



INVESTMENT IN VIETNAM

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GENERAL INTRODUCTION



- Since its accession to the World Trade Organization (WTO) on 11 January 2007, Vietnam has taken active steps to revamp its legal framework for business and investment in Vietnam. The changes are largely favorable to both foreign and local investors
- Since the introduction in 2006 of both the Investment Law, which regulates investments in Vietnam, and the Law on Enterprises, which sets out the types of corporate vehicles investors may establish to carry out their investment projects, additional legislation has been enacted to further enhance both foreign investment and foreign invested business operations in Vietnam.
- All types of companies must operate according to the same corporate governance rules. This should create a level playing field for doing business. The failure to comply with these corporate rules will lead to personal liability for directors or officers of a company, regardless of whether the company is foreign-owned, Vietnamese-owned or State-owned. Similarly, the Investment Law also applies to both local and foreign investors.



LEGAL FRAMEWORK

- Under the Vietnamese legal system, only written legislation, commonly referred to as “legal instruments” is recognized as source of law.
- Annually, the Supreme People Court of Vietnam consolidates court judgments toward outstanding cases in Vietnam into a general guide to court judgments. However, these documents are only recognized as a reference for interpretation and application of law.

Issuing Body	Legal Instrument	Governing Scope
National Assembly	The Constitution Laws Resolutions	Whole Territory of Vietnam
Standing Committee of the National Assembly	Ordinances and Resolutions	Whole Territory of Vietnam
The Government	Decrees Regulations and Resolutions	Whole Territory of Vietnam
The Prime Minister	Decisions and Instructions	Whole Territory of Vietnam
Ministries	Circular	Whole Territory of Vietnam
Minister	Decisions	Whole Territory of Vietnam
Provincial People Committee/Council	Decisions and Resolutions	Territory of Province or City

FORM OF FOREIGN INVESTMENT IN VIETNAM



Direct investment – where the investor invests capital and participates in the management of the investment, including (i) establishment of foreign invested companies (FIC); (ii) Investing pursuant to a contract such as Business Co-operation Contract (BCC), Build-Operate (BO), Build-Transfer-Operate (BTO) or Build-Operate-Transfer (BOT) or Build-Transfer (BT) Contract; (iii) Purchasing shares or contributing capital to existed companies in Vietnam to participate in management; (iv) merger or acquisition of a company or branch.

Indirect investment – where the investor invests through the purchase of securities or through intermediary financial institutions where the investor does not participate directly in the management of the investment activity, including (i) Purchasing of shares, bonds and other valuable papers; (ii) Investing through securities investment funds and (iii) Investing through other intermediary financial institutions.

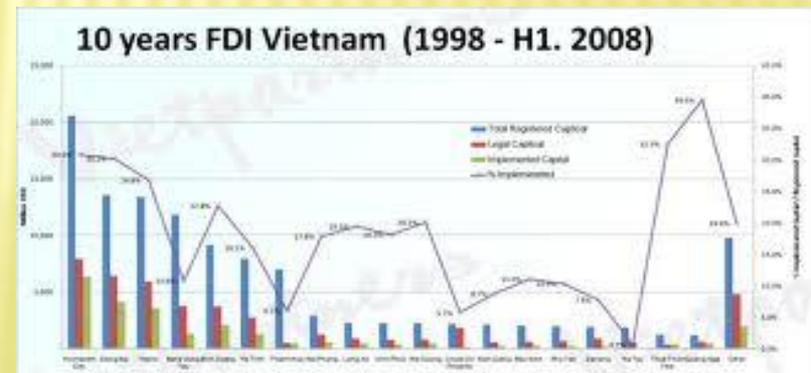
INVESTMENT CAPITAL

- ▶ Except for several conditional investment sector such as real estate, finance, tourism and banking, education and trainings, etc **there is no requirement for minimum investment capital**;
- ▶ Foreign Investor is to be responsible for estimation of the Investment Capital required for running its Investment Project in Vietnam;
- ▶ Competent Authority may reject to grant the License if it find that the estimated Investment Capital is not sufficient to run the proposed Investment Project.
- ▶ Foreign Investor must contribute its capital contribution in accordance with the schedule stated in the License



PROCEDURES FOR SETTING UP FOREIGN INVESTED COMPANY (FIC)

- Foreign Investor must obtain an Investment Certificate from the Licensing Authorities;
- Investment Certificate shall be also considered as the License for Incorporation of FIC under Vietnam Law;
- Prime Minister shall approve enormous scale projects, the spheres related to many branches, regions, social community, such as oil and gas exploration, telecommunication service for foreign investment projects etc and alternative projects dimensioned from 3,000 billions VND upwards;
- Foreign Investment projects scaled from 800 billions VND upwards shall be under licensing authority of the Ministry of Planning and Investment;
- The remained investment project shall be subject to decision of Provincial People Committee (for companies located outside industrial or export processing zones) or the provincial Industrial and Export Processing Zones Management Authority (for companies located in industrial or export processing zones).



