

Vietnam

Legal Provisions

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GENERAL REMARKS

Vietnam with a population of 93.4 million people (the 13th largest in the world, 2013) remains one of the fastest growing Asian economies with positively high GDP growth in recent years, based on FDIs and the private sector. Since joining the WTO in 2007, Vietnam has demonstrated efforts in liberalizing its market and transforming its regulatory.

Vietnam launched the Open Door policy 20 years ago, starting in 1987 with the first wave of reforms launching the decision to end the practice of strict central planning and of agricultural collectivisation, combined with price liberation. These internal reforms were continued with a policy of economic openness, resulting in opening to foreign direct investments and international trade. To create a favourable environment for foreign and domestic businesses, Vietnam has been making efforts to improve its legal system. In the recent years, many laws and regulations have been enacted to form the legal framework for the reforms and to comply with the international integration requirements, especially to implement Vietnam's commitments to the WTO membership, of which the most important laws include:

- Commercial Law (2005)
- Law on Investment (2014)
- Law on Public Investment (2014, effect 1. Jan.2015)
- Law on Enterprises (2014)
- Labour Code (1994, amended in 2002, 2004 & 2006)
- Law on Tax Administration (2006)
- Law on Vietnam Customs (2001, revised in 2005, 2014)
- Law on Business Income Tax BIT (2004, revised 2013)
- Law on Personal Income Tax PIT (2007, effective from 1. Jan. 2009)
- Law on Intellectual Property (2005, amended 2009)
- Law on Protection of Environment (2010, revised 2014)
- Law on Commercial Arbitration (effective from 1. Jan. 2011)
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CUSTOMS

Goods are freely imported or exported from Vietnam provided that they do not fall into the list of goods prohibited from import and export or goods subject to licenses granted from Vietnam's relevant competent ministries.

Vietnam Customs provides information related to customs procedures on the website: <http://www.customs.gov.vn/English/Default.aspx>

Prohibited imports and exports

Weapons, ammunition, explosives, military technical equipment, drugs, toxic chemicals, debauched and reactionary products, firecrackers of all kinds, toys with negative impacts on the dignity education, social security and safety, cigarettes beyond the stipulated quantity, antiques, wild animals, rare and precious animals and plants, documents related to the national security, etc. Furthermore, Vietnam has joined the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and strictly complies with its rules.

IMPORT AND EXPORT REGULATIONS

Import and export activities in Vietnam are regulated by three major laws such as the Commercial Law (2005), the Law on Import - Export (2005), the Customs Law and their sub-law regulations (e.g. Decrees, Circular, Decisions etc). According to the Laws and regulations, a Vietnamese company may export and import of all kinds of goods irrespective of the lines of business or lines of goods stated in their certificates of business registration, provided that import and export of these goods are not prohibited or conditional. A foreign company however does not enjoy the same rights. Trading rights for foreign companies are negotiated in bilateral agreements dealing with market access or in WTO accession commitments.

Trading rights for foreign companies. Foreign companies in Vietnam may directly be involved in distribution network to sell products they manufacture in Vietnam and export their products directly. However, the establishment of trading businesses not associated with manufacturing activities is still restricted. In the first stage of the roadmap for Vietnam's accession to the WTO, the commitments only allow foreign companies to provide commission agent's services, whole-sales and retail business of through establishment of joint venture companies (JVC) with Vietnamese companies, in which foreign capital contribution should not exceed 49%. From 1. January 2008, there is no limit on the foreign investor's equity in the JVC. As of 1. January 2009, foreign companies may establish 100% foreign invested trading companies.

Trading goods. In general, local and foreign companies are permitted to trade all legally imported and domestically produced commodities, except cement, tires (excluding airplane tires), paper, tractors, motor vehicles, iron/steel, audio-visual devices, wines, spirits and fertilisers.

