Investing in Vietnam: Corporate Entities, Governance and VAT

P.04 Forms of Investment for Foreign Companies in Vietnam

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Vietnam’s new Enterprise and Investment Laws, in effect from July 1, 2015, have changed the country’s investment landscape. Foreign investors still face restrictions on doing business here, but fewer than before. The framework for corporate governance is enshrined in this legislation and must be considered when hiring a team in Vietnam to fill roles required under the law. These requirements are especially important when writing responsibilities into employment contracts.

Concerns of investors putting their money into a country with a developing legal framework are understandable. Laws in Vietnam are sometimes released without relevant implementing regulations, leaving the situation unclear. This is why expert guidance of experienced professionals who work in liaison with the government is so critical when establishing a presence in Vietnam.

In this issue of Vietnam Briefing, we highlight the forms of corporate presence available to foreign investors in Vietnam. We take a look at the country’s system of corporate governance, and discuss how the form of presence a company chooses affects its obligations from a governance perspective. Finally, we examine Vietnam’s VAT and invoice system which, as elsewhere in the region, is tightly controlled.

For foreign companies selecting an Asian country in which to invest, Vietnam is a more attractive option now than ever before. As the country’s new investment laws come into effect, we hope that you find this issue of Vietnam Briefing a useful starting point for establishing your business here.

Kind regards,

Alberto Vettoretti
Managing Partner
Dezan Shira & Associates
Vietnam Office

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Green Palm Gallery
info@greenpalmgallery.com | +84 91 321 8496
http://v2.greenpalmgallery.com
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Forms of Investment for Foreign Companies in Vietnam

By Dezan Shira & Associates, HCMC Office

Thanks to its socio-political stability and a vibrant business environment, Vietnam has become a highly attractive investment destination for foreign investors in recent years. Due to its developing investment landscape, significant alterations to the legal system continue to open the country up to foreign investors, being either an individual holding a foreign nationality or an organization established under foreign laws doing business in Vietnam. The newly enacted Law on Investment (No. 67/2014/QH13) and Law on Enterprises (No. 68/2014/QH13) introduce a new concept of foreign-invested economic organizations, which are subject to similar investment requirements to foreign investors if at least 51 percent of its charter capital is held by foreign investors.

When entering Vietnam’s market, foreign investors should decide which form of investment is most appropriate for them. Several options include:

- Establishing a new enterprise (either foreign owned enterprises or joint ventures between foreign and Vietnamese partners);
- Setting up a branch, a business cooperation contract, or a representative office;
- Investing in an existing company.

Establishing a New Enterprise

A wholly foreign-owned enterprise can take the form of a limited liability company (LLC) or a joint stock company (JSC). A joint venture between foreign and domestic investors may take one of the three forms: a limited liability company (LLC), a joint stock company (JSC), or a partnership.

a. Limited Liability Companies (LLCs)

There are two types of LLC; a single-member LLC or multi-member LLC, of which the latter consists of at least two and at most 50 members. This type of company is established by capital contribution (also known as charter capital) of its members, whose rights and obligations are proportional to their contributed capital. Limited liability companies cannot issue shares.

b. Joint Stock Companies (JSCs)

A joint stock company is established by a minimum of three shareholders; either organizations or individuals, depending on the amount of shares that they own. There is no upper limit to the number of shareholders. The charter capital of a JSC is the total value of sold shares, divided into equal portions.

c. Partnerships

A partnership must have at least two members who are co-owners of the company. As with LLCs, partnerships cannot issue shares. In a partnership, there are contributing partners and general partners, who must be individuals and must take responsibility of the company’s obligations with their properties.
Establishing a branch, business cooperation contract, or representative office

Besides establishing a new company in Vietnam, foreign investors have other options, such as opening branches, a representative office (RO), or signing a business cooperation contract.

**a. Branches**

A branch is a form of commercial presence that foreign investors are permitted to set up in Vietnam in specific sectors, such as banking, insurance, and securities. A foreign entity is allowed to open a branch only if it has been operating for at least five years, since the date of establishment or registration.

**b. Representative Offices (ROs)**

ROs are more common in Vietnam compared to branches. However, foreign investors should be aware that an RO is not an independent legal entity and is not allowed to directly conduct any commercial contracts or any activities that generate profits.

**c. Business Cooperation Contracts**

A business cooperation contract does not establish any new legal entity. It is a type of contractual agreement between foreign investors and at least one Vietnamese partner to carry out business activities and specifies how profits are shared and the joint responsibilities of all parties.

