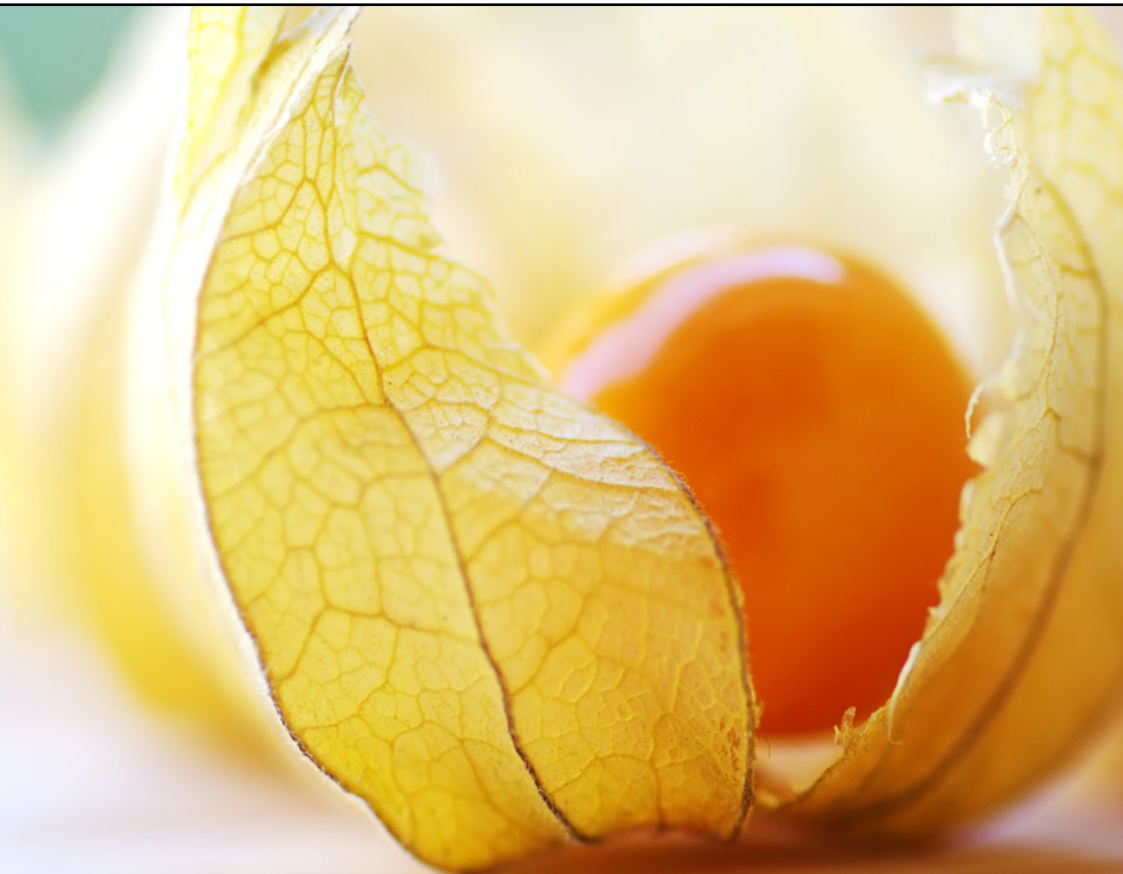
Rödl & Partner

INVESTMENT GUIDE
VIETNAM

Framework for investments

2022
2023

UNFOLDING OPPORTUNITIES



Unfolding opportunities

"Vietnam is in a stable transition into a true market economy – its openness to international trade and its extraordinary economic growth in recent decades have turned the country into a highly attractive investment destination. We stand by your side with international expertise and local know-how, all from a single source, allowing you to take advantage of this unique opportunity and to reap the rewards in this rapidly growing market."

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Content

About us

Rödl & Partner – The agile caring partner for Mittelstand shaped world market leaders

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Hanoi

Our services in Vietnam

Rödl & Partner opened their Vietnam offices in Ho-Chi- Minh-City in 2007, and 2018 in Hanoi. As one of the first European professional services firms in Vietnam, our offices assist foreign investors with the structuring and establishing of companies, representative offices, investment projects, mergers and acquisitions and with the full provision of accounting services through our own accounting firm.

Moreover, Rödl & Partner offers comprehensive expertise in real estate and construction law, labor law and social security law, in addition to tax optimization, cross-border tax structuring, transfer pricing, tax compliance and business process outsourcing services.

Our business minded professionals provide extensive knowledge of the legal and investment environment at both, local and central levels. Combined with a wide-reaching network of worldwide offices, we assembled a team of local and expatriate experts who pool a wide-ranged international experience to support you in all your business endeavors.

Facts & Figures

Background	As a result of a long and turbulent history, marked by successive foreign occupations and wars of resistance, Vietnam has chosen to open up since the late 1980s (Đổi mới), and is now one of the most dynamic economies in ASEAN.
Location	Southeast Asian country located in the eastern part of the Indochina peninsula. It borders China to the north, Laos to the northwest and Cambodia to the southwest.
Area	331,212 km^2
Ethnic groups	Approximately 85 % of the population are ethnic Vietnamese, with the remainder made up of the 54 minority groups recognized by the Vietnamese government and mainly distributed in the northern, north-western and central mountainous regions.
Languages	Vietnamese (official), English (increasingly favored as a second language), some French, Chinese, and Khmer, mountain area languages (Mon-Khmer and Malayo-Polynesian)
Population	Approx. 98.51 Million (2022 est.)
Government type	Socialist Republic
Legal system	Civil Law system
GDP	5.03 % (2022, real growth rate est.) USD 408.947 Billion (2022, current prices est.)
Labor force by occupation	Agriculture: 40.3 % Industry: 25.7 % Services: 34 %
Unemployment rate	2.2 % (2021)

Inflation rate (consumer prices)	2.03 % (2021)
Industries	Food processing, garments, shoes, machine-building; mining, coal, steel; cement, chemical fertilizer, glass, tires, oil, mobile phones
Export and export turn-over Exports	USD 668.5 billion (2021)

The World Factbook. Washington, DC: Central Intelligence Agency, 2022
The Ministry of Planning and Investment of the Socialist Republic of Vietnam
The Ministry of Industry and Trade of the Socialist Republic of Vietnam
World Data Bank – Vietnam
General Statistics Office of Vietnam
International Monetary Fund

Investment Climate

Vietnam has established itself as one of the favored investment destinations in South East Asia. It offers very favorable investment conditions and regulations with few remaining restrictions on Foreign Direct Investment. The protectionist measures in effect are limited and reasonable, especially in comparison to the regional peers.

The stable social and political environment is the basis for the continuing success. Investors benefit from the young and well educated work force as well as from the very competitive operation costs.

As Vietnam has prospered for decades, it now also offers a growing market for consumer goods. The ever faster developing Vietnamese start-up scene has already minted at least four unicorns, and overseas investment in the tech scene is expected to multiply.

Government policies have also successfully attracted sizeable investments in innovative sectors such as renewable energies and software development. While Vietnam is still – and by far the biggest – frontier market, the government has the clear intention to become an emerging market as soon as possible.

Vietnam's multinational treaties and its ASEAN membership open a large market to foreign investors, and the diversity of its export products makes Vietnam a key destination in the region.

1.1 INCENTIVES FOR INVESTMENT

The most common forms of incentives usually refer to tax, customs duties, and land rental, among others. Typically, the criteria used to determine the eligibility for incentives will rely on the objectives, locations, and scale of the project. In particular, projects with hightech activities, green energy, production of IT products / software products, etc. are highly encouraged in Vietnam. As such, projects located in a social-economically disadvantaged area and projects raising investments exceeding the amount of 6,000 billion VND (together with the satisfaction of other conditions) will be eligible to benefit from incentives.

1.2 INVESTMENT RESTRICTIONS

However, the Government has identified certain sectors in which investments are highly restricted, and in some instances, prohibited. This is the case for businesses trading hazardous chemicals and minerals, as specified in the Law on Investment.

1.3 WTO IMPLICATIONS AND FREE TRADE AGREEMENTS

Vietnam's accession to the World Trade Organisation in 2007 and its participation in the ASEAN Economic Community ("AEC") in 2015 both had a positive impact on the country's market and economy. Vietnam's partners now benefit from the reduction of import duties on goods for domestic production for both, private and public consumption.

In addition, Vietnam's services market has been largely opened to foreign investors, as services subsectors that used to be closed or restricted to foreign investment, such as distribution, transport, telecommunications and finance, are now largely liberalized.

As such, investors from countries that are not members of the WTO (e.g., the Cayman Islands and the British Virgin Islands) may experience limitations on foreign ownership, business sector restrictions and forms of investment requirements (e.g., joint venture).

Finally, as the EU's largest partner for imports of goods among ASEAN countries, Vietnam entered into a Free Trade Agreement (EVFTA) and an Investment Protection Agreement (EVIPA) signed on 30 June 2019.

The EVTA was ratified by the European Parliament, approved by the Vietnamese National Assembly, and came into force on 1 August 2020. Its dispositions virtually eliminate all tariffs on goods traded between the two sides, in addition to ensuring the respect of labor rights, environmental protection, and the Paris Agreement on climate.

The EVIPA is yet to be ratified by the EU's members parliament but will effectively replace the 20 existing bilateral investment agreements between Vietnam and EU countries. Its focus is directed at the liberalization of non-direct investment and the uniformization of procedures for the settlement of disputes between investors and States. As included in the EVIPA, more precise standards on investment protection mean that the government must respect five fundamental principles:

- provisions on non-discrimination;
- allowing investors to transfer or repatriate investment-related funds;
- prompt and adequate compensation in cases of expropriation;
- a commitment to fair and equitable treatment; and
- a guarantee that contractual and legal obligations towards ivestors will be honored.

These agreements introduce a new era for both sides to further bilateral trade and investment cooperation. They are expected to play a critical part in bringing new opportunities for market diversification, to give a welcomed boost to Vietnam's industries, such as manufacturing, and to create new motivation for post COVID-19 exports.

1.4 FDI REGISTRATION REQUIREMENT

Foreign investors must register their intention and obtain the approval to invest in Vietnam. Such approval will usually be granted on a case-by-case basis. In practice, it is the provincial Department of Planning and Investment or the board of management of the relevant industrial zone or park over the location of the project that has the power to approve foreign investment projects.

However, due to the limitation above, larger-scale projects and projects in certain sectors further require approval from higher-level government bodies, such as the National Assembly, the Prime Minister, or the provincial People's Committee (See 3.1 below for more details).

