

Vietnam

Legal Provisions

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GENERAL REMARKS

Vietnam with a population of over 96 million people (the 15th largest in the world, October 2018) 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. It started in 1987 with the first wave of reforms, launching the decision of ending the practice of strict central planning and agricultural collectivisation, combined with price liberation. These internal reforms were continued with a policy of economic openness that opened 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)
- Law on Enterprises (2014)
- Labour Code (2012)
- Law on Tax Administration (2006, amended in 2016)
- Law on Vietnam Customs (2014)
- Law on Business Income Tax BIT (2008, revised 2013)
- Law on Personal Income Tax PIT (2007, revised 2012)
- Law on Intellectual Property (2005, amended 2009)
- Law on Protection of Environment (2014)
- Law on Commercial Arbitration (2010)

CUSTOMS

Goods are freely imported or exported from Vietnam provided that they do not fall into the list of prohibited or conditional goods 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, the Law on Export and Import duties (2016), the Vietnam 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, if these goods are not prohibited or conditional export-import ones. A foreign direct invested (FDI) company however does not enjoy the same rights. Trading rights for FDI companies are negotiated in bilateral agreements dealing with market access or in WTO accession commitments.

Distribution rights for FDI companies. FDI companies in Vietnam may directly be involved in distribution network to sell products they manufacture in Vietnam and export their products directly.

Foreign participation in this sector, which includes commissioned agent services, wholesale services, retail services, and franchising and direct sales activities, is allowed without equity limitations. However, foreign-invested distributors are restricted from trading in a limited number of goods that are excluded from Vietnam's distribution sector commitments, either during a phase out period or for an indefinite time period, as set out in Vietnam's WTO Schedule of Specific Commitments.

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 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 5'000. If the amount exceeds USD 5'000, 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 declare 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, Labors & 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.tbvtvn.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, these information can be found from the relevant agency being 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
 - Traffic works
 - Specialised transport equipment for construction, marine exploration, and exploitation equipment
- Ministry of Construction
 - Civil works
 - Industrial works
 - Technical infrastructure works

- Ministry of Defence
 - Military equipment and facilities
 - Defence works
- Ammunitions, weapons and products in service of defence

TAXES

Most business activities and investment in Vietnam will be affected by the following taxes:

- Corporate Income Tax;
- Various withholding taxes;
- Capital assignment profits tax;
- Value added tax;
- Import duties;
- Personal Income tax of Vietnamese and expatriate employees;
- Social insurances, unemployment insurance and health insurance contributions

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

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

All these taxes are imposed at the national level. There are no local, state or provincial taxes.

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 2018 (a summary of Vietnam taxation) of PWC Vietnam: <https://www.pwc.com/vn/en/publications/2018/pwc-vietnam-pocket-tax-book-2018-en.pdf>

COMMERCIAL LAW

The Commercial Law (2005), 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.

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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>

FORMS OF BUSINESS

There are several forms of business in Vietnam that foreign companies can consider:

Representative Office

Foreign companies with business relations or investment projects in Viet Nam may apply to open representative offices in Viet Nam.

A representative office is generally easy to establish, but is the most restricted form of official presence in Vietnam. The license is issued by provincial Trade Department and permitted for a limited scope of activities.

A representative office is only permitted to:

- Act as a liaison office;
- Conduct market research; and
- Promote its head office's business and investment opportunities.

A representative office may not conduct commercial or revenue generating activities (i.e. the execution of contracts, receipt of income, sale or purchase of goods, or provision of services).

This is a very common form of registered legal presence in Viet Nam, particularly for those in the first stage of a market entry strategy.

Limited-liability Company

A limited-liability company is a legal entity established by its "members" (i.e. owners) through capital contributions to the company. The capital contribution of each member is treated as equity (charter capital). The members of a limited-liability company are liable for the financial obligations of the company to the extent of their charter capital contributions.