Invest in an existing company

Under the Law on Investment, foreigners may choose to invest in existing Vietnamese enterprises by directly contributing capital or purchasing shares and capital contributions. In terms of contributing capital to business organizations, foreign investors may buy shares of joint stock companies through initial public offerings (IPOs) or contribute capital to LLCs, partnerships, and other type of business organizations.

Another form of investment is to buy shares of joint stock companies and capital contribution of LLCs, partnerships, and other types of companies. In order to register for contribution of capital or purchase of shares and capital contributions, foreigners must submit an application to the local Department of Planning and Investment near the business organization’s headquarters.
Understanding Corporate Governance for Foreign-Invested Enterprises in Vietnam

By Dezan Shira & Associates
Editors: Thao Dang and Charles Small

Corporate governance is a bulwark defending the investor by managing the conflicting interest between the company’s shareholders and its managers. Vietnam’s corporate governance framework is in place to ensure that the shareholders’ best interests are prioritized.

Vietnam’s modern legal framework for corporate governance is based on the Law on Enterprises, the Law on Securities, and the company’s charter.

Multi-member Limited Liability Companies

A multi-member LLC has between two and 50 individual or organization members. It contains a Member’s Council with a Chairman, and a Director. A Control Board is required if a company has 11 members or more, and is optional for a company with fewer than 11 members.

Members’ Council

The Members’ Council decides on annual development strategies and business plans, increasing or decreasing charter capital, salaries, bonuses, and other benefits of the Council Chairman or Director. The Council may elect or discharge its Chairman or the Director, approve annual financial statements, and amend the company charter. The Council may make decisions on investment projects, branch and representative office establishment, market development, marketing and technology transfer, company re-organization, dissolution, petitioning for bankruptcy, approving loan contracts and selling assets.

Chairman of the Members’ Council

The Chairman of the Members’ Council is elected by the Council for a term of up to five years, can be re-elected an unlimited amount of times, and may concurrently be the Director. The Chairman is required to prepare operation plans for the Council, arrange program agenda and essential documents for meetings, summon and preside at meetings, supervise the implementation of and sign resolutions on the Council’s behalf.

Director

The Director is in charge of managing daily business activities of a company and is responsible to the Members’ Council. The Director organizes Council resolution implementation and daily business operations, and signs contracts on behalf of the company. The Director submits the annual financial statement to the Members’ Council, makes recommendations on the company’s organizational structure, recruits employees, and appoints or discharges company managers except those under the authority of the Council.

One-member Limited Liability Companies

a. Single-organization-owned Limited Liability Companies

For a single-organization-owned LLC, the internal governance structure of the company can be one of the two forms. The first structure includes a Member’s Council, a Director, and an inspector. The second structure consists of a President, a Director, and an inspector. The company’s legal representative is either the President or the Chairman of the Member’s Council.
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Corporate Governance in Vietnam

1. **JOINT-STOCK COMPANIES**

   - **General Meeting of Shareholders**
     - Elect/Discharge
     - Convene meetings of the GMS
   - **Board of Directors**
     - Chairman
     - Board Members
     - Convene and preside at meetings of the Members’ Council
   - **Director/General Director**
     - Manage daily business operations
   - **Control Board**
     - Elect/Discharge
     - Only required if the company has: + at least 11 individual shareholders or + a corporate shareholder holds more than 50% of the equity capital
   - **Inspector**
     - The number of inspectors will be decided by the company’s owner

2. **LIMITED LIABILITY COMPANIES**

   - **Company’s Owner**
     - Multi-member LLC
       - 2 - 50 members (organizations or individuals)
     - Authorized Representatives
       - Exercise the rights and obligations of the company’s owner
   - **Members’ Council**
     - Chairman
     - Board Members
     - Convene and preside at meetings of the Members’ Council
   - **Management Committee**
     - President
   - **Director/General Director**
     - Manage daily business operations
   - **Control Board**
     - Elect/Discharge
     - The number of inspectors will be decided by the company’s owner

**b. Single-natural-shareholder Limited Liability Companies**

For a single-natural-shareholder LLC, the organizational structure includes a President and a Director.

- **Members’ Council**
  The Members’ Council will be appointed or discharged by the company’s owner. It will have three to seven members, whose terms do not exceed five years. The Chairman of the Members’ Council may be appointed or elected by the Council.

- **Company’s President**
  The President is appointed by the owner, and exercises the rights and obligations of the company’s owner. The President implements rights and obligations of the company on behalf of the company, except those under the authority and responsibilities of the Director.

