COUNTRY COMPARATIVE GUIDES 2024

The Legal 500 Country Comparative Guides

Vietnam

INVESTING IN

Contributor

ACSV Legal

Thang Nguyen

Partner | thang.nguyen@acsvlegal.com

Minh Nguyen

Special Counsel and Head of Dispute resolution practice | minh.nguyen@acsvlegal.com

Phuong Huynh

Senior Associate | phuong.huynh@acsvlegal.com

Stanley Boots

Partner and Head of Project finance and Financing practice | stanley@acsvlegal.com

This country-specific Q&A provides an overview of investing in laws and regulations applicable in Vietnam.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

VIETNAM
INVESTING IN

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Despite the global economic recession primarily stemming from the COVID-19 pandemic over the last three years, Vietnam has continued attracting foreign investments, which has contributed to the country's annual growth. Such investments span various national economic sectors, predominantly in the processing and manufacturing industries. Notably, Quang Ninh, Hai Phong, Bac Ninh, Binh Duong, and Ho Chi Minh City remain top destinations for foreign investment in Vietnam.

Vietnam saw an increase of 9.2% in registered foreign direct investment (**FDI**) at USD 31.15 billion post-pandemic in 2021 (compared to the corresponding period in 2020). However, the end of 2022 witnessed a decline in foreign investments from developed countries into Vietnam amid a challenging global economy; total registered FDI capital in Vietnam dropped to 89% of 2021. However, realised capital in 2022 increased by 13.5% compared to 2021 (at approximately USD 22.4 billion), signaling economic recovery. As of 20 December 2022, Vietnam has 36,278 valid projects, having a total registered capital of USD 438.69 billion.

According to the latest official data from the Foreign Investment Department, the total registered FDI capital has reached USD 36.61 billion as of 20 December 2023. This reflects a notable increase of 32.1% compared to the corresponding period in 2022. Realised FDI capital reached USD 23.1 billion, the highest figure within the 2018-2023 timeframe.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

A foreign investor can invest in one of the following ways:

Incorporation of an enterprise

Foreign investors may establish autonomous entities in Vietnam without a local partner. This alternative has the advantage of allowing foreign investors complete control over their operational frameworks and decision-making processes.

Establishing a company under the Vietnamese legislative framework is primarily governed by the *Law on Investment* and the *Law on Enterprises*. Foreign investors may establish a wholly foreign-owned entity or a joint venture with local partners. Also, note that sector-specific regulations specify restrictions on foreign ownership in designated industries.

Capital Contribution or Acquisition (M&A)

The capital contribution or acquisition in an existing (foreign-owned or local) enterprise serves as a strategic conduit for expeditious market entry. Key M&A issues to be considered include obtaining explicit M&A approvals before executing the transaction, foreign ownership restrictions, land-use rights, Vietnamese competition law and other regulatory concerns.

Where the stocks being acquired are of a joint-stock company ("**JSC**") listed on a stock exchange, the *Law on Securities* applies as this is deemed a form of indirect investment activity, and thus not subject to M&A approval. The *Law of Securities* imposes disclosure requirements and monitoring of foreign ownership limits. Investors must also remain cognizant of sector-specific limitations and reporting obligations.

Public-Private Partnerships ("PPP")

 © 2024 Legalease Ltd

A collaborative alliance between governmental entities and foreign investors, commonly known as PPPs, is useful for investments to develop essential infrastructure and provide public services. The 2020 PPP Law establishes a new form of local investment engagement.

The relevant governmental entity will issue a tender with their specific technical and commercial requirements for each PPP project. If selected, the foreign investor(s) – and their project enterprises – will sign a PPP contract with the relevant national state agency. This engagement is subject to the approval(s) of competent authorities.

Business Cooperation Contracts ("BCC")

BCCs are a flexible alternative to JVs, as they avoid the creation of a distinct legal entity. The BCC facilitates collaboration between partners on targeted business activities, where the shared outcomes may manifest as joint profits or the exchange of products. BCCs are typically detailed contractual agreements that align operational dynamics with applicable Vietnamese laws.

While BCCs are unincorporated entities, foreign investors who are parties to a BCC must still apply for an investment registration certificate ("**IRC**"). Foreign parties to a BCC may establish an operating office in Vietnam to implement the BCC by registering with the provincial Department of Planning and Development ("**DPI**"), which oversees its operation. In addition, the parties to a BCC shall establish a coordinating board to execute the BCC, with the functions, tasks, and powers to be agreed between the parties under the BCC.