Forms of Investment

The Law on Investment (LOI) provides several forms of investments for foreign investors. The choice of investment vehicle depends on criteria such as the number of investors, the type of industry (related to ownership restrictions in single sectors), the size of the project as well as licensing and tax requirements and their implications. One of the most important investment decisions to be made beforehand is whether a local partner should be involved.

2.1 ESTABLISHING A NEW ENTERPRISE

Foreign investors may set up a 100 percent foreign owned enterprise (FOE) or a joint venture (JV) with Vietnamese partner(s).

A 100 percent FOE is the most common investment vehicle for foreign investors in Vietnam in relatively small projects with no involvement of Vietnamese partner(s). It usually takes the corporate form of a Limited Liability Company (LLC) or in some cases a Joint Stock Company (JSC). Foreign investors are in principle not subject to minimum investment capital restrictions.

2.2 ACQUIRING AN EXISTING ENTERPRISE

Foreign investors may also choose to invest in Vietnam by acquiring all or part of an existing enterprise. Regulatory approvals will be required if foreign investors acquire 50 percent or more of shares or equity in a Vietnamese company, or acquire shares or equity in a business sector subject to conditions applicable to foreign investors.

2.3 BUSINESS COOPERATION CONTRACT

A business cooperation contract (BCC) is an agreement between one or more foreigners and one or more Vietnamese parties to cooperate and share the profits in a business field without establishing a company. The Vietnamese legal framework allows parties to decide freely on the subject, content, interests, obligations and responsibilities of, and relations among the parties and to specify these in the contract.

To coordinate the daily operation of a BCC, a coordination board can be set up if necessary. However, for tax purposes, the business cooperation is treated as an entity on its own.

2.4 PUBLIC AND PRIVATE PARTNERSHIP CONTRACT

Foreign investors can invest in public sector projects under public private partnership (PPP) arrangements. The PPP Law establishes an umbrella legal framework for all PPP. Depending on the terms of the contract and the specific PPP model, the investor is regularly entitled to receive income from the investment for a certain period of time.

The most important PPP forms are:
- BOT (Build-Operate-Transfer): The investor is fully in charge of the construction and management of a project for a specific duration, after which the project is to be transferred to the State without any compensation.
- BTO (Build-Transfer-Operate): The title has to be transferred to the State immediately upon completion of construction. However, the State will allow the investor to operate the project over the period of time agreed by both parties in the contract, so that the investor can recover capital and reasonable profits.

Foreign investors are entitled to select one of the following enterprise forms or legal presences for their establishments in Vietnam:

- Limited liability company
- Joint-stock company
- Partnership company
- Branch office
- Representative office

3.1 LIMITED LIABILITY COMPANY

The first three forms are legally independent companies and the main corporate forms for foreign business. Branch and representative office are not legally independent organizations and are assigned to the parent company.

In an MLLC:
The investors perform the following acts in the name of the company: violating the laws; conducting business or other transactions not in the interest of the company and causing damage to other persons; paying off undue debts when there is a financial danger facing the company;

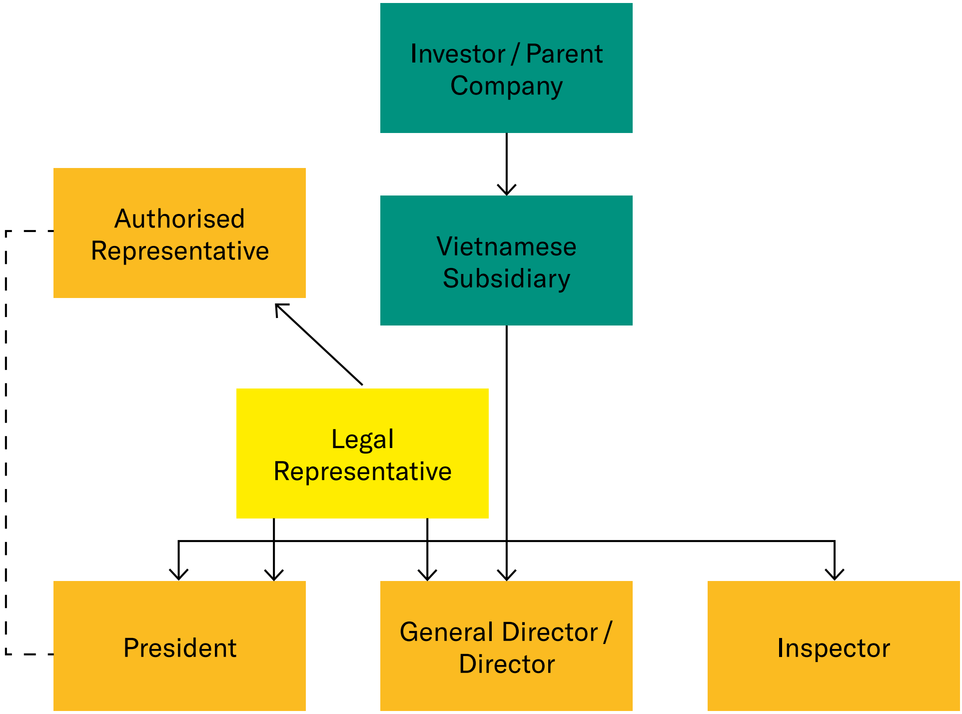
In an LLC:
The investor(s) enter into transactions with the Company without complying with approval procedures for related party transactions under the LoE;

In an LLC:
Where the parent company interferes beyond the authority of the owner or the member and compels a subsidiary company to conduct business operations inconsistently with normal business practices or to conduct unprofitable activities without reasonable compensation in a relevant fiscal year, causing damage to the subsidiary company.

3.1.1 PERSONNEL STRUCTURE IN AN SLLC

An SLLC can have one or multiple authorized representatives:

<u>One authorized representative model</u>



AUTHORISED REPRESENTATIVE:
Representing the investor in the Vietnamese subsidiary.

LEGAL REPRESENTATIVE:
The legal representative represents the company and signs on behalf of the company. At least one legal representative has to be appointed

who must also simultaneously hold the position of President or General Director / Director; and at least one representative must maintain residence in Vietnam.

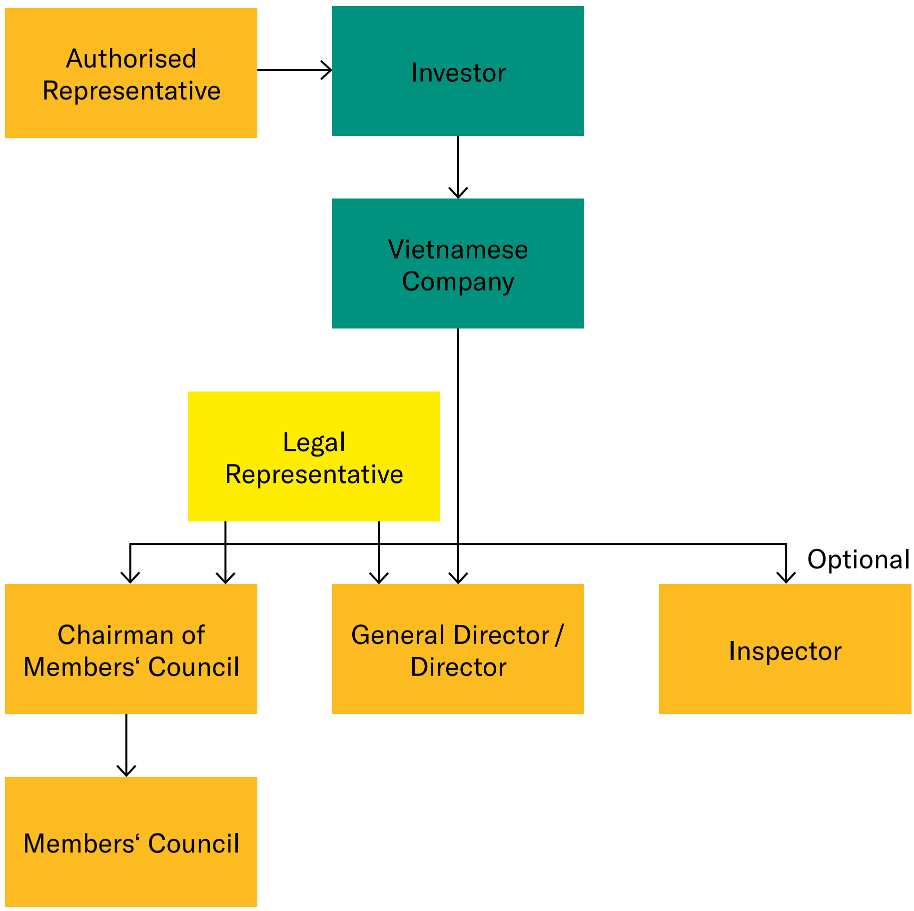
The company charter should especially determine the number of legal representatives and their rights and obligations.

PRESIDENT:
The President is appointed by the owner of the mother company.

GENERAL DIRECTOR:
The General Director or Director takes care of the daily business but can be limited in their authorization. In principle, the General Director has executive powers similar to that of a chief executive officer in other jurisdictions. The President of the company can simultaneously act as General Director.

INSPECTION COMMITTEE/INSPECTOR:
The inspection committee (supervisory board) / inspector is not a statutory governance body in an SLLC, except for State-owned enterprises under the LOE.

Multiple authorised representatives model



AUTHORISED REPRESENTATIVE:
Representing the investor in the Vietnamese subsidiary; 3–7 authorized representatives.

LEGAL REPRESENTATIVE:
The legal representative represents the company and signs on behalf of the company. At least one legal representative has to be appointed

who must also simultaneously hold the position of Chairman of Members’ Counsel or General Director / Director; and at least one representative must maintain residence in Vietnam.

The company charter should especially determine the number of legal representatives as well as their rights and obligations.

