

Social Environment

Education

Vietnamese are most well-educated, with a literacy rate of over 95%. As for university and college training alone, there are in total about 412 universities, colleges and junior colleges throughout the country, attracting nearly million students each academic year.

Although having not a State school for foreigners in Vietnam, foreign diplomatic and economic institutions have set up schools for their staff's children. Recently, expatriates in Hanoi can enroll their children aged 4 to 15 years old at the United Nations International School (UNIS), meantime the same in HCMC can join the International School Ho Chi Minh City (ISH).

Accommodation

The quality and availability of international hotels has increased dramatically in recent years in Vietnam. Five and four-star international hotels are well abundant in Hanoi, Da Nang and HCMC. Besides, mini hotels are plentiful, easy to find and very cheap in comparison with the said first-tier hotels. For recent years, the current supply has been outstripping the demand.

In addition to hotels, housing space is now easy to find in big urban areas, especially Hanoi and HCMC. Many high-class and international standard residential buildings are now open for rent, with much lower prices compared to few years ago. Local standard housing space is also abundant, mainly from individual landlords, with cheaper prices. The high-class is often preferred by individual foreigners.

International and Local Travel

International flights are daily available from Hanoi and HCMC. Vietnam Airlines, and other domestic and foreign airlines have booking offices in both cities. Local flights are also daily busy from Hanoi to HCMC and vice versa. Actually, for local travels, Vietnam Airlines, Jestar Pacific, Vietjet Air, SkyViet, Vietstar Airlines and Hai Au (Albatros) are the six operating players. All these airlines use French or American made aircrafts.

By land travel, buses and trains are very common for local transportation of passengers around towns/cities and for inter-province trips including from Hanoi to HCMC and vice versa. Metered-radio taxis are available in the major cities and at Noi Bai (Hanoi) and Tan Son Nhat (HCMC) airports. Car hire is relatively cheap and for shorter journeys cyclos (pedal driven transport) can be hired. It is expected that from 2016 onwards, Vietnam shall have another type of public transport, tramways (including skytrain and subway) to be put into use in two major cities, Hanoi and HCMC.

Media and Communications

The international communications system (telephone, telefax and telex) and internet infrastructure (broad band, optical cable, Wi-Fi) have been frequently upgraded so as to respond the increasing market demand. Also, electronic communications including Wi-Fi spot are quite common, standard and at reasonable cost, even Wi-Fi-free areas in Vietnam, especially in urban and industrial areas.

English-language newspapers, including online versions, are well available in Vietnam at present. The Vietnam News Agency publishes daily the English-language Vietnam News newspaper. In addition, there are a number of local newspapers and magazines in English language being published in Vietnam, which include the weekly Vietnam Investment Review newspaper, the weekly Vietnam Economic News Magazine, the monthly Vietnam Economic Times Magazine, etc. A number of other business

magazines, published in neighboring countries, are also available.

The official Voice and Television of Vietnam broadcast news in English and other widely-used language, for instance, French. TV and Radio programs broadcast by foreign stations such as CNN, BCC, Australia Network, TV5, DW, Russia-1, NHK, KBS, etc. are also available.

Foreign Direct Investment

Legislation

From 1 July 2015, the Law on Enterprises 2014 (“LE”) and Law on Investment 2014 (“LI”) replace the previous Laws of 2005 and generally govern investment activities, establishment and operation of enterprises in Vietnam. At present, the Government continues to issue Decrees and other lower level legal documents providing guidelines for the entire process from the investment registration, business registration to the business operations.

The LE and LI continuously confirm to guarantee the legal capital and assets of foreign investors in Vietnam, and allow foreigners to invest in most sectors of the economy, particularly in sectors of export-oriented, agricultural activities, new materials, high technology, development research, environment protection, and others of similar nature.

Vehicles of Foreign Direct Investment

Under the ULE and CLI, foreign investors are entitled to select one of the following vehicles or forms for their investment in Vietnam:

(i) Establishment of a foreign-invested company: Limited Liability Company, with One or More Members (“LLC”); Joint Stock Company (“JSC”); Partnership; or other economic organization

(ii) Capital contribution to; purchase of shares/ capital contribution portions in Vietnamese company

- (iii) Public – Private Partnership (“PPP”) contract; and
- (iv) Business Co-operation Contract (“BCC”).

