

Vietnam

Legal Provisions

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GENERAL REMARKS

Vietnam with a population of over 98 million people (the 15th largest in the world, September 2021) 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, revised on 2019)
- Law on Public Investment (2014, revised on 2019)
- Law on Enterprises (2005, revised on 2014 & 2020)
- Labour Code (1994; amended in 2002, 2006 & 2007; revised on 2012 & 2019)
- Law on Tax Administration (2006, amended in 2016; revised on 2019)
- Law on Vietnam Customs (2001; amended on 2005; revised on 2014)
- Law on Business Income Tax BIT (1997, amended on 2003, 2008 & 2013)
- Law on Personal Income Tax PIT (2007, amended on 2012)
- Law on Intellectual Property (2005, amended 2009 & 2019)
- Law on Protection of Environment (1993; revised on 2005, 2014 & 2020)
- 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: www.customs.gov.vn

Prohibited imports and exports

Weapons, ammunition, explosives (excluding industrial explosives); military technical equipment; toxic chemicals; assorted fireworks (excluding signal fires used for navigational safety under the guidance of the Ministry of Transport); sky lanterns, assorted devices causing interference to vehicle speedometers; pesticides banned from use in Vietnam; samples of precious, rare and endangered animals and plants; documents and equipment 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, Circulars, 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 the distribution, which includes commissioned agent services, wholesale services, retail services, and franchising and direct sales activities, is allowed without equity limitations.

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
- Tuition fees and living expenditures for students, who study oversea

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.tbtdn.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 gain tax;
- Value added tax;
- Import duties;
- Personal Income tax of Vietnamese and expatriate employees; and
- 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; and
- Land rental fee.

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](#)
- [The General Department of Taxation](#)
- [Vietnam Pocket Tax Book 2021 \(a summary of Vietnam taxation\) of PWC Vietnam](#)

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: [link](#)

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 ([link](#)) 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.

Main functions of Foreign Investment Agency are as below:

- Act as a focal body to synthesize inward and outward investment for national economic plan;
- Synthesize, propose solutions to issues related to foreign investment;
- To preside over the development, amendment and complementation of foreign investment policy and mechanism; collect and find solutions to difficulties and impediments during the implementation of law, policy, mechanism of inward and outward investment;
- Preside over or co-ordinate with relevant bodies to monitor, check and inspect the implementation of the regulations on inward and outward investment in accordance with the assignation of the Ministry;
- Preside over or co-ordinate with relevant bodies to provide procedures guidance to the inward and outward investment accordance with the assignation of the Ministry;
- Receive applications and participate in inspecting BOT, BTO, BT projects; preside over the procedures for BOT, BTO, BT projects; Submit to the Minister to make decision in issuance of Investment License to BOT, BTO, BT projects where the proposal for the project is approved;
- Receive application files of outward investment projects; participate in inspecting outward investment projects; preside over the application process and monitor the outward investment projects; to the Minister for the issuance of Investment License where the project is accepted;
- Act as a focal body to undertake the state management over investment promotion activities; co-ordinate with relevant units to set up strategy, plan, policy, direction for inward and outward investment. Synthesize, evaluate and co-ordinate investment promotion activities.
- Implement other duties assigned by the Minister of Ministry of Planning and Investment.

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:

- The manager of a representative office, project or the person in charge of the operation of an international organizations or a foreign non-governmental organization in Vietnam.
- Entering Vietnam for a period of less than 03 months to do marketing of a service.
- Entering Vietnam for a period of less than 03 months to a resolve complicated technical or technological issue which (i) affects or threatens to affect business operation and (ii) cannot be resolved by Vietnamese experts or any other foreign experts currently in Vietnam.
- A foreign lawyer who has been granted a lawyer's practicing certificate in Vietnam in accordance with the Law on Lawyers.
- One of the cases specified in an international treaty to which the Socialist Republic of Vietnam is a signatory.
- Getting married with a Vietnamese citizen and wishes to reside in Vietnam
- The owner or capital contributor of a limited liability company with a capital contribution value of at least 3 billion dong.
- The Chairperson or a member of the Board of Directors of a joint-stock company with a capital contribution value of at least 3 billion dong.
- An intra-company transferee within 11 sectors in the schedule of commitments in services between Vietnam and WTO, including: business services, communication services, construction services, distribution services, educational services, environmental services, financial services, health services, tourism services, recreational and cultural services, and transport services.
- Entering Vietnam to provide professional and engineering consulting services or perform other tasks intended for research, formulation, appraisal, supervision, evaluation, management and execution of programs and projects using official development assistance (ODA) in accordance with regulations or agreement in international treaties on ODA signed between the competent authorities of Vietnam and foreign countries.
- Being granted a communication and journalism practicing certificate in Vietnam by the Ministry of Foreign Affairs as per the law.
- Being sent by a foreign competent authority or organization to Vietnam to teach and study at an international school under management of a foreign diplomatic mission or the United Nations; or of a facility established under an agreement to which Vietnam is a signatory.
- A volunteer.
- Entering Vietnam to hold the position of a manager, executive, expert or technical worker for a period of work of less than 30 days and up to 3 times a year.
- Entering Vietnam to implement an international agreement to which a central or provincial authority is a signatory as per the law
- A student studying at a foreign school or training institution which has a probation agreement with an agency, organization or enterprise in Vietnam; or a probationer or apprentice on a Vietnam sea-going ship.
- A relative of a member of foreign representative body in Vietnam
- Obtaining an official passport to work for a regulatory agency, political organization, or socio-political organization.
- Taking charge of establishing a commercial presence.
- Being certified by the Ministry of Education and Training as a foreign worker entering Vietnam for teaching and research purpose. Capital-contributing members or owners of limited liability companies.

Others

Employers (enterprises and organizations) are responsible for preparation of the application dossier and submit it to the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs of the province where he/she is expected to work at least 15 working days before the day on which a foreign worker starts to work. Within 5 working days after receiving a duly completed application, a work permit is expected to be issued to the foreign worker

Eligibility of foreign employees: A foreign employee means a person who has a foreign nationality and:

- is at least 18 years of age and has full legal capacity;
- has qualifications, occupational skills, practical experience and adequate health as prescribed by the Minister of Health;
- is not serving a sentence; does not have an unspent conviction; is not undergoing criminal prosecution under his/her home country's law or Vietnam's law;
- has a work permit granted by a competent authority of Vietnam, except in the cases mentioned above.

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 consecutive 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 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;
 - Has at least 5 years of experience and professional certificates relevant to the position the foreign worker is expected to work 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 as well as at least 5 years of working experience in the job suitable to the position expected to be taken in Vietnam.

More detailed information is available in the Labour Code (2019) and the Government's Decree no. 152/2020/ND-CP (December 30, 2020).

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

mof.gov.vn

The State Bank of Vietnam

www.sbv.gov.vn

The Ministry of Industry and Trade

moit.gov.vn

Vietnam Trade Promotion Agency

www.vietrade.gov.vn

The Directorate for Standards, Metrology and Quality (STAMEQ)

tcvn.gov.vn

PricewaterhouseCoopers Vietnam

www.pwc.com

Date:

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Author:

Mr. Do Quang Chinh, Trade Officer

Author's address:

Consulate General of Switzerland
Bitexco Financial Tower, 37th Floor
2 Hai Trieu, District 1, Ho Chi Minh City
Vietnam

Tel. +84 28 6299 12 13

Fax +84 28 6299 12 22

Email: quang-chinh.do@eda.admin.ch