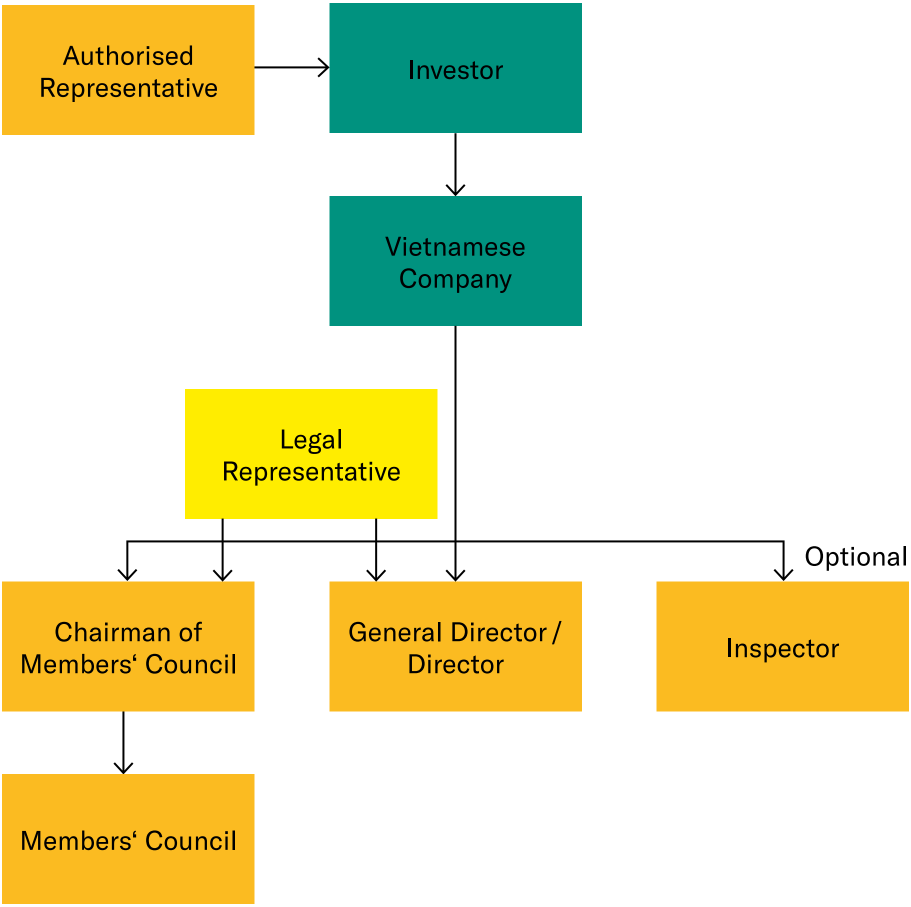
MEMBERS’ COUNCIL:
If the investor decides to appoint multiple authorized representatives, the Members’ Council should be formed. The members are appointed and discharged by the owner of the parent company. The Members’ Council consists of 3 to 7 members with a term of office of maximum five years. It is the highest authority in the Company.

CHAIRMAN OF MEMBERS’ COUNCIL:
Appointed by the owner of the company or elected by the members of the Members’ Council by simple majority. The Chairman of Members’ Council may concurrently act as a General Director of the company.

GENERAL DIRECTOR:
The General Director takes care of the daily business but can be limited in their authorization. The General Director can simultaneously act as the Chairman of the Member’s Council or a member of the Members’ Council. The Members’ Council appoints a General Director for a time of maximum five years.

INSPECTION COMMITTEE:
The inspection committee (supervisory board) / inspector is not a statutory governance body in SLLC, except for State-owned enterprises under the LOE.

3.1.2. PERSONNEL STRUCTURE IN AN MLLC



An MLLC must have at least 2 members or investors and may not have more than 50 members or investors. The main difference to an SLLC is that an MLLC must always have a Members' Council.
An MLLC must have a Members' Council, a Chairman of the Members Council and a General Director. The exact assignment of the position of the legal representative shall be specified in the charter of the company. The inspection committee (supervisory

board) is not a statutory governance body in MLLC, except for State-owned enterprises and subsidiary companies of State-owned enterprises under the LOE.

3.2. JOINT STOCK COMPANY

A JSC is a company in which the charter capital is divided into shares. The company is formed by subscription of the shares.

The JSC is the only form of company under Vietnamese law that can issue shares. The reason for choosing the legal form of a JSC is often the possibility of raising additional capital at a later date by selling shares. With regard to the organizational structure, a JSC generally has the following bodies: General Meeting of Shareholders, Board of Directors, Supervisory Board and

General Director. The chairperson of the Board of Directors may simultaneously be the General Director in a JSC. The Supervisory Board has 3 to 5 members. In case a JSC has fewer than 11 shareholders and the institutional shareholders own less than 50 % of the total number of shares of the company, a Supervisory Board is not mandatory. Compulsory is an annual meeting of the Share-holders within four months of the end of the financial year.

A JSC is a legal entity established by at least three investors, with no maximum requirement, regardless individual or institutional, local or foreign. A JSC protects their shareholders from liabilities incurred by the JSC. Shareholders are not liable with personal assets for the debts of the JSC, except for the cases as mentioned regarding the LLC.

3.3. PARTNERSHIPS

A partnership is required to have at least two general members (only individuals). The general partners are unlimitedly liable with their private assets for debts incurred by the partnership. In addition to the general partners, the partner company may have members who only pay money into the capital. Their liability is limited to the extent of the amount of capital they have contributed.

3.4. BRANCH

Another possible form of organization is establishing branches. However, a branch is not an independent legal entity. The operating license of the branch expires after five years, but is extendable. Unlike a representative office (see Section 3.5 below), a branch may make profits. A prerequisite for the establishment of a branch is that the parent company has been operating in its home country for at least five years. Branch is an interesting organizational form but may only be established in a limited number of sectors, such as insurance, education, banking and legal services.

3.5. REPRESENTATIVE OFFICE

A Representative Office (RO) is quite often the entry vehicle for establishing A representative office (RO) is quite often the entry vehicle for establishing a presence in Vietnam. The rights of a RO are very limited. ROs are permitted to engage only in certain activities, without the aim to generate revenue. RO is only representing the parent company in Vietnam. Liabilities of the RO have to be borne by the foreign parent company. As a RO is prohibited from generating taxable income, it is not subject to corporate income taxation.

Despite these limitations, a RO may play an important role in facilitating operations and business objectives on behalf of the foreign parent company. The most relevant benefit of a RO is to manage contractual relations between the mother company and the partner in Vietnam as well as providing a certain level of control and act as a liaison office. Furthermore, a RO may undertake market research and promote tasks for the parent company. A RO may not engage in any direct activities to earn profits.

RO is the easiest way of establishing a presence in Vietnam. Generally, the only relevant tax scheme is the personal income tax of employees working in the RO. There is no obligation for the chief representative to reside permanently in Vietnam.

The approval for establishment of a RO of a foreign company is granted in the form of a license issued by the provincial Department of Industry and Trade. Procedures for setting up a RO are quite simple and it normally takes 2 to 4 weeks to obtain a RO license from the date of submission of a complete application dossier.

4.1 APPROVAL PROCESS FOR ESTABLISHING A NEW ENTERPRISE

The LOI and the LOE have simplified and streamlined foreign investment in Vietnam. The LOI allows any business investment that is not explicitly prohibited or restricted (please see above under 1.2.).

When establishing a new enterprise, foreign investors must prepare an investment project and apply for both an Investment Registration Certificate (IRC), and an Enterprise Registration Certificate (ERC). In some specific cases, the investors also need to carry out certain procedures in advance in connection with inprinciple approval process from the National Assembly, the Prime Minister or the provincial People's Committee and / or selection of investors.

The Department of Planning and Investment (DPI) or Management boards of industrial parks, export-processing zones, hi-tech zones and economic zones is in principle the relevant authority to grant the licenses. The duration for the process is 15 working days for the IRC and 5 working days for the ERC. In practice, however, there are major regional differences regarding the processing time of registrations by the various provincial DPIs.

4.1.1. INVESTMENT REGISTRATION CERTIFICATE

Only foreign investors need an IRC. However, an IRC is not necessary, if the foreign investor invests via an existing company in which the foreign ownership is below legally defined thresholds (of below 50 % of shares or equity in a Vietnamese company).

The registration procedure to obtain the IRC depends on the size and type of project. In a first step, foreign investors must obtain an IRC from the licensing authorities, which may be either:
- The provincial DPI (for projects located outside of industrial zones, export processing zones, high-tech zones and economic zones); or

- The provincial industrial zone management authority or economic zone management authority (for projects located inside industrial zones, export-processing zones, high-tech zones and economic zones).

This process should take about 15 working days as from the date of obtaining necessary approval (for the investment project subject to the in-principle approval process and selection of the investor) or 5 working days as from the date of submission of valid IRC dossier (for the project not subject to the in-principle approval process and selection of the investor) by law but it might take longer depending on the complexity of the project. However, in cases where the deadline is not met, the authorities usually argue that the application is not complete.

The necessary application documents include in particular:
- Details of the planned investment project.
- Describing the land use permits and lease agreements required.
- Financial statements of the investor of the last 2 years.

4.1.2 ENTERPRISE REGISTRATION CERTIFICATE

In a second step, foreign investors must conduct procedures with the licensing authorities to obtain an ERC.

The necessary application documents include, besides the application itself, the charter of the company and the list of authorized representatives and legal representatives. Documents issued out-side of Vietnam (such as the business registration certificate or the articles of association or the audited financial statements of the parent company) have to be legalized. Legalization is a procedure to certify the authenticity of foreign documents.

In practice, most applicants make a copy of the original, have a notary in their home jurisdiction certify that the copy corresponds to the original, have a competent body certify that the notary acted within his or her powers and finally obtain a statement from a Vietnamese mission to their home country that the procedure was followed correctly. All documents in a foreign language must be translated into Vietnamese; the translation must be certified correctly by a Vietnamese notary. Sometimes, Vietnamese translation is completed by the Vietnamese diplomatic mission that has legalized the document.

Under the regulations, the licensing process for setting up a new business may take around 15 to 18 working days. In practice, it usually takes longer.

4.1.3 INVESTMENT CAPITAL

When applying for an IRC, the applicant must specify what is known as investment capital, which comprises the following items:

Charter capital	The amount actually contributed or will be contributed by the owner of a company (the subsidiary's registered equity).
Loan capital	Loans granted to the subsidiary by its parent company, group companies or third parties.
Legal capital	Minimum amount of capital required by law for the establishment of an enterprise engaging in certain conditional business; Fixed at a specific number

In common practice, nevertheless, the authorities will review the viability of an investment project under the angle whether, in their opinion the subsidiary has sufficient funds. Save for conditional business, the capital has to be reasonable to support the FDI project. However, there are no official guidelines. Generally the higher the investment capital the easier it is to obtain the IRC.

Within 90 days after the issuance of the ERC, the charter capital has to be contributed. Failing to do so will led to a reduction of the capital and liquidation of the company if reduction leads to a capitalization of zero.

The charter capital is considered as contributed capital. The legal capital (required for only a few business scope, see above) is not working capital and shall remain deposited in the capital account at all times.

4.2 POST-LICENSING PROCEDURES

Once the IRC and ERC have been issued, the following additional steps have to be taken to complete the procedure and start business operations, in particular:
- Seal engraving
- Bank account opening
- Tax filing
- Labor registration

The subsidiary company shall carry out procedures of tax registration at the provincial DPI at the same time of submission of ERC. Vietnamese law also requires foreign investor who invests to participate directly in the management of the company to set up a so-called direct investment capital account (DICA). Charter capital and loans provided by the parent company must be paid into a DICA of the subsidiary. DICA is governed by special foreign exchange control provisions aimed to enable the government to supervise the inflow and outflow of cash. DICA must be opened in a foreign currency with a bank licensed to do business in Vietnam.

