Establishing a company in Vietnam, opening a Representative Office, or starting a business can be an intimidating or confusing exercise for foreign investors.

This publication looks at the most common options for establishing an appropriate corporate structure in Vietnam, and seeks to provide a simple yet informative guide to the options for foreign investors.

We also look at the responsibilities and requirements of individual office holders, the operating structure of investment vehicles, and detail the documents required to establish foreign invested structures.

We trust that you find the guide useful and informative, and we wish you the best in your business endeavours. Do not hesitate to contact us with any inquiries arising from this publication.
Introduction

Domicile Corporate Services is a professional services company, focussed on assisting foreign investors to enter Vietnam and remain compliant.

With more than 35 staff, and operating through our two offices in Ho Chi Minh City and Hanoi, Domicile Corporate Services provides a broad range professional services in Vietnam to foreign invested and local companies with international aspirations.

Our company and staff hold licenses and qualifications allowing us to provide a wide range of accounting, tax advisory and corporate services, and all undertake ongoing internal and external training commensurate with their roles and professional affiliations.

Our standards and processes are based upon international best practice, and we are proud that we do not cut corners or lower our approach regardless of the environment often encountered in Vietnam. We hold ourselves to the same high standards that international clients expect their own operations to aspire to.

1. Investment Structures

Investments into Vietnam by foreign investors can be dissected into two distinct categories.

1.1 Direct Investment

Direct Investment is the form of investment in which the investor provides investment capital and directly participates in the management of investment activities, including through the following forms:

- Establishment of a new legal entity (a company), in which foreign investors own 100% of the capital, or where the company is jointly owned by domestic and foreign investors;
- General Partnerships;
- Business Cooperation Contracts signed with other local or foreign investors;
- Public Private Partnership contracts with Vietnamese State bodies; and
- Investing by way of the acquisition of the shares/capital of an existing Vietnamese entity.

1.2 Indirect Investment

Indirect Investment is the form of investment where the investment forms part of a portfolio, and does not participate in the management of investment activities. Forms of Indirect Investment include:

- The purchase of shares, share certificates, bonds and other securities traded on stock exchanges;
- Through securities offered by investment funds; and
- Investment through other intermediary financial institutions.

This publication focusses primarily on the Direct Investment structures.

Disclaimer:
This publication is general in nature, and is not intended to be professional or specific advice. No reliance should be placed on the contents and no responsibility is taken for any actions arising from this publication. Parties should arrange their own professional advice accordingly.

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2. Company Structures

2.1 Company Forms

Foreign individuals, along with foreign incorporated companies that are lawfully established (together known as “Foreign Investors”), may invest into Vietnam by establishing a new Vietnamese company or by acquiring the shares in an existing Vietnamese company.

The corporate structures available when establishing a 100% foreign owned company, or establishing a jointly foreign and domestic owned company, in Vietnam are:

Limited Liability Companies (“LLC”)

LLC’s can either be:

- a Single-Member Limited Liability Companies (“SLLC”) or
- a Multiple-Member Limited Liability Companies (“MLLC”)

and

Joint Stock Companies (“JSC”)

2.2 Key Characteristics of Vietnamese Companies

<table>
<thead>
<tr>
<th></th>
<th>Limited Liability Companies</th>
<th>Joint Stock Companies</th>
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<td>Single-Member LLC</td>
<td>Multiple-Member LLC</td>
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<tr>
<td>Ownership Structure</td>
<td>The company is established</td>
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<td>and owned by one Member</td>
<td>Shareholders (Owners) is</td>
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<td>entity or an individual,</td>
<td>no maximum number;</td>
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<td>either foreign or domestic;</td>
<td>Paid-up (Charter) Capital is</td>
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<td>permitted to issue shares.</td>
<td>A Joint Stock Company</td>
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<td>is entitled to issue Shares and</td>
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<td>other Securities.</td>
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<td>General Director</td>
<td>The General Director is</td>
<td>The company is not</td>
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<td>responsible for the</td>
<td>permitted to issue</td>
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<td>documents to conduct the</td>
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<td>company.</td>
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<td>jurisdictions.</td>
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<td>Dividends</td>
<td>Can be distributed from</td>
<td>A Joint Stock Company</td>
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<td>profits after the company</td>
<td>is entitled to issue</td>
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<td>ensure that its debts and</td>
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<td></td>
<td>other property obligations</td>
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<td>can be paid in full after</td>
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<td>distribution of profits.</td>
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</tbody>
</table>
2. Company Structures

