

Agent Activities

Foreigners can request for local agent for sale and purchase of goods of various kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the list for which import or export is subject to issuance of a permit, the business entity shall only be permitted to sign an agency contract after the competent agencies have issued a permit. The agency contract must be in writing or in another form with equivalent legal validity. Under the Commercial Law, agent activities vary by the following forms: commission agent, package agent, exclusive agent and general agent.

Legislation

The same legal basis applicable for the processing for foreigners is effective to the agent activities for foreigners in Vietnam.

Contents of the Contract

A sale and purchase agent contract is requested to contain quite simple contents in comparison to the other types of commercial or economic contracts. Only the following are compulsory present therein: the description about both principals and agents; the contractual goods: name, specifications, quality, quantity, volume; Time-limit for, method and place of goods delivery; Price; Commission rate and costs; Method and time of payment; Bonuses, penalties and indemnity; and duration of validity of contract.

Permitted Activities

Amongst others, foreign principals can decide at their own discretion the selling or purchasing price and service charge to customers, and the price which the principal fixes for the agent; request the agent to implement security measures; receive deposits or documents on mortgaged assets from the agents, and request the agents to make payment or deliver

goods in accordance with the signed contracts. To inspect and supervise the contract performance, foreign principals can second their people to agents' facilities in Vietnam.

As a matter of fact, the following actions are often carried out by local agents instead of foreign principals, which include the dealing with the import/export procedures, the declaration and payment of relevant taxes on behalf of foreign principals.

Taxation

Contractual goods are likely subject to the import/export duties of Vietnam.

Holding Company Stakes

Foreign investors irrespective of individual or institutional ones, may hold or acquire, in theory, up to 100% stake in all types of local companies, except for some special cases where the investment is made in specific business sectors (e.g. banking) or in public companies operating in a sector where business is conditional for foreign investors and detailed provisions on foreign ownership are not yet available (up to 49%), or the listed or public company's charter limits foreign ownership and the State Securities Commission of Vietnam ("SSC") has been reported thereon. The current laws recognize and treat the foreign-invested companies (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of less than 51% of the charter capital similar to entirely Vietnamese-invested companies.

Legislation

The Law on Enterprises and the Law on Investment, both dated 26 November 2014 and effective from 1 July 2015, constitute the principal legal base for foreigners to buy stakes or shares of local enterprises. This right is further detailed in a number of implementing regulations, including Decree

No.96/2015/ND-CP, dated 19 October 2015; Circular No.131/2010/TT-BTC dated 6 September 2010 guiding the Regulation on capital contribution to or purchase of shares by foreign investors in Vietnamese enterprises ("Circular 131"); Circular No.19/2014/TT-NHNN dated 11 August 2014 of the State Bank of Vietnam providing guidelines on the foreign exchange control for foreign direct investments in Vietnam ("Circular 19"); v.v. Covering all service sectors and as a supplementation to the national laws and regulations as mentioned above, is the commitments of Vietnam when accession to the WTO, which is particularly reflected in the specific service commitments, which was effective from 11 January 2007.

Requirements

At present, and in general, all types of companies in Vietnam, including SOEs, joint stock companies, limited liability companies, and partnerships are entitled to offer stakes to foreign investors, who can buy, in theory, up to 100% of the charter capital of the company; however, in particular, the maximal or ceiling rates of less than 100% are still in existence and applicable, from time to time, to a number of specific cases, e.g. banking sector in which foreign investment is now permitted to have maximally 30%, or in public companies operating in the industries or trades in which business investment is conditional in respect of foreign investors, and detailed guidelines on foreign ownership are not yet available foreign stakes cannot exceed 49%.

According to the prevailing regulations, foreigners can purchase stakes and remit abroad dividends and principals, directly or indirectly through local and foreign banks licensed and operating in Vietnam. To facilitate these transactions, foreign stake holders are entitled to open their indirect investment accounts at banks licensed to operate in Vietnam, except where Vietnamese company was now granted by competent authorities with investment certificate/ investment registration certificate, such company must open a direct investment account, which is a payment account denominated in foreign currencies or Vietnam, in a bank licensed to carry out transactions relating to the activities of foreign investors in Vietnam.

The laws confirm that the legal rights and benefits of foreign

stake holders in Vietnam are protected by the laws and the State of Vietnam.

Permitted Activities

Being stake holders, foreigners can:

- (i) Involve or not involve in the company management and administration;
- (ii) Convert their dividends and all others receipts from local into foreign currency before remitting abroad;
- (iii) Mortgage and pledge by using stakes in hands for their credit transactions;
- (iv) Be exempted from corporate income tax imposed on incomes derived from the activities of capital contribution, joint venture or partnership with domestic companies, after the concerned enterprises have paid corporate income tax;
- (v) Be granted with single entry or multiple entries visas of DT category, of which the duration of validity shall not exceed 5 years, residence certification and temporary residential cards to for entry and exit of, and residence in Vietnam; and
- (vi) Enjoy the equal rights and benefits as given to local stakeholders.