- **Inspector**
  The company’s owner decides on the number of inspectors, appoints inspectors for a term not exceeding five years, and sets up a Control Board or Inspection Committee. Inspectors are obligated to inspect the legitimacy, honesty, and prudence of the Members’ Council, the company’s president, and the Director. Inspectors verify financial statements, business outcome and administration reports, propose resolutions, amendments, and business administration structures, and examine company documents. Inspectors may attend and participate in discussion at meetings of the Members’ Council and other meetings of the company.

**Joint-stock Companies**

Corporate bodies in a joint-stock company include the General Meeting of Shareholders (GMS), a Board of Directors (BOD), and a Director. A Control Board must be established if a company has 11 or more individual shareholders, or an institutional shareholder holding more than 50 percent of equity capital.
Unless proscribed by the Law on Securities, a joint-stock company may choose another governance structure, which also consists of the General Meeting of Shareholders, a BOD, and the Director. In this case, the company must set up a Control Board affiliated with the BOD. At least 20 percent of the BOD members must be:

- A member of the non-executive BOD and not related to the Director, Chief Director, Chief Accountant, or other BOD-appointed managers;
- Not a member of the BOD or a representative of the major shareholder or a person related to the major shareholder of the company;
- Not working for any organization that has provided legal consulting or audit services for the company in the past two years;
- Not a Partner or a person related to a Partner of a second company receiving at least 30 percent of the total revenue or value of goods or services purchased by the company over the past two years.

**General Meeting of Shareholders (GMS)**
The GMS approves the company’s development plan and annual financial statements, decides on issued share types, dividends for those shares, and the amount of each share type for sale. The GMS may amend the company’s charter, and has authority to elect and discharge members of the BOD or inspectors. It makes decisions on investment or asset sales, and takes actions against violations committed by the BOD and the Control Board that cause losses to the company and its shareholders. Furthermore, the GMS determines the company’s re-organization and dissolution, and share redemption.

**Board of Directors (BOD)**
The BOD has three to 11 members who sit for terms up to five years. It decides on medium-term development strategies and the company’s annual business plan, proposes the type, amount, and selling price of shares and bonds. The BOD decides on investment plans, market development, marketing and technology transfer, nomination or discharge of the BOD Chairman, the Director, and other managerial positions according to the company’s charter. It approves loan, sale and other contracts.

The BOD decides on salaries, bonuses and benefits of managers, supervises the Director, and convenes GMS meetings. It decides on organizational structure, internal company management, branch and representative offices establishment, and annual financial statement submission to the GMS. The BOD also makes recommendations on re-organization and dissolution of the company.

**Chairman of the Board of Directors**
The BOD Chairman can concurrently act as the Director, except in joint-stock companies of which the State owns 50 percent of the voting shares. The BOD Chairman creates the operation plan of the BOD, prepares the agenda and documents for meetings and presides over BOD meetings.

**Director**
A Director manages daily business operations under BOD supervision for a term not exceeding five years, but may be re-elected for an unlimited number of terms. The Director decides on day-to-day business activities of the company not requiring BOD decisions, organizes the implementation of resolutions, business plans, and investment plans, and makes recommendations on organizational structure and internal management regulations. The Director decides on salary and benefits of employees and managerial positions, recruits employees, propose dividend payment and loss settlement methods, and nominates or discharges managerial positions of the company, except those under the authority of the BOD.

**Control Board**
The Control Board has three to five members who sit for terms of up to five years. The Control Board is responsible for supervising the BOD and the Director in running the company, the consistency of accounting and statistical works inspecting business reports and annual and biannual financial statements, and evaluating internal control, internal audit, and risk management systems.

The Control Board must carry out inspections within seven days of receiving such a request from shareholders. Within 15 days of the end of the inspection, the Control Board must report to the BOD or relevant shareholders. The Control Board may make recommendations to the BOD or the GMS on organizational structure, supervision and business administration, attend and participate in meetings of the GMS, BOD, and other meetings of the company. If a member of the BOD or a Director violates the Enterprises Law, the Control Board must notify the BOD in writing.
Getting to Grips with Vietnam’s Taxes & VAT Invoices

By Dezan Shira & Associates, HCMC Office

Under Circular No. 39/2014/TT-BTC, VAT invoices, also known as red invoices, are required for domestic sale of goods and service provision, international transportation, and export of goods to non-tariff zones. In Vietnam, VAT invoices for domestic transactions are often used by individuals and companies which calculate the VAT using the deduction method.