It is worthy of note that for establishment of any new economic organization, it is required to attach the establishment to an investment project in Vietnam. The LI and LE separate application for the issuance of IRCs of investment projects and application for the issuance of Enterprise Registration Certificates (“ERC”) of the newly-established economic organization instead of the old regulations allowing the IRC to serve at the same time as the ERC.

Details concerning each vehicle are described hereunder. **(i) LLC**

LLC may be established by a single investor or pursuant to a joint venture contract signed by one or more investors, either Vietnamese investors and one or more foreign investors; or between foreign investors, individually or institutionally, for the purpose of carrying out business activities in Vietnam. The difference of the LLC compared with the JSC is that the LLC is not permitted to issue shares (and list its shares on stock exchange), and the number of investors, regardless individual or institutional, is not allowed to be excessive of 50.

Unlike the Law on Foreign Investments in Vietnam (“FIL”), which was no longer valid, the old LE and LI since 2005 introduced the term of “charter capital” for replacement of the confused “legal capital”, and do not require the ratio between the charter capital of the LLC per the invested capital of their investment project being at least 30%. It seems that under the LE and LI, foreign investors will have more choice in making their contributions to the charter capital in cash or in kinds compared with the FIL in the past, and that there are no floor limits of the foreign investors in the charter capital of the LLC (pursuant to the FIL in the past, the contribution by the foreign investors is required to be at least 30% of the company’s charter capital).

Unlike the FIL in the past where the JVC or FOC is managed by the Board of Management (“BOM”), and members are nominated by the parties in proportion to their contributions, under the LE

and LI, the LLC shall be ultimately managed by the Member Council or Company Chairperson. The general director/ director shall be responsible before the Member Council or Company Chairperson, for the day-to-day management and business of the LLC. No specific regulations on the nationality of the general director/director in the LLC are provided, and the unanimous agreement/ voting on some matters of the LLC (i.e. revising the charter, appointing the general director, etc.) have been no longer valid. Instead of those, the voting principles by majority of votes representing at least 65% and/ or 75% (as the case may be) of the total capital contributed by attending members for LLC with Two or More Members, or more than 1/2 and 3/4 (as the case may be) of attending members for LCC with One Member, in a duly-organized Member Council meeting.

(ii) JSC

JSC is a company established by at least 3 investors, regardless individual or institutional, local or foreign. Differing from the LLC, JSC can issue shares to the public and list its shares on stock exchange. JSC is a kind of limited liability company, and has the legal person status in accordance with the laws of Vietnam.

Like LLC, under the LE, the specific requirements of the ratio of the charter capital of the JSC per the invested capital for the investment projects by the JSC (i.e. 30%) and the same of the contributions by the foreign investors in charter capital (i.e. 30%), are no longer valid.

Similarly, the LLC, the highest management authority of a JSC is the general shareholder meeting, which decides all the most principal matters of the company. However, the LE is opener than the old Law with provisions permitting JSCs to choose either of two organizational and managerial models, or to have one or more legal representative(s). The general director/ director is responsible to the general shareholder meeting and BOM for the day-to-day management and business of the JSC. Assisting the general shareholder meeting in supervising the performance of the BOM, general director/ director and other the management positions is the Board of Supervision.

Finally, voting principles by majority of 51% or 65% (as the

case may be) of the total number of votes of all shareholders attending a duly-organized general shareholder meeting, or a number of shareholders representing at least 51% of the total number of votes in the case of collecting opinions in writing.

(iii) Partnership

Partnership is a company by at least 2 members, who are individual or organization, domestic or foreign, together under one common name ("general partners"). In addition to the members of the partnership, partnership can have capital contributing partners. Unlike JSC, partnership may not issue any type of securities, and general partners shall be liable with all its assets for the obligations of the company. Partnership has legal personality under the law of Vietnam.

