

Establishing a Business in Vietnam: A Practical Guide for Foreign Investors

A comprehensive guide to navigating Vietnam's legal and regulatory landscape for foreign business setup

Alitium

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Introducing Alitium

Alitium is a Vietnam-based professional services firm specializing in supporting foreign investors throughout their market entry and ongoing business operations in Vietnam. As a long-term strategic partner rather than a one-off service provider, Alitium offers integrated solutions across legal, corporate consulting, accounting, human resources, taxation, and compliance. With deep local expertise and a practical, solution-oriented approach, the firm understands the regulatory and operational challenges foreign investors face and helps them align commercial objectives with Vietnam's legal and compliance requirements. Through our offices in Vietnam (Ho Chi Minh City & Hanoi), Singapore and Malaysia, we provide direct support to foreign businesses entering and seeking ongoing assistance in Asia.

We understand that to operate effectively and achieve sustainable growth, businesses need a strong legal and operational foundation. That is why Alitium delivers professional, flexible, and tailored solutions to meet the specific needs of each business model, helping our clients not only remain compliant with local regulations but also optimize their operations and build a strong reputation in fast-growing, competitive markets.

More than just a service provider, Alitium is a strategic partner committed to supporting the long-term growth of your business in Asia and beyond.

Publication Overview

The Vietnam Setup Guide provides a practical and comprehensive overview for foreign investors seeking to establish and operate a business in Vietnam. As one of the fastest-growing economies in Southeast Asia, Vietnam offers compelling opportunities across a wide range of sectors, supported by a dynamic market, a competitive workforce, and an increasingly favorable regulatory environment.

This guide is designed to simplify the market entry process by clearly outlining the key legal requirements, regulations, and procedures involved in business establishment. It focuses on core areas such as investment structures, licensing processes, and the establishment of legal entities in Vietnam.

Compiled by Alitium's team of experienced professionals in investment advisory and legal services, this publication serves as a valuable resource, offering practical insights to help foreign enterprises gain clarity and make well-informed decisions when approaching Vietnam's business landscape.

Whether you are at an early stage of market exploration or already planning a concrete investment, this guide acts as a trusted reference to support your decision-making process and facilitate a smooth, compliant, and efficient business setup in Vietnam.

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Overview of Company Structures in Vietnam

Entity Types

There are a variety of entity types in Vietnam, not all of them practical or even available for foreign investors.

An overview of the primary types of entities that are commonly available is covered below.

Limited Liability Company (LLC)

This is the most common corporate entity structure in Vietnam. A Limited Liability Company (LLC) is a corporate entity with at least one owner (member), up to a maximum of 50 owners (members), but unlike a Joint Stock Company (see below), there are no shares issued to the owners (members). Instead, members have the ownership ratio based upon each members' contributed (paid up) capital.

There is a distinction in law between a Single-Member Limited Liability Company and a Multi-Member Limited Liability Company, much of it regarding specifics with governance requirements (ie, the Members Council), the operations and other requirements remain the same.

Joint Stock Company (JSC)

Joint Stock Companies are similar in many ways to an LLC, but with a few key differences. Firstly, JSCs issues shares to their owners, with each shareholder having a prescribed number of shares (and therefore underlying ownership percentage). JSCs are more suited to larger businesses, due to their extra complexities, and are often the primary structure for those seeking to raise capital in Vietnam from other investors.

JSCs are required to have a minimum of 3 shareholders, with no maximum. Further requirements exist regarding governance and oversight, depending on the size of the company, the number of shareholders and the relationship of shareholders.

Representative Office

A Representative Office is not an entity in its own right, but instead is regarded as an outpost of the foreign organisation it is representing.

In Vietnam, a Representative Office is only permitted to undertake market support activities, including acting as a liaison office, undertaking research, and supporting the marketing of the parent entity in Vietnam. It is not permitted to earn income in its own right, nor is it permitted to undertake activities that are directly involved in the earning of income.

A Representative Office is only permitted to be registered at and operate from one address in Vietnam (although it is possible for a foreign organisation to separately register additional Representative Offices in other provinces), and it is required to have a Chief Representative as head of the structure in Vietnam, who is responsible for the activities and liabilities arising.

Branch Office

Foreign companies in certain sectors are entitled to open a Branch Office of their foreign entity in Vietnam. In some sectors (ie, banking) this is the more common path due to regulatory reasons, however in other sectors it may be rare or non-existent.

As this is a relatively uncommon structure, the registration process and ongoing compliance obligations represent ongoing challenges that are not experienced by LLC or JSC structures.

Although a Branch Office is technically not a legal entity in its own right, for all intents and purposes it operates as one in Vietnam (from a taxation

and structural perspective). That said, there are restrictions on additional licences and permitted activities that other entities may not face.

Household Business

Household Businesses are very common in Vietnam, generally representing small and sole traders with registered business, but which remain an unincorporated structure.