Representative and Branch Offices

Representative offices are pivotal in facilitating market research and liaising between foreign investors and the Vietnamese market. However, these entities are expressly prohibited from partaking in profit-making activities. In contrast, branch offices are afforded the latitude to engage in commercial activities, underscoring a more expansive operational scope. The establishment and operation of both RO and BO are under the purview of the *Commercial Law* and its guiding regulations.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Generally, foreign investors may own up to 100% of the charter capital in an economic entity, except where the business activity is subject to sectoral restrictions on foreign ownership (e.g., banking, civil aviation, certain telecommunication and logistics services).

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Generally, foreign investors may invest in, and hold, the same class of stock or other equity securities as their domestic counterparts in both public and private companies. This includes ordinary shares, dividend preference shares, redeemable preference shares, voting preference shares, and other preferred shares. It is worth noting that the ownership of voting preference shares and the exercise of founding shareholders' rights to ordinary shares are subject to certain restrictions under the law.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Prevailing legal frameworks permit investors to structure and administer businesses through a combination of both domestic and offshore entities. The choice of structure depends on a variety of factors, including intrinsic characteristics of the business, overarching investment strategies, and tax and regulatory considerations.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Under the Law on Enterprises, there are several forms of domestic companies:

Joint-Stock Company ("JSC")

This is a company where at least three shareholders hold the capital. There is no restriction on the maximum number of shareholders, who may be entities or individuals. JSC shareholders are liable for the entity's debts and other liabilities to the extent of their own contributed capital, making it suitable for medium and large-scale businesses. It can also be listed on the stock

 © 2024 Legalease Ltd

market.

Limited Liability Company (LLC) with Two or More Members:

This is an enterprise under the ownership of between two and fifty members who may be entities or individuals. The members of a multiple-member LLC are liable for the debts and other liabilities of the LLC to the extent of their own contributed capital, making it suitable for small to medium-sized enterprises (**SMEs**).

Single-Member LLC

This type of company is owned by a single member, who may be an entity or individual. The owner is liable for the debts and other liabilities of the LLC up to its charter capital. Like multiple-member LLCs, this form is also suitable for SMEs.

Partnership

A partnership is an enterprise with at least two individual general partners who are joint owners of the company and do business under the same name. They are liable for the obligations of the partnership to the extent of all their assets.

Limited partners (being individuals or entities) are liable for the debts of the partnership only to the extent of their contributed capital.

Which form is preferred by domestic shareholders?

Domestic shareholders typically prefer multiple-member and single-member LLCs as their responsibility for company liabilities and debts is limited to their contributed capital. LLCs are also appealing to SMEs due to their relatively straightforward governance structures and lower regulatory burden compared to JSCs.

Which form is preferred by foreign investors/shareholders?

- **What are the reasons for foreign shareholders preferring one form over the other?**

The choice generally depends on factors such as business size, capital requirements, the level of control desired, and the nature of activities the company intends to undertake in Vietnam.

Foreign investors tend to favour JSCs for their flexibility and liquidity, and ease of ownership transfer, especially for larger investments. This feature allows foreign investors to tap into a broader investor base, enhancing capital-raising opportunities that may include future listing on stock exchanges. In addition, JSCs often have more structured corporate governance mechanisms, thus appealing to foreign investors who value transparency and accountability.

The LLC structure provides a clear and straightforward ownership arrangement and is often used for medium-sized investments. Foreign investors frequently use LLCs for short to medium-term investments into startups, especially for wholly foreign-owned enterprises or joint ventures.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Which governmental entities have to give approvals?

Depending on the type and distinctive attributes of each investment, approvals/licenses/certificates may be issued by different competent authorities. Foreign investors are advised to seek legal advice to navigate the Vietnamese legal framework to ensure a streamlined and efficient investment process.

What is the process for forming/incorporating a domestic company?

The establishment of a domestic corporation for foreign investors encompasses several primary phases:

Obtaining an Investment Registration Certificate (IRC)

Foreign investors, and domestic enterprises with more than 50% foreign ownership, must obtain an IRC prior to the creation or incorporation of the investment vehicle. Domestic investors and enterprises with foreign ownership amounting to 50% or less only require an Enterprise Registration Certificate ("**ERC**") to establish a new enterprise.