Members' council of the partnership is consisted of all members of the company, and has the right to decide on all the business activities of the company. The general partners have the right of legal representatives of the company, and organize and direct daily business operations of the company. Chairperson of the Members' Council is concurrently general director or director if the company's charter does not provide otherwise. The decision of the Council of Members shall be adopted with the approval of at least 3/4 or 2/3 of the total number of partners (as applicable).

(iv) Capital contribution to, purchase shares/ capital contribution portion in Vietnam-based company

Foreign investors are entitled to:

(a) Capital contribution to companies in Vietnam in the following forms: Purchase of initially-issued shares or additionally-issued shares of a JSC; Capital contribution to a LLC or Partnership; Capital contribution to other economic organizations; and

(b) Purchase of shares/ capital contribution portion in the companies in Vietnam in the following forms: Purchase of shares of a JSC from the company or its shareholders; purchase of capital contribution portion of existing members of a LLC to become a member of such LLC; purchase of capital contribution portion of capital contributing partner(s) in a partnership to become capital contributing member of such

partnership; Purchase of capital contribution portion of a member of other economic organization.

(v) PPP Contract

A PPP is a new form of investment stipulated in the LI, based on the provisions of previous laws on the BOT, BTO and BT contracts; made on the basis of contracts between competent State agencies and investors, project companies for implementation, management and operation of infrastructure projects, provision of public services.

PPP contracts may take any of 5 forms specified by the Government, including: Build – Operate – Transfer (“BOT”) contracts; Build – Transfer – Operate contracts (“BTO”); Build – Transfer (“BT”) contracts; Build – Own – Operate (“BOO”) contracts; Build – Transfer – Lease (“BTL”) contracts; Build – Lease – Transfer (“BLT”) contracts; Operation – Management (“O&M”) contracts; and other similar contracts. There are two groups of contracts: First, investors directly charge users or generate revenue through product consumption contract; Second, the investor’s income comes from repeated payment of State agencies depending on the quality and progress of the investment made.

And also, there are two ways for investors to participate in the projects: First, the State determines ideas, proposals and feasibility study reports. Investors will be consulted during project preparation and tendering to gain the right to implement the project. This is a key way for the projects on socio-economic development planning and sectorial planning. Second, investors propose the idea, and prepare the project proposal and feasibility study report. When the report is approved, the State agency shall organize tendering for selection of investors. Investors preparing the proposals are entitled to certain incentives in tendering; if they do not win the tendering, the cost of project study will be reimbursed.

Almost all projects must apply for the issuance of IRC (except for Group C projects under the Law on Public Investments), and apply for the establishment of a project company (excluding Group C projects and projects under BT contracts).

(vi) BCC Contract

BCC is a cooperation contract signed by investors with the objective of conducting jointly one or more business

operations in Vietnam, on the basis of mutual allocation or responsibilities and sharing of profits and products or losses, without creating or forming a legal entity in Vietnam. As BCC is not a separate legal entity, the contractual rights and obligations of the parties must be shared. To implement the contract and co-ordinate the daily operation of a BCC, if necessary, a co-ordination board having the functions, duties and powers as agreed by the parties, can be set up when necessary, with presence of the equal nominees from the parties.

To do joint business under the BCC, the parties to a BCC signed between a local investor and a foreign investor or between foreign investors must apply for the issuance of IRC.

Project Classification and Licensing Agencies

Unlike the FIL in the past, the projects under the LI are classified into two groups: projects requested to apply for the issuance of IRC and those not requested to do so. In which, investment projects of foreign investors normally fall on the first group. More decentralized, all projects (except PPP projects to which MPI or provincial-level PC will issue the IRCs) are approved and licensed by the provincial-level Department of Investment and Planning (DPI) with respect to projects outside IZs, EPZs, HZs and EZs, and provincial-level Management Boards of IZs, EPZs, HZs and EZs with respect to projects inside an IZ, EPZ, HZ or EZ.