The Household Business registration option is not one that is available for foreign investors.

Other Structures

Other structures that exist in Vietnam include Business Co-operatives, Foreign Project Offices, Partnerships and Business Co-operation Contracts (BCC). These all have their place, and are commonly more niche structures for specific needs and purposes.

From a practical perspective, the more niche a corporate structure is, the more complicated is the commensurate regulatory and operating processes (including repatriating profits).

Laws Governing Corporate Entities in Vietnam

Company Laws in Vietnam

Vietnam's legal framework governing businesses is primarily composed of the Law on Enterprises and the Law on Investment. These laws are designed to regulate the formation, operation, and management of businesses, as well as to encourage and manage investments.

In addition, companies are required to adopt a Company Charter, which is essentially a rule book on how the company is to operate. The company charter cannot conflict with these Laws, but there are a number of elements of the Laws that can be varied and adopted within the charter.

Law on Enterprises

The Law on Enterprises (LOE) in Vietnam provides the legal foundation for establishing and operating businesses. It defines different types of enterprises, their organizational structures, rights, and obligations. The LOE outlines the formation, management, and dissolution of enterprises. It also provides regulations on the conduct of business activities, corporate governance, shareholder rights, and other operational matters. It aims to ensure transparency and accountability in business operations and to protect the interests of stakeholders.

Law on Investment

The Law on Investment (LOI) governs investment activities in Vietnam, both domestic and foreign. It sets out the procedures for obtaining investment certificates, the rights and obligations of investors, and the mechanisms for resolving disputes.

Structure, Roles and Responsibilities within Companies

Limited Liability Company

The management structure of an LLC typically includes a Members' Council, a Chairman, and a General Director (or Director).

Key Roles and Responsibilities:

- **Members' Council:** The highest decision-making body, comprising all members. Responsible for key decisions such as amending the charter, approving financial statements, and distributing profits.
- **Chairman:** Elected by the Members' Council, the Chairman presides over meetings and represents the company in its dealings. Alternatively, as a Chairman of the Company, the individual is appointed by the Company Owner to represent and exercise all of the Owner's rights and authorities within the Company.
- **General Director/Director:** Responsible for the day-to-day management of the company, appointed by the Members' Council or Chairman.
- **Legal Representative:** At least one Legal Representative must be appointed to give the company legal capacity. In addition at least one Legal Representative must reside in Vietnam, and must also hold a specific role in the organisation (for example, General Director or Chairman).

Joint Stock Company

The management structure of a JSC typically includes a General Meeting of Shareholders (GMS), a Board of Directors (BOD), Board of Controllers (or Audit Committee), and a General Director (or Director).

Key Roles and Responsibilities:

- **General Meeting of Shareholders (GMS):** The highest decision-making body, consisting of shareholders with voting rights. Responsible for major decisions such as approving financial statements, distributing profits, and electing the Board of Directors.
- **Board of Directors (BOD):** Elected by the GMS, the BOD oversees the company's management and is responsible for strategic decisions.
- **General Director/Director:** Appointed by the BOD, the General Director manages the daily operations of the company.
- **Legal Representative:** At least one Legal Representative must be appointed to give the company legal capacity, and is appointed by the BOD. In addition at least one Legal Representative must reside in Vietnam.
- **Board of Controllers (or Audit Committee):** A body responsible for supervising the management and financial activities of the company, and for monitoring compliance with laws and internal regulations.

Compliance Obligations of Companies and Officers

Companies in Vietnam, and their officers, have significant compliance obligations, including:

- **Business Registration:** Companies must maintain accurate and up-to-date registration information.
- **Reporting Obligations:** Regular financial and tax reporting is mandatory.
- **Corporate Governance:** Companies must adhere to corporate governance standards, including holding regular meetings and maintaining proper records.

VIETNAM COMPANY APPOINTMENTS

OFFICERS, ROLES & RESPONSIBILITIES

Standard corporate roles within a Limited Liability Company (LLC), being the most common form of company structure in Vietnam, are detailed below. Comparison with common international roles is included for commentary only and to better assist with clarity of obligations/responsibilities in Vietnamese law.

Investor / Structural Roles

Member - an equity holder of a Vietnamese enterprise (also known as an Owner or Investor, and akin to a shareholder*). A Member can be an individual or a corporate.

Members' Council - a body representing, and appointed by Members (ie, Owners/Investors), and which is responsible for the structure, strategy and oversight of the company, along with appointing the other roles and positions. Members of the Members' Council are appointed according to the Company Charter with one of these being appointed as Chairman.