4.3. LAND AND LEASE OPTIONS FOR INVESTORS

In Vietnam, constructions and assets annexed to the land are heavily regulated and safeguarded under Vietnamese laws with a sophisticated mechanism. Indeed, land is in itself considered to collectively belong to the Vietnamese people, and it is the State who is solely responsible for the management of the land on their behalf.

In general, the rights of a foreign individual or a foreign-invested enterprise (hereinafter referred to as “FOE”) on using land and owning assets annexed to the land, are restricted by certain conditions. There is no “ownership” on the land but rather “rights to use land”, while the FOE can own assets annexed to the land. As such, no one is permitted to ‘own’ land, instead, the land users can only have the “rights to use land”.

In principle, business lines impacting the environment (e.g. production, mechanical engineering, metallurgical, textile-garment industry, etc.) are required to operate in an Industrial Park, Economic Zone (hereinafter referred to as “IP”). For other business lines (i.e., IT, trading, services, etc.), the investor can register its business in any other location. In such case, the investor can lease the office downtown or uptown to run their business. Nevertheless, restrictions apply, as habitable apartments are not allowed. Concerning the term of the leasing office, it is usually flexible as per the agreement of the parties.

In case the business lines of an investor require to operate in an IP, it is possible to either decide to lease a brownfield factory, a factory built by the property owner and ready to use, or to opt for a greenfield factory, effectively leasing the land and carrying out the construction of the factory themselves.

When leasing a brownfield factory, an investor can consider leasing a Ready-Built-Factory, a Build-to-Suit-Factory, or a High-Rise-Factory. Leasing such factories is very advantageous as it saves both, time and money; the investor can start operating their project upon obtaining the necessary Investment Registration Certification (hereinafter referred to as “IRC”) and Enterprise Registration Certificate (hereinafter referred to as “ERC”). However, the factory is usually built as per the standard of the property owner, and it is normally of a small or medium size. The term of the lease depends upon the agreement reached, although, in practice, it lasts from 3 to 5 years.

With the greenfield factory, the investor designs and constructs the factory themselves. Here, the investor shall lease the land use right from the property owner and make a one-time payment for the whole term. However, the factory will then be entirely owned by the investor and will perfectly suit the specific needs of the business line. Nevertheless, it must be stressed out that this option is time and money consuming and thus increases the initial investment costs. The term of the lease is subject to the term of the investor’s IRC, granted for a period of up to 50 years, and the term of the land use right certificate of the property owner.

The major taxes, which are relevant for companies and foreign investors, are as follows:

- Corporate Income tax (CIT)
- Value-added tax (VAT)
- Foreign Contractor Withholding Tax (FCWT)
- Special consumption tax
- Business license tax
- Stamp duty
- Personal Income Tax (PIT)
- Transfer Pricing (TP)

As far as goods are imported or exported, customs duties must of course also be observed. All taxes in Vietnam are levied at national level. There are no local or provincial taxes. However, there are several other types of national tax that may be applicable to a particular business

5.1 CORPORATE TAXATION

5.1.1 THE CORPORATE INCOME TAX

Since 1 January 2016, the standard Corporate Income Tax (CIT) rate in Vietnam is 20 percent, which is levied on the taxable profit. Foreign-invested companies must adopt Vietnamese accounting standards.

The taxable income comprises the total proceeds from the sale of goods, remuneration for processing and charges for provided services, whether domestic or foreign sourced. CIT exempt income include income from cultivation, husbandry and aquaculture, income from the application of technical services directly for agriculture, transfer of Certified Emissions Reductions (CERs), dividends etc.

In general, expenses are tax deductible if they are related to business operations, sufficiently supported by supporting documentation (including but not limited to contracts, legitimate invoices, non-cash payment vouchers where the invoice value is VND20 million or above) and not specifically included in the statutory list of non-deductible expenses.

Taxpayers may carry forward tax losses fully and consecutively for a maximum of 5 years.

Vietnam has a self-assessment tax system where taxpayers self-assess their tax liabilities, declare and pay tax under relevant tax regulations. Tax authority shall check the tax compliance status of taxpayers by performing tax audits / tax inspection on risk-based mechanism.

Taxpayers are only required to make quarterly provisional CIT payments not later than the 30th day of the following quarter without filing the provisional tax returns. From tax year 2021, the new Decree on tax management mandates that the total CIT paid for the first 3 quarters of a tax year must not be less than 75 % of the finalized CIT amount, otherwise, the shortfall amount shall be imposed a late payment interest at 0.03 % / day. The finalized CIT return is filed on the basis of the company's audited financial statements. The annual CIT return must be filed and submitted not later than the last day of the first quarter in the following fiscal year and the outstanding tax payable (if any) must be paid by the same deadline.

5.1.2 TAX INCENTIVES

In certain areas, regions, sectors and at certain scales of a project it is possible to receive investment incentives for new investments, e.g. preferential tax rates, tax holidays, tax reductions or import tax exemptions. Business expansion projects which meet certain conditions are also entitled to CIT incentives. These possibilities should be carefully examined in advance to optimize the tax cost of the project.

The following investment incentives can be granted within the framework of CIT:

CIT incentives for Business sector:

INCENTIVIZED BUSINESS SECTORS	PREFERENTIAL TAX RATE	TAX HOLIDAY TAX REDUCTION
High-tech fields, software production, renewable energy / biotechnology, certain infrastructure development, manufacture of certain materials.	10 % for 15 years	Tax holiday, tax reduction – CIT exemption for 4 years; and 50 % CIT reduction for the subsequent 9 years
Environmental protection		
High-tech enterprises, agriculture enterprises applying high technologies		
Large-scale projects (initial capital is at least VND 6,000 billion being disbursed in 3 years, and total revenue is at least VND 10,000 billion per year / more than 3,000 employees)		
Large-scale projects (initial capital is at least VND 12,000 billion being disbursed in 5 years and total revenue is at least VND 10,000 billion per year)		
Prioritized ancillary products		

Socialized enterprises (education – training, vocational training, healthcare, culture, sports, environment)	10 % for the whole project life	Established in areas with particularly difficult or difficult socio-economic conditions – CIT exemption for 4 years; and – 50 % CIT reduction for the subsequent 9 years
		Established in areas with favorable socioeconomic conditions – CIT exemption for 4 years; and – 50 % CIT reduction for the subsequent 5 years
Publishing houses from publication activities, press agencies, social houses, certain activities related to forest / agriculture in areas with difficult socio-economic conditions, salt production	10 % for the whole project life	n / a
Farming, husbandry, processing of agriculture and aquaculture products in areas with favorable socio-economic conditions	15 % for the whole project life	n / a
People's credit funds, cooperative banks and microfinance institutions	17 % for the whole project life	n / a
Production of hi-class steel, energy-conserving products, machinery and equipment for agriculture, forestry, fisheries and salt production, irrigation and drainage equipment, livestock and aquatic animal feed; and development of traditional crafts and trades.	17 % for 10 years	– CIT exemption for 2 years; and – 50 % CIT reduction for the subsequent 4 years

The Preferential tax rate is applied from the first revenue generating year while tax exemption is counted from first profit making year and tax reduction in applied the subsequent years. It should be noted that CIT exemption will be kicked in from 4th year counting from the first revenue generating year if no profit is made after 3 years from the first revenue generating year.

In a tax period, if an income is eligible for different preferential CIT rates and tax holiday and reduction incentives, taxpayer is allowed to apply the most favorable incentive.

CIT incentives are not applicable for the following income: incomes from transfer of contributed capital or right to contribute capital; incomes from real estate transfer; Incomes from transfer of project of investment or the right to participate in project of investment, incomes from overseas business operation.

In addition, other incentives may be used in individual cases, for example:

- Exemption from import duty on goods imported to form fixed assets, raw materials, supplies and components for implementation of an investment project.
- Exemption from and reduction of land rent, land use fees and land use tax for specifically encouraged investment sectors.

5.1.3 VALUE ADDED TAX

The Value-added-tax (VAT) is imposed on the added value of goods or services arising in the process from production, circulation to consumption. Taxpayers include organizations and individuals producing or trading / importing of goods or services subject to VAT, while the cost of VAT is absorbed by the final consumers of goods and services.

In Vietnam, the common VAT rate is 10 percent, certain goods and services are entitled to 0 percent and 5 percent VAT. There are a number of goods and services not subject VAT or exempt from VAT declaration and payment.

VAT RATE	GOODS AND SERVICES
5%	Supply of certain goods and services being basic necessities (clean water, sugar, social houses, etc.), agriculture-related supplies, social welfare related (medical equipment, books, medicine, teaching equipment, etc.), technology supportive activities
0%	Export of goods and services (with certain exceptions in relation to transfer of technology / intellectual properties, trading of imported wines / beer / cigarettes, services provided in relation to goods sold, distributed, consumed in Vietnam, etc.)
10%	Supply of the remaining goods and services, except for goods and services not subject to VAT or not subject to VAT declaration and payment.

Goods and services not subject to VAT are mainly agricultural products or services provided directly to agricultural production, social welfare related (human-related insurance, medical services, educational services, publishing, ...), certain financial services in accordance with international practices, transfer of land use right, technology transfer, machines and equipment not yet produced domestically imported for the purpose of scientific research and development.

Transactions not subject to VAT declaration and payment include non-commercial activities (compensation, bonus, unconditional supports, etc....), services performed outside of Vietnam by foreign service providers, sale of assets by non-business individuals and organizations, special transactions must be specifically handled for the purpose of VAT management to minimize overall costs and tax evasions, intra-group assignment of assets, capital contribution by assets, payment and collection on behalf, etc.

There are 2 VAT declaration methods, including credit method and direct method, depending on the size, the capability to keep track of expenses and revenues as well as of the maintenance of relevant supporting documents. Specifically:

- VAT credit method applies to business establishments (except for business households and individuals) that comply with the

regime for accounting and invoicing according to the laws on accounting and invoicing, with an annual revenue of at least 1 billion VND from goods sale, or voluntarily applying the tax credit method;
- Direct VAT declaration method is applicable to business households and individuals, companies of which the annual revenue is less than 1 billion VND, business organizations and individuals (including foreign business without Vietnam-based resident establishments but earning income in Vietnam) that fail to fully observe regulations on accounting, invoicing and documentation; as well as gold, silver and gem trading activities.

For taxpayers declaring VAT under credit method, input VAT of expenses is creditable provided that the requirements on supporting documents are qualified. Input VAT is refundable in certain cases, notably production of exported goods / services; investment projects; ODA projects; upon being converted, merged, amalga-mated, divided, dissolved, bankrupt, terminated, etc. A tax audit for VAT refund will be performed by the tax authority either before or after a VAT refund, depending on the tax risk assessed by the tax authority.