CURRENCY REGULATIONS

General overview. In late 2005, Vietnam accepted the obligations under Article VIII of the IMF Agreement not to impose restrictions making payments and transfers of international transactions or to engage in any fiscal discriminatory currency arrangement or multiple currency practice without IMF approval. All transactions, related to payments and remittance of money related to exports/imports, loans & credits from banks, net income from investments, interests and repayments on foreign loans, import/export of goods/services, bank loans may be conducted freely.

Investment and capital transaction. Profits earned by foreign companies and individuals can be free remitted abroad and, in case they are made in VND, foreigners are entitled to convert it into foreign

currency. Indirect investment capital in Vietnam must be executed in VND. Any transfers related to these operations are to be executed via an authorised credit institution (ACI).

Local transactions in foreign currencies. In principle, every transaction in Vietnam must be carried out in VND, except ACIs, duty free shops and registered exchange offices.

Inflow and outflow of foreign currencies. As mentioned before, any one entering or leaving Vietnam and having foreign currencies in cash or traveller's check, VND or gold must declare it to the border customs office if the amount exceeds USD 5000. If the amount exceeds USD 5000, the outflow must be authorised in advance by an ACI or the State Bank of Vietnam (SBV). In case of individuals, the outflow is not granted unless the money comes from a foreign currency ACI account and originated in legal and authorised sources. In-flow of foreign currency are not restricted, but must be declared to customs. With regards to credit transfers, inflows of foreign currency under any nature forms (e.g. postal order or credit transfer) are not restricted, but the funds should be paid into a bank account, in foreign currency or in VND. Outflows by transfer are not authorised, except in the following cases:

- Payment for imports and services abroad
- Refund of loans contracted abroad and payment of interests of these loans
- Investment projects carried out abroad
- Transfer to the benefit of foreign investors (profits & dividends earned from business operations)
- Wage payments to foreign employees

Loans in foreign currencies. Foreign companies may contract loans in foreign currency with an ACI in Vietnam without any special authorisation. Companies are entitled to contract loans from foreign lenders and are responsible for their refunding. All loans are subject to supervision and monitoring of the State Bank of Vietnam SBV (www.sbv.gov.vn)

REGISTRATION PROCEDURE FOR PRODUCTS

Mandatory registration of product quality was abolished in early 2001, replaced by a regime of self-declaration under the following forms:

- Declaration of product quality standards/basic standards
- Declaration of products which meet required standards
- Registration of inspection, test and measurement of products

A number of government agencies are responsible for standards, technical regulations, conformity assessment procedures and other measures related to technical requirements. These include the Ministries of: Science & Technology; Industry & Trade, Agriculture, Information & Communication, Natural Resources & Environment, Transport, Health, Labor & Social Affairs, Construction, Culture, Sports & Tourism.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Vietnam undertook to comply with the obligations of the Technical Barriers to Trade (TBT) Agreement from the date of its accession to the WTO in 2007. Since then, the country has notified a number of measures to the TBT Committee.

Vietnam Office for Technical Barrier to Trade: www.tbtvn.org

Standards/Technical rules

Vietnam's standard system consists of over 6'000 standards. Information about standards of specific products may be provided by Vietnamese importers or customers. Otherwise this information can be sought from the relevant agency responsible for country's standards, the Directorate for Standards and Quality (STAMEQ) under the Ministry of Science and Technology.

According to the Law on Technical Regulations and Standards (effective from 1. January 2007), the Vietnam's standard system includes National Standards (TCVN) and Local Standards (TCCS). All National Standards TCVN are classified by sectors/subjects in the classification of TCVN and relevant to the International Classification for Standards (ICS).

