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V i e t n a m

I n v e s t m e n t s

Investment Forms – Labour Law – Tax Law

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The Socialist Republic of Vietnam is one of the fastest-growing states in Southeast Asia. With a gross domestic product growth rate of 5.05%¹ in 2023 and a projected growth rate of 5.8%² for this year, it indicates remarkable economic dynamism.

With its accession to the World Trade Organization (WTO) in 2007 Vietnam has agreed to a considerable number of commitments concerning trade liberalization. Although the implementation process is in practice not yet fully completed, many investors from all over the world are attracted by Vietnam's business opportunities. These foreign investors contribute around three-quarters of the country's export volume.³

This summary is not intended to provide you with a detailed overview of all variations of a foreign direct and/or indirect investment but should make you aware of common investment forms and general legal regulations. Thus, at this stage, please allow us to only briefly state that not all business activities can be serviced by a 100% foreign-owned legal entity. For a start of your investigations into Vietnam's investment regime, please do note that, for example, the production of goods, software etc. as well as data processing, maintenance and installation services as well as import and export of goods can be implemented via a 100 % foreign-owned company.

If you are planning to service other business scope(s), please do not hesitate to contact us to receive custom tailored advice and/or "consult" the internet to find Vietnam's WTO accession schedule which is very instructive for investors intending to set up a service company.

I. Common Investment Vehicles

A. Limited Liability Company (Co., Ltd.)

A Co., Ltd. is comparable to a German "GmbH" and is, in our current legal practice, the most common form for an investment vehicle.

A Co., Ltd. is a legal entity in which the liability of its members/owners shall be, in legal theory, limited to the amount of the registered charter capital. Specific minimum capitalization requirements only exist for certain business scopes (such as insurance, brokerage, credit institutions, etc.). Nevertheless, local authorities might have their "own" perception as to what capitalization is actually sufficient and/or reasonable for a planned investment project and thus please do check with your local advisor as to current and especially localized experiences.

In our experience service companies should at least target a capitalization similar to a regular German GmbH while production companies should take rental/lease payments as well as the value of imported machinery into account.

A Co., Ltd. can be established by one or several individuals and/or legal entities. Foreign investors (individuals and/or legal entities) may establish a Co., Ltd. in the form of a joint venture or a 100 % foreign-owned enterprise

¹ General Statistics Office of Vietnam (Socio-economic situation in the fourth quarter and 2023).

² <https://www.imf.org/en/Countries/VNM#atag glance>.

³ MPI Report on foreign direct investment in 2022.

subject to specific restrictions, if any, applicable to the business scope(s) of such new legal entity (please see our general remark above).

The Members' Council, composed of so-called authorized representatives appointed by the/each owner, is the highest decision-making authority of a Co., Ltd. and entrusted with deciding on major issues concerning the company (for example: changes of the company charter, charter capital increases, entering into loan contract(s) in excess of certain thresholds etc.). The members of the Members' Council (i.e., the so-called authorized representatives) shall elect, in their first meeting, a chairman (Chairman of the Members' Council) who is then entrusted with arranging the administrative side of Members' Council meetings (one meeting to be held each year) and issuance of the decisions passed by the members of the Members' Council.

Instead of a Members' Council, the owner of a Co., Ltd. can opt to use a Chairman of the Company who will replace the Members' Council.

A Co., Ltd. must have at least one legal representative who will be listed in the enterprise registration certificate. The nomination of several legal representatives is possible but please do note that at least one of the legal representatives must be resident in Vietnam (but can be a foreign national).

Of note: based on Vietnamese Enterprise Law the Chairman of the Company/Chairman of the Members' Council is supposed to act and be registered as the Legal Representative of the Company. In our practice, the General Director(s) – who is, by law, supposed to run the day-to-day business activities – is/are generally appointed and registered as the Legal Representative(s) and the Members' Council or Chairman of the Company are thus scheduled for a more “supervisory” function.