The management structure of a limited-liability company would normally consist of the "members' council", the chairman of the members' council, the general director and a controller (or board of supervisors where the limited liability company has more than 11 members).

A limited-liability company established by foreign investors may take the form of either:

- A 100% foreign-owned enterprise (where all members are foreign investors); or
- A foreign-invested joint-venture enterprise between foreign investors and at least one domestic investor.

Joint-stock Company

A joint-stock company is a limited liability legal entity established through a subscription for shares in

the company. Under Vietnamese law, this is the only type of company that can issue shares. The charter capital of a jointstock company is divided into shares and each founding shareholder holds shares corresponding to the amount of capital the shareholder has contributed to the company.

A joint-stock company is required to have at least three shareholders. There is no limit on the maximum number of shareholders in such companies. The governance of a joint-stock company includes the general meeting of shareholders, the board of management, the chairman of the board of management, the general director and a board of supervisors (not compulsory if the joint stock company has less than 11 shareholders, or if a corporate shareholder holds less than 50% of the shares of the joint-stock company).

A joint-stock company may either be 100% foreign-owned or may take the form of a joint venture between both foreign and domestic investors.

Partnership

A partnership is a very rare form of investment. It may be established between two individual general partners. The general partner has unlimited liability for the operations of the partnership.

Branch

This is not a common form of foreign direct investment and is only permitted in a few sectors (e.g. banking and foreign law firms). A branch is not an independent legal entity.

Branches of foreign companies are different from representative offices in that a branch is permitted to conduct commercial activities in Viet Nam.

Business Cooperation Contract (“BCC”)

A BCC is a cooperation agreement between foreign investors and at least one Vietnamese partner in order to carry out specific business activities.

This form of investment does not constitute the creation of a new legal entity. The investors in a BCC generally share the revenues and/or products arising from a BCC and have unlimited liability for the debts of the BCC.

Public and Private Partnership Contract (“PPP”)

A Public and Private Partnership (“PPP”) contract is an investment form carried out based on a contract between the government authorities and project companies for infrastructure projects and public services.

PPP contracts include Build-Operate-Transfer, Build-Transfer, Build-Transfer-Operate, Build-Own-Operate, Build-Transfer-Lease, Build-Lease-Transfer and Operate-Manage contracts.

Both public and private investors are encouraged to participate in PPP contracts. The rights and obligations of the foreign investor will be regulated by the signed PPP contracts and the applicable regulations governing such contracts. Investment sectors include:

- Transportation infrastructure and relevant services;
- Lighting systems, clean water supply systems, water drainage systems, water/waste collection and treatment systems, social/resettlement houses, cemeteries;
- Power plants and power transmission lines;
- Infrastructure for healthcare, educational and training, cultural, sport and relevant services, offices for government authorities;
- Infrastructure for commerce, science and technology, hydrometeorology, economic zone, industrial zone, high- tech zone, centralised information technology zone, information technology application;

- Infrastructure for agriculture and rural development, services for enhancing the correlation of agricultural production with processing and consumption of agricultural products; and
- Other sectors according to the Prime Minister's decisions.

Source: "Doing Business in Vietnam" of PWC Vietnam

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. 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:

- Capital-contributing members or owners of limited liability companies.
- Members of the Board of Directors of joint-stock companies.
- Chiefs of representative offices and directors of projects of international organizations or non-governmental organizations in Vietnam.
- Those who stay in Vietnam for under 3 months to offer services for sale.
- Those who stay in Vietnam for under 3 months to deal with complicated technical or technological problems that adversely impact or are at risk of exerting adverse impacts on production and business activities and these problems cannot be handled by Vietnamese and foreign experts who are currently in Vietnam.
- Foreign lawyers possessing a professional practice license in Vietnam in accordance with the Law on Lawyers.
- It is in accordance with a treaty to which Vietnam is a contracting party.
- Those who are studying and working in Vietnam provided that the employer should notify their employment to the provincial-level state management agency of labor 7 days in advance.
- Other cases as stipulated by the Government as follows:
 - The workers are internally reassigned in the companies which engage in 11 service industries in the Vietnam's WTO commitments on services, including: business, communication, construction, distribution, education, environment, finance, health, tourism, culture, entertainment and transportation;
 - The workers enter Vietnam to provide professional and technical advisory services or perform other tasks serving the research, construction, appraisal, assessment, management and execution of programs and projects funded by ODA according to the International Treaties on ODA between the competent authorities of Vietnam and other countries;
 - The workers are issued with the licenses for the practice of communications or journalism in Vietnam by the Ministry of Foreign Affairs;
 - The workers are appointed by foreign agencies or organizations to teach or do research in international schools under the management of foreign diplomatic missions or international organizations in Vietnam or the workers are permitted to teach or do research in educational and training institutions in Vietnam by the Ministry of Education and Training;
 - The workers are volunteers who have obtained the certification of the foreign diplomatic missions or international organizations in Vietnam;
 - The workers enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for a period of under 30 days and an accumulated working period of under 90 days per year;
 - The workers enter Vietnam to implement international agreements to which central or provincial agencies and organizations are signatories in accordance with the law;
 - Students who are studying in schools or training institutions in foreign countries execute their practicum at agencies, organizations or companies in Vietnam upon agreements;
 - Relatives of members who are executing their functions in foreign missions in Vietnam upon the approval of the Ministry of Foreign Affairs, unless otherwise stated in the International Treaties to which the Socialist Republic of Vietnam is a signatory;
 - Workers are holders of Official Passports for working in state agencies, political organizations or sociopolitical organizations;

- Other cases decided by the Prime Minister at the request of the Ministry of Labor, War Invalids and Social Affairs.

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.

Eligibility of foreign employees:

- The worker is capable of civil acts as prescribed by law.
- The worker's health is fit for working.
- The worker is a manager, chief executive officer, expert or technician.
- The worker is not a criminal or liable to criminal prosecution in accordance with the Vietnam law and the foreign country's law.
- The employment of the foreign worker is approved in writing by a state competent authority.

There are 05 groups of foreign employees:

- Foreign workers internally reassigned in the company including the managers, chief executive officers, experts and technicians of a foreign enterprise which has established a commercial presence in Vietnam, are temporarily reassigned within the same enterprise to its commercial presence in Vietnam and have been employed by the foreign enterprise for at least 12 months.
- Volunteers including unpaid foreign workers who voluntarily work in Vietnam to implement the International Treaties to which the Socialist Republic of Vietnam is a signatory.
- An expert including a foreign worker who:
 - Has a document certifying that he/she is an expert of an overseas agency, organization or enterprise; or
 - Has a bachelor's degree or equivalent or higher qualifications provided that he/she has worked at least 03 years in his/her training field in corresponding with the job position that he/she shall be appointed in Vietnam and other special cases upon the consideration and decision of the Prime Minister.
- Managers and chief executive officers including:
 - Managers are persons in charge of managing the companies as regulated in Clause 18 Article 4 of the Enterprise Law or heads or vice-heads of agencies or organizations;
 - Chief executive officers are the heads who directly manage subordinate units of agencies, organizations or enterprises.
- Technicians including workers who had undergone training in technique or other majors for at least 01 year and have worked for at least 03 years in their training fields.

More detailed information is available in the Labour Code (2012) and the Government's Decree no. 11/2016/ND-CP (February 03, 2016).

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

The Ministry of Finance

The State Bank of Vietnam

The Ministry of Industry and Trade

Vietnam Trade Promotion Agency

The Directorate for Standards, Metrology and Quality (STAMEQ)

PricewaterhouseCoopers Vietnam

US & Foreign Commercial Service

www.mpi.gov.vn

www.mof.gov.vn

www.sbv.gov.vn

www.moit.gov.vn

www.vietrade.gov.vn

<http://tcvn.gov.vn>

www.pwc.com/vn

<https://www.export.gov>

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