For more information on VAT refund, please refer to section 9 on Customs below.

Taxpayers must file VAT returns on a monthly basis by the 20th day of the subsequent month, or on a quarterly basis by the last day of the first month in the following quarter.

5.1.4 FOREIGN CONTRACTOR WITHHOLDING TAX

FCT is applicable to foreign business organizations doing business in Vietnam or earning income in Vietnam under contracts, agreements or commitments between the foreign contractor (FC) and a Vietnamese entity. Payments to a FC by the Vietnamese party are subject to FCT which consists of VAT and CIT. VAT is generally creditable for the Vietnamese party. CIT may be exempt under a relevant Double Tax Agreement if certain conditions are satisfied, which is mainly if the foreign contractor does not have profits attributable to a PE in Vietnam. Other cases are excluded from the scope of FCT, such as pure supply of goods and services performed and consumed outside Vietnam.

There are three methods for calculating and paying the corporate income tax (CIT) and value-added-tax (VAT) for foreign contractors. The specific method to be applied depends on various conditions, e.g. on the status of the foreign contractual partner (permanent establishment or resident status) in Vietnam and the question of the application of the Vietnamese accounting system in the specific company.

(i) Withholding method, in which deemed VAT and CIT rates apply and all administration and tax payment responsibilities rest with the Vietnamese party. This is the most commonly adopted method;

(ii) The credit method entails the FC registering for VAT and paying CIT based on actual net profits. There are certain requirements on the compliance to apply this method.

(iii) The third method is the hybrid method, which is a combination of the two methods above, whereby the FC registers for VAT but is subject to CIT based on deemed rates. Generally, a FC applies this method where they will incur significant input VAT on local purchases which would not otherwise be claimable.

Under the Withholding method, the applicable deemed VAT and CIT rates would vary based on the nature of business activities performed, specifically:

NO.	GOODS AND SERVICES	VAT
1.	Services, rental of machinery and equipment, insurance; construction, installation exclusive of raw materials, machinery and equipment.	5%
2.	Production, transportation, services attached to goods; construction, installation inclusive of raw materials, machinery and equipment	3%
3.	Others	2%
NO.	GOODS AND SERVICES	CIT
1.	Distribution of goods, raw materials, supplies, machinery and equipment attached to services in Vietnam (including those provided in the form of domestic exports, except for goods processed under processing contracts with foreign entities); supply of goods into Vietnam under Incoterms DAP, DDU, DDP, etc.	1%
2.	Service, lease of machinery and equipment, insurance, lease of an oilrig.	5%
	Specifically: – Restaurant, hotel, casino management services;	10%
	– Derivative financial services.	2%
3.	Lease of aircraft, aircraft engines, parts of aircrafts and ships	2%
4.	Construction, installation, whether or not inclusive of raw materials, machinery and equipment	2%
5.	Loan interest	5%
6.	Income from royalty	10%
7.	Transfer of securities, certificates of deposit, ceding reinsurance abroad, reinsurance commission	0.1%

Notably, under the new Laws on Tax management effective from July 2020, there is withholding tax imposed on income derived from cross border e-commerce and digital transactions conducted by offshore e-commerce suppliers and digital platform based service providers into Vietnam (collectively referred to as “offshore e-suppliers”), including both B2B and B2C business conducted by foreign contractors in Vietnam. Vietnamese tax authority requires all offshore e-suppliers to directly declare and pay taxes to Vietnamese tax authority via the Electronic Portal of the General Department of Taxation.

5.1.5. BUSINESS LICENSE TAX

Business license tax (BLT) is an indirect tax. The tax is paid on an annual basis by entities. The BLT-rates are fixed in Circular 302/2016/TT-BTC, in effect since 1 January 2017. The amount of the BLT-rate for companies is between 1 and 3 million, depending on the corporate structure and the amount of registered capital.

5.1.6 SPECIAL CONSUMPTION TAX

A special sales tax (special consumption tax or luxury tax) applies to the production, distribution or import of special / luxury goods and services, in addition to VAT. These goods are in particular:

- Cigarettes, cigars and other tobacco preparations, cars and related products;
- Liquor;
- Beer;
- Under-24 seat cars;
- Two- and three-wheeled motorcycles of a cylinder capacity of over 125 cm^3;
- Aircraft and yachts;
- Gasoline of all kinds, naphtha, reformade components and other components for mixing gasoline;
- Air-conditioners of 90,000 BTU or less;
- Playing cards;
- Votive gilt papers and votive objects.

Special sales tax is also applicable to certain services, notably casinos, price-winning video games, golf business, lottery business, massage parlors, karaoke bars, etc.

5.1.7 STAMP DUTY

This tax applies for the necessary registration of ownership of specified assets, e.g. buildings and transportation. The tax rate is between 0,5 and 15 percent.

5.2. PERSONAL INCOME TAXATION AND SOCIAL INSURANCE

5.2.1. COMPULSORY SOCIAL INSURANCE, HEALTH INSURANCE AND UNEMPLOYMENT INSURANCE

Vietnam has a compulsory social, health and unemployment insurance scheme. Contributions are to be borne by both, the employer and the employee. The basis for calculating the contributions is the monthly salary as stipulated in the labor contract. The salary level used for the calculation of social insurance is capped at VND 29.8 million (twentyfold of the basic salary).

Compulsory unemployment insurance only applies to enterprises with 10 or more employees. Foreigners seconded to Vietnam by the parent company do not have to contribute to the compulsory insurance schemes. Seasonal workers are not subject to social insurance contributions either.

An employer is obliged to withhold the employee’s portion of the insurance contribution from the salary of the employee, and to transfer the amount together with the employer’s portion to the insurance authority.

	VIETNAMESE EMPLOYEES		FOREIGN EMPLOYEES	
	EMPLOYEE	EMPLOYER	FOREIGN EMPLOYEE	EMPLOYER
Social insurance*	8%	17.5%	8%	17.5%
Health insurance	1.5%	3%	1.5%	3%
Unemployment insurance**	1%	1%	–	–
Union Fee	–	2%	–	–
Total	10.5%	23.5%	9.5%	20.5%

Note:
* The Social Insurance part of the Employer from 1 July 2021 to 30 June 2022 is 17% (before is 17.5%). The employer will use the monetary support obtained (equivalent to 0.5% in the occupational accidents and diseases fund) for the purpose of prevent the COVID-19 pandemic.
** The Unemployment Insurance part of the Employer from 1 October 2021 to 30 September 2022 is 0%.

For a more comprehensive overview of the labor law in Vietnam, please refer to our brochure “Labor Law in Vietnam”.

5.2.2 PERSONAL INCOME TAX

Vietnamese and foreigners working in Vietnam are subject to personal income tax (PIT). The tax base depends on the residence status of the individual. Tax residents are those individuals meeting one of the following criteria:
- Residing in Vietnam for 183 days or more in either the calendar year or the period of 12 consecutive months from the date of first arrival; or
- Having a permanent residence in Vietnam and unable to prove tax residence in another country in the case where the actual residing days in Vietnam is less than 183 days.

Tax residents are subject to Vietnamese PIT on their worldwide income including both, employment and non-employment income. Foreign tax credit is only applicable to income sourced from overseas, and is conditional upon satisfaction of supporting documents.

Individuals not meeting the conditions for being tax resident are considered tax non-residents. Tax non-residents are subject to PIT on the income paid for the work relating to Vietnam, irrespective of their presence in Vietnam. While the PIT rates vary for non-employment income, employment income is taxed at progressive PIT rates of up to 35 percent for tax residents, and at a flat rate of 20 percent for non-tax residents. Double taxation agreements between Vietnam and the respective countries have to be observed.

In general, organizations established and operating in Vietnam who pay employment income on which PIT is incurred are required to withhold, declare and make PIT payments on behalf of the individual income earners. Income payers are required to file PIT on either a monthly or quarterly basis depending on their respective VAT declaration period. At year end, organizations that pay taxable employment incomes shall make a PIT finalization declaration if they are authorized by the employees, regardless of whether tax has been withheld or not.

PIT finalization is only required for tax residents who earn employment income. Direct PIT filing cases (i.e. not allowed to authorize income payers to conduct PIT finalization on their behalf) include:

- Residents earning income from salaries from two or more sources, and who do not meet the conditions for authorizing the PIT finalization to their income payers are required to directly declare a PIT finalization with the tax authorities if they have additional tax payable or an overpaid tax amount to be refunded or offset in the next tax period;
- For individuals present in Vietnam for less than 183 days in the first calendar year, but for 183 days or more in 12 consecutive months from the first day of presence in Vietnam, the first tax finalization year is 12 consecutive months as of the first day of presence in Vietnam;
- Individuals who are foreigners terminating their working

contracts in Vietnam shall conduct a PIT finalization declaration with the tax authorities before leaving Vietnam. If these individuals have not completed a PIT finalization with the tax authorities, they shall authorize the income payer or another organization or individual to conduct the PIT finalization;

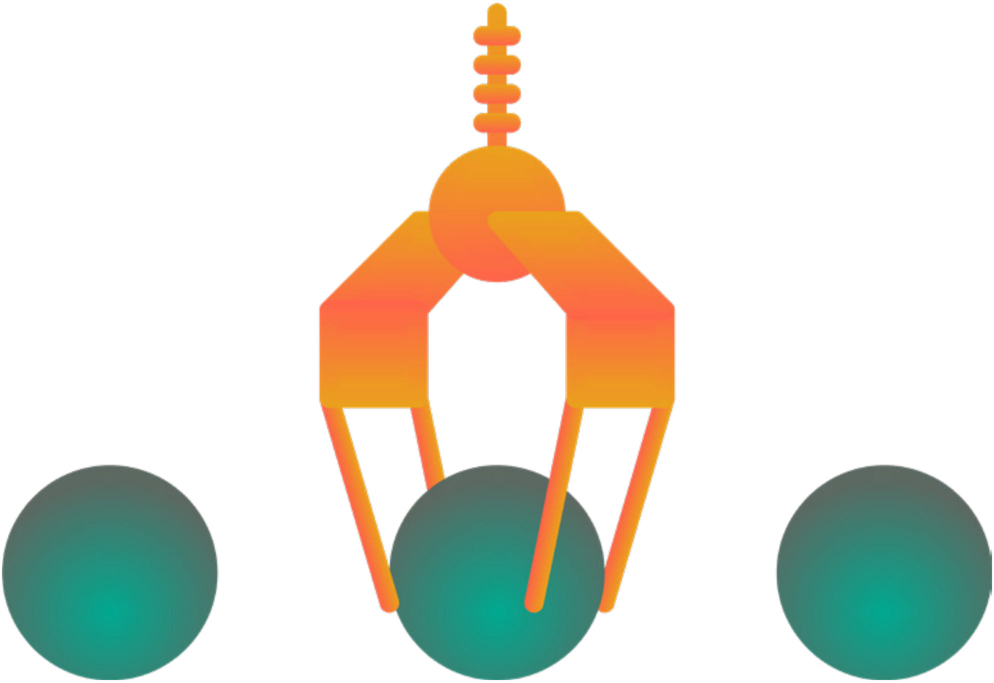
- Residents earning incomes from salaries paid from overseas and from international organizations, Embassies and Consulates without tax withholding during the tax year must conduct a PIT finalization with the tax authorities directly if they have additional tax payable or overpaid tax amount to be re-funded or offset in the next tax period.
- Residents earning incomes from salaries and who are eligible for a tax reduction due to natural disasters, fires, accidents, or fatal diseases that affect their ability to pay tax, shall directly conduct a PIT finalization with tax authorities.

