing business certificate and, at the same time, receive a new investment certificate.

In order to resolve the confusing situation, the Vietnamese government has announced a proposed amendment to the Decree 108 of the Law on Investment. The revised decree stipulates that if a foreign investor intends to acquire a part of the equity of Local Firm, the foreign investor shall apply for the issuance of an investment certificate by submitting the following documents:

- application for issuance of a investment certificate;
- equity purchase agreement;
- the current articles of incorporation and the revised one;
- a copy of the existing business registration certificate; and
- letter of resolution (passed in the board of directors meeting or a general meeting of employees/shareholders) on the internal procedure of the company to be acquired

If the decree is revised as proposed, foreign investors who intend to invest in Local Firms would not have to go through the procedure to change the already-issued business registration certificate and would just need to get a new investment certificate, which will be a much simpler process compared to the current one.

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