

## Unsound Regulation On Investment Procedure For Foreign Investors Under Law On Investment 2014

Law on Investment No. 67/2014/QH13 ("**Law on Investment 2014**") which comes into effect from July 1<sup>st</sup>, 2015 was expected to create significant changes in attracting investment and administrating investment environment in Vietnam. However, after a period of implementation, Law on Investment 2014 has exposed some unsound regulations, typically the regulation on procedure to invest in the form of capital contribution, purchase of share or contribution capital applied for the foreign investors being existing members, shareholders of the economic organizations as stipulated in Article 26 of Law on Investment 2014.

We will study a particular case as follows: Company A is a limited liability company which was granted the Investment registration certificate and Enterprise registration certificate in January 2016 with 03 members: B, C and D. B and C are foreign investors, holding respectively 31% and 20% of charter capital, and D is a Vietnamese investor, holding 49% of charter capital of Company A. Under new business strategy, B desires to transfer all of his contribution capital in Company A to C (After the transfer, C will hold 51% of charter capital of Company A).

Point b, Clause 1 of Article 26 of Law on Investment 2014 requires the foreign investors to execute the procedure of registration for capital contribution, purchase of share or contribution capital if the result of that leads to the foreign investor's holding from 51% of charter capital of that economic organization.

Therefore, in order to receive all contribution capital of B, C must execute the procedure as stipulated in Point b, Clause 1 of Article 26 of Law on Investment 2014.

According to Clause 3 of Article 46 of Decree No. 118/2015/ND-CP (on procedure to invest in the form of capital contribution, purchase of share or contribution capital), C must acquire official letter from Department of Planning and Investment certifying that he meets the investment conditions applied for foreign investors prior to the procedure to change the members, shareholders of Company A at business registration agency. Specifically, in this case, C needs to implement 02 (two) steps to receive contribution capital from B, including: Step 1 - Execute the procedure to invest in the form of capital contribution, purchase of share and contribution capital and Step 2 - Execute the procedure to change the members of Company A under the laws.

Meanwhile, at the time of executing the procedures to obtain the Investment Registration Certificate in the name of Company A under Law on Investment 2014 and Decree No. 118/2015/ND-CP, C has met the investment conditions, especially the condition on foreign ownership percentage in the economic organization.

Obviously, it is unreasonable to require C to implement the procedure to invest in the form of capital contribution, purchase of share or contribution capital since it gives rise to additional procedure for the foreign investor.

From practical experience, we recommend omitting the procedure to invest in the form of capital contribution, purchase of share and contribution capital applied for the foreign investors being existing members, shareholders of that economic organization.