Procedures for Purchase of Shares or Portion of Capital Contribution

Much simpler than it was in the past when any buying/ selling capital by local companies to foreign investors was subject to the prevailing laws of Vietnam, the recent regulations allow the owners or top management team of the local companies or cooperatives to have the right to decide in accordance with the company charters or regulations. With respect to the equitized SOEs having the demand of selling capital to foreign investors, the State agencies who decide the equitization shall be the decision makers.

An investor shall carry out the procedures for registration of its capital contribution or of purchase of shares or portion

of capital contribution to a local company in the following circumstances:

(i) Foreign investors contribute capital to, purchase the shares or portion of capital contribution in a local company operating in the industries or trades in which business investment is conditional in respect of foreign investors;

(ii) The capital contribution or purchase of shares or portion of capital contribution shall result in the fact that the foreign investor or economic organization that foreign investors have control over more than 51% of its charter capital holds 51% or more of the charter capital of a local company.

Foreign investors will submit file for registration of capital contribution or purchase of shares or portion of capital contribution at the Department of Planning and Investment ("DPI") of the province or centrally-run city where the local company is headquartered. Where the capital contribution or purchase of shares or portion of capital contribution by the foreign investor satisfies the conditions prescribed, the DPI shall, within a period of 15 days from the date of receipt of the complete file, notify in writing the investor for the latter to carry out the procedures for change of a shareholder or member in accordance with law.

Investors not within the cases required to carry out procedures for registration of its capital contribution or of purchase of shares or portion of capital contribution to a local company shall carry out the procedures for change of a shareholder or member in accordance with law upon capital contribution or purchase of shares or portion of capital contribution to the local company.

Taxation

No further withholding tax shall be applicable to any abroad remittance of legal income by foreign investors in Vietnam, provided that all tax and financial obligations related thereto have been cleared off by foreign investors, in accordance with the laws of Vietnam. For other taxes, please refer to the [Section 16](#) hereunder.

Industrial Zones and Export Processing Zones

Legislation

The LI and the LE constitute the principal legal base for the establishment and operation of EPZs, IZs and EZs. Guiding the laws is Decree No.29/2008/ND-CP dated 14 March 2008 of the Government issuing regulations on EPZs, IZs and EZs, as amended and supplemented by Decree No.164/2013/ND-CP dated 12 November 2013, and Decree No.114/2015/ND-CP dated 9 November 2015; and several implementing circulars in connection to environment, construction, labour, taxation, customs procedures, etc. in these zones.

For HTZs alone, the Government recently issued Decree No.99/2003/ND-CP on 28 August 2003, providing the regulations of the HTZs ("Decree 99"), which replaces the regulations on HTZs in Decree No.36/CP dated 24 April 1997 of the Government.

Features of EPZs, IZs and HTZs

EPZs and IZs mean the zones with specific boundaries and without any inhabitant, being established by the Government or the Premier, and containing EPZ and IZ enterprises. EZs mean zones having a separate economic space with an investment and business environment, which is specially favourable for investors, and fixed geographical boundaries; being organized into functional areas including: non-tariff areas, bonded warehouse areas, export processing zones, industrial zones, entertainment areas, resorts, urban areas, residential areas, administrative areas and others. Having the same features, HTZs as defined in Decree 99 however is a multi-functional economic and technical zone to be established to carry out

research and development (R&D) and application of high technology, training of highly technical personnel, and to manufacture and trade in high-tech products. It is noted that EPZs, bonded warehouses, tax suspension warehouses and dwelling buildings may be located in an HTZ.

Under the LI, EPZs, IZs, EZs and HTZs are not typical vehicles for foreign investment, however, the EPZs and IZs play an important role in attracting foreign investment in Vietnam. That is why they are described herein. The purpose of EPZs and IZs is to provide an efficient and single base for manufacturing, processing and assembling products (for export only in the case of EPZs). Foreign capital projects are encouraged to locate in the zones by the assurance of modern infrastructure, such as good transportation and utility services, as well as the availability of necessary services.

In principle, an investment in development of an EPZ, IZ, EZ or HTZ must follow the same procedures and be governing by the same regulations as applicable to foreign investment in the zones as well as in rest of the country. To attract more investments in infrastructures, a number of preferential treatments and/or incentives are provided to foreigners who invest in developing EPZs and IZs, among them the easier licensing, longer duration and tax incentives.

Advantages of Locating in EPZs, IZs, EZs and HTZs

The application procedures for a new enterprise inside EPZs, IZs, EZs or even HTZs are similar to the same applicable to the rest of the country, but quite easier in consideration and licensing.

According to Decree 118, EZs, HTZs (including concentrated information technology zones established under the provisions of the Government) are considered as areas with extremely difficult socio-economic conditions, and EPZs established under the provisions of the Government fall on the list of areas with difficult socio-economic conditions to be entitled

to investment incentives. Investors in EPZs, IZs, EZs and HTZs enjoy incentives related to corporate income tax, import tax and value-added tax, which are more favourable than those offered to investors outside.