B. Representative Office (Rep. Office)

A Rep. Office is, based on Vietnamese understanding, not an independent legal entity but deducts its permission to exist, i.e., be registered, as a dependant administrative unit of a foreign mother company⁴. The Rep. Office is only permitted to conduct a very limited range of supporting operations (acting as a liaison office, market studies and promotion of the mother company's business activities). Consequently, i.e., based on the limited scope of operations, the Rep. Office itself is not a taxable subject.

Despite the above stated legal restrictions, this investment vehicle was and occasionally is still used, not only for supporting, but also for processing business transactions of a foreign company in Vietnam. Such excessive practice can be sanctioned and could lead to a qualification of the Rep. Office as a “Permanent Establishment” and thus lead to a considerable tax exposure.

⁴ Please note that this section deals with representative offices of foreign traders. Vietnamese law also provides for Representative Offices of Vietnamese legal entities.

C. Branch

A branch is also a dependant subsidiary unit of a foreign company and does not permit for a limitation of the liability of its mother company.⁵

Unlike a Rep. Office, a branch may carry out commercial activities, but only within the mother company's registered business scope(s).

This investment vehicle had been and partly still is to be used for specific business sectors (i.e., banking, legal consulting, etc.) but, due to complex establishment procedures and due to the theoretically unlimited liability of its mother company, is seldomly used and foreign investors initially evaluating such a set up tend to switch to the establishment of a Co., Ltd. instead.

D. Shareholding Company/Joint Stock Company (JSC)

A Vietnamese Shareholding Company or Joint Stock Company is comparable with a German "Aktiengesellschaft (AG)". A JSC is a legal entity which must have a minimum of three shareholders who may be foreign or Vietnamese individuals and/or legal entities.

A JSC may issue ordinary or preference shares (voting, profit) and can but needn't be listed on the local stock exchange.

The management and organizational structure of a JSC consists of the General Meeting of Shareholders, a Board of Management, Director/General Director and, where applicable, an Inspection Committee.

Due to the 'ease' of transferring previously unsubscribed shares, this investment vehicle would allow for the "easier" admission of new shareholders. A previously more "relaxed" registration regime permitted foreign investors to acquire shares in Vietnamese JSCs operating in business scopes which had been, via a Co., Ltd., not as easily accessible. Such practices are no longer prevalent and thus JSCs, in our practice, currently remain the target of M&A activities but are rarely used for new set ups.

E. Others

In addition to the above mentioned, further investment forms consist of Business Cooperation Contracts (BCC), Partnerships, Private Enterprises as well as Public Private Partnerships (PPP) which are, in practice, of importance for foreign investors in very specific investment sectors (e.g., PPP in infrastructure projects).

⁵ Please note that this section deals with branches of foreign traders. Vietnamese law also provides for branches of Vietnamese legal entities.

II. Labor Regulations

The current applicable Vietnamese Labor Code became effective on 1st January 2021 and stipulates – in conjunction with implementing provisions – the legal framework of Vietnamese labor law. The Labor Code applies both to Vietnamese and foreign employers and employees (working in Vietnam).

A. Regional Minimum Wages

Starting from 1st July 2024, statutory minimum wages have been raised. The minimum wage amounts to 4.960.000 VND/month in urban and well-developed areas, and can be reduced to 3.450.000 VND/month in rural areas.

Of note: actual wages (including allowances etc.) tend to exceed the above stated amounts. And such difference might be “substantial” and will largely depend on the locality of your investment project as well as your actual talent/qualification requirements. Thus, any feasibility study for your investment project should include a local salary survey and an availability check at your planned project location. Please do not rely solely on surveys covering Vietnam as a whole but do focus on the specific conditions at your project site.

B. Non-Wage Labor Costs

Non-wage labor costs comprise social, health and unemployment insurance as well as trade union fees/contributions.