Chairman - the Chairman includes:

- Chairman of the Members' Council in a multi-member LLC;
- Chairman in a single-member LLC owned by an individual; or
- Chairman or Chairman of the Members' Council in a single-member LLC owned by an organization. In particular:
 - (a) *For Chairman and Director (General Director) model:* a single individual represents the owner's capital and execute its rights; or
 - (b) *For Members' Council and Director (General Director) model:* 3-7 authorized representatives form a Members' Council headed by its Chairman and jointly execute the owner's rights

Model (a) offers a simpler governance structure, while model (b) allows broader oversight through collective decision-making.

**Note that an LLC in Vietnam does not issue shares as part of its capital structure, and therefore does not technically have shareholders. The reference to shareholders is for comparative purposes only)*

Company Roles & Appointments

Legal Representative - A company must appoint at least one Legal Representative, and at least one of the Legal Representatives appointed must reside in Vietnam. There are no specific nationality requirements in addition to residency. Multiple Legal Representatives are permitted, provided at least one meets the residency requirements at all times.

The Legal Representative gives the company "capacity", as unlike other jurisdictions, a Vietnamese company does not have individual legal capacity in its own right, with legal conduct of the company undertaken through responsibility of the Legal Representative(s).

Legal Representatives must also have a specific role in the organisation, for example the Chairman of the Members Council or the General Director.

General Director / Director - Each company is required to appoint a General Director (or often just referred to as a Director). This is the highest operating position of the company, and is appointed to lead the company. The specific roles and responsibilities of the General Director are generally detailed in the formal appointment minutes or similar for the role.

Deputy General Director / Deputy Director - these are roles reporting to, and sitting under, the General Director, and will have specific duties/responsibilities delegated to them. Unlike the General Director / Director, these are not legislated roles but are commonly accepted.

Chief Accountant - All companies must appoint a Chief Accountant, and the appointed individual must hold a Vietnamese Chief Accountant Certificate (or CPA certificate). During the first 12 months, or longer if the company is a "micro" entity, the requirement for a Chief Accountant Certificate is waived, however the appointed individual must still have requisite experience and qualifications per the law.

Company Establishment / Incorporation for Foreign Investors

Key Corporate Structural Documents and Registration Processes in Vietnam

Establishing a foreign-invested company in Vietnam involves several steps, each governed by specific laws and regulations. As with most administrative tasks in Vietnam, the requirements follow a very process-oriented structure that must be followed, including required documents that must be submitted with applications.

Enterprise Registration Certificate

An Enterprise Registration Certificate (ERC) is an official document issued by the Vietnamese authorities that certifies the legal existence of a business entity in Vietnam. It provides key information about the enterprise, such as its name, business structure, registered office, and legal representatives.

Requirements to obtain an ERC

In order to apply for an ERC, the following documents are required to be prepared and submitted as part of the application:

- *Application Form*: A standard form for enterprise registration.
- *Charter of the Company*: Company's charter with details of the business structure and other specifically required information.
- *List of Members/Shareholders*: Details of all members or shareholders.
- *List of foreign shareholders (if any)*: Details of all foreign shareholders.
- *List of Beneficial Owners*: A declaration specifying the individuals who ultimately own or exercise control over the company, including through direct or indirect ownership or other forms of control, as required by law.
- *Legal documents*: Legalised identification documents of the member(s)/shareholder(s) and legal representative(s); and the individual representatives of the member(s)/shareholders (if applicable).
- *Other documents*: Letter of appointment of the authorized representative, etc.

Processing Time

An ERC will generally be processed within 3-6 working days after submission at the relevant Business Registration Office of Department of Finance in the province that the company is being registered, provided all required documents are available and submitted alongside the application.

Investment Registration Certificate

An Investment Registration Certificate (IRC) is a statutory certificate recording a foreign investor's registered investment project information in Vietnam. The IRC application is akin to an investment proposal and serves as the basis for the competent authority to assess and approve the project's scope.

Under the Law on Investment 2025 (effective 1 March 2026), foreign investors may establish an economic organization prior to completing the IRC procedures. Subsequently, the investor must complete the IRC application within 12 months. Only after the IRC is granted may the economic organization officially commence its business activities and conduct amendment or supplement its business lines if needed.

Requirements to obtain an IRC

Under the current regulations, the following documents are required to be prepared and submitted as part of the application:

- *Request for Investment Project Implementation*: Information on the investor and the proposed project, including its objectives, location, total investment capital, implementation schedule, and the investor's commitments.
- *Investment Proposal*: Description of the project, objectives, scale, and implementation timeline.
- *Financial Capacity Evidence*: Bank documentary evidence, or latest audited financial statements in certain scenarios, of the foreign investor(s), confirming financial capacity to meet the obligations under the IRC.
- *Legal Documents*: Legalised identification documents for the investor and individual representatives of the investor (e.g., passport, business registration certificates).
- *Lease Agreement in Vietnam*: Proof of the right to use the business location at the intended registered address in Vietnam.
- *Other documents*: *explanation letter on technology (if any); documents evidencing the investor's conditions and capacity (if any), etc.*

Processing Time

An IRC will generally be processed within 10-20 working days after submission at the relevant Department of Finance or the Management Board of industrial parks, export-processing zones, hi-tech parks, or economic zones in the province where the investor implements its investment project.