Further detailed information can be found at the website of the Vietnam Standard and Quality Institute <http://www.vsqi.gov.vn>

Goods subject to mandatory inspection and quality control (domestically produced, imported and for export)

- Ministry of Industry and Trade
 - Pressure equipment
 - Lifting equipment for industrial use
 - Chemicals
 - Industrial explosives
 - Oil and gas mining equipment, except for marine exploration and exploitation equipment and facilities

- Ministry of Public Security
 - Fire prevention and fighting equipment
 - Technical equipment
 - Ammunitions, weapons
 - Support instruments

- Ministry of Information and Communications
 - Telecommunication terminal equipment
 - Computers, network and IT equipment
 - Radio and transmission equipment

- Ministry of Health
 - Foods
 - Pharmaceuticals
 - Vaccines
 - Medical bio-products
 - Cosmetics
 - Drug materials, Drugs for human use
 - Domestic chemicals
 - Insecticides
 - Disinfectants
 - Medical equipment & facilities

- Ministry of Agriculture and Rural Development
 - Plants
 - Animals
 - Fertilizers
 - Feeds
 - Plant protection drugs
 - Bio-products for use in agriculture, forestry or aquaculture

- Ministry of Science and Technology
 - Petrol, diesel and biofuels
 - Motorbike, helmets
 - Electrical and electronic

- Products
 - Electrical wires
 - Toys
- Ministry of Transport
 - Means of transport
 - Loading and unloading means and equipment
 - Specialised transport equipment for construction, marine exploration, and exploitation equipment
 - Traffic works
- Ministry of Construction
 - Civil works
 - Industrial works
 - Technical infrastructure works
- Ministry of Defence
 - Military equipment and facilities
 - Ammunitions, weapons and products in service of defence
 - Defence works

TAXES

Most foreign investments and businesses in Vietnam will be affected by the following taxes:

- Corporate/Business Income Tax
- Capital assignment profit tax
- Value added tax
- Import duties
- Personal Income tax
- Social and health insurances for Vietnamese employees

There are other taxes that may affect certain foreign businesses, including

- Special sales tax
- Natural resource tax
- Property tax
- Export duties
- Environment protection tax

Detailed information concerned taxes and taxation policies, please visit the websites of

- The Ministry of Finance: <http://www.mof.gov.vn>
- The General Department of Taxation <http://www.gdt.gov.vn>
- Vietnam Pocket Tax Book (a summary of Vietnam taxation) of PricewaterhouseCoopers VN: http://www.pwc.com/vn/en/publications/2014/pwc_vietnam_-_pocket_tax_book_2014.pdf

COMMERCIAL LAW

The Commercial Law, which came into effect from 1.1. 2006, consists of 9 chapters setting forth main principles in trade activities, foreign traders operating in Vietnam, trading in goods and services, trade processing, goods assessment, goods bidding, trade promotion, trade sanction and trade dispute settlement and resolution to trade violations. The Law aims to integrate Vietnam's trading practice into the world's trading system in term of legal aspects.

The key changes of the Law 2006 compared with the Law 1997 are:

- Goods in transit through Vietnam

- Transit services
- Goods leasing
- Goods trading through Goods Transaction Office
- Transferring trade rights

For detailed information of the Law and its sub-law regulations, please visit the website of the Ministry of Industry and Trade/Legal text/Search legal text: the Commercial Law, which came into effect from 1.1. 2006, consists of 9 chapters setting forth main principles in trade activities, foreign traders operating in Vietnam, trading in goods and services, trade processing, goods assessment, goods bidding, trade promotion, trade sanction and trade dispute settlement and resolution to trade violations. The Law aims to integrate Vietnam's trading practice into the world's trading system in term of legal aspects.

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For detailed information of the Law, please visit the website of the Government of Vietnam: <http://www.chinhphu.vn/portal/page/portal/English/legaldocuments?type=2>

SETTING UP COMPANIES

In order to set-up a commercial presence in Vietnam, a foreign firm must obtain one of the following three types of licences: Representative Office (RO) Licence, Branch Office (BO) Licence and Investment/Business Licence/Certificate.

• **Representative Office Licence**

Establishment of RO and BO is regulated by the Commercial Law (passed in 2005) and its implementing Government Decree 72/2006/ND-CP dated 25 July 2006 and Ministry of Trade's Circular 11/2006/TT-BTM dated 28 Sep. 2006.