To apply for the IRC, the foreign investors submit information pertaining to the investment project (e.g. investment objectives, investor profiles, the economic

 © 2024 Legalease Ltd

entities implementing the project, project investment capital, scale and location). The IRC is typically issued by the competent Department of Planning and Development ("**DPI**") or management boards of industrial parks, export-processing zones, hi-tech zones and economic zones (collectively, **Investment Registration Authority**) before incorporating a commercial entity. The IRC is also required for ERC applications (see more below).

However, note that certain types of investments (e.g. those impacting the environment, established land use rights, population resettlement, border and coasting communities, key infrastructure development, defense and security concerns, etc) must seek an Investment Policy Approval ("**IPA**"). If such IPA is granted, the Investment Registration Authority will automatically issue the IRC.

Obtaining an Enterprise Registration Certificate (ERC)

All private business enterprises in Vietnam must obtain an ERC from DPI that sets out company registration details, such as the enterprise name and code number (which serves as its identification for its entire corporate life cycle). It also contains the head office address; information of the owner/members in the case of LLCs; the full name, permanent residential and mailing address, nationality, identity card or passport, number of legal representatives; and the registered amount of charter capital.

Post-establishment formalities

Upon obtaining the ERC, several administrative formalities must be fulfilled within respective time limits, including the payment of license tax and publication on the national enterprise registration information portal. A company will also need to open bank accounts and make company seals to initiate its operation. A foreign-invested company incorporated by foreign investors via issuance of IRC, or with the majority of its charter capital owned by foreign investors, is also required to open a direct investment capital account.

What is a required capitalization for forming/incorporating a company?

Generally, the law does not prescribe minimum capital requirements for most businesses in Vietnam. Sectors that are subject to capitalisation mandates include security and order, transportation, postal and telecommunications, finance, banking, education, and health; in these cases, the registered capital must meet minimum capital requirements for the licensing authorities (i.e., DPI) to issue the company with the IRC and/or ERC within the specific sector.

How long does it take to form a domestic company?

The timeframe to obtain the IRC and ERC differs from case to case. The law states that the IRC and ERC may be issued within 15 days and 3 business days, respectively, from submitting a full and valid application dossier. However, the issuing authority may request further information in practice, resulting in a longer timeline.

How many shareholders is the company required to have?

See paragraph 6.

Is the list of shareholders publicly available?

Generally, the LLC and JSC shareholders are not legally required to be publicly disclosed. However, information about foreign shareholders, founding JSC shareholders and LLC members is publicly accessible on the national business registration portal. See further paragraph 18.

Shareholders holding 5% or more of the voting shares in a public company or investment fund management company dealing in securities must be notified to Vietnam's State Securities Commission ("**SSC**") and the relevant stock exchange. Changes in their shareholding must also be notified. However, in practice, some public companies voluntarily disclose such information about shareholders holding less than 5% of the voting shares to foster transparency and investor confidence.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

(a) Shares Acquisitions. See paragraphs 2(c) and 4 above.

(b) Asset Acquisitions. Technically, there is no general restriction on foreign investors in acquiring Vietnamese assets, and as such, no requisite regulatory approvals to be obtained. However, many legal issues and challenges may arise in such transactions (e.g. restrictions around land use rights and buildings by foreigners). Such issues would require legal advice around the structuring of how foreign investors can hold such assets.

 © 2024 Legalease Ltd

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

Generally, subject to compliance with applicable foreign ownership ratios, foreign investors may invest in public companies on the domestic stock market without approval (save for circumstances in paragraph 10), provided that they satisfy the following before investing:

- Register for a securities trading code with Vietnam Securities Depository and Clearing Corporation.
- Establish an indirect investment capital account at a depository bank duly licensed to facilitate foreign exchange transactions.
- Open a securities depository account.

Public companies must disclose the maximum permissible foreign ownership ratio within their corporate structure on the company's official website, the stock exchange, Vietnam Securities Depository and Clearing Corporation, and SSC's information disclosure system. The trading mechanisms on the trading floor incorporate safeguards to ensure that the purchase of shares by foreign investors adheres to the permissible ownership ratio.

Foreign investors can buy stocks on the stock exchange through two distinct trading modalities:

(a) Order Matching Transactions. Acquire stocks from any seller, as governed by order matching principles and price determination as prescribed by law.