Special Investment Projects

In addition to the standard procedures, Vietnamese law provides a special investment mechanism under which eligible projects are exempt from investment policy approval and several regulatory approvals (including technology, environment, construction, and fire safety). Instead, investors must submit a written commitment confirming compliance with the relevant regulatory requirements and disclose anticipated environmental impacts, mitigation measures, and any restricted technologies. This mechanism applies to projects located in designated zones such as industrial parks, high-tech parks, free trade zones, and functional areas of economic zones, except for projects that subject to investment policy approval.

GUIDE TO ESTABLISHING A FOREIGN OWNED COMPANY IN VIETNAM

(Updated April 2026)



Preparation and Documentation

Most sectors in Vietnam are open for foreign investors, however certain sectors have specific requirements and limitations. Determination of relevant laws and business lines will dictate documents required for initial setup.

- > Required documents identifying foreign equity holders (investors) and addressing applicable market access conditions, together with a Vietnam registered address, an eligible resident legal representative, and access to initial capital should be in place at the outset of the application process.



Registration and Approval

(*) Foreign investors typically need to obtain these two core registrations. Under the Law on Investment 2025 and Decree No. 96/2026/ND-CP, foreign investors may establish an economic organisation prior to completing the IRC procedures, subject to applicable market access conditions and relevant guiding decrees and circulars.

1 - 2 Weeks*

ERC Application / Lodgement

The Enterprise Registration Certificate ("ERC") is evidence of the formal establishment of an entity in Vietnam, and details essential information on the company. The document forms a similar purpose to a certificate of incorporation in other jurisdictions. Once this has been approved and received, the company is established.

- > Authority: Business Registration Division under the Provincial Department of Finance.

2 - 4 Weeks*

IRC Application / Lodgement

After the ERC is issued, foreign investors are required to complete the procedure for obtaining the Investment Registration Certificate ("IRC") within 12 months.

IRC is a statutory certificate recording a foreign investor's registered investment project information in Vietnam. The IRC application is akin to an investment proposal and serves as the basis for the competent authority to assess and approve the project's scope. Upon being granted the IRC, the economic organisation shall implement the investment project in accordance with the registered contents.

- > Authority: Department of Finance or the Management Board of industrial parks, export-processing zones, hi-tech parks, or economic zones in the province where the investor implements its investment project.



1 - 2 Weeks*

Post Establishment Obligations

Obligations following ERC issuance include:

- > Opening a bank account (Including Direct Investment Capital Account - "DICA") (Charter capital must be deposited into the DICA within 90 days from the ERC date)
- > Tax Registration, VAT registration, Chief Accountant appointment
- > Appointment of General Director
- > Engraving of Company Stamp, Registration with Statistics Office



Sub-License Application(s)

Certain sectors or activities will require sub-license or similar post-establishment applications. These vary, and can include actions such as retail location registration, professional registrations with ministries/departments, and health and safety requirements for food & beverage outlets.

(*) Indicative timeframe for carrying out the procedures, subject to the review and approval of the competent authorities.

This guide is general in nature and should not be treated as specific advice. Depending on your investment plan, the key regulatory workstreams may be carried out in different sequences. Parties should seek their own professional advice on how to proceed in their particular circumstances.

Further Structural Considerations & Restrictions When Establishing Foreign Invested Companies

Concept of Business Lines

All companies in Vietnam are subject to the concept and restrictions of Business Lines. Companies are only permitted to undertake activities and earn revenue in relation to business lines for which they are registered. This contrasts with many common law regimes, where companies are permitted to undertake any activity, unless otherwise restricted or regulated.

Not all business lines are permitted for foreign investors, and many have other conditions that may be difficult, costly or time consuming to meet. Initial business lines need to be included and indicated on the IRC application, and further business lines can be added to the company registration at later stages, provided the requirements or restrictions for further business lines are met.

Further discussion on business lines and restrictions is contained in on later pages of this publication.

Charter Capital & Investment Capital

The understanding of Charter Capital and Investment Capital is critical regarding the financial commitments that investors have in respect to establishing and operating a company in Vietnam.

When preparing the initial application for the IRC, investors are required to make a commitment in respect to the funds they will bring into Vietnam. These are:

Charter Capital

Charter Capital is akin to share capital, essentially it is the paid-up capital that investors contribute into the company. In the IRC and ERC, this will be noted as the minimum funds that an investor has committed to bring into and invest in Vietnam.

For most companies/business lines, there is no legislated or prescribed minimum capital, however the authorities have expectations and common practice for their required minimum capital contributions which can vary considerably depending on business lines. In practice, the required minimum capital is usually based upon funding or supporting a significant portion of the likely operating costs of the enterprise.