5.3 DTA

Vietnam has entered into an impressive and extensive network of double tax treaties. Double taxation arises when two or more countries impose taxes on the same taxpayer in respect of the same taxable income or capital. To relieve taxpayers from the burden of double taxation, Vietnam has concluded comprehensive Double Taxation Agreements with approximately 80 countries, including Germany.

The system in place prevents foreign investors from facing redundant taxes on their income (e.g., in their country of residence and the countries they raise income through foreign investments). In this regard, the agreements apply to both, individual and corporate residents of Vietnam or the signatory country of the DTA for their corporate and personal income taxes.

However, tax relief under the DTA is not automatically applied in Vietnam but requires a formal request to be submitted to tax authority under local tax procedures. From 1 January 2022, Vietnamese tax authority will issue the Decision on approval/rejection of DTA application within 30 days from the date on which the full dossier is received by tax authority. If there is a tax audit, the approval will be issued within 40 days.



6.1 GUIDANCE ON TRANSFER PRICING IN VIETNAM

In recent years, the Vietnamese tax authorities have increased their scrutiny on Transfer Pricing ("TP") matters. In an effort to tackle tax avoidance and to ensure a more transparent tax environment, on 5 November 2020, the Vietnamese Government officially issued Decree No. 132/2020/ND-CP ("Decree 132"), which replaces Decree No. 20/2017/ND-CP ("Decree 20"), Circular 41/2017/TT-BTC ("Circular 41") and Decree 68/2020/ND-CP ("Decree 68"), and prescribes tax administration for enterprises engaging in related party transactions ("RPTs").

The new guidance on TP – Decree 132 takes effect from 20 December 2020 and be applicable to the 2020 tax year. With the inheritance and revision compared to Decree 20, the new Decree is more aligned with international current practices. Decree 132 broadens the definition of related party relationships to cover more cases where companies are both under the management or control of individuals with close relationships in the same family.

The below table summarizes the main points about the TP compliance requirements which shall be obliged by the taxpayers engaged in RPTs under the current Vietnamese TP regulations:

	ANNUAL TP DECLARATION FORMS	ANNUAL TP DOCUMENTATION REPORTS
TP Compliance Requirements	– APPENDIX I – Declaration of the taxpayer's related party relations and transactions; – APPENDIX II – Declaration of the content of the taxpayer's Local File; – APPENDIX III – Declaration of the content of the Group's Master File; – APPENDIX IV – Country-by-country report ("CbCR") for the tax-payer having the Vietnamese ultimate parent company.	– LOCAL FILE – including the taxpayer's information about RPTs, TP policies and methodologies in the context of RPTs under review according to the checklist of Appendix II; – MASTER FILE – containing information about business activities of multinational groups, TP policies and methodologies of the global group, and policies on allo-cation of profits, decentralization of operations and functions in value chains of the group according to the checklist of Appendix III; – The COPY OF CBCR of the global ultimate parent company.

Statutory Deadlines	Submitted with CIT finalization	TP DOCUMENTATION REPORTS must be prepared by the time of filing CIT finalization returns each year, and submitted on the tax authorities' request with deadlines as follows: – TAX AUDIT /INSPECTIONS: In accordance with the Law on Inspection from the date of receiving the request to provide information. – CONSULTATION PERIOD PRIOR TO TAX AUDIT / INSPECTIONS: No later than 30 working days from the date of receiving the written request to provide information to the tax authorities; can be extended once for no longer than 15 working days from the expiry date with valid reasons.

It is important to note that taxpayers are subject to a deemed tax adjustment relating to TP as follows:

- Failure to determine, declare transfer prices in accordance with the TP regulations;
- Failure to provide information, documentation in accordance with the TP regulations;
- Engaging in transactions that do not truly reflect the economic substance and reality of transactions for the purpose of reducing the tax liability.

The introduction of Decree 132 illustrated the expectation of the Vietnamese government in terms of enhancing the Vietnamese legal system regarding TP administration.

In light of this, companies are highly recommended to carefully review the new regulations on compliance obligations in Vietnam, and to assess the possible impact of such changes on their business operations for effective planning and compliance. In addition, it is essential that companies must ensure to commit with the requirements (about the statutory deadlines, information and contents disclosed) of TP declaration and preparation of TP documentation reports, as well as to maintain all the relevant supporting documents / evidence to appropriately conclude that the companies' overall operations including the RPTs incurred are consistent with the arm's length principle set forth in the Vietnamese TP regulations.

7.1 STATUTORY FRAMEWORK FOR ACCOUNTING AND AUDITING

The Accounting Law and the Law on Independent Audit constitute the statutory framework for accounting and auditing.

All companies registered and operating in Vietnam are obliged to comply with the Vietnamese Accounting Standards (VAS). While the VAS are in principle based on the International Financial Reporting Standards (IFRS), there are notable differences as to terminology, applied methods and presentation scope which must be observed.

For example, accounting must be undertake in Vietnamese language. Furthermore, the Ministry of Finance provides fixed tables of accounts which must be adhered to.

The default currency is VND. Under certain circumstances, the use of other currencies is permitted, but requires prior registration with the tax authorities.

The financial statements must be submitted in Vietnamese language.

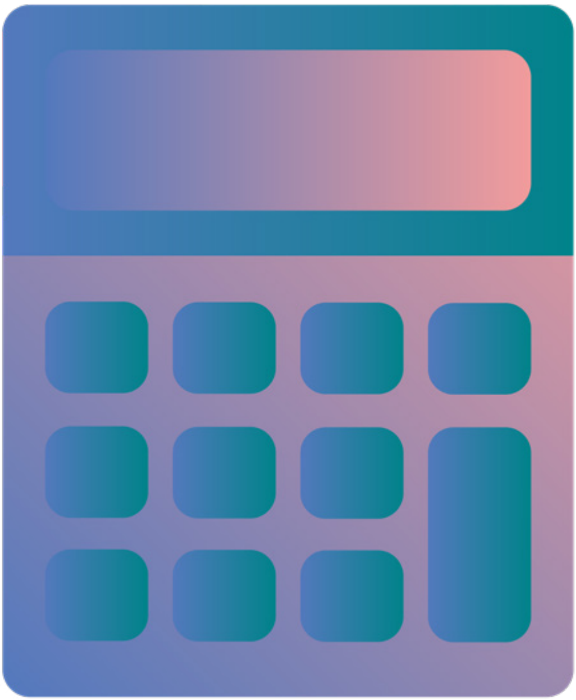
The standard fiscal year applicable is the calendar year, commencing from 1 January and ending on 31 December. However, foreign invested companies may seek an alternative fiscal year starting on the first of any quarter of the calendar year.

Annual Financial Statements have to be filed with the relevant authorities within 90 days after closure of the fiscal year.

The preservation period of documents depends on the type of document and varies between 5 years, 10 years and indefinite.

With the aim to improve the transparency and efficiency of financial information, enhance the accountability of enterprises, protect the business environment as well as legitimate interests of investors and integrate the Vietnam's economy with the region and the world, it is expected that the adoption of IFRS will become compulsory from financial year 2026.

Currently Vietnam is in the 2nd stage in the 3-stage-roadmap to the compulsory adoption of IFRS. Specifically, from year 2022 to 2025, FDIs are allowed to voluntarily adopt IFRS to stand-alone financial statements if selected by the Ministry of Finance. Enterprises applying IFRS who prepare consolidated financial statements or stand-alone financial statements are not required to prepare financial statements according to VAS.



8.1 AUDIT ON ANNUAL FINANCIAL STATEMENTS

In principle, all foreign invested entities in Vietnam as well as all representative offices are required to have their annual financial statements audited. In comparison, the reporting requirements for representative offices are less extensive.

The audit must be conducted by an independent auditor based in Vietnam.

The audited Annual Financial Statements have to be filed with the relevant authorities within 90 days after closure of the fiscal year.

According to the current Penal Code, non-compliance could be considered a criminal offence.

Customs

To import or export goods into or out of Vietnam, it is essential to understand the relevant customs procedures in place. At present, the clearance standards are set out under Law No. 54/2014/QH13 on Customs supplemented by various decrees for implementation and guiding circulars.

9.1 IMPORT DUTIES

In general, any goods imported to Vietnam will be subject to import duties. Nonetheless, as a large trade partner within the ASEAN and with the EU, Vietnam also provides for several preferential rates in addition to exemptions. Typically, import duty exemptions are granted on goods necessitated by projects in encouraged sectors or locations. As such, there are three import duty rates, namely the ordinary rate, the preferential rate, and the special preferential rate.

The PREFERENTIAL RATE concerns goods imported from countries or regions that entered into a free trade agreement with Vietnam (e.g., the EU, New Zealand, India, etc.).

The SPECIAL PREFERENTIAL RATE refers to goods imported from countries entitled to a most favorable treatment in their trade relation with Vietnam under the WTO's qualification.

The ORDINARY TAX RATE is applied to goods coming from countries falling into neither of these categories. The rates in place will be no more than 70 percent higher than the preferential tax rates specified by the government.

Therefore, the relevant import duty rate depend on the type of goods imported (i.e., the HS codes of the goods) and the originating country.

Concerning export duties, Vietnam's customs framework exempts most goods from an export tax. Export duties are only applied to basic natural resources, for example sand or crude oil, at rates ranging from 0 to 40 percent.