(b) Put-Through Transactions. Procure shares from a designated shareholder through transactions wherein both parties agree upon a specified price and volume in adherence with the prescribed price fluctuation range applicable on the transaction date.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

According to the *Law on Securities*, a tender offer must be made when an investor (either alone or in conjunction with affiliated persons (per statutory definition)) acquires 25% or more of the voting shares of a public company listed on the Vietnamese stock market, except where a statutory exception applies.

The acquiring party must disclose information related to the tender offer per the law, and the tender offer process is subject to regulatory approval by the SSC.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

The approval process for building a new facility in Vietnam varies depending on the nature of the project, industry, and location. However, the process would generally include the following key steps:

(a) In the initial phase, the prospective investor must undergo the approval process for investment in Vietnam (i.e., obtaining IRC, ERC, and/or M&A approval (see paragraph 7)).

(b) Upon obtaining the relevant approvals for investment in Vietnam, investors must procure an operational license. Establishing new facilities in Vietnam generally requires permits, including construction permits and certificates/approvals pertinent to environmental protection and fire prevention measures. Notably, foreign investors may be eligible for the issuance of the land use rights certificate ("**LURC**") for the land and the newly developed assets, subject to meeting specific conditions and circumstances stipulated by Vietnamese regulatory authorities.

The approval process may involve coordinating with multiple local, regional, and national government agencies. Additionally, process specifics can vary based on the nature of the project, the industry, and the regulatory framework of the country in question.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on

 © 2024 Legalease Ltd

how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

This depends on the parties and type of transaction.

In Vietnam, unless expressly permitted by law, all transactions, payments, quoting prices in contracts, etc. (including conversion or adjustment of prices of goods and services, the value of contracts and agreements) of residents and non-residents must be performed in Vietnamese Dong (**VND**).

Vietnamese residents are permitted to perform the following transactions, among others, in foreign currency:

(a) As entities with legal person status, transfer internal capital in foreign currency between their accounts and accounts of their dependent units with no legal person status and vice versa.

(b) Contribute capital in foreign currency by bank transfer to perform foreign investment projects in Vietnam;

(c) Being entities trading in free-duty goods, allowed to list the prices of goods in foreign currency and receive payments in foreign currency by transfer or cash from the provision of goods (subject to compliance with applicable laws);

(d) Being entities trading in the domains of air transport, hotel, and tourism, allowed to list and advertise prices of goods and services in VND and equivalent foreign currency on websites, specialized-line publications (excluding menu and service price table) in foreign languages; and

(e) Quote, fix prices, and receive payments in foreign currency from non-residents for the export of goods and services.

Non-residents are permitted to (i) transfer foreign currency to other non-residents, and (ii) quote prices, and pay for export goods and services in foreign currency by transfer, to residents.

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

Where the law permits the use of foreign currency in a transaction, no further approval is required.

For transactions where the use of foreign currency has not been expressly permitted by Vietnamese laws, parties can seek special approval from Vietnam's Central Bank, the State Bank of Vietnam (**SBV**), to use foreign currency. In practice, such special approval is seldom granted.

- in an acquisition, or

Payment in foreign currency is permitted by law (without further approval) if the acquisition is between non-residents.

- to pay to contractors, or

In most cases, contractor payments must be in VND. If a foreign contractor performs the contract outside Vietnam, payment can be made in foreign currency without further regulatory approval.

- to pay salaries of employees?

Salaries of Vietnamese employees must be contractually stipulated and paid in VND. Salary payments to foreign employees may be paid in foreign currency without SBV or other government agencies' approval.

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

There is no limit on the amount of foreign currency provided that the use of foreign currency is permitted by law for such transactions or series of related transactions. Do note that foreign currency remittance transactions must be verified by the remitting bank in Vietnam, which will request supporting documents for their verification.

Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

Generally, there is no approval requirement or limit. Still, foreign investors will need to register the amount with Vietnamese authorities and transfer the registered amount of foreign currency to the correct bank account in Vietnam for later remittance.

However, if a foreign investor provides a mid or long-term loan in foreign currency (i.e., the loan term is more than one year) to a Vietnamese company, the borrower must obtain approval from SBV before the loan can be disbursed to the borrower in Vietnam.

 © 2024 Legalease Ltd

Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

There is no approval requirement or limit on how much domestic currency a foreign investor can buy in Vietnam.

Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Yes, provided that the foreign investors comply with the *Law on Investment*, foreign exchange control ordinance and money transfer procedures.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

If a Vietnamese company seeks to transfer VND out of Vietnam for investment activities, it must obtain an offshore investment registration certificate from the Ministry of Planning and Investment to register the amount of VND that will be transferred out of Vietnam for investment.

Foreign investors must satisfy the following conditions to transfer foreign currency out of Vietnam:

(a) the transfer is permitted by Vietnamese law, including for (i) remittance of profits, income from investment in Vietnam, (ii) payment for goods and services to an offshore supplier, and (iii) other lawful payments;

(b) having fulfilled all outstanding financial obligations (taxes, fees, etc.) to the Vietnamese authorities;

(c) the Vietnamese company, in which the foreign investor invested in, opens and maintains a direct investment capital account (**DICA**) for remitting investment profits outside Vietnam; and

(d) the foreign investor can provide supporting documents required by the Vietnamese commercial bank remitting the money to prove the legitimate source of the money.

Whose approval is required?

No approval is required.

How long does it take to get the approval?

N/A

Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

There is no limit on the amount of foreign currency that can be transferred out of the country, provided that the source of funds complies with foreign exchange controls and anti-money laundering laws.

Is the approval required for each transfer or can it be granted for all future transfers?

No approval is required.

14. Is there a tax or duty on foreign currency conversion?

Any income arising from an exchange rate difference when converting foreign currency is subject to tax.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

None.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

The tax treatment is similar between asset acquisition and share acquisition, being that the seller is subject to income tax on any gain.

For share acquisitions, the applicable taxes will vary based on (a) whether the target company is an LLC or JSC, (b) the target company's assets, and (c) whether the seller is foreign or local, an individual or a company.

Aside from income tax, VAT may be imposed at the standard rate on sale proceeds from the asset sale. Certain types of assets may also be subject to other specialized taxes and Pre-Registration Fee.

17. When is a stamp duty required to be

 © 2024 Legalease Ltd

paid?

In Vietnam, there is no 'stamp duty' concept. Instead, the country levies a 'Pre-Registration Fee' (under the 2015 *Law on Fees and Charges*) when individuals or entities register ownership or usage rights with the state authority. It encompasses various assets like houses, land, and registered vehicles. Unlike stamp duty, the Pre-Registration Fee is predetermined based on specific public services and state management tasks outlined in the law.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

Shareholders in a JSC generally have the right to freely transfer their shares in compliance with the company's charter, subject to certain restrictions:

(a) Within 3 years from the incorporation date, founding shareholders may only transfer ordinary shares to non-founding shareholders with General Meeting of Shareholders ("**GMS**") approval, where the transferor must abstain from voting on such resolution.

(b) Unless specified in the company charter, dividend preference shares and redeemable preference shares are freely transferable.

(c) Voting preference shares can only be held by founding shareholders and, therefore, cannot be transferred to non-founding shareholders unless converted to ordinary shares.

Can the shares be held outside of the home jurisdiction?

Generally, foreign investors are allowed to hold shares in local economic entities across most economic sectors, subject to foreign shareholding restrictions discussed in paragraph 3 above.

Public companies can publicly offer and list their securities (including shares) on foreign stock exchanges, subject to the approval of SSC and other Vietnamese authorities where needed. See paragraph 9 for discussion on foreign ownership ratios.

A Vietnamese company must obtain an offshore investment registration certificate to hold shares in a foreign company.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

Transfers of ordinary shares to non-founding shareholders within the first 3 years from incorporation date require approval resolved at the GMS (where the transferor must abstain from voting on such resolution). Where shares are transferred to another foreign investor, the new investor must secure pre-approval, commonly known as merger and acquisition approval ("**M&A Approval**"), from licensing authorities before updating the foreign shareholders' information with the licensing authority.

Are changes in shareholding publicly reported or publicly available?

Information about foreign and founding shareholders of private companies is publicly accessible on the national business registration portal. The transfer details in other cases are not mandatory to be disclosed to a third party and the company is self-responsible for keeping records.

