

**INVEST IN VIETNAM:
Made simple in 10 Questions & Answers**



 **FIDAL ASiATTORNEYS** 
Your crossborder crossculture legal partner

1. Can I fully own my company in Vietnam?

YES: Foreigners are allowed to set up fully owned companies.

ADVANTAGES:

- Greater flexibility in developing its governance and organization rules for its board of directors than a joint company.
- Pursuant to international investment protection agreements, it makes it easier to assert one's rights and benefit from diplomatic support if needed.

CAUTION:

This form of foreign direct investment is not accessible or is limited to certain sectors of activity, notably:

- Culture, Advertisement and Banking, where only the joint venture is allowed.
- Transportation and logistics where rules may vary.

2. Do I need prior approval from Vietnamese authorities to invest in Vietnam?

YES: Foreign investment project requires prior approval before setting up a Company:

- 2 files presenting the investment project and the legal structure.
- An Investment Registration Certificate (IRC) will be issued after validation of the project and is necessary to get an Enterprise Registration Certificate (ERC).

DETAILS:

- The size, sector and location of the project affect the certification process.
- Domestic investments require a simple registration and request of ERC only.
- For conditional sectors the capital invested shall be higher than average; otherwise problems may arise during the formation process.
- Conditional sectors, high investment (more than VND 5 billion/USD 233 million), large environmental impact, high scale projects must be approved by the Prime Minister and ratified by the National Assembly.
- Registration process of a company may take several months.
- As for capital/shares transfer, a new foreign investor will have to be registered at the Department of Planning and Investment (DPI).

3. Which taxes apply to me?

INDIVIDUALS:

- People having an activity in Vietnam and residing 183 days or more will be subject to Personal Income Tax (PIT/Progressive rates 5-35%).
- Foreigners earning income in Vietnam, will be subject to the income tax of natural persons, residents or not in Vietnam.
- These taxes sometimes combine with the taxation of your country of origin. Hopefully, your country signed a Double Taxation Avoidance (DTA) bilateral agreement with Vietnam !

COMPANIES:

- Companies under Vietnamese law enjoy mild corporate income tax (CIT, usually 20%) and Value Added Tax (VAT) for services and sale of goods in Vietnam (usually 10 %).
- Foreign companies established abroad but having an activity in Vietnam will be subject to the Foreign Contractor Withholding Tax (FCT) for activities generating income in Vietnam (5-10%).

PROPERTY:

- Customs duties affect all products imported into Vietnam (rates from 0 to 150%).
- Goods from countries that have signed a trade agreement with Vietnam (including ASEAN and some European countries, asides EU-VN FTA ratification) benefit from a preferential tariff regime.
- Special consumption tax (SCT) hits specific goods (sugary drinks, milk, cigarettes & cigars, large vehicles...).

4. How to resolve disputes?

Negotiation and conciliation are widely used in Vietnam. If, however, you cannot reach an amicable settlement you may go to the Vietnamese courts unless your situation enables a foreign court. We recommend to insert a med-arb clause in your commercial contracts (mediation process and, in the event of failure, arbitration process).

The International Arbitration Center of Vietnam (VIAC) has acquired the skills and notoriety. Depending on the configuration of the contract, it will also be possible to appoint an arbitration center located abroad (example: SIAC in Singapore, CCIP in Paris, etc...)

5. Can I use my currency and repatriate my dividends?

- Any transaction in Vietnam between 2 Vietnamese entities must be invoiced in the national currency, Vietnamese Dong (VND).
- US Dollar (USD) is the main foreign reference currency for supplementary billing.
- Payments in foreign currency are controlled and require supporting documents for transfers abroad.
- Foreign companies can pay dividends or salaries in foreign currency to foreign counterparts and share profits in VND on transfer of securities / real estate.

6. Can I freely recruit and set wages?

RECRUITMENT

- Foreign companies can directly recruit their employees without going through a state employment agency anymore.
- Foreign employees must have a qualification level that does not exist on the Vietnamese labor market and are subject to work permit.

MINIMUM WAGES

- The basic legal minimum wage varies between 120 and 190 USD a month depending on the region and its development.
- The maximum working hours are 48 hours per working week and 8 hours per day (Overtime is possible and regulated).
- Holidays: minimum 12 paid leave days a year + 10 days of public holidays.

7. Do I need a visa?

MAYBE NOT !

You may enjoy a visa exemption for 15 days' stay for French, German, British, Italian and Spanish nationals.

It's easy to get a 3-6 months VISA

Besides tourism visa (DL) up to 3 months, you may get business (DN), investment (DT) or employment (LD) visa up to 3 or 6 months.

The applicant must be sponsored by a partner in Vietnam who is the professional organization with which he/she is in contact with (legal entity / individual, Vietnamese or foreigner).

It's possible to get a long term VISA

A work permit is mandatory for foreign employees working more than 3 months in Vietnam and grants access to a residence card for 2 years extendable to one's family.

Exemptions exist for:

- The foreign associate employee of a Vietnamese law firm.
- The employee owning a EURL under Vietnamese law.
- The employee member of the Board of Directors of a SA under Vietnamese law.

8. Is it possible to protect my brand or my technologies?

YES, even you are not based in Vietnam!

- The so-called "first registered, first protected" rule applies in Vietnam. The registration therefore guarantees the protection of your intellectual property rights (IPR).
- This registration may relate to patents, trademarks, industrial designs, copyrights and technology transfers.
- The judicial or administrative procedures are often lengthy and lead to sanctions that do not always compensate for all the damages suffered. In practice you need constant vigilance and field, together with innovation are keys to IP rights protection.

9. Is my industrial project subject to specific regulations?

YES

- Depending on your activity and industry sector, you may only have access to a limited number of areas (e.g. fish and seafood).
- Your location is subject to the general rules of the Law on Environmental Protection and its implementing texts.
- IRC issuance may require, depending on your project:
 - A presentation of an environmental impact assessment report.
 - The setting up of an environmental protection project.
- All necessary measures must be taken to protect and inform your employees of potential pollution according to the risks involved.
- Particular sectors are subject to specific regulations: the standards of the food hygiene ordinance in the agri-food sector for instance.

10. Can I own or rent a property in Vietnam?

According to the founding principle of land law in Vietnam, the soil belongs to the Vietnamese people who entrust its management to the State. People only own a land use right.

LONG TERM LEASE:

- Foreign investors can obtain a Land Use Right (LUR) as part of the development of their investment project. This lease may not exceed the term of its investment certificate, i.e. 50 years (75 years in certain circumstances).
- The rental fees of the LUR can be paid annually or in one installment at the beginning of the lease.
- This LUR may be subject to mortgage and be assigned, given or bequeathed to another foreign or domestic entity; the latter will again obtain a LUR for the remaining duration or a duration of up to 50 years.

OFFICE LEASE OR HOUSE:

It is possible to rent premises in the name of a legal entity registered in Vietnam or as a natural person (without the need to prove a visa, residence card or work permit).

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With a combined business strategy and legal advisory practice, we take a comprehensive approach to business law, corporate services, regulatory and compliance requirements at large to accurately defining and implementing effective strategies tailored to the client's needs and objectives.

CONTACT US

Do not hesitate to contact us to get more details about legal and economic information or for any assistance.

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