Investment Capital

The Investment Capital is the theoretical maximum investment funds that investors can inject into the company and does not necessarily have to be equal to the Charter Capital. This is a combination of both loan capital and contributed capital, although only the contributed capital is compulsory to be injected - loan capital provide a relatively flexible funding option.

When applying for IRC, an investor must show evidence of their ability to fund the total Investment Capital (although they may not intend to immediately inject the Loan portion).

Post Establishment Obligations for Foreign Investment Companies

There are a significant range of obligations arising from the moment the ERC is issued and the company is established.

The checklist on the following page summarises a large number of the post-establishment obligations that need to be actioned. Comments on a significant item, bank accounts, follows:

Bank Accounts

Opening bank accounts in Vietnam is not inherently difficult for a company, and usually only takes a matter of days (depending on the specific bank).

Companies are required to open (and register) their current / operating bank account. Foreign invested companies also required to open a Direct Investment Capital Account (DICA). Companies can have numerous current / operating accounts, but can only have one DICA.

Capital Injection

After ERC is issued, the investor must complete the contribution of the charter capital within 90 days. When applying for IRC, the timeline for contributing the Investment Capital shall follow the schedule committed by the investor in the project dossier as indicated on the IRC. For foreign investors, the capital injection must follow the following process:

- Foreign investor sends the committed capital into the DICA
- The funds must come from a foreign bank account held in the name of the foreign investor
- The value of funds injected from abroad for the capital cannot exceed the registered capital in the ERC/IRC, otherwise the deposit will be rejected by the receiving Vietnamese bank as being in excess of approved amounts.

The DICA

The DICA is a bank account that is most commonly used as a flow through account, so that when eligible funds are received from abroad into the DICA, the funds are promptly sent straight to the operating accounts for treasury/operational needs. There is no requirement to maintain any balance in the DICA.

More importantly, the DICA serves as the vehicle for investors to bring funds in and out of the country. More specifically:

- Dividends/profits declared for foreign investors are transferred to the DICA before being repatriated to the foreign investors bank account held abroad (noting that the foreign bank account must be held in the name of the investor)
- Foreign loans come into the country via the DICA, and are repaid and sent back abroad through the DICA.
- As with capital contributions being injected into the DICA, any disposal or reduction in capital of the business are paid out through the DICA.

It should be noted that:

- a) There is another bank account type, an Overseas Loan Account (OLA), which is also permitted to receive and repatriate foreign loans, should investors prefer
- b) If a company is minority foreign owned, it will generally not be eligible to open a DICA, however each foreign investor will be permitted to open an Indirect Investment Capital Account (IICA), which works the same as a DICA, just in the name of the investor and not the company.

Note: Matters relating to the method of capital contribution, the type of account used, and the practical recording and handling of such contributions remain subject to the guidance of the State Bank of Vietnam.

COMPANY INCORPORATION IN VIETNAM

POST ESTABLISHMENT OBLIGATIONS

Once a new company is established/incorporated in Vietnam, and the Enterprise Registration Certificate ("ERC") is issued, a significant number of post-establishment obligations arise. Below are the key post-establishment items that need to be attended to promptly and often within relatively short prescribed time limits.

Initial Items

Making of Company Seal: A physical seal (stamp) is to be arranged for the company through a commercial provider. Laws do permit digital seals, however a physical seal is required in practice.

Appointment of General Director: Formal minutes of appointment of the General Director, including detailing powers and authorities.

Appointment of Chief Accountant: Each company must appoint a Chief Accountant. For micro companies and companies within their first 12 months of establishment, there is no requirement to appoint a Chief Accountant; instead, an Accounting Supervisor may be appointed.

Tax Registrations

Initial Tax Registration: Registration within 10 working days from ERC date with the local tax authority, depending on registration specifics.

Purchase of Digital Tax Token: Also known as a Digital or Electronic Signature, this is purchased through a commercial provider registered as an agent for the E-Tax system.

Registration of E-Tax Account: Enabling payments and lodgements through the E-Tax portal, and completed after the purchase of the Digital Tax Token

E-Invoice Registration: Registration for E-Invoice issuance through a registered provider, including customisation of E-Invoice template. In practice, the tax authority may undertake further steps (ie, site visit or meeting with Director) prior to approving E-Invoice registration.

Other Obligations

Registration for FDI Reporting: E-account to be created with the provincial Department of Finance for quarterly foreign invested enterprise reporting.

Appointment of Auditor: Foreign invested enterprises are required to submit an annual statutory audit report within 3 months of year end.

