

Re-registration of FIEs in Vietnam



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Foreign-invested enterprises (FIEs) have, on the whole, been considered an attractive channel for investment in the Vietnam market. However, FIEs already established and operating under the Foreign Investment Law in Vietnam (Old FIEs) have had to cope with difficulties within the legal framework under the Law on Investment and Law on Enterprises due to not having gone through re-registration. By issuing Law No. 37/2013/QH13, dated June 20th, 2013 (effective from August 1st, 2013) on amending and supplementing Article 170.2 of the Law on Enterprises (Amended Law), the National Assembly of Vietnam has tightened State management regarding FIEs' operation and abolished the previous deadline for re-registration for such Old FIEs.

Purpose of re-registration in the Amended Law

The Government has extended the time for re-registration in order to allow FIEs to maintain their current operations, especially those that have stable production, create stable jobs for local employees and contribute to social welfare and the state budget. The amendments will also provide a legal rescue for FIEs who failed to re-register by the previous re-registration deadlines (i.e. before July 1st, 2008 and July 1st, 2011), and help overcome difficulties and obstacles for businesses with foreign investment, ensuring their long-term commitment and favourable conditions for the economy in Vietnam. Government statistics have pointed out that as of June 2013, as many as 2,916 out of a total 6,000 FIEs had not as yet re-registered. As such, the implementation of the Amended Law will save up to 3,000 foreign companies from shutting down.

Old FIEs whose operational duration expired under their investment licenses after July 1st, 2006

The Amended Law stipulates such FIEs are allowed to continue their current operations provided that they are not in the process of dissolution and shall re-register as soon as practicable before February 1st, 2014. Doing so, the Old FIEs shall be recognised as being operated continuously since the expiry date of operation stated in their old investment licenses. However, for the intervening period and post re-registration, the current applicable laws on tax, investment and corporation shall be applied to these FIEs,

instead of the former provisions in the old investment licenses. FIEs that re-register, are also entitled to adjust, supplement and extend investment projects at the same time as conducting such procedure. In the absence of re-registration, these FIEs shall be forced to cease operations and required to fulfill their obligations related to dissolution before leaving Vietnam.

Old FIEs whose operational duration is still valid

The Amended Law stipulates that Old FIEs whose operational duration is still valid can either re-register for operation and management in accordance with the Law on Enterprises or not re-register. In the view of the State of Vietnam, re-registration is also made to unify FIEs' rights and ensure the principles of corporate governance in a limited liability company or joint stock company under the Law on Enterprises. Thus, the re-registration is a good option for FIEs planning to make an effective investment under the prevailing laws of Vietnam.

FIE's who choose not to re-register will see their business operation limited to the activities specified in their investment licenses and companies' charter and may not extend their business operations terms. However, they may amend or supplement their business lines provided that there are no changes in the operation duration prescribed in the investment licenses. Any changes in the business's operational duration or amendments and supplementations leading to a change in operational duration stated in the current investment licenses, will require FIEs to re-register.

Currently, the Ministry of Planning and Investment of Vietnam is finalising the replacement draft decree on re-registration, conversion of FIEs and the replacement of investment certificates of parties in the business cooperation agreements. The draft decree may be submitted to the Government later this year.

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