For public companies and those listed on the stock exchange, the share transfer process is tightly regulated, including but not limited to the registration of Share Transfer with the Securities Depository Center (**VSD**) or a Securities Company.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

 © 2024 Legalease Ltd

Subject to the form of FDI, different filings may be required:

- Direct share acquisitions meeting certain thresholds will trigger the requirement to obtain pre-approval for acquisition (commonly known as M&A Approval).
- IRC and/or ERC must be obtained by foreign investors for the incorporation or establishment of the new entity, BCC, or new investment project (see paragraph 7 above).
- Sub-licenses for specific FDI sectors – for example, for the retail sector, retail license and retail outlet establishment license.

With which agency is it required to be made?

FDI filing is commonly made with the Investment Registration Authority. See further paragraph 7.

Depending on the business sector, the foreign investor or foreign-invested company may also need to obtain licenses from sectoral regulators.

How long does it take to obtain an FDI approval?

The regulatory timelines for different agencies vary from case to case. See paragraph 7 for timelines to obtain IRC and ERC approval.

Procedures with other authorities typically take longer, possibly taking many months to complete.

Under what circumstances is the mandatory FDI filing required to be made?

FDI filing becomes obligatory when a foreign investor intends to establish a new entity, contribute capital to an existing one, purchase shares, or invest in business sectors subject to foreign ownership restrictions in Vietnam. Additionally, in specific fields and business activities, the mandatory filing extends to submissions for pre-approval and operational licenses, ensuring compliance with sector-specific regulations.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

Even if a transaction does not require a mandatory filing, it can still be reviewed by governmental authorities. While outright blocking is rare, it is possible for regulatory bodies to act as they deem necessary.

The Investment Registration Authority and the business registration authority have the power to terminate an investment project's operation and request the enterprise's dissolution if they find that the project or enterprise has violated any law or regulation.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

Such a transaction may trigger the requirement to conduct economic concentration/merger filing in Vietnam with Vietnam's competition/anti-trust regulatory body.

Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

In theory, Vietnamese authorities can prohibit indirect transfer of control of the subsidiary if there are grounds to conclude that such indirect transfer of control gives rise to significant anti-competitive effects in the Vietnamese market. However, there has not been any precedent of an indirect transfer of control over a Vietnam entity from the global transaction being prohibited.

Besides the anti-competition/anti-trust concern, Vietnamese authorities may also assess an offshore transaction based on its impact on the business activities of any subsidiary in Vietnam, thus giving rise to tax obligations in Vietnam.

20. What are typical exit transactions for foreign companies?

Typical exit transactions for foreign investors include share/equity sales, asset sales, having the Vietnamese company in which they invested repurchase their shares (shares repurchase), and debt assignment (for investments in foreign loans).

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

Private companies generally prefer to avoid IPO due to complex and stringent legal and financial requirements.

i. on a domestic stock market, or

Less stringent listing requirements of domestic stock

 © 2024 Legalease Ltd

exchanges make it more common for Vietnamese private companies to pursue IPOs on the domestic stock market and for Vietnamese public companies to list their securities on Vietnamese stock exchanges.

ii. on a foreign stock market?

- If foreign, which one?

Direct listings on foreign exchanges are uncommon due to complex legal and regulatory barriers, high costs, transparency requirements and fears of equity dilution and loss of control. Navigating IPO strategies within the Vietnamese legal landscape requires adept management of legal, financial, and operational considerations.

However, we are seeing a shift in Vietnamese corporate strategy, with select firms opting to venture into global markets to access a larger capital and investor base. We observe that Vietnamese companies prefer to pursue IPOs on the Singapore stock exchange or the American stock exchange (e.g., the New York Stock Exchange (**NYSE**)). Hong Kong is another option.

An example of a successful foreign listing would be Sea Group (formerly Garena), a technology conglomerate originating from Vietnam, which listed on NYSE through registration in Singapore. However, Sea Group is a unique case as it is identified as a Singaporean company during its IPO process despite its Vietnamese roots. In another case, Vinfast successfully pursued a foreign listing using the SPAC structure.

Alternatively, many Vietnamese companies opt to raise capital through stock or bond issuance in international markets without directly being listed on those exchanges.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

Since the 2003 enactment of the *Ordinance on Commercial Arbitration*, arbitration has been widely recognised and preferred for resolving general disputes arising from investment-related agreements, especially those with foreign elements or related to cross-border transactions.