9.2 EXEMPTION OF IMPORT TAX

The most common exemptions among many others are:

- Goods exempt from export and import duties under international treaties to which the Socialist Republic of Vietnam is a signatory;
- Imported raw material, supplies, components serving the processing of exports; finished products imported to be fixed on processed products; outward processing products;
- Material, supplies, components imported for the manufacture of export products;
- Goods manufactured, processed, recycled, assembled in a free trade zone without using imported raw material; or components when they are imported into the domestic market;
- Goods temporarily imported for re-export, or goods temporarily exported for re-import within a certain period of time;
- Imports as fixed assets of an entity eligible for investment incentives as prescribed by regulations of law on investment;
- Raw material and components which cannot be domestically manufactured of investment projects for the manufacture or assembly of medical equipment given priority shall be exempt from import duties for 5 years from the commencement of manufacture;
- Certain imports serving environmental protection, including imported machinery, equipment, tools, supplies that cannot be domestically produced serving the collection, transport, treatment of wastewater, wastes, exhaust gases, environmental monitoring and analysis, production of renewable energy, treatment of environmental pollution, response to environmental emergencies.

9.3 VAT REFUND

From July 2016, the monthly or quarterly amount of input VAT which has not been fully deducted from the VAT paid by a business taxpayer adopting the invoice credit method in the period, shall be deducted from the VAT incurred in the subsequent period. VAT refund is only applicable in the following cases:

- Refund of VAT for investment when the remaining deductible VAT is VND 300 million or higher. If the remaining deductible VAT is inferior to VND 300 million, it shall be carried forward to the next tax period of the project;
- Refund of tax on exported goods and services when the amount of remaining deductible input VAT is at least VND 300 million on the exported goods and services in a tax period.

A business that both exports and domestically sells their goods and services in a month or quarter shall record the input VAT on their exported goods and services separately in accounting entries.

The input VAT on the exported goods and services, if not feasibly recorded in separate accounting entries, shall be determined according to the proportion of the revenue of exported goods and services in relation to the total revenue of goods and services through tax periods starting from the period that succeeds the latest tax period in which tax has been refunded to the current period in which tax refund is requested.

If the amount of input VAT on exported goods and services (the amount of input VAT separately recorded and the amount of input VAT determined through the said proportion) remains at least VND 300 million after having been deducted from VAT on goods and services sold domestically, the business shall receive a re-fund of VAT on exported goods and services. The refunded amount of VAT on exported goods and services shall not exceed the revenue from such exported goods and services multiplied by 10 percent.

- A business that pays the value added tax by the invoice credit method shall receive a refund of overpaid VAT or of remaining deductible input VAT upon its transfer, conversion, merger, consolidation, division, dissolution, bank-ruptcy or shutdown;
- Projects and programs financed by grant ODA, grant aids or humanitarian aids shall be eligible for VAT refund;
- Entities granted diplomatic immunities and privileges as per relevant laws shall receive a refund of VAT paid, according to the VAT invoice or the receipt stating the VAT-included price on the goods and services that they purchase in Vietnam for consumption.

9.4 EXPORT-PROCESSING ENTERPRISE (EPE)

Many foreign investors who specialize in commercial manufacturing to export and trade overseas, without consumption in the local market, intend to exercise their business activities under this model to benefit from tax incentives on import and export taxes as well as on value added tax of Vietnam.

However, since the EPE is entitled to tax incentives in accordance with regulations applied to free trade zones as prescribed in laws on import and export duties, the Government increasingly tightened the criteria for this enterprise model.

In order to be granted an IRC and a subsequent EPE certification, investors first need to obtain a “pre-approval” of the customs authorities confirming their compliance with the requirements with regard to a fixed fence, the installation of CCTV and the implementation of a management system for raw material and supplies for the production of exported goods.

Furthermore, besides manufacturing to export and trade overseas, EPEs are entitled to sell the liquidated assets of the enterprise and other goods to the local market, in accordance with laws on investment and commerce. However, import duties, customs procedures and further requirements apply for local sales.

Due to the increasingly strict requirements for the establishment and operation of an EPE, in common practice, most investors prefer an alternative and register their project company as a “Type of export production”.

Once the project company has successfully passed the inspection of the Customs Authority, it may be entitled to tax incentives (i.e. import duties and VAT exemption for imported material, VAT refund for material purchased from the local market that are used for the production for export) similar to an EPE but without the burden of the administrative works in relation to the customs procedures required in the case of an EPE.

Employment

This chapter provides a short overview of the regulatory and practical requirements on labor regulations in Vietnam. Vietnam's labor legislation and its implementation in practice are well developed. It covers almost all aspects of labor relations in the work-place, from the right to work to the worker's right to organizes, from labor contracts to collective bargaining agreements, from minimum working ages to minimum wages, etc.

10.1 WORKING HOURS, REST BREAKS DURING WORKING HOURS, HOLIDAYS, OVERTIME

Maximum Working Hours	– 8 hours a day – 48 hours per week The State encourages employers to apply 40-hour workweeks.
Rest breaks during working hours	– At least 30 minutes break; OR – At least 45 minutes break during nighttime If an employee works a continuous shift of at least six consecutive hours or more, the rest break shall be included in the working hours. The continuous shift working under the Labor Code is an employment practice designed for at least two people or two groups of people taking turns to work on the same working position, calculated for a period of 24 consecutive hours, and the transition time between two shifts does not exceed 45 minutes.
Paid leave (Annual leave)	12 days paid leave; one additional day for every five years of employment 11 public holidays; foreign employees are additionally entitled to a day off with pay on 1 traditional public holiday and 1 national day of their country Additional days off for special occasions (marriage, death, etc.)

Overtime	Not more than 12 working hours / day, 40 hours overtime / month and 200 hours overtime / year (in some sectors 300 hours /year with permission from DOLISA)
Overtime payment	The overtime pay is at least 150 % of actual hourly wage on a normal working day, at least 200 % on a weekly day off and at least 300 % on a public holiday or paid days off (exclusive of wages of public holidays and paid days off prescribed by the Labor Code).

10.2. TERMINATION OF EMPLOYMENT

The rights employees have when their labor contract is terminated depend upon the reason of termination and the type of labor contract. This affects the notice period and possible severance payments. The Labor Code is largely oriented towards the needs of the workforce and, in particular in the case of labor disputes, is usually interpreted in favor of the employee.

The employment relationship ends in the following cases:

<table>
<tr><th>Basis</th><th>Prior Notice Requirement[1]</th><th>Separation Benefit</th><th>Other Requirements</th></tr>
<tr><td>Expiry of labor contract</td><td rowspan="4">None</td><td rowspan="4">Severance allowance of 0.5 months‘ salary for each year of employment, excluding periods covered by the statutory unemployment insurance scheme[2] (“Severance Allowance”)</td><td rowspan="4">None</td></tr>
<tr><td>Work completion</td></tr>
<tr><td>Mutual termination</td></tr>
<tr><td>Employee is sentenced to serve a jail term, capital punishment or is prevented from performing the job by judgement or decision of a court</td></tr>
</table>

[1] This requirement means that termination must be notified a certain period of time ahead of it being implemented as prescribed by Vietnamese labor regulations. For bases that are not subject to the prior notice requirement, the termination can be communicated at any time that the party having the right to terminate considers appropriate and reasonable.

[2] Compulsory unemployment insurance has been introduced with effect as of 1 January 2009.

<table>
<tr><td>Employee dies or is declared missing or lacking legal capacity for civil acts by a court</td><td rowspan="6">None</td><td rowspan="6">Severance allowance of 0.5 months' salary for each year of employment, excluding periods covered by the statutory unemployment insurance scheme[2] ("Severance Allowance")</td><td rowspan="6">None</td></tr>
<tr><td>Employer terminates its operation or no longer has a legal representative or an authorized person.</td></tr>
<tr><td>Work completion</td></tr>
<tr><td>Foreign employee who is expelled due to judgments or decisions of courts and competent authorities in Vietnam</td></tr>
<tr><td>Foreign employee whose work permit has been invalidated</td></tr>
<tr><td>Expiry of probation without concluding a labor contract</td></tr>
<tr><td>Unilateral termination of the Employee or the Employer</td><td colspan="3">Please refer to Unilateral Termination below.</td></tr>
</table>

10.2.1. UNILATERAL TERMINATION

As the regulatory framework favors the employee, terminating a labor contract is often challenging. In particular, a unilateral termination of the labor contract by the employer is only possible in very few cases after a long and burdensome procedure. In principle, an employment relationship can only be terminated if such termination is supported by a legitimate reason and by observing the applicable notice period.

The statutory minimum notice periods depend on the type of labor contract:
- Definite-term contracts of less than 12 months: 3 working days
- Definite-term contracts: 30 calendar days
- Indefinite-term contracts: 45 calendar days ("Normal Notice Period")

In some special industries and trades as well as for special jobs (e.g., enterprise manager), the statutory minimum notice periods shall be as follows:
- Definite-term contracts of less than 12 months: At least equal to a quarter of the term of the labor contract
  Definite-term contract and Indefinite-term contract: 120 days ("Special Notice Period")

TERMINATION BY EMPLOYER[3]

Basis	Lawful reason triggering the unilateral termination of the Employee: – Poor performance of the employee; – Prolonged Illness of the employee; – Force Majeure events that lead to the reduction of labor force due to a scale-down of business; – Employee reaches the retirement age; – Employee provided untruthful information; – Employee is absent from the workplace following a temporary suspension of labor contract; – Employee is absent from the workplace without legitimate reason for 5 consecutive working days or more	– Employer conducts restructuring; – Technological change; – Economic reasons; – Merger; – Acquisition; – Consolidation or Division
Prior Notice Requirement[4]	Applicable notice period required	Notice to the trade union and the Department of Labor, Invalids and Social Affairs where the employer is located

[3] Termination by employer is not allowed in any of the following situations:

- Employee has been on leave for treatment due to sickness or accident;
- Employee is on leave as permitted by the employer;
- Pregnant employee; or
- Employee is on maternity leave or is raising a child under 12 months old.

[4] This requirement means that termination must be notified a certain period of time ahead of it being implemented as prescribed by Vietnamese labor regulations. For bases that are not subject to the prior notice requirement, the termination can be communicated at any time that the party having the right to terminate considers appropriate and reasonable.

Separation Benefit	Severance Allowance[5]	Job-loss allowance of one month's salary for each year of employment, excluding periods covered by the statutory unemploy-ment insurance scheme, and in any case not less than two months' salary
Other Requirements	In case of termination due to the poor performance of the employee: Criteria for assessing the work completion should be provided in a separate performance assessment policy issued by the employer, consulting the Organization representing the employees at grassroots level (if any) in advance.	A labor usage plan must be developed, consulting the Organization repre-senting the employees at grassroots level (if any) in advance and giving prior notice of 30 days to the People's Committee of the province and to the em-ployees.

[5] Except for the cases in which the employee is entitled to receive retirement pension as prescribed by social insurance laws, and the cases in which the employee is absent from the workplace without legitimate reason for five consecutive working days or more.