Investment guarantees are a set of measures that are stipulated in the law to ensure rights and legitimate interests of investors in the course of investment with the purpose of earning profits. Investment Guarantees under Vietnam Investment Law are follows:

- ▶ Lawful assets and invested capital of investors shall not be nationalized or confiscated by administrative measures.
- ▶ Ensure equality of treatment among investors is the commitment of Vietnam towards all investors carrying out investment activities in Vietnam irrespective of nationalities, origins of capital of any investors.
- ▶ The State shall protect intellectual property rights during investment activities; and shall ensure the legitimate rights of investors in technology transfer in Vietnam in accordance with the laws on intellectual property and other provisions of relevant laws.
- ▶ Foreign investor has discharged fully its financial obligations to the State of Vietnam, it shall be permitted to remit abroad its profit, payments received from the provision of technology and services and from intellectual property, principal of any interest on foreign loans, Invested capital and proceeds from the liquidation of investments and other sums of money and assets lawfully owned by the investor.

DISPUTE SETTLEMENT

- Any dispute relating to investment activities in Vietnam shall be resolved through negotiation and conciliation, or shall be referred to arbitration or to a court in accordance with law;
- Any dispute as between domestic investors or as between a domestic investor and a State administrative body of Vietnam relating to investment activities in the territory of Vietnam shall be resolved at a Vietnamese court or arbitration body;
- Any dispute to which one disputing party is a foreign investor or an enterprise with foreign-owned capital, or any dispute as between foreign investors shall be resolved by one of (i) Vietnamese court; (ii) Vietnamese arbitration body; (iii) Foreign arbitration body; (iv) International arbitration body; (v) Arbitration tribunal established in accordance with the agreement of the disputing parties;
- Any dispute between a foreign investor and State administrative body of Vietnam relating to investment activities in the territory of Vietnam shall be resolved by a Vietnamese court or arbitration body, unless otherwise provided in a contract signed between a representative of a competent State body of Vietnam with the foreign investor or in an international treaty of which the Socialist Republic of Vietnam is a member.

- ❖ ***Labor contract shall be entered into one of the following forms:***
 - *An indefinite term labor contract.* An indefinite term labor contract is a contract in which the two parties do not determine the term and the time for termination of the validity of the contract;
 - *A definite term labor contract.* A definite term labor contract is a contract in which the two parties determine the term and the time for termination of the validity of the contract as a period of twelve (12) months to thirty six (36) months;
 - *A labor contract for a specific or seasonal job* with duration of less than twelve (12) months.
- ❖ ***Termination of Labor Contract***
 - The expiry of the contract;
 - The tasks stated in the contract have been completed;
 - Both parties agree to terminate the contract;
 - The employee is sentenced to imprisonment or is prevented from performing his former job in accordance with a decision of a court;
 - The employee dies or is declared missing by a court;
 - One of Parties unilaterally terminates the Labor Contract;

FOREIGN EMPLOYEE

- Foreign Employee who works in Vietnam 3 months upward must obtain Work Permit except for (i) Foreigner being a member or an owner of a limited liability company; (ii) Foreigner being a member of the Board of Management of a Joint Stock Company; (iii) Foreign lawyer licensed to practice in Vietnam; (iv) Foreigner entering Vietnam to offer services; (v) Foreigner who enters Vietnam to resolve an emergency case; (vi) Foreigner being the Chief of Representative Office of Foreign Company and (vii) Foreign Employee designed by the Foreign Parent Company to work for its subsidiaries in Vietnam.
- Enterprises of all economic sectors, Vietnamese as well as foreign or international organizations, are entitled to employ non- Vietnamese employees. However, the employer must have a training plan to train Vietnamese to replace their foreign employees.
- In order to obtain work permit, Foreign Employee must satisfy following conditions:
 - Minimum age of 18 years*
 - Good health*
 - Suitable to the requirements of the job Manager, executive director or an expert with high professional or technical qualifications, experience in one's career or in management that Vietnamese employees do not yet possess*
 - No criminal convictions or civil record in respect of a breach of national security or any other crime as well as no current criminal prosecutions or criminal sentences not yet been discharged in accordance with Vietnamese and foreign laws.*

▶ **Business License Tax**

Business License tax's nature is an annual fee on the establishment of production and business activities of all economic sectors. All organizations and individuals engaged in business are liable to pay the license tax.

Enterprises shall pay license tax on the basis of their registered capital inscribed in the Business License. For foreign-invested enterprises, it shall be the investment capital.

License Tax Grade	Registered Capital (VND)	License Tax for the whole year (VND)
Grade 1	Over 10 billion	3,000,000
Grade 2	Between 5 and 10 billion	2,000,000
Grade 3	Between 2 and 5 billion	1,500,000
Grade 4	Under 2 billion	1,000,000

▶ Value Add Tax (VAT)

VAT is levied on the value added of goods and services incurred in the process of production, circulation and consumption;

VAT's paid by manufacturers, traders and service providers, but the consumer is taxpayer through the prices of goods and services;

Taxable objects are goods and services used for production, trading or consumption in Vietnam are subject to value-added tax, except for *“machinery, equipment, spare parts, special-purpose means of transport and supplies which cannot be manufactured at home and need to be imported for prospecting, exploring and developing oil and gas fields”*.