Application Document Requirement

An application/ registration file for submission to investment registration agencies, under the LI, normally includes:

- (a) Written application for implementation of the investment project;
- (b) Personal papers for individual investors, the documents certifying the legal status of institutional investors;
- (c) Proposal for investment project;
- (d) Written confirmation of investor's financial capacity;
- (e) Proposal for a need for land use; where the project does not require the State to allocate or lease out land or to permit conversion of the land use purpose, a copy of the site lease agreement or other document certifying that the investor has the right to use the site for implementation of the investment project shall be submitted;
- (f) Explanatory statement on technology to be used in respect

of the projects using technology falling within the List of technologies limited to be transferred under the laws on transfer of technology;

(g) BCC contract in the case of investment projects in the form of a BCC contract; and

(h) Explanation on satisfaction of WTO's requirements, as the case may be.

Vietnamese language is lawfully required, but a widely-used foreign language may also be accompanied, for instance, English. In principle, the two languages have equal legal weight in determining the parties' intentions, but in case of discrepancies, the Vietnamese shall prevail.

Licensing Procedures and Timing

All the new establishment of LLCs, JSCs, Partnerships, BCCs, other economic organizations; implementation of PPP contracts (except for Group C projects) are required to get IRCs. The licensing procedures and timing for obtaining the certificates are in the same and described hereunder:

(a) For investment projects subject to investment policy decisions, the investment registration agency shall issue IRCs to investors within 5 working days from the date of receipt of the written investment policy decision.

(b) For the remaining projects, the investment registration agency shall issue the IRC within 15 days from the date of receiving the complete dossier.

Representative Office

Representative office ("RO") is not a separate legal entity under the laws of Vietnam. The activities of a RO are limited to business promotion; identification and accelerating the trade opportunities; and supervising the implementation of contracts signed between its parent/ represented company(ies) and local partners. However, a RO may sign commercial

contracts on behalf of its parents companies, with appropriate authorization, on a case-by-case basis.

In this Section, only ROs of foreign businesses, which fall within the jurisdiction of the Provincial-level Departments of Industry and Trade (“DOIT”) are focused (ROs of foreign banks, auditing, law firms, tourism organizations, fall within the power of the State Bank of Vietnam (“SBV”), the Ministry of Finance, and the Ministry of Justice (“MOJ”), respectively). It is noted that a foreign business shall be entitled to set up one or several ROs, each in a different city or province in Vietnam.

Legislation

The Commercial Law dated 14 June 2005 constitutes the legal ground for representative offices and branches of foreign businesses in Vietnam, which is further specified by the Government’s Decree No.07/2016/ND-CP, dated 25 January 2016, detailing the provisions of the Commercial Law on representative offices and branches of foreign traders in Vietnam (“Decree 07”).

To implement Decree 07, on 5 July 2016, the Ministry of Industry and Trade (“MOIT”) issued Circular No.11/2016/TT-BCT, detailing all standard forms related to the issuance of licenses to, organizations and activities of representative offices and branches of foreign enterprises in Vietnam (“Circular 11”).

Requirements

Under Article 7 of the Decree 07, a foreign trader shall be issued with a license for establishment of the representative office in Vietnam upon satisfying the following requirements:

- (i) The foreign trader is incorporated and registers for doing business in accordance with provisions of laws of countries or territories being parties to treaties to which Vietnam is a signatory or is recognized by the aforesaid countries or territories;
- (ii) The foreign trader has come into operation for at least 1 year from the date of establishment or registration;
- (iii) The foreign trader’s Certificate of Business Registration or the equivalent document if having expiry date is valid for at least 1 more year from the date of submission of the application;

(iv) The scope of operation of the representative office is consistent with that in Vietnam's Commitments to treaties to which Vietnam is a signatory;

(v) Where the scope of operation of the representative office is inconsistent with Vietnam's Commitments or the foreign trader is not located in the country or territory being party to treaties to which Vietnam is a signatory, the representative office can be established only if relevant Ministers, Heads of ministerial agencies (hereinafter referred to as "relevant Ministers") have given approval for establishment of the representative office.

Applications

To establish a representative office in Vietnam, a foreign company must apply for a license issued by the provincial-level DOIT. A set of application files for establishment of the representative office must be submitted to the provincial-level DOIT.

To obtain a seal, the Chief Representative of the representative office or its staff may be required to personally lodge the application due to security reasons.