TERMINATION BY EMPLOYEE

Basis	At employee's discretion	Lawful event triggering the unilateral termination of the Employee.
Prior Notice Requirement[4]	Normal Notice Period	None
Separation Benefit	Severance Allowance	Severance Allowance
Other Requirements	None	None

10.2.2 BILATERAL TERMINATION

Finally, an employment relationship can be terminated by a termination agreement. In contrast to dismissal, the termination contract is the most common and most viable option for terminating the employment relationship.

In practice, unilateral termination of employment may be troublesome and time consuming. A mutual termination agreement between the employer and the employee is often used. This helps to avoid any dispute that may arise or any shortcoming of the termi-nation procedure. The employer and employees may reach agreements on the date of termination, severance payments, etc. The time required to comply with termination procedures is reduced significantly when resolved through mutual agreement.

10.3. MINIMUM WAGE

Vietnam currently simultaneously applies two different minimum wages, the Basic Minimum Wage and the Regional Minimum Wages. While the Basic Minimum Wage sets the base for the calculation for the cap of social insurance, health insurance and the salary for state-employees, the Regional Minimum Wages play a key role for setting the minimum wage of non-state employees and the base for the cap of the unemployment insurance.

- Basic Minimum Wage: The Basic Minimum Wage is 1,490,000 VND per month and applied across the country.
- Regional Minimum Wages: As the cost of living varies, the Vietnam government divides the Regional Minimum wages into four groups to reflect the economic realities.

From January 2020, regional minimum wages are between minimums of 3.07 million VND (approx. 133 US Dollars) to 4.42 million VND (approx. 192 US Dollars), as follows:

REGION	CITIES	MINIMUM WAGE / MONTH
Region I	Parts of Hanoi and HCMC, Dong Nai Province, Vung Tau Province, Binh Duong Province, …*	4,420,000 VND
Region II	Remaining districts of Hanoi and HCMC, Da Nang, Hung Yen Province, Hue province, Can Tho, Rach Gia, …*	3,920,000 VND
Region III	Remaining provincial cities, …*	3,430,000 VND
Region IV	Covers the remaining administrative divisions	3,070,000 VND

*For more detailed information cf. appendix Decree No. 90/2019/ND-CP; defined as per November 15, 2019

10.4. COMPULSORY SOCIAL INSURANCE, HEALTH INSURANCE, UNEMPLOYMENT INSURANCE AND TRADE UNION FEES

Vietnam has a compulsory social, health and unemployment insurance scheme. Contributions are to be borne by both, the employer and the employee. The basis for calculating the contributions is the monthly salary as stipulated in the labor contract (capped at 20 times common minimum wage for social insurance / health insurance and 20 times minimum regional wage for unemployment insurance).

An employer is obliged to withhold the employee's portion of the insurance contribution from the salary of the employee, and to transfer the amount together with the employer's portion to the insurance carrier.

The contribution rate to the Trade Union funds is set at 2 percent of the salary funds for Social Insurance contributions for employees. This fee must be paid into the Trade Union funds once per month.

10.5. INTERNAL LABOR RULES (ILR'S)

An enterprise with 10 employees or more must provide written In-ternal Labor Rules ("ILR") covering all important items of the working environment. The written ILR come into effect through registration with DOLISA. In case there is an organization representing the employees at the grassroots level (i.e., internal labor union and / or any organization established on a voluntary basis by the employees at the company), the employer must consult with such organizations.

If an employer employs less than 10 employees, it is not required to register a written ILR, but the regulations regarding labor discipline and material responsibility need to be comprised in the labor contracts.

Well-worded ILRs are important for the employer to be able to take disciplinary actions against employees, or to terminate labor contracts in case of poor performance. It is difficult for an enterprise to dismiss an employee for an offense if this offense is not specified in the ILR, or if the enterprise does not have duly registered ILR.

An employee who breaches the ILR may, depending on the seriousness of the breach, be disciplined. The limitation period for dealing with a breach of labor discipline is 6 to 12 months, depending on the violation.

10.6. TRADE UNION

There is a multilevel system of trade unions in Vietnam, which ranges from the Vietnam General Confederation of Labor (VGCL) as an umbrella Organization, to the unions at grassroots level. Apart from collective negotiations, trade unions fulfill such tasks at company level which are taken over by the works council in other countries. Unlike in some European countries, trade unions in Vietnam are not entitled to participate in management decisions, and presently have no right to be informed about the economic performance of the enterprise.

Employers are not obliged to establish a trade union, but they assume the responsibility of creating a favorable environment for their establishment. In order for a trade union at enterprise level to be established, five or more employees have to unite and request for a voluntary participation in the Vietnamese union. Employers must provide the union in their enterprise with a suitable workplace and adequate facilities. Union officers are entitled to a certain paid time off, in order to fulfill their functions.

The compulsory trade union fee equals 2 percent of the total salary volume for the social insurance contribution of all employees per month, and has to be paid to the trade union's account, in which 70 percent of the trade union fee will be returned to the grassroots union of the company.

Employees who joined the grassroots union of the company are also obliged to pay the trade union member fee, equivalent to 1 percent of the salary volume taken as a basis for social insurance contribution. 60 percent of the trade union member fee will be returned to the grassroots union of the company.

Recently, arbitration has increasingly emerged in Vietnam as an appealing legal technique to settle foreign and non-foreign conflicts without resorting to the judicial system. More specifically, arbitration is a preferred dispute resolution mechanism for its confidentiality and time-saving advantages compared to litigation through the traditional judicial proceedings – where domestic courts are usually overloaded with cases.

Arbitrators in Vietnam have a high degree of experience as they are chosen from a group of professionals with specialized knowledge of a certain trade or business, strengthening busi-nessmen's confidence and trust in the procedures and the ulti-mate award. Arbitration also ensures the enforceability of the judgment as the arbitration award is a final binding decision with a restricted right of appeal.

As of March 2022, the Ministry of Justice of Vietnam reported 35 Vietnamese arbitral institutions in Vietnam. The first and most prominent institution is the Vietnam International Arbitration Center (VIAC) located at the Vietnam Chamber of Commerce and Industry since 1993, with offices both in Hanoi and Ho-Chi-Minh-City.

According to the 2021 statistics revealed by the VIAC, the number of new arbitration cases administered by the VIA had grown by 21 percent from 2020, with a total value of dispute of 5.500 billion VND. Parties filed claims across a wide range of sectors, with the Sale of Goods and Construction sectors taking the lead with 47 percent and 14 percent respectively. However, a growing number of claims relate to other economic sectors such as banking and finance, distribution, investments, outsourcing and services.

11.1. DRAFTING AN ARBITRATION CLAUSE

To submit a dispute for settlement before an arbitral tribunal, the disputing parties should enter into an arbitration agreement. In Vietnam, the Law on Commercial Arbitration merely requires that an agreement be in writing and shall contain a wording that establish the mutual parties' decision to resolve their dispute through arbitration.

According to the Commercial Arbitration Law of Vietnam, if an agreement provides for the intervention of arbitration, then the judicial court seized must declare itself incompetent. In other words, if the parties have already decided to choose arbitration, then the court must respect the will of the parties. To that end, and to minimize the risk of redundant court intervention as well as to facilitate a smooth arbitral process, it is crucial to include a well-drafted arbitration clause into an agreement. In a worst-case scenario, an award may be revoked or denied enforcement even after the arbitral proceedings took place. Most arbitral institutions offer model arbitration clauses which may be adapted to the parties' needs.

First and foremost, an arbitration clause must unambiguously record (in writing) the party's intention to resolve (any) dispute by arbitration. Further, the following should be mentioned in an arbitral agreement: The seat of the arbitration and the adopted arbitration rules. Specific procedural regulations such as the compo-sition of the arbitral tribunal or the language of arbitration may be added. Only a well-balanced arbitration clause tailored to the specific transaction – neither omitting crucial elements nor over-specifying the arbitral conduct – will ease the settlement of a dis-pute professionally and efficiently.

11.2. CONDUCT OF ARBITRATION

When starting an arbitration, the parties must acknowledge that there are several requirements regarding the statute of limitations and the documents.

Depending on the nature of the dispute, the parties shall agree to settle the dispute at an arbitration center or by an ad hoc arbitration council - with an arbitration center being the more widely and more frequently chosen option.

A party who wishes to initiate arbitration at the arbitration center must submit a Request for Arbitration along with all supporting documents to the arbitration center. The Arbitration Center shall send copies of the plaintiff's petition and enclosed documents to the defendant. The defendant, on the other hand, is required to submit a self-defense statement to the arbitration center. The defendant may affirmatively file a counterclaim against the plaintiff.

The counterclaim could be submitted simultaneously with a self-defense statement to the Arbitration Center or the arbitration council and the defendant. After an initial verification of the documents provided by the parties, the arbitration council may conduct the hearings. When it is considered that no further relevant document or evidence is to be submitted, the arbitration council shall declare such a hearing to be the final hearing. The Arbitral Award shall be made no later than 30 days from the date of the final hearing.

In addition, the Arbitration Law of Vietnam allows the involved parties to negotiate themselves and agree upon terminating the dispute settlement.

11.3. APPLICABLE LAW

To determine the applicable law, the arbitration court will have a look at the parties' will in addition to the nature of the conflict. Indeed, for a dispute that does not involve any foreign element, Vietnamese law will be applicable to settle the dispute. For disputes involving a foreign element (e.g., the nationality of the parties or the establishment, modification, implementation, or termination of their relationship occurring in a foreign country) will be settled according to the law selected by the parties.

In case the parties have no agreement on the applicable law, the arbitration council shall decide to apply a law it considers to be most appropriate.

11.4. ENFORCEMENT OF AN ARBITRAL AWARD

Concerning foreign arbitral awards, the competent provincial people's court must formally recognize and hold it enforceable. With Vietnam becoming a signatory party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1995, the latter has further been codified into Vietnamese law through its Civil Procedure Code. As a consequence, a foreign arbitral award shall be recognized and enforced in Vietnam, if the award was issued in a country party to the New York Convention of 1958. In the absence of such adhesion, the Viet-namese arbitration court can also enforce a foreign arbitration award based on reciprocity.

Under the Civil Procedure Code 2015, the grounds for refusing the recognition and enforcement are substantially similar to those in the New York Convention. Once a foreign arbitral award is recognized and held enforceable by the competent provincial people's court, the award is legally effective like any decision or judgment of a Vietnamese court.

In regard to the non-foreign arbitral awards, unless there are reasons for cancellation, non-foreign arbitral awards are fully enforceable. The award creditor can have the award executed by the provincial civil judgment enforcement authority where the award was issued. The provincial civil judgment enforcement authority will verify with the competent people's court to ascertain whether there has been a request to cancel the award. before granting the decision to enforce the arbitral award.

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