

PwC Legal Vietnam NewsBrief

Decree guiding the Law on Investment

The Government issued Decree No. 118/2015/ND-CP on 12 November providing guidance on a number of articles in the Law on Investment. Notable points of Decree 118 include:

- Investors from countries which are not WTO members can enjoy the same investment conditions applicable to WTO members.
- The Ministry of Planning and Investment must be consulted regarding applications to carry out business activities which are not committed to, or specified, in Vietnam's WTO commitments and in relation to which Vietnamese law does not provide investment conditions for foreign investors. The MPI approval will effectively act as a precedent for other foreign investors wishing to engage in the same sector.
- The licensing authority must include all requests/comments from all authorities in relation to an investment certificate application in one letter. If a ministry has been asked for its opinion and fails to respond within 15 days, then it is deemed to have agreed with the application.
- In relation to M&A transactions, Decree 118 confirms that foreign investors which buy shares in or make capital contribution to an existing domestic company, do not have to obtain an investment registration certificate. They must however obtain an acquisition approval from the Department of Planning and Investment, if foreign ownership of a target reaches 51% or more, or if the target operates in a conditional sector.
- Where a foreign invested company is already operating in Vietnam either under an investment certificate or an investment licence, it can continue to so operate. If the details of its 'business registration', such as its name, address, charter capital or legal representative are no longer up to date, it should apply for an enterprise registration certificate (but not an investment registration certificate, as the details relating to its investment project as contained in its old investment certificate/ investment licence continue to be valid). Instead, if the details of its 'investment registration', such as the name, place, duration or capital of the project are no longer up to date, it should apply for an investment registration certificate (but not an enterprise registration certificate, as the details relating to its business registration as contained in its old investment certificate/investment licence continue to be valid).