The following documents must be submitted to the licensing authority for obtaining the License:

- (i) Application for License (standard form);
- (ii) A legalized copy and Vietnamese translation of the Certificate of Incorporation or the equivalent document and any amendments thereto of the parent company;
- (iii) A certified copy and Vietnamese translation of the parent company's letter of appointment of the Chief Representative;
- (iv) A certified copy and Vietnamese translation of the audited financial statements of the parent company for its latest financial year issued by an auditing company or certificates of fulfillment of tax liabilities or financial obligations of the last fiscal year or equivalent documents as proof of existence and operation of the foreign trader issued or certified by competent authorities where such foreign trader is established;
- (v) Documents on the expected location of the representative office; and
- (vi) A certified copy and Vietnamese translation of Chief

Representative's passport.

Licensing Timing

A R0 license will be granted within 7 days from the receipt of the satisfactory file. The applicant is required to pay the license fee of VND3 million for a license for establishment of a new representative office. The license fee would be paid upon the approval of the application file.

Within 15 days from the date of issuance of the licence, information about the R0 shall be publicly published on the licensing agency's website.

Permitted Activities

According to Decree 07, a R0 will be entitled to do the functions as stipulated in the granted license. Operational functions of a R0 are limited to:

- (i) the conduct of liaison activities;
- (ii) market research, and promotion of its head office's businesses, excluding services the establishment of representative office in which is specified in specialized legislative documents.

A R0 shall have the following rights and obligations:

- (i) R0 shall be entitled to do the functions as stipulated in the granted license;
- (ii) The Head of the R0 shall have the right to conduct activities authorized by the parent company;
- (iii) R0's staff shall be subject to relevant tax obligations in accordance with the laws of Vietnam;
- (iv) R0 shall have to report provincial-level PCs, once a year, the R0's operations.

Term of License

The license of a representative office has a term of five years but not exceeding the remaining effective period of the parent company's Certificate of Business Registration or the equivalent (for documents having expiry date). If the parent company's business licence or establishment certificate expires, the licence of the representative office will also expire. In other words, the term of the representative office cannot exceed any term of existence of its parent company. The license of a representative office may be extended upon its expiry unless it commits one of the following violations:

- (i) Fail to come into operation for 1 year and fail to enter

into transactions with licensing agencies;

(ii) Fail to submit reports on the operation of the representative office for 2 consecutive years; and

(iii) Fail to submit reports, provide documents or explanations on issues related to its operations to the licensing agency within 6 months from the deadline of submission or at the written request of the licensing agency; and

(iv) Other cases provided for by law.

In addition, the License may be revoked when the representative office committed any of the above-mentioned violations.

Taxation

No taxes are applicable to RO's operation, except for personal income tax charged their staff which will be further described in Section 16 hereunder.

Company Branch

Foreign banks, auditing firms, law firms, fund management companies, and foreign economic organizations can set up their branches in Vietnam. The licensing agencies are varied, of which e.g. SBV grants licenses to foreign banks' branches, MOF grants licenses to branches of foreign auditing firms and fund management companies' branches, and MOIT is authorised to grant licenses to foreign businesses.

In this Section, only branches of foreign business/traders which fall within the sole power of the provincial-level DOIT are focused, with a note that the new establishments thereof shall be all conditional to the Vietnam's WTO commitments, pursuant to which the establishment of branches of foreign service providers is unbound, except for the following sectors

and sub-sectors:

- Legal services;
- Computer and related services;
- Management consultant services;
- Service related to management consulting;
- Construction and related engineering services;
- Franchising services;
- Non-life insurance services;
- Banking services;
- A number of securities services (Asset management service, Settlement and clearing services for securities, derivative products, and other securities-related instruments; Provision and transfer of financial information, and related software by suppliers of securities services; Advisory, intermediation and other auxiliary securities-relate, including investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy; etc.).

Nevertheless, the licensing in practice may vary from what is provided by the Vietnam's WTO Commitments as itemized above. At this moment, no information about the abrogation of this hurdle to market is revealed by the Vietnamese Government so far.

7.1 Legislation

The Commercial Law dated 14 June 2005 constitutes the legal ground for representative offices and branches of foreign businesses in Vietnam, which is further specified by the Government's Decree No.07/2016/ND-CP, dated 25 January 2016, detailing the provisions of the Commercial Law on representative offices and branches of foreign traders in Vietnam ("Decree 07").

