



MEASURES TO ENSURE GOVERNMENT CONTROL OVER FOREIGN INVESTMENT

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The Chapter V, including Articles 54-64, of the Foreign Investment Law of 1996 is designed to deal with "Government Control Over Foreign Investment" and the Decree 12/CP issued by the Government on Feb. 18, 1997 also provides "Detailed Regulations On The Realization of Foreign Investment Law" in its Chapter XII (Articles 95-98). In the Decree 10/NĐ-GP issued on Jan. 23, 1998, Article 2, Chapter I (General Regulations) and Articles 19-20, Chapter IV (Government Control over Companies) provide main measures to ensure the government control over foreign investment.

According to the Article 54 of the Foreign Investment Law of 1996, the government control over foreign investment includes the following tasks:

- + Building strategies, plans and policies on foreign investment
- + Making rules and regulations on foreign investment

- + Directing ministries and provincial authorities to carry out operations relating to foreign investment

- + Granting and withdrawing investment licenses

- + Coordinating efforts of governmental bodies to control foreign investment

- + Inspecting and supervising foreign investment projects

I. MEASURES SET FORTH BY THE DECREE 10/1998/CP TO CON- TROL FOREIGN INVESTMENT

To carry out the above-mentioned tasks, the Government set forth measures to control foreign investment in Articles 2, 19 and 20 of the Decree 10/1998/NĐ-CP issued on Jan. 23, 1998. These measures can be divided into the following groups:

1. Measures to ensure the realization of policies on foreign investment and improve environment for investment

-To realize consistently legislation made under powers conferred by the Foreign Investment Law by requiring governmental bodies and provincial governments to consult the Ministry of Planning and Investment (MPI) before making regulations or guidelines relating to foreign investment, and report to the PM if there is a division of opinion (Article 1, Section 2): This measure aims at realizing correctly and stably the policy on foreign investment with a view to providing foreign investors with favorable conditions and preventing obstacles caused by subordinate authorities to foreign investment activity.

-To require the MPI to hold regular working sessions with Ministries of Finance and of Trade, State Bank, General Department of Land Registry, General Department of Customs and related provincial governments in order to handle newly-arisen problems, study petitions applied by foreign-invested

companies and propose new measures to improve the investment environment (Article 19, Section 3): To carry out this measure, the MPI has recently formed two Service Centers for Foreign Investment Activity, in Hà Nội and HCMC, run by two Deputy Ministers. These Centers have to make decision on petitions applied by investors within 10 days, including the time needed for requesting opinions from the PM in order to solve problems beyond the authority of ministries and related provincial governments.

2. Measures to coordinate efforts of governmental bodies to control foreign investment activity

-To require related ministries, central governmental bodies, provincial governments to direct the foreign investment activity in localities under their control: This measure aims at not only delegating power to governmental bodies but also coordinating their operation to control the foreign investment activity (Article 2, Section 1).

-To beef up the mechanism for controlling foreign-invested companies with a view to force all governmental bodies to control the foreign investment activity according to regulations set by law.

-To require the MPI to gather and supply full and up-to-date information about foreign investment to related ministries, central governmental bodies and provincial governments.

3. Measure to delegate control power

Article 19, Section 2 provides that: "Provincial governments are responsible for handling on time all problems within their authority and direct companies to operate in compliance with what are stated in their investment licenses and regulations set by law."

4. Measure to reform administrative procedures

To carry out projects to reform the administration, revise procedures for making investment in order to make them simpler and more effective according to the "one-door" principle (Article 2, Section 1).

5. Measures to control foreign investment activity

These measures are stated in Article 20 of the Decree. They aim at helping foreign-invested companies overcome obstacles, solving newly-arisen problems and making sure that these companies operate in compliance with their investment licenses and regulations set by law (Article 20, Section 1). Tasks of carrying

out these measures are delegated as follows:

-Provincial governments and management boards of provincial industrial estates make plans to carry out regular inspection in order to estimate the realization of investment projects and business performance of foreign-invested companies under their control.

-Ministries and central governmental bodies make plans to carry out inspection foreign-invested companies in order to make sure that all regulations relating to fields under their control are observed.

-Authorized governmental bodies carry out inspection whenever violations of regulations or troubles committed by foreign-invested companies are discovered.

To make sure that the inspection is carried out properly, the Decree 10/1998/NĐ-CP requires that:

-Inspecting organizations must inform related provincial governments and management board of industrial estates of their inspection plans in advance. Both regular and specialized inspection can be carried out in a company once a year only (Article 20, Section 2).

-Governmental bodies carrying out regular or specialized inspection are responsible for notifying the related company of the inspection plan at least seven days in advance. The inspection of a company mustn't last for more than five days. If a longer duration is needed, the inspecting body must inform related provincial governments and management board of industrial estates of this prolongation (Article 20, Section 3).

-Within 30 days after the inspection, the inspecting body must submit reports on inspection results to the MPI and related organizations (Article 20, Section 4).

6. Complaints procedure and measures to deal with violations of regulations on foreign investment activity

-Inspected companies have rights to make complaints about illegal inspection (Article 20, Section 3).

-All unlawful inspection and action of using inspection as a way to cause trouble to companies should be punished by law.

-Heads of related organizations are responsible for supervising and controlling their subordinate bodies, and handling violations on time according to regulations set by law (Article 2, Section 1).

Thus, the Decree 10/1998/NĐ-CP delegates to heads of governmental

bodies tasks of supervising and controlling subordinates, and handling violations of law or troubles caused to foreign-invested companies. Article 64 of Chapter V also allows companies not only to make complaints but also to bring a lawsuit against unlawful decisions and violations of law made by officials or inspecting bodies.

II. POSITIVE EFFECTS OF MEASURES TO CONTROL FOREIGN INVESTMENT ACTIVITY

Measures to control the foreign investment introduced by the Decree 10/1998/ NĐ-CP show many positive aspects:

-The task of controlling foreign-invested companies is delegated to local governments and management boards of industrial estates, thereby helping these companies make contact with authorized governmental bodies easier, reduce travelling expenses and avoid waste of time caused by the state of being controlled by too many organizations.

-The application of "one-door" principle can help to make investment procedures simpler.

-This Decree can be seen as an effort to deal with contradiction between directives given by central and local governments and prevent local governments from disobeying laws or instructions given by the central government.

-The control over operation of foreign-invested companies aims at removing obstacles to companies and helping them operate according to law.

-The Decree also delegates duties and rights to control and handle violations and actions of causing troubles to foreign-invested companies.

However, many people are of the opinion that the regular inspection can be coupled with specialized inspection so the company is inspected only once a year.

In the process of realizing the Foreign Investment Law, it's obvious that necessary adjustments will be made in order to make this law suitable to economic development and changes in policies on foreign affairs, but generally, measures to control the foreign investment activity introduced by the Decree 10/1998/NĐ-CP are open and realistic enough to encourage foreign investment in Vietnam in the period of industrialization and modernization. ■