2.3 Other Important Company Structural Matters

a. The Corporate Seal
   After establishing the company, a company seal must be engraved at a permitted agency and an announcement on using the seal specimen provided to the licensing authorities before using it. The company may have one corporate seal or additional duplicates of its seal. The company can decide on the form and contents of its seal (i.e., a logo), but all seals must contain the company’s name and the company’s registration number.

b. Term of an Enterprise
   The term of a company and its underlying invested project, may not exceed 50 years, except for investment projects in economic zones which may be granted a term of up to 70 years. Foreign investors can renew the term upon expiration of the initial term of an investment project.

c. Enterprise Capital
   The company’s enterprise capital ("Investment Capital") is comprised of Charter Capital and Loan Capital.
   The Charter Capital is the amount of funds that Members or Shareholders contribute or commit to contribute within a certain period as stated in the charter, and must be fully contributed within 90 days from the date on which the company is established.

d. Bank Accounts
   After establishment, the company may proceed to open bank accounts. If foreign invested, the company will open a Direct Capital Account, in which the foreign Charter Capital and foreign Loan Capital will be received into. The company will also open operating (current) bank accounts with commercial banks that it chooses to work with.

3. Other Forms of Investment

3.1 Investment through Cooperation Contracts

Public Private Partnerships
A Public Private Partnership ("PPP") is a form of investment made on the basis of contracts between State agencies and investors for the implementation, management and operation of infrastructure projects or provision of public services. PPP contracts may take a variety of forms, including:
- Build, Operate, Transfer ("BOT") contracts;
- Build, Transfer, Operate ("BTO") contracts;
- Build, Transfer ("BT") contracts;
- Build, Own, Operate ("BOO") contracts;
- Build, Transfer, Lease ("BTL") contracts;
- Build, Lease, Transfer ("BLT") contracts; and
- Operation and Management ("O&M") contracts.

Business Cooperation Contracts
A Business Cooperation Contract ("BCC") is a contract signed by investors with the objective of conducting jointly one or more commercial business operations in Vietnam. One party to the contract will take the lead role to represent all the parties. To implement the contract and co-ordinate the daily operation of a BCC, if necessary, a coordination board having the functions, duties and powers as agreed by the parties. A BCC signed between a local investor and a foreign investor or between foreign investors must apply for the issuance of Investment Registration Certificate.
3. Other Forms of Investment

3.2 Establishing other Commercial Presences in Vietnam

Representative Office
A Representative Office is a dependent unit of a foreign company, and is allowed to survey the market and undertake a number of commercial promotion activities permitted by the laws of Vietnam. A Representative Office is not allowed to engage in any direct profit-making activities, or to facilitate commercial contracts signed by the parent company.

Conditions for establishment:
- The foreign company must be in the list of countries/territories with which Vietnam has signed bilateral agreements.
- The foreign company needs to have been established (operating) for at least one year.
- The Certificate of Business Registration of the foreign company (or an equivalent document) must be valid for at least one year from the date of submission of the application.
- The scope of operation of the Representative Office is consistent with that in Vietnam’s Commitments to treaties to which Vietnam is a signatory.

Branches
A Branch is a dependent unit of a foreign entity that is permitted to conduct commercial activities for profit purposes. Establishing a Vietnam branch of a foreign company is, in practice, most relevant for banks, airlines or other regulated sectors, however they remain an option when considering investment or trading structures in Vietnam.

Conditions for establishment
- The foreign company is incorporated and registered to do business in countries that have treaties to which Vietnam is a signatory or is recognised by the country.
- The foreign company has operated for at least five years from the date of establishment or registration;
- The Certificate of Business Registration of the foreign company (or an equivalent document) must be valid for at least one year from the date of submission of the application.
- The scope of operation of the branch conforms with Vietnam’s commitments to market access stipulated in treaties to which Vietnam is a signatory, and shall be consistent with the lines of business of the foreign company.

4. Process for Establishing a Company in Vietnam

4.1 Procedures and Timelines

Foreign investors investing in Vietnam by establishing a new company will:
(i) Apply for an Investment Registration Certificate (“IRC”) for their investment project, then
(ii) Apply for and obtain an Enterprise Registration Certificate (“ERC”) to establish the new company after the IRC is issued.