To implement Decree 07, on 5 July 2016, the MOIT issued Circular No.11/2016/TT-BCT, detailing all standard forms related to the issuance of licenses to, organizations and

activities of representative offices and branches of foreign enterprises in Vietnam ("Circular 11").

7.2 Requirements

Under Decree 07, normally, a Branch license shall be granted if the applicant satisfies the following conditions:

- (i) The parent company is incorporated and registers for doing business in accordance with provisions of laws of countries or territories being parties to treaties to which Vietnam is a signatory or is recognized by the aforesaid countries or territories;
- (ii) The parent company has come into operation for at least 5 years from the date of establishment or registration;
- (iii) The Certificate of Business Registration or equivalent document having expiry date is valid for at least 1 more year from the date of submission of the application;
- (iv) The scope of operation of the branch is conformable with Vietnam's Commitments to market access stipulated in treaties to which Vietnam is a signatory shall be consistent with lines of business of the parent company;
- (v) Where the businesses of the branch are inconsistent with Vietnam's Commitments or the parent company is not located in one of countries or territories being parties to treaties to which Vietnam is a signatory, the branch can be established only if they obtain a prior consent of the relevant Minister for establishment of the branch.

7.3 Applications

To establish a Branch in Vietnam, a foreign company must submit a set of application files for a license issued by the MOIT. The following documents must be submitted to the licensing authority for obtaining the License:

- (i) Application for the license (standard form);
- (ii) A legalized copy of the Certificate of Incorporation or equivalent documents of the parent company and any amendments thereto;
- (iii) A certified copy and Vietnamese translation of the parent company's letter of appointment of the Head of Branch;

(iv) A certified copy and Vietnamese translation of the audited financial statements or certificates of fulfillment of tax liabilities or financial obligations of the last fiscal year or equivalent documents as proof of existence and operation of the parent company issued or certified by competent authorities where such foreign trader is established;

(v) A certified copy and Vietnamese translation of the Memorandum and Articles of Association of the Branch;

(vi) Documents on the expected location of the Branch including: copies of memorandum of understanding (MOU) or leasing agreements or documents as proof of the right to use a location as the branch, copies of documents on the expected location of the Branch; and

(vii) A copy of the passport or ID card (for Vietnamese), or certified copy and Vietnamese translation of the passport (for foreigners) of the Head of the Branch.

7.4 Licensing Timing

A Branch license will be normally granted within 7 days from the receipt of the satisfactory file. The applicant is required to pay the license fee of VND1 million for a license. The license fee would be paid upon the approval of the application file.

Within 15 days from the date of issuance of the licence, information about the Branch shall be publicly published on the licensing agency's website.

7.5 Permitted Activities

A Branch is permissible to trade the products and carry out the trading-related activities in accordance with the provisions of the Commercial Law, concretely:

(i) Provide services other than those specified in specialized legislative documents;

(ii) Lease the office, lease and/ or purchase the utilities necessary for the operation of the Branch;

(iii) Recruit staff;

(iv) Execute the contract in Vietnam in accordance with the License;

- (v) Open the bank account;
- (vi) Remit profits abroad;
- (vii) Have stamp in the name of the Branch;
- (viii) Carry out the trading activities and other activities specified in the License.

7.6 Term of License

The license of a Branch has a term of five years but not exceeding the remaining effective period of the parent company's Certificate of Business Registration or the equivalent (for documents having expiry date). The license of a Branch may be extended upon its expiry unless it commits one of the following violations:

- (i) Fail to come into operation for 1 year and fail to enter into transactions with licensing agencies;
- (ii) Fail to submit reports on the operation of the branch for 2 consecutive years;
- (iii) Fail to submit reports, provide documents or explanations on issues related to its operations to the licensing agency within 6 months from the deadline of submission or at the written request of the licensing agency; and
- (iv) Other cases provided for by law.

In addition, the License may be revoked when the representative office committed any of the above-mentioned violations.

7.7 Taxation

Branches of foreign businesses shall be subject to the taxes prevailing in Vietnam, which are well described in the [Section 16](#) hereunder.