A RO is generally easy to establish, but is the most restricted form of official presence in Vietnam. The licence is issued by the provincial Trade Department and permitted for a limited scope of activities. A RO can rent offices, residential houses, lease, employ local and foreign staff, import or purchase equipment/facilities necessary for its operations. It cannot represent several foreign companies in Vietnam. A RO is authorized to conduct only those activities detailed in its license and will concentrate on market studies, negotiating projects/contracts and ensuring their follow-ups. A RO is not permitted to generate any revenues or carry out any trade activities in Vietnam. A RO is exempted from the corporate income tax and auditing requirements. Personal income tax for Vietnamese and expatriate staff must be paid in accordance with relevant regulations.

Application procedures: In general, all documents issued or certified by competent foreign authorities must be translated into Vietnamese and consularised /certified by a Vietnamese diplomatic mission or consular post in the foreign country.

• **Branch Office License**

Decree 72/2006/ND-CP defines a branch office (BO) of a foreign firm as an "affiliate" established to engage in commercial activities to earn profits directly. The license is issued by the Ministry of Trade. Branch status authorized a foreign firm to operate officially in Vietnam, including billing on-shore and the execution of local contracts. BO is fully liable for Vietnamese taxes on their assets and activities.

Application procedures: documents to be submitted are the same like for a RO, but added by a copy of the charter of the branch, specifying scope of authorization of the branch's head;

• **Investment certificate**

On 26 November 2014, the National Assembly of Vietnam passed the new Law on Investment 2014 and Law on Enterprises 2014. Both shall take effect from 1 July 2015 and replace the current Law on Investment 2005 and Law on Enterprises 2005. In general, the two new Laws will clear up some of confusion arisen in the two old ones 2005 and their application, as well as ease and simplify foreign investment procedures. The Investment Law 2014 separates business registration from the certificate of investment registration (now known as investment certificate). It has only authority over investment projects, while business establishment is now underscope of the Enterprise Law 2014.

Business Registration Certificate

To legally set up a business entity, domestic and foreign organizations /individuals shall apply for the business registration certificate at the provincial business registration office. According to the form of entity selected (private enterprise, limited liability company with one member, with two or more members), application conditions and documents required are different respectively. In general, the spirit of innovation and the respect for freedom of businesses, freedom of negotiation reign supreme and are clearly reflected in the newly revised Enterprise Law 2014.

JOINT VENTURE OPPORTUNITIES

As mentioned earlier, joint venture (JV) is one of three forms for foreign direct investment. A JV may take a form of a limited liability company with more than one member, a joint stock company or a partnership and is a legal entity with limited liability. JV like all different business entities, have advantages and disadvantages. On the positive side, Vietnamese partners can bring in their already existing distribution channels, relationships, access for qualified staff and/or ability to invest in sectors where investment is conditional. However, there are many potential liabilities with a Vietnamese partner. Their organizational structure is cumbersome and bureaucratic. Their points of view are often different, especially in strategic business planning.

PROMOTION OF INVESTMENT

The Foreign Investment Agency (www.fia.gov.vn) under the Ministry of Planning and Investment is responsible for state management of the foreign direct investment activities in Vietnam and the direct investment of Vietnam abroad.

The Foreign Investment Agency has the following tasks and rights:

- Helping the Minister manage the foreign direct investment in Vietnam and direct investment of Vietnam abroad.
- Gathering foreign direct investment plans for the generalization of the national economic plans; generalizing and proposing the issues concerning general guidelines about foreign direct investment.
- Hosting the construction, amendment and addition to the mechanism, policies on foreign direct investment;
- Monitoring and proposing solutions to arising problems in the implementation of the decisions to devolve the management of foreign direct investment to the local levels;
- Building the programs and plans, and organizing the investment promotion activities;
- Supporting investors to look for investment opportunities and form investment projects; mobilizing and promoting investment in key programs and projects;
- Guiding domestic and foreign investors about the investment procedures for foreign direct investment projects in Vietnam and investment projects of Vietnam abroad;

- Taking part in assessing foreign direct investment projects so that the Ministry could propose to the Prime Minister for approval or grant Investment licenses as determined by the Ministry's authority.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

Entry conditions

Entry visa to Vietnam is required for Swiss citizens, but not for citizens of certain countries like ASEAN, France, Korea, Japan & Scandinavians. For travelling suggestions and information, please visit the website of <http://www.safetravel.ch>.