In addition, certain significant projects require in-principle approval on investment policy by the National Assembly, the Prime Minister, or the provincial People’s Committee (“In-principle Approval”), and where these are applicable the investors must first apply for such approval before applying for the IRC & ERC. Projects covered include, construction and operation of airports, construction and operation of golf courses, construction of nuclear power plants, and projects that require the relocation and resettlement of 20,000 people or more in mountainous areas or 50,000 people or more in other areas.

<table>
<thead>
<tr>
<th>Step</th>
<th>Procedure</th>
<th>Statutory Processing Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application for an In-principle Approval (only if applicable)</td>
<td>35 days or more depending on whether the investment project needs to be approved by the National Assembly, the Prime Minister, or the provincial People’s Committee.</td>
</tr>
<tr>
<td>2</td>
<td>Application for an IRC</td>
<td>• 3 weeks from the receipt of required documents if the investment project is not subject to a decision on investment policies, or  • 1 week from the receipt of an In-principle Approval for the project if it is subject to issuance of a decision on investment policies.</td>
</tr>
<tr>
<td>3</td>
<td>Application for an ERC</td>
<td>1 week from the receipt of required documents</td>
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</tbody>
</table>
4. Process for Establishing a Company in Vietnam

4.2 Officers of the Company

When establishing a company, investors need to identify individuals to occupy three key positions as officers of the company. Specifically:

- **Legal Representative.** Every company is required to have at least one Legal Representative, who can be of any nationality, with at least one Legal Representative residing in Vietnam.

- **General Director.** The General Director runs the day-to-day operations of the company, and can be of any nationality. The General Director and the Legal Representative may be the same person.

- **Chief Accountant ("CA").** is an individual that must review, approve and sign accounting vouchers and documents, along other company lodgements. This role is appointed after the company is established, and (subject to some exceptions) needs to hold a Vietnamese Chief Accountants Certificate. Keep in mind that the Chief Accountant’s appointment is usually required for a Vietnamese company to complete initial tax registrations and open bank accounts.

4.3 Company Address

Before preparing for an application to establish a company in Vietnam, the proposed company needs to have a formal address in Vietnam that can be evidenced. Leased property (or property subject to an agreement-to-lease) must have the legal right to be leased to the new company and documents showing the landlord’s right to lease will need to be presented to the authorities. Serviced offices are often used as an interim step as the initial formal address for a company establishment application, with a more permanent location being determined later.

4.4 Documentation

Foreign Investors are required to provide Vietnamese licensing authorities with the following documents for the implementing procedures to establish a new company in Vietnam:

<table>
<thead>
<tr>
<th>Step</th>
<th>Foreign investor being an organisation</th>
<th>Foreign investor being an individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Certificate of Incorporation and/or Certificate of Business Registration of the Investor, and all amendments thereof, together with a Profile and/or brochure of the investor.</td>
<td>Legalized/Certified Passport/ID card of the investor.</td>
</tr>
<tr>
<td>1.2</td>
<td>Charter and/or Articles of Incorporation of the Investor and all amendments thereof.</td>
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<td>1.3</td>
<td>Legalized/Certified Passport/ID card of the legal representative/authorised representative(s) of the foreign investor, who is permitted to sign documents on behalf of the investor.</td>
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<tr>
<td>2</td>
<td>Bank statement, or bank letter, confirming available bank funds equal to or exceeding the value of the Charter Capital being invested in the new local company.</td>
<td></td>
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<tr>
<td>3</td>
<td>A lease contract for the local company confirming its Vietnam office address, along with documentation relating to the landlord.</td>
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<tr>
<td>4</td>
<td>Passport/ID Card of the individual who will hold the position as Legal Representative of the new company.</td>
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</tr>
</tbody>
</table>

Please note:

- **Notarization:** Notarized documents are valid for a period of 6 months from the date of notarization.

- **Legalization:** The legalization process differs from country to country. Therefore you should contact the Vietnamese Embassy/Consulate in your country for the specific requirements. Generally, the “legalization process” of a document involves the following steps:
  - Notarization: This is the attestation by a Notary Office that the signature appearing on the document is true and genuine or the documents are true copies.
  - Authentication: The Ministry of Foreign Affairs (or similar) in the country where the documents are issued certifies the documents.
  - Legalization: The Vietnamese embassy/consulate where the document is to be presented declares and accepts the signature, seal or stamp appearing on the document as genuine.