Bank Accounts

- Opening initial Bank Accounts:** A operating bank account, along with a Direct Investment Capital Account (DICA) for foreign invested companies, to be opened with a commercial bank in Vietnam as soon as practical.
- Charter Capital Contribution:** Within 90 days from the date of the ERC, the Charter Capital is to be contributed in full into the DICA (foreign investor) or operating bank account (local investor), unless the investor is contributing assets in-kind.
- Certificate of Charter Capital Contribution:** Company is to prepare and issue confirmation of contribution of Charter Capital, with cash and in-kind contributions detailed for each investor.

Accounting & HR Related

- Accounting System:**
 - Adoption of compliant Chart of Accounts to be documented.
 - Selection of VAS compliant accounting software system.
 - Compliant Finance and Accounting policies to be documented and implemented, for preparing compliant accounting records in accordance with Vietnamese regulations.
- Human Resources**
 - Document Human Resource policies, compliant with Vietnamese Law (recruitment, onboarding, salary bands, performance management, disciplinary and termination)
 - Establish compliant Employee Records Management System
 - Payroll system/software selection and implementation
 - Registration for electronic PIT withholding and reporting for employees
 - Registration of Social Insurance Code with the Social Insurance Authority
 - Registration and payment with local Trade Union Authority
 - Establishment of internal Trade Union (where 10 staff or more are employed)
 - Preparation of Internal Labour Regulations, and submission with Labour Authority, where the employer has 10 staff or greater.
 - Hire employees and commence Work Permit application process for any foreign employees (foreign individuals require a Work Permit, or exemption, prior to employment).

This publication is intended to provide a general overview only and does not aim to be comprehensive or constitute professional advice. While every effort has been made to ensure the accuracy of the information provided, Alitium disclaims all responsibility for any reliance placed on the contents by any party.

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Corporate Structures & Strategic Planning

Plan for the future when first entering Vietnam

The correct corporate structure for Vietnam is often dependent on the future, which is inherently difficult to predict. However, being prepared for future options provides the most flexibility and can reduce potential risks and losses in the future.

Flexibility and Corporate Secretarial Simplification

Vietnamese corporate laws require that any changes to investors, officers, addresses or capital require application and approvals from the authorities before they can take effect. Often this requires foreign documents that have been legalised abroad, and amendments can be expensive, cumbersome and unpredictable. In the worst case, changes cannot be completed due to modified laws or regulations.

Further, capital structures in Vietnam are more restrictive when compared to other foreign jurisdictions. As ownership at the Vietnamese level of a LLC is solely based upon the percentage of capital contributed, it becomes much more complicated to adjust ownership entitlements or dividend flows to match expectations.

It is therefore often preferred to insert an offshore Holding Company (HoldCo) as the parent entity of a foreign owned Vietnamese company, with the HoldCo owning 100% of the capital of the Vietnamese entity. The foreign investors own HoldCo in the proportion desired and would have the option to manage its share registry, including rights and obligations of shareholders (including dividend streaming, issuing additional shares, etc) without seeking approval from Vietnamese authorities.

The further benefit is that more comprehensive shareholder agreements can be entered into in offshore jurisdictions (ie, a common law jurisdiction) which can provide an efficient structuring, more so than could be achieved in Vietnam, with access to a preferable legal/dispute system. For many, this is simply not necessary, but for others it can add considerable value.

Treaty / Jurisdiction Benefits?

Using a HoldCo from selected countries may provide benefits that a direct investment may not provide. These can include access to Double Tax Agreement relief, access to certain business lines (ie, only investors from WTO member countries can invest in certain retail activities), and potential benefits contained in bi-lateral and multi-lateral agreements (for example, Free Trade Agreements).

There is also the ability to implement investor related actions, such as ownership creep/adjustments, dividend streaming, and injunctions/enforcement in a more practical and straight forward sense.

However, investors should be aware of potential Vietnamese capital gains that may arise from offshore restructuring in certain circumstances, which is discussed further below.

Risks - Capital Transfer and Jurisdiction Risks and Complexity

Although there are benefits to using a HoldCo for entry, there are risks and issues that should be thought through.

These can include the additional compliance burden of maintaining additional foreign entities, the risk of assets / obligations in a further foreign jurisdiction and potential for legal or statutory changes in that jurisdiction.

Being approved and opening a bank account remains a problem with many jurisdictions, with the historical simplicity of just opening an offshore HoldCo and bank account no longer exists. This needs to be seriously considered before proceeding with any strategy, and understanding the implications if a bank account cannot be opened.

Although many common jurisdictions for establishing a HoldCo for investing into Vietnam do not have Capital Gains Tax regimes, allowing for simple restructuring and capital management, Vietnam reserves the right in certain circumstances to look through offshore transactions the involve significant underlying Vietnamese assets and deem a Capital Gains Tax event arising in Vietnam. This result is not common, but does arise, and planning to work within DTA rules and not exposing to domestic risks for offshore transactions is important.

Practical Examples of Market Entry Structuring Benefits

Below are two scenarios, as examples, where using a HoldCo structure for market entry is beneficial.