However, Vietnamese courts have long asserted their exclusive jurisdiction over Vietnamese real property disputes. This includes cases where a significant portion of the value of the dispute comes from real property in Vietnam (e.g., the share purchase agreement concerns a sale of majority shares in a company where real property accounts for more than 50% of the sale price). Arbitral awards in such cases are at risk of being set aside by the competent court of Vietnam or being refused recognition and enforcement in Vietnam.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

By operation of law, first-instance litigation proceedings concerning a dispute arising from a civil contract should typically take 3–5 months from the date the court issues a notification on the handling of the lawsuit petition. However, in reality, civil contract litigation proceedings in Vietnam often extend far beyond this timeframe. They can take up to several years, depending on the subject matter of the dispute and its complexity.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

The legal framework of Vietnam has been considerably improved in recent years to give foreign investors the same legal protection as domestic investors are entitled to. The *Law on Investment* stipulates that disputes involving foreign investors can be resolved through various dispute resolution mechanisms, including Vietnamese courts, Vietnamese arbitration, foreign arbitration, international arbitration, or ad-hoc arbitration, as agreed between the parties.

With the entry into significant bilateral and multilateral treaties, Vietnam has made many attempts to reform its legislation to be in line with international laws and standards. However, due to the nature of a civil law system, there are still gaps in Vietnam's laws that expose foreign investors to the risks of uncertainties when engaging in legal proceedings in Vietnam. For example, the ground of "being contrary to the principles of Vietnamese law" is commonly used by Vietnamese courts to set aside an arbitral award or refuse recognition and enforcement of a foreign arbitral award in Vietnam.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

The mechanism for resolving lawsuits for investor abuse initiated by foreign investors against the host country is commonly referred to as the investor-state dispute resolution (**ISDS**) mechanism, whereby aggrieved

 © 2024 Legalease Ltd

foreign investors may sue the host country where the investment project is located. Foreign investors may bring their claim of abuse or injury before (i) a competent government body of Vietnam; (ii) the Vietnamese courts; or (iii) an arbitral tribunal.

Details on ISDS proceedings and outcomes are often not publicly accessible. According to the United Nations Conference on Trade and Development (**UNCITAD**), there were only eleven investor-state disputes involving Vietnam as the respondent in ISDS claims over the past two decades. Among five cases which have final outcomes, 3 were decided in favour of Vietnam (i.e., *McKenzie v. Vietnam* in 2010, *DialAsie SAS v. Vietnam* in 2011, and *Recofi SA v. Vietnam* in 2013). The Vietnamese Ministry of Justice reports that, as of September 2019, 19 investor-state dispute cases were being resolved by the Vietnamese judicial bodies, and approximately 129 cases were being resolved by competent Vietnamese authorities (e.g., various governmental ministries).

26. Are international arbitral awards recognized and enforced in your country?

Yes. Vietnamese law recognises the concept of a "foreign arbitral award". According to Vietnamese law, foreign arbitration is defined as arbitration seated in a foreign country and/or administered by a foreign arbitral institution. The terms "foreign arbitral award'" and "international arbitral award" may be used interchangeably.

In general, foreign arbitral awards are enforceable in Vietnam through two routes as follows:

(a) Any foreign arbitral awards made in the territory of another state member of the New York Convention are enforceable in Vietnam.

(b) If there is no agreement between Vietnam and another country regarding the recognition and enforcement of the foreign arbitral award in question, such award can be recognised by a competent court and enforced in Vietnam based on the reciprocity treatment of Vietnam towards the country concerning the arbitral award being enforced.

27. Are there foreign investment protection treaties in place between your country and major other countries?

Yes. As of August 2023, Vietnam has entered into 16 Free Trade Agreements (**FTAs**) with regional and global partners. These treaties generally include investment protection agreements (**IPAs**), which enhance the accountability of member states by introducing new rules for dispute settlement in case of a unilateral breach of the agreed-upon investment conditions.

In recent years, Vietnam has entered into several key IPAs with major countries, such as the EU-Vietnam Free Trade Agreement (**EVFTA**), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**), and the Regional Comprehensive Economic Partnership (**RCEP**).

Contributors

Thang Nguyen
Partner
thang.nguyen@acsvlegal.com

Minh Nguyen
Special Counsel and Head of Dispute resolution practice
minh.nguyen@acsvlegal.com

Phuong Huynh
Senior Associate
phuong.huynh@acsvlegal.com

Stanley Boots
Partner and Head of Project finance and Financing practice
stanley@acsvlegal.com

© 2024 Legalease Ltd