10% corporate income tax rate with four-year holiday commencing from the date taxable income are first making and nine-year 50% reduction will be applicable to enterprises newly established from investment projects in IZs or EPZs located in areas with extremely difficult socio – economic conditions, EZs and HTZs for fifteen (15) years from the first year of project revenues. 17% corporate income tax rate with two-year holiday and four-year 50% reduction will be applicable to enterprises newly established in IZs located in areas with difficult socio – economic conditions and EPZs for ten (10) years.

Investors in EPZs, IZs, EZs and HTZs enjoy also the modern infrastructure and the availability of utility services and others. But, instead of these, they bear a higher price for the use of land and infrastructures, and are often required to pay the land and infrastructure rental for the entire duration. This reflects the other side of the EPZs, IZs, EZs and HTZs. However, except for mining projects; production and trading of goods and services subject to special sales tax other than automobile manufacturing; land investment projects in IZs or EPZs located in the areas with extremely difficult socio-economic conditions, EZs, and HTZs are exempt from non-agricultural land use tax; and the land of investment projects in IZs located in areas with difficult socio – economic conditions, and EPZs are entitled to 50% reduction of payable tax amount.

Enterprises newly established from investment projects (except for mining projects; production and trading of goods and services subject to special sales tax other than automobile manufacturing) in IZs or EPZs located in areas with extremely difficult socio – economic conditions, EZs, HTZs; or IZs

located in areas with difficult socio – economic conditions and EPZs that goods imported to create their fixed assets are exempted from import tax, including:

- (i) Equipment and machinery;
- (ii) Special-use means of transport included in technological lines which cannot be domestically manufactured yet; worker-transporting vehicles including cars of 24 seats or more and waterway crafts;
- (iii) Components, details, knocked down parts, spare parts, fittings, moulds and accessories accompanying machinery, equipment and special-use means of transport stated at Points (i) and (ii) above for assembly into complete units;
- (iv) Raw materials and supplies which cannot be domestically produced yet. to be used for manufacturing equipment and machinery included in technological lines or for manufacturing components, details, knocked down parts, spare parts, fittings, moulds and accessories accompanying equipment and machinery stated at Point (i) for assembly into complete units;
- (v) Building materials which cannot be domestically produced yet.

Raw materials, supplies and components which cannot be domestically manufactured and are imported for production of investment projects (except for the mining projects; projects on production and trading of goods and services subject to special sales tax, projects on production and assembly of automobiles, motorcycles, air conditioners, electric heaters, refrigerators, washing machines, electric fans, dishwashers, DVD players, stereo receivers, electric irons, kettles, hair dryers, drying hands and other items as decided by the Prime Minister) in IZs or EPZs located in areas with extremely difficult socio – economic conditions, EZs, and HTZs are exempt from import duties for a period of 5 years.

Furthermore, goods exported from non-tariff zones (including EPZs, export processing enterprises, warehouses and storing

zones of goods pending duty payment, bonded warehouses, special economic-trade zones, trade-industrial zones, and other EZs which are established under Prime Minister decisions) to foreign countries; goods imported from foreign countries into non-tariff zones for use in non-tariff zones only; goods transported from one non-tariff zone to another are not subject to import tax or export tax.

For the enterprises in EPZs, CEPT/AFTA tariff will be applicable in case they export the products to domestic market provided that the products contain at least 40% elements originating from ASEAN countries.

Goods temporarily imported and re-exported and goods temporarily exported and re-imported; raw materials imported for manufacture or processing of goods for export in accordance with manufacturing or processing for export contracts with foreign parties; goods and services purchased and sold as between foreign parties and non-tariff zones, and purchased and sold as between non-tariff zones; are not subject to value-added tax.

In addition, value-added tax rate of zero per cent (0%) is applicable to (i) goods sold, and (ii) services directly provided to organizations and individuals in non-tariff zones (meaning any such entity who has registered business or other cases as stipulated in regulations of the Prime Minister of the Government) and consumed therein, which are considered as exported goods and services.

Besides, persons with taxable income, including Vietnamese and foreign employees working in EZs, shall be entitled to a fifty (50) per cent reduction of personal income tax.

Economic Contracts

Legislation

Except for some specific trading contracts regulated by the Commercial Law dated 14 June 2005, all the contracts shall be subject to the general provisions of the Civil Code of the same date. (Both mentioned principal laws became effective from 1 January 2006). This is regarded as a great change in the business environment in Vietnam, in the way that synchronizing the contract regime in Vietnam.

Features of the Contract

Although this is not a true vehicle for doing business in Vietnam, it is advised that foreign businessmen who wish to do business in Vietnam, should pay a due attention toward this kind of contract because of its relevance to their business and/or undertakings in Vietnam.

Business contract should be in writing, with or without public notification, subject to the nature of the transactions, and signed by the legal representatives of the contractual sides, whose name must be clearly recorded in the enterprise registration certificate/ investment registration certificate and the charter in case the signatory is a legal person.

A business contract must contain principal matters such as the description of products or services, with defined quantity and quality, the fixed price, the proposed time and mode of payment, and the conditions for delivery of goods and services, penalties and indemnity, etc. Subject to the negotiations of the contractual parties, the terms and conditions on guarantee, the duration and the settlement of disputes should be also included therein.