1. Three Party Joint Investment, through Singapore HoldCo

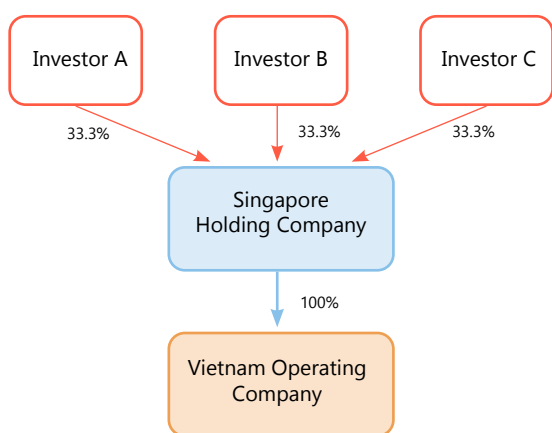
Three investors from different countries enter into a shareholders agreement and form a HoldCo in Singapore. The Singapore entity then invests and establishes a single-member LLC in Vietnam, using the Chairman only model for governance.

Under the shareholders agreement, the three investors have specific obligations and roles for the development and advancement of the company. The agreement contemplates dividend streaming (different entitlements, based upon underlying performance of different segments of the Vietnam operations), adjustments to shareholdings (additional shares being issued, based upon certain action/events) and drag along rights should an investor find a buyer for their equity on predefined terms.

Issues for a Vietnam only structure: many of these events would be difficult and time consuming to achieve in Vietnam. Issuing additional shares can be achieved in a JSC (but not in an LLC, without additional capital being contributed), but requires a regulated and time consuming approval process, versus the Singapore process. Dividend streaming may be partially possible for a Vietnam JSC, but is certainly not straight forward, and would not be possible under an LLC structure.

Further, enforcing a drag along between shareholders in Vietnam can also be difficult if all parties are not in agreement, more so than say Singapore, where speed and transparency from a dispute/enforcement process would be beneficial.

The preferred structure in the example:



2. Staged Exit, Based Upon Performance

A foreign owned LLC in Vietnam is to be sold to another foreign investor. However, the payment for the equity in the Vietnam structure is based upon performance hurdles and paid over a period of time. Notwithstanding, the buyer wishes to take 100% of the capital in the company on day 1.

The issues arising here include:

- Security and enforcement over future payments once capital (ownership) is transferred
- Ability to repatriate (or even receive) further hurdle payments, once the initial transfer has been approved and funds exited the DICA
- Requirement to declare and pay tax on full value of transaction when arising, when full value is not known, and additional taxes arising (and potential penalties) for the future payments

All of these can be dealt with in the Vietnamese context (not necessarily simple solutions, though), however if the structure was via an offshore entity/jurisdiction, which in turn owned 100% of the Vietnamese entity, then there are often more preferred solutions that don't have the same complications for cash transfer, tax and enforcement/protection issues.

Summary

The structuring of an investment into Vietnam needs to be considered, based upon what an investor intends to do today, and what might arise in the future. Structures can be modified in the future, so a decision now is not necessarily an impediment to decisions in the future, but consideration should be made to ensure maximum entry and exit benefits/flexibility.

Business Lines & Foreign Investment Restrictions

Understanding committed, uncommitted, restricted and prohibited activities.

Market access conditions for foreign investors in Vietnam is based around a combination of domestic laws, WTO commitments and multilateral commitments. These can be complicated in detail, and the specifics for each sector can vary dramatically.

Business Lines

As a starting point, the concept of Business Lines is the foundation. All companies in Vietnam (whether foreign or domestically owned) are subject to the concept of Business Lines. This concept simply states that companies can only undertake activities and derive revenue from activities which fall within those specifically permitted in the business lines registered to their company.

Companies can have multiple business lines registered, and therefore provide a broad range of activities, provided that the requirements for each business line is met.

Permitted Lines for Foreign Investors

Market access conditions for foreign investors into Vietnam are built around a number of core concepts. These can be broken down into two categories:

1. Where Vietnam has not specifically committed a specific business sector to foreign investment, but the sector is otherwise permitted by Vietnamese laws, then foreign investors are permitted to invest, subject to:
 - The activity not being within the list of **Prohibited Business Lines** for foreign market access (ie, on the list of Prohibited business lines - of which there are 20+ lines), and
 - Does not fall within the **Prohibited Sectors** (of which there are 11 and which apply to Vietnamese and foreign investors)
2. Where Vietnam has specifically committed a business line for foreign investment under a international agreement, provided it is neither on the Prohibited Business Lines or Prohibited Sectors, then foreign investment is permitted.

Restrictions

Notwithstanding the permissions for foreign investors to participate in a sector, restrictions may exist on certain sectors for a variety of reasons. These can include maximum foreign ownership restrictions, requirements for joint ventures, etc.