Table of contribution rates:

Vietnamese employee	Employer's contribution (in %):	Employee's contribution (in %):	Contribution assessment ceiling (in VND):
Social insurance	17,5	8	20 times ⁶ of base salary ⁷
Health insurance	3	1,5	20 times ⁸ of base salary
Unemployment insurance	1	1	20 times ⁹ of respective regional minimum wage ¹⁰
Trade union fee	2	(1)	Employer: 20 times ¹¹ of base salary Employee:

⁶ Art. 89 Cl. 3 Law 58/2014/QH13.

⁷ Currently amounts to 2.340.000 VND/month.

⁸ Art. 14 Cl. 5 Law 25/2008/QH12.

⁹ Art. 58 Cl. 2 Law 38/2013/QH13.

¹⁰ See II. A.

¹¹ Art. 5 Decree 191/2013/ND-CP i.c.w. Art. 89 Cl. 3 Law 58/2014/QH13.

			234.000 VND (max. contribution) ¹²
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Of note: Starting from 1st January 2018 foreign employees were supposed to also participate in the Vietnamese social insurance regime. Irrespective of the initially rather outspoken opposition of foreign business associations to such change, foreign nationals are now, with effect from 1st January 2022, also fully covered by and obliged to be registered in the Vietnamese social insurance regime.

Table of contribution rates:

Foreign employee		Employer's contribution (in %)	Employee's contribution (in %)	Contribution assessment (in VND)
Social insurance	Sickness allowance, maternity/ fraternity allowance	3	-	20 times of base salary ¹³
	Injury benefit	0,5	-	
	Pension and death benefits	14	8	
Health insurance		3	1,5	20 times of base salary ¹⁴

(The base salary applies to the public sector, whereas the regional minimum wage covers the private sector).

C. Working Hours

The Vietnamese working week consists of max. 6 working days and 48 hours/week (either fixed with 8h/day or up to 10h/day if fixed with 48h/week).

Overtime work is limited to either 4 hours per day (in case of fixed 8h/day schedule) or a maximum of 12 hours total working time (in case of fixed 48h/week schedule where up to 10 regular working hours per day are possible) which effectively limits the total permissible working hours/day to 12 h (either 8 h plus 4 h overtime or 10 h plus 2 h overtime).

In principle, overtime is limited to max 200 hours per year (max. 40 hours per month) and only in exceptional cases 300 hours per year are permitted.

On normal working days, overtime (OT) has to be compensated with an amount of at least 150 % of the regular wage of the employee; OT on a

¹² Art. 23 Cl. 3 Decision 1908/QĐ-TLĐ.

¹³ Art. 89 Cl. 3 Law 58/2014/QH13.

¹⁴ Art. 14 Cl. 5 Law 25/2008/QH12.

weekly day off is to be rewarded with 200 % and OT on public holidays or paid leave days require 300 %.

D. Paid Annual Leave

An employee working for full 12 months period is entitled to at least 12 days of paid annual leave. After 5 consecutive years of employment 1 additional paid annual leave day must be granted.

E. Labor Contracts

Labor contracts generally have to be made in written form whereby the electronic form may be recognized as legitimate and either a definite term labor contract (up to 36 months; max. two definite term labor contracts except for labor contracts with foreign employees) or an indefinite term labor contract can be used.

Unilateral terminations by an employer can be made for cause, i.e., due to illness and for personal, behavioural or operational reasons, but are subject to a rather comprehensive procedural regime and thus, in practice, rarely effective.

The applicable notice period varies and amounts to at least 45 days in case of an indefinite term contract, at least 30 days in case of a definite term contract with a duration of 12-36 months and at least 3 working days in case of a contract with a duration of less than 12 months.

Dismissals, i.e., unilateral terminations for cause with immediate effect, can be used in exceptional cases (theft, embezzlement, violence, etc.) but are also subject to a comprehensive procedural regime.