Valid VAT invoices are either government-issued invoices or company invoices which are approved by tax authorities. They are required to verify claims for input tax deduction, revenue, and corporate profit taxes of a company. Any organization established under the Law on Enterprises and the Law on Investment which produce and trade goods and services subject to VAT or import taxable goods and services, are required to issue VAT invoices. VAT must be collected on sale of products or services, and declare the creditable input VAT. Finally, individuals and companies issuing VAT invoices in Vietnam must pay the output VAT to the government.

Since valid VAT invoices are compulsory to justify the company’s expenses, there is an incentive for companies to receive tax invoices, rather than issuing them.

Types of Invoices

Self-printed Invoices

Under Decree No. 51/2010/ND-CP, enterprises which are able to create self-printed invoices after obtaining the Tax Identification Number (TIN) include enterprises established under regulations of industrial parks, economic zones, and hi-tech parks, public service agencies that manufacture and operate in accordance with Vietnamese law, and enterprises with charter capital of at least VND15 billion. For manufacturers and service providers with under VND15 billion of charter capital established after Circular No. 39/2014/TT-BTC came into effect, their fixed assets, machinery, and equipment must worth at least VND1 billion at the time the notification of invoice issuance was released. In addition, such enterprises must have:

• obtained the TIN;
• earned revenues from selling goods and service;
• a system of equipment and essential software for printing and issuing invoices;
• not committed to tax-related violations or have been fined for a total fine of less than 50 million VND within 365 consecutive days before the first self-print;
• a written request for permission of using self-printed invoice approved by local tax authorities.

E-invoices

E-invoices are created and processed on computers of business organizations and enterprises with TIN for sale of goods and service provision and are stored on computers of relevant parties under the Law on e-transactions. To issue e-invoices, business organizations must have declared their taxes online or conducted e-banking transactions, had qualified personnel, software, and equipment for issuing and storing e-invoices, had an e-signature under law, and had essential processes for backup and storage of data.
Ordered Invoices
Enterprises may use invoices printed by an authorized printing house in some circumstances. Newly established enterprises that are allowed to use self-printed invoices under Decree No. 39/2014. TT-BTC are eligible to use ordered invoices in sale of goods and service provision. Business organizations and companies which are not eligible to purchase invoices from tax authorities shall also use ordered invoices. Foreign investors should be aware that before placing the first order of invoices, business organizations and enterprises must apply to the tax authorities for permission to use ordered invoices.

VAT Invoice Templates
A VAT invoice, either paper or electronic, must be written in Vietnamese and must include the:
• name, symbol, and serial number of invoice and name of its copies. Ordered invoices must include the name of the invoice-printing house;
• name, address, and TIN of the seller and buyer;
• name, unit of calculation, quantity, unit price of goods and services, total amount without VAT, VAT rate, and VAT amount for VAT invoices;
• total paid amount, signatures (or e-signature for e-invoices) of the seller and buyer, seal of the seller (if any), and the date the invoice was issued.

How to obtain VAT invoices
In order to register for using self-printed invoices, companies need to submit a written request to local tax authorities along with other documents, including:
• a sample self-printed invoice;
• a map showing the company’s office or the company’s lease contract, certified by the ward commune people’s committee;
• the general director’s identification card;
• a copy of the business registration certificate;
• the tax registration certificate and a copy.

The last two types of enterprises may only purchase invoices from tax authorities within 12 months. After that, depending on their use of invoices and tax declaration, tax authorities will notify these enterprises regarding which type of invoices they are eligible to use within five working days.
Our Vietnam Practice
Hanoi
hanoi@dezshira.com
Tel +84 4 3942 0443
Room 901, Floor 9th, VID Tower 1 Building
115 Tran Hung Dao Street
Hoan Kiem District, Hanoi

Ho Chi Minh City
hcnc@dezshira.com
Tel +84 8 6299 8294, Fax +84 8 6299 8295
Room 022, 4th Floor, Centec Tower
72-74 Nguyen Thi Minh Khai Street
District 3, Ho Chi Minh City

Our Global Practice
China
china@dezshira.com

Hong Kong
hongkong@dezshira.com

India
india@dezshira.com

Indonesia *
indonesia@dezshira.com

Malaysia *
malaysia@dezshira.com

Singapore
singapore@dezshira.com

The Philippines *
philippines@dezshira.com

Thailand *
thailand@dezshira.com

Liaison Offices, Germany
germandesk@dezshira.com

Liaison Office, Italy
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