



VIETNAM



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Licensing procedures for foreign investors clarified

The simplification of administrative procedures has now been widely acknowledged as an aim of the Vietnamese government as part of its wider plan to attract more foreign investment.

Understanding the utmost need for a more effective and simpler legal framework for foreign investors to invest in Vietnam, the Ministry of Planning and Investment (MPI) has created a mechanism allowing interconnection between the investment registration procedures and enterprise registration procedures (the Interconnection Mechanism). Such Interconnection Mechanism took effect as of June 15, 2017 by issuance of Circular No. 02/2017/TT-BKHDT, guiding the mechanism for cooperation in processing applications for investment registration and enterprise registration submitted by foreign investors (Circular 02).

It is expected that, with Circular 02, the investment registration procedures as well as the enterprise registration procedures shall take considerably less time and effort from the foreign investor. In brief, the Interconnection Mechanism lets the foreign investor submit one dossier for two procedures to register for its investment project, instead of two separate dossiers as before.

Principles for applying the Interconnection Mechanism

The Interconnection Mechanism does not eliminate the former procedures. In fact, the foreign investor, at its own discretion, can choose to use either the Interconnection Mechanism or the separated procedures already in effect to register for investment

projects in Vietnam. In other words, the choice of administrative procedure has now been given to the investor and in consideration to other factors (ie, the complexity of the documents), the investor can itself choose the most effective one.

In addition, the investor shall no longer be required to submit two copies of the same document if the Interconnection Mechanism is chosen. Before the issuance of Circular 02, the documents with regards to the investment registration procedure and enterprise registration procedure could not be submitted at the same time, so the investor had to submit separate copies of documents in each procedure.

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Cases in which the Interconnection Mechanism is applied

The Interconnection Mechanism applies in the following cases:

- a. Foreign investor or foreign-invested economic organisation invests in Vietnam under the form of establishment of economic organisation;
- b. Foreign investor or foreign-invested economic organisation invests in Vietnam

under the form of conducting acquisition;
c. Foreign investor or foreign-invested economic organisation concurrently amends the enterprise registration content and investment registration content under Article 4.3 of Circular 02.

Considerable benefit of Interconnection Mechanism

Investment under the form of establishment of economic organisation in Vietnam requires the investor to first obtain an Investment Registration Certificate (the IRC) through the investment registration procedure. However, until the issuance of the Enterprise Registration Certificate (the ERC) through the enterprise registration procedure, the economic organisation will then be established officially and such name will be recognised by law. In practice, therefore, under some circumstances the investor was granted an IRC but rejected the ERC when conducting procedures for enterprise registration. The common reason for such rejection was that the name of the enterprise appearing in the IRC has already been registered by another entity during the processing time for issuance of the IRC. This proved problematic for investors and their advisers.

According to the Interconnection Mechanism, the dossier for obtaining an IRC as well as an ERC must be submitted at a single time, hence, the enterprise name shall be protected by the time the competent bureau announces the proper submission.

It would thus appear that the MPI is seeking to simplify the process of submitting proposals to the proper authorities to register investment projects in the country. It is hoped that this change will not only simplify, but also expedite procedures for foreign investors.