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“New legislation gives FDI enterprises a “last call””

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NEW LEGISLATION GIVES FDI ENTERPRISES A “LAST CALL”!

Nguyen Thu Huyen, J.D.



After July 1, 2008, foreign invested enterprises (“FDI enterprises”) those have not “re-registered” its business with the authority will not be able to (i) change its registered scope of business, (ii) extend the term of investment and (iii) transform from a limited liability company to other corporate forms. This is the main contents of Decree 101/2006/ND-CP dated September 21, 2006 which is considered as the “last call” for FDI enterprises which want to have a more flexible framework for their business than that of their existing investment license.

In accordance with the Decree, three different processes will be applied:

- (i) **re-registration:** a rather simple process in which an application, a new charter (modified to be consistent with the Law on Enterprises 2005) and copy of the investment license(s) should be submitted to the license-issuing authority. A time limit of 15 days for issuing a new license is set for the authority.
- (ii) **replacement of investment license:** this process is only applicable to business-cooperation-contracts (“BCCs”).

A time limit for replacing the investment license is 7 days.

- (iii) **transformation of corporate form:** this process is for the FDI enterprises wishing to transform its corporate form. The application includes the documents as in the re-registration process and a decision of transformation from the investors. The authority has 30 days to consider the application and issue a new license.

“Re-registration is not compulsory but worthy”

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“Is it compulsory to re-register?”

The Decree gives FDI enterprises a period of two years from July 1, 2006 to re-register. Re-registration is not compulsory and it is up to the enterprise to decide to re-register or not. However, after the time limit expires on July 1, 2008, non-reregistering enterprises are subject to a number of restrictions are follows:

- The FDI enterprises cannot amend the scope of business activities provided in its investment license;
- The form of limited liability company is the only choice for non-reregistering enterprises. It cannot be transformed to a joint stock company;

The investment license of non-reregistering enterprises will not be extended upon the expiry of the approved investment period. In order to continue the business, the investor shall close the enterprise and apply for a new investment license.

“Is it worthy to re-register?”

To encourage FDI enterprises to re-register, a number of incentives are given to re-registering one:

- Multiple investment projects will be possible (whereas a non-reregistering enterprise is

restricted as single-project-enterprise by its investment license);

- No “thin capitalization” rule;
- Can amend investment license in all situations, whereas non-reregistering FDI enterprises are subject to restrictions on amendment;
- Can list on the stock exchange;
- Re-registering FDI enterprises may be formed as a limited liability company or joint-stock companies (whereas the limited liability company is only one form available for non-registering FDI enterprises);
- Better legal framework for corporate governance thanks to the application of the Law on Enterprises.

Although, the re-registration requires the FDI enterprises to carry out some paper works but the incentives are certainly outweighed such difficulties in administrative procedures. In addition, the re-registration procedures are not complicated and time consuming. However, it is the “last call” for the enterprises and the deadline is July 1, 2008.