Previously mandatory severance or retrenchment allowance payments (0.5 – 1 month salary/year of employment) have become nearly obsolete due to the fact that the unemployment insurance regime is to be used instead, i.e., if duly registered with the unemployment insurance and provided that applicable contributions are paid for, the coverage provided under the unemployment insurance regime “replaces” the previously mandatory severance/retrenchment allowance payments. Thus, only employees that are not participating in such regime (foreign nationals for example) or employees which had been working for an employer at a time during such participation was not yet mandatory might be entitled to either of the above stated allowances.

F. Foreign Employees

In general, foreign employees require a work permit in order to work in Vietnam. Notable exceptions apply to short-term working stays (30 days stay

up to 3 times per year) or secondment to a subsidiary that engages in one or several of the service sectors listed in the WTO accession schedule.

Foreigners eligible for a work permit, which will be issued for a maximum term of 2 years (which can be extended once), must be managers/executives, experts or technicians and must be able to proof their qualifications, experience as well as appointment/employment during the work permit application procedures.

III. Tax Regulations

Tax regulations as well as the practice of local tax authorities are in constant change. Thus, employment of an experienced chief accountant and/or co-operation with a knowledgeable tax consultant is paramount to the success of your local business operations (or, better put, will prevent unpleasant surprises in the long run).

Agreements for the avoidance of double taxation exist with numerous countries, including Germany, Austria, and Switzerland.

Companies operating in Vietnam are particularly subject to the following taxes:

A. Corporate Income Tax

The standard Corporate Income Tax rate amounts to 20 %. Enterprises working in the oil and gas sector or exploiting other natural resources are subject to tax rates up to 50 %.

Depending on the scope of the business operations and/or the location of the company, several tax incentives and exemptions might be applicable.

At this moment, tax incentives can be granted to, e.g., companies operating in the fields of high technology, infrastructure, software development and might be awarded to major investment projects and investments in less developed regions.

Vietnamese law also has a transfer pricing regulation which defines situations in which transactions are to be considered as being between “related parties” and which sets mechanisms to determine the market value of the transaction at “arm length” for taxation purposes. It has to be noted, that the definition of “related parties” is broader than in other jurisdictions, as it put the general control threshold at 25 % and even includes significant suppliers, customers and funding relationships between otherwise unrelated parties.

B. Foreign Contractor Withholding Tax

Payments to foreign parties, i.e., foreign parties that do not maintain a commercial presence in Vietnam, are generally subject to a withholding tax consisting, also generally speaking, of a Corporate Income Tax levy

(between 0,1 % and 10 %) and possibly also a Value Added Tax levy (ranging from 2 % to 5 %).

The above stated tax regime covers, for example, interest payments, royalties as well as payments for services.

C. Value Added Tax

Following the European Value Added Tax system, the provision of services as well as sale of goods are generally subject to Value Added Tax of 10 %¹⁵ whereby a business can balance such Value Added Tax with the Value Added Tax imposed on their costs.

Value Added Tax exemptions and reductions as well as preferential treatment are present in Vietnam's Value Added Tax regime.

D. Personal Income Tax

Vietnam's Personal Income Tax regulations covers foreign as well as Vietnamese nationals and several income sources.

Tax rates for income from employment range, on a progressive scale, from 5 % (income up to 5 Mio VND/month) to 35 % (income higher than 80 Mio VND/month).

E. Free Trade Agreements and Customs Duties

In general, all goods imported to Vietnam are subject to import duties. A notable exemption may apply to the import of machineries if such are to serve a preferential investment project.

Export duties shall be levied on several commodity groups such as natural resources (fishery products, rice, minerals, etc.) or the exportation of scrap metals.

Vietnam's still progressing integration into the global supply chain has led to a number of free trade agreements such as the „European Vietnam Free Trade Agreement“ (EUVFTA) which bring further relief and protection.

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¹⁵ In the course of an economic stimulus package currently reduced to 8 % applicable to certain goods and services.