VAT Rate: 0%; 5% and 10%

▶ **Corporate Income Tax (CIT)**

- Corporate income tax is a direct tax levied on profits of enterprises;
- Enterprises established under Vietnamese law shall pay tax on taxable incomes generated in and outside Vietnam;
- Taxable incomes include income from goods and service production and business activities; Income from the transfer of capital or real estate; income from the right to own or use assets; income from the transfer, lease or liquidation of assets; income from interests, loans or foreign currency sales; refund of provisions; recovery of bad debts already written off; collection of payable debts of unidentifiable creditors; omitted income from previous years business activities, and other incomes, including income generated from production and business activities outside Vietnam;
- Taxed income in a tax period shall be determined as follows:
Taxed income = Taxable income - (Tax-exempt income + Losses carried forward under regulations)
- Taxable income shall be determined as follows:
Taxable income = (Turnover - Deductible expenses) + Other incomes
- CIT rate: 25%

▶ **Corporate Income Tax (CIT)**

- Tax incentives are granted based on regulated encouraged sectors and difficult socio-economic locations. The sectors which are encouraged by the Vietnamese Government include education, health care, sport/culture, high technology, environmental protection, scientific research, infrastructural development and computer software manufacture;
- The two preferential rates of 10% and 20% are available for 15 years and 10 years respectively, starting from the commencement of operating activities. When the preferential rate expires, the enterprise income tax rate reverts to the standard rate;
- Taxpayers may be eligible for tax holidays and reductions. The holidays take the form of a complete exemption from enterprise income tax for a certain period beginning immediately after the enterprise first makes profits, followed by a period where tax is charged at 50% of the applicable rate. However, where the enterprise has not derived profits within 3 years of the commencement of operations, the tax holiday/tax reduction will start from the fourth year of operation. Criteria for eligibility to these holidays and reductions are set out in the Corporate income tax regulations.
- Additional tax reductions may be available for engaging in manufacturing, construction, and transportation activities which employ many female staff, and employing ethnic minorities.
- Tax incentives do not apply to other income, which is broadly defined

▶ Import Tax and Export Tax

- Export tax, import tax is a tax on commercial goods, non-commercial goods being allowed to export or import across borders of Vietnam;
- Goods in the following cases shall be liable to import tax or export tax:
 - ✓ Goods imported or exported through Vietnam's border-gates or borders, including goods imported or exported through land or river way border-gates, seaport, airports, transnational railway stations, international post offices or other customs clearance venues set up under decisions of competent state agencies;
 - ✓ Goods brought from the domestic market into non-tariff zones or from non-tariff zones into the domestic market;
 - ✓ Other sold, purchased and exchanged goods which are considered imported or exported goods.
- ❖ *Goods transited through Vietnam's border-gates or borders; Goods exported from non-tariff zones to foreign countries; Goods imported from foreign countries into non-tariff zones for use in non-tariff zones only; goods transported from one non-tariff zone to another; Goods being petroleum volumes paid to the State as natural resource tax when exported shall be not subjected to Import Tax.*

▶ **Import Tax and Export Tax**

- ▶ Tax rates applicable to exports shall be specified for each goods item in the Export Tariff;
- ▶ Tax rates applicable to imported goods shall be specified for each goods item, including preferential tax rates, special preferential tax rates and ordinary tax rates:
 - Preferential tax rates shall apply to imported goods originating from countries, groups of countries or territories which sanction most favored nation treatment in their trade relations with Vietnam. Preferential tax rates shall be specified for each goods item in the Preferential Import Tariff;
 - Special preferential tax rates shall apply to imported goods originating from countries, groups of countries or territories which sanction most favored nation treatment in their trade relations with Vietnam under the regime of free trade areas or tariff alliance in order to facilitate border commercial exchange, and other cases of special preferential treatment;
 - Ordinary tax rates shall apply to imported goods originating from countries, groups of countries or territories which do not sanction most favored nation treatment or grant special import tax preferences to Vietnam.

- ▶ **Personal Income Tax (PIT):**
- ▶ Tax Residents are those individuals residing in Vietnam for 183 days or more in a calendar year, or in 12 consecutive months from the first date of arrival; or those having a permanent residence in Vietnam (including a registered residence which is recorded on the permanent/ temporary residence card in case of foreigners);
- ▶ Individual stays in Vietnam for more than 90 days but less than 183 days in a tax year, the individual will be treated as a tax non-resident if he/she can prove that they are tax resident of another country;
- ▶ Tax residents are subject to Vietnamese PIT on their worldwide taxable income, wherever it is paid or received. Employment income is taxed on a graduated tax rates basis. Non-employment income is taxed at a variety of different rates;
- ▶ Individuals not meeting the conditions for being tax residents are considered tax non-residents in Vietnam. Non-residents are subject to PIT at a flat tax rate of 20% on the income received as a result of working in Vietnam in the tax year, and at various other rates on their non-employment income.