Business sectors which are subject to international commitments for 100% foreign ownership (referred to as **Committed Sectors**) do not have restrictions.

Some sectors are specifically restricted (**Restricted Sectors**), and the specific restrictions dictate the involvement that foreign investors may have.

The balance of sectors are either **Uncommitted** (ie, specifically referred to in international agreements as uncommitted) or **Unspecified** (not on any other list), and investment in these sectors require additional guidance and instructions from ministerial level.

However, just because a sector/line is uncommitted or unspecified, investment may not be necessarily impeded. Manufacturing, for example, is a the key driver of Vietnam's growth and has been a favourite for foreign investment, yet this sector falls into the Unspecified category.

Additional License Requirements

In addition to the investment permissions or restrictions referred to above, certain business lines/activities may have additional license requirements imposed on them.

The requirements can vary dramatically, depending on the activities and the authorities involved in oversight of the sector/activities. These can involve (as examples) requirements for:

- employment of staff who hold certain specified certification,
- satisfactory approval of business capabilities,
- meeting location/facility requirements, or
- financial capacity

Business Lines & Foreign Investment Restrictions

Ultimately, it is imperative that any business lines restrictions and obligations are thoroughly explored before commencement.

List of Prohibited Sectors

(ie, prohibited exist for all investors)

- Trading narcotics
- Trading hazardous chemicals and minerals
- Trading in wild flora and fauna
- Prostitution
- Human trafficking including human body parts
- Human cloning
- Trading of firecrackers
- Provision of debt collection services
- Trading in national treasures
- Trading in the export of relics and antiques
- Trading in electronic cigarettes and heated tobacco products

List of Prohibited Business Lines

(for Foreign Market Access)

- Trade in goods and services in which the list of goods and services is specifically controlled by the State monopolies
- Press activities
- Fishing
- Security services
- Judicial administration services
- Overseas employment agent services
- Investment in cemetery construction
- Refuse collection services
- Opinion poll services
- Blasting services
- Importing and dismantling used ships
- Public postal services
- Goods transshipment business
- Temporary import for re-export businesses
- Export, import, and distribution of goods on the list of goods that foreign investors are not permitted to export, import or distribute.
- Collection, purchase and handling of public property of the armed forces
- Intellectual and industrial property representation services
- Services of the establishment, operation and maintenance of aids to navigation, water zones, water areas, public marine fairway and maritime routes
- Regulatory services to ensure maritime safety in water zones
- Testing services (inspection and experiment) and issuance of certification for means of transport
- Services of investigation, assessment and exploitation of natural forests
- Researching or utilizing genetic resources of new livestock breeds before being appraised by the Ministry of Agriculture and Environment
- Tourism services, except international tourism services for international tourists to Vietnam



Contact

As investors plan their market entry journey, we believe the Vietnam Setup Guide serves as a valuable resource to help clarify the opportunities and key requirements involved in establishing a business in Vietnam. With extensive expertise in legal, licensing, accounting, HR, compliance, and tax services, Alitium provides investors with clear insights and a strong foundation to support effective and sustainable business operations.

Decisions made during the initial setup phase will have a lasting impact on a company’s development in Vietnam. Contact Alitium to begin your business establishment journey in Vietnam in an efficient, compliant, and sustainable manner.

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Phuong is a Vietnamese-qualified lawyer, who spent 12 years leading the licensing and legal services division at an international market entry specialist, before founding Alitium.

Phuong has extensive experience supporting international organisations, including representing numerous foreign governments, listed companies from dozens of markets, and multi-national organisations from across the globe.

She has broad exposure to all facets of market entry, governance and compliance for foreign companies, and understands the needs to develop compliant yet commercially practical solutions for client needs.

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With over 20 years of experience in accounting, tax, and business advisory, Ms. Phung has supported numerous businesses in effectively addressing complex issues. Holding CPA and CA certifications, along with dual Bachelor's degrees in Accounting & Auditing and Enterprise Law, she seamlessly combines financial expertise with legal insight in her advisory solutions.

Her approach focuses on listening carefully to and understanding each client's unique needs, from which she develops tailored solutions that ensure legal compliance and optimize efficiency.

**Matthew Lourey**

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Matthew has more than 30 years professional services experience, with 20 of this in Vietnam. He previously established and lead a services firm in Vietnam supporting foreign investors that grew to 150 staff, and which was rolled into a regional group.

Matthew is an Australian Chartered Accountant, and is renowned for his understanding and application of Vietnamese structures, compliance and strategies for foreign investors. His practical advice and experience in market brings value to any client wishing to operate in Vietnam.

This publication is intended a general overview, and not intended to be comprehensive or to be relied upon as professional advice. Although every effort has been made to ensure accuracy of the information disclosed, Alitium disclaims all responsible for any party that relies upon the contents.

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