Work permits, residence permits, labor law

Foreigners in following cases do not need work permit in Vietnam:

- Work in Vietnam for a period of less than 03 (three) months;
- Members of the Board of Management or member's council (in the case of a limited liability company) established under Vietnamese laws with legal status
- Head of representative offices or branches in Vietnam
- Lawyers to whom Ministry of Justice has issued a certificate to practice in accordance with laws

Others

Employers (enterprises and organizations) are responsible for preparation of the application dossier and submit it to the Provincial Department of Labor, War Invalid and Social Affairs. The process takes 15 working days and has a fee of VND 400'000 (approx. USD 25).

Eligibility of foreign employees:

- Being 18 years of age or older
- Being physically fit to the work requirements.
- Must have highly technical skills or highly professional qualifications
- Have no previous conviction or criminal records
- Those engaged in private medical or pharmaceutical practices or directly carrying out disease examination and treatment in Vietnam must satisfy all conditions stipulated by the Vietnamese laws in relation to private medical or pharmaceutical practice.

Application dossier shall consist of the following:

- Application for issuance of the work permit of the employer
- Application for working in Vietnam of the employee
- Form of criminal record issued by the competent authority from the foreign countries they lived. In case where the foreigners have resided in Vietnam for over six months, they should also submit the Form of criminal record issued by the Department of Justice in the locality where they are living.
- CV of the foreign employee's resume, made according to a form set by the Ministry of Labor, War Invalids and Social Affairs, including an attached photograph of the foreigner.
- Medical certificate issued in the foreign countries; if the laborer is residing in Vietnam, health certificate must be granted under the regulations of the Health Ministry.
- Legal copies of certificates on professional skills/academic decree such as: bachelor, master, doctor and certificates on qualifications granted under the existing law of the foreign countries.
- 3 (three) color photos (size 3cm x 4 cm) with bare head, taken frontally, showing clearly the face and 2 ears and no glasses

For detailed information, please visit the website of the Agency for SME Development, under the Ministry of Planning & Investment: <http://www.business.gov.vn>

PROCEDURES FOR COLLECTING PAYMENT

Modes of payment such as Letters of Credit (L/C) and telegraphic transfer (T/T) are of practice in Vietnam. However, payments by L/C currently account for 90% of total international payments and are in the common manner:

- An advance payment (approx. 20% of the contract price) shall be paid within 30 days of signing the contract on submission of the seller's claim for payment.
- The rest amount of 80% of the contract price shall be paid by means of an irrevocable documentary Letter of Credit, acceptable to the seller, to be opened in favor with and confirmed by the seller's bank within a certain time (normally 1-1.5 months) since the signing of the contract, available at sight against presentation of the shipping documents. The validity of the Letter of Credit is about 4 to 8 weeks after the agreed payment schedule.

SOURCES OF INFORMATION AND LINKS

The Ministry of Planning & Investment	www.mpi.gov.vn
The Ministry of Finance	www.mof.gov.vn
The State Bank of Vietnam	www.sbv.gov.vn
The Ministry of Industry and Trade	www.moit.gov.vn
Vietnam Trade Promotion Agency	www.vietrade.gov.vn
The Directorate for Standards and Quality (STAMEQ)	www.tcvn.gov.vn
Trade Barrier BT Vietnam Office:	www.tbvtvn.org
PricewaterhouseCoopers Vietnam	www.pwc.com/vn
US & Foreign Commercial Service	http://www.buyusa.gov

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