- Passport of individual investors, the legal representative, and the authorised representative(s) of the investor may be notarized in Vietnam if any of the passport holders are in Vietnam, the information pages of his/ her passport can be notarized in Vietnam by the legal division of the People’s Committee of any districts in Vietnam.
5.1 Purchase of Shares or Contributed Capital of an Existing Enterprise

Investors may invest in Vietnam by contributing capital to, or purchasing shares or existing capital, in established companies. The ratio of capital contributed or of shares purchased by foreign investors in some fields and industries is subject to industry-specific legislation and regulations.

Investors will follow the procedures to register the purchase of shares or contributed capital, then go through required procedures to amend company’s ERC and IRC (if applicable) to reflect the ownership changes.

5.2 Representative Office Establishment

Procedure for establishment

Where a foreign company seeks to establish a Representative Office in Vietnam, it is to submit the application dossier to the Department of Industry and Trade in the Province that they wish to register (or Management Boards of Industrial Parks, Export Processing Zones, Economic Zones or Hi-Tech Zones if the Representative Office will be located in in those specific locations). The authority will review the application and issue the Certificate establishing a Representative Office within 2 weeks from the date of receipt of the required documentation (except for specific cases, ie where the country of the investor is not party to reciprocal agreements in Vietnam, and in these cases the application timing will be extended).

To apply for the Certificate establishing a Representative Office, the foreign company should prepare and provide the following documents:

- Legalized copies of Certificate of Incorporation of the foreign Company;
- Legalized copy of Charter/Articles of Association;
- Legalized copy of audited financial statements of the Company for the most recent financial year, or certificates of fulfillment of tax liabilities or financial obligations of the Company in the most recent financial year;
- Legalized/Notarized copy of passport or Vietnam ID card of the head of the Representative Office;

Term of Registration:

Representative Offices are registered for a period of 5 years, but not exceeding the remaining effective period of the Certificate of Business Registration of the foreign company or the equivalent (for documents that have an expiry date).

5.3 Branch Office Establishment

Procedure for establishment

A foreign company that seeks to establish a Branch in Vietnam is to submit the application dossier to the licensing authority (either the Ministry of Industry and Trade, or an other specified Ministry for their specific sector).

The licensing authority will consider and issue the Certificate of Branch Establishment within 2 to 3 weeks from the date of receipt of the required documents depending on scope of operation of the branch, the country or territory which the company comes from as well as whether establishment of the branches is prescribed in specialised legislative documents.

Term of Registration:

Branches are registered for a period of 5 years but not exceeding the remaining effective period of the Certificate of Business Registration of the foreign company or the equivalent (for documents that have an expiry date).
6. Ongoing Compliance

6.1 Additional Ongoing Compliance Requirements in Vietnam

Enterprises in Vietnam should be aware of the additional compliance matters that they need plan for and ensure compliance with. These include:

a. Corporate Income Tax
   The standard Corporate Income Tax rate applicable to most companies is currently 20%, with quarterly submissions and annual finalisations required. Taxpayers may have certain tax incentives or reductions, depending on their sector, location or other factors.

b. Value Added Tax
   Value Added Tax is applicable at 10% for most transactions, although certain activities may have a reduced or zero rate. Depending on size, companies are required to submit monthly or quarterly to the tax authorities, with an annual finalisation.

c. Labour Taxes, Insurances and Trade Unions
   Employers are required to withhold Personal Income Taxes and specified government insurances from staff salaries, as well as contribute employer contributions for insurances. Insurances are submitted monthly, with Personal Income Taxes submitted monthly or quarterly depending on the size of the company. Compulsory Trade Union contributions should also be attended to.

d. Statistical Lodgements
   Companies in Vietnam are required to prepare and lodge specified statistical reports with authorities on a monthly, quarterly, half-yearly and annual basis. The exact reports required depend on the activities of the company, investment sources and labour utilised, amongst other factors.

e. Annual Audit
   Foreign invested enterprises require an annual financial audit, which is generally to be submitted with the authorities within 90 days from year-end together with their annual tax finalisation.
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