**FDI and M&A Legal Guidelines[[1]](#endnote-1): FDI in Vietnam**

Like in many other countries, Vietnam faced the Covid-19 challenges in 2021. Both FDI and M&A transactions were down from the pre-pandemic level. With the scheduled reopening, both FDI and M&A are deemed to come back strongly in 2022.

Notable reported cases of the M&A transactions in 2021 are in consumer finance, digital payment, retail, ecommerce sectors and the energy business with renewable and LGN leading tractions in this sector.

 **PART 1. FOREIGN DIRECT INVESTMENT**

1. **What are the principal laws and regulations applicable to FDI in your jurisdiction? Are there special rules for certain foreign investors, including state-owned enterprises (SOEs)?**

The following are the pertinent laws and regulations governing the FDI activities in Vietnam by all investors, domestic and foreign:

1. Law on Investment No. 61/2020QH14 passed by the National Assembly of Vietnam on 17 June 2020 (effective as of January 1, 2021) (**“LOI”**);
2. Decree No. 31/2021/ND-CP of the Government dated 26 March 2021 with detailed regulations for implementation of the Law on Investment **(“Decree 31”).**
3. Circular No. 03/2021/TT-BKHDT of the Ministry of Planning and Investment dated 09 April 2021 prescribing templates for documents and reports related to investment activities in Vietnam, outward investment activities and investment promotion activities (**“Circular 03/2021”**).

There are no special regulations that are applicable to certain type of investors such as a state-owned enterprise (SOEs).

1. **Are there any governmental and regulatory approvals required for FDI? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?**

Approvals are required for FDI. The investment procedures are set forth as follows:

1. Investment policy approval (IPA) for certain types of investment.

IPA is required for both domestic and foreign investors when the intended investment falls into certain types of project （for example, gaming projects; special economic zone） . The investor will need to apply for and receive the IPA prior to the investment with either, depending on the type of investment, the National Assembly, the Prime Minister or the Provincial Peoples’ Committee.

1. Investment Registration Certificate (IRC) which details the investment project.

When the investment project is located outside the industrial zones, the investors will need to obtain the IRC from the local Department of Planning and Investment; when the investment project is located inside the industrial zones, export processing zones, high-tech zones and economic zones, then the IRC is applied with and granted by the management board of such a zone.

1. After the grant of the IRC, the investor proceeds to obtain the enterprise registration certificate for establishment of the foreign-invested enterprise in Vietnam.
2. **Are there any industry sector controls on foreign investment?**

In the most recent regulation released for implementing the LOI, the “negative list” was introduced, i.e., where the foreign investment is made in an industry, trade that fall under the list for which market approach is restricted for foreign investor (**“Negative Lists”**), the foreign investor must satisfy those market approach conditions.

Foreign investment in sectors that do not fall under the Negative List will be subject to the same market access conditions that apply to the domestic investors.

Foreign investor typically must satisfy the conditions if it invests in the industries and trades that fall under the Negative Lists.

The Negative Lists shall include:

1. List of industries and trades for which there has not been market approach:

The foreign investors are not allowed to invest in sectors that fall within this list.

1. List of industries and trades for which market approach is conditional

The foreign investors are allowed to invest in sectors falling under this list provided that the relevant market access conditions are satisfied.

The Negative Lists are published on the National Portal for Investment (<https://vietnaminvest.gov.vn/SitePages/List_View.aspx?ChuyenMuc=3>).

In addition to the market approach conditions, the foreign investor must satisfy necessary conditions during the entire business investment process if it conducts business in the conditional industries and trades set out in Appendix 4 of the LOI.

1. **Are there any government free carry interest requirements on special industry sector?**

There are no free carry interest requirements under the existing laws on special industry sector.

1. **Are there any localization requirements (e.g. minimum ratio of local employees, minimum ratio of local procurement) for FDI in your jurisdiction?**

In general, there is no localization requirement applicable to FDI. As with the market access conditions or restrictions, investments in some sectors will need to fulfil certain conditions on things such as professional qualifications, capitals, etc. Examples are:

* For maritime transport services (passenger transportation and freight transportation less cabotage), a number of foreign seafarers permitted to work in ships under Vietnam’s flag shall not exceed one-third of the total employees of the ships[[2]](#footnote-1).
* Both domestic and foreign companies providing services of telecommunications, internet, and value-added services in cyberspace in Vietnam that conduct the collection, exploitation, analysis, or processing of data of individuals, data about relationships of service users, or data generated by users in Vietnam must preserve that data in Vietnam during the time period regulated by the Government[[3]](#footnote-2).
1. **Are there any exchange control restrictions in terms of remittance of capital, profits and dividends?**

The Local currency, Vietnam Dong (VND) is NOT freely convertible to foreign currently just like RMB in China. Banking and foreign exchange are one of the areas where an investment and operation in Vietnam is expected to be in full compliance.

Remittance of capital, profits, or dividends are permissible from the “capital account” (formally called Direct Investment Capital Account or “DICA”) of a foreign investor upon fulfilling the conditions imposed by those regulations.

Foreign investors can repatriate profits overseas when the followings are satisfied:

* Fulfilling its financial obligations to the State of Vietnam under the law (i.e., tax payments are current).
* Submitting its audited financial statement and declaration of its company income tax to a competent tax bureau (foreign owned enterprises are under mandatory audit requirement).
* Fulfilling other obligations in accordance with the law on tax administration (if any).
1. **What are the most common types of corporate legal entities established for FDI? For each type of corporate legal entities, please introduce the internal corporate governance structure. What types of corporate legal entities are recommended for partially or wholly foreign owned corporate legal entities?**

Three (3) common types of business entities are used by for domestic and foreign investors. Other forms of business include partnership and sole proprietorship.

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| --- | --- | --- | --- |
|  | **Single Member Limited Liability Company** | **Multi-member Limited Liability Company**  | **Joint Stock Company** |
| ***Number of member(s)/shareholder(s)*** | One individual or organization  | At least two (02) up to fifty (50) (including individual(s) and/or organization(s)) | Minimum three (03) (including individual(s) and/or organization(s)) |
| ***Organizational management structure*** | * Individual as member:
1. The company president (company owner), and
2. Director/General Director.
* Organization as member:
1. Board of Members (03-07 members) or company president, and
2. Director/General Director.

Accordingly, the company owner appoints its authorized representative(s) to act as the company president or member of the Board of Members.  | Including:* Board of Members which is chaired by one of its members.
* Director/General Director.
 | * Model 1:
1. General Meeting of Shareholders, and
2. Board of Directors, and
3. Director/General Director, and
4. Board of Supervisors (only when more than eleven (11) shareholders and/or shareholders being organization hold more than 50% of the company’s total shares).
* Model 2:
1. General Meeting of Shareholders, and
2. Board of Directors (at least 20% of its members must be independent directors), and
3. Director/General Director), and
4. Audit Committee under the BOD.
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1. **What is the procedure of registration and incorporation of foreign-owned companies?**

As explained in answer to Question #2, the procedures are for the investor to first obtain the investment approval (IPA and the IRC) under the LOI from the relevant government authority, and then subsequently registers and receives the ERC (enterprise registration certificate).

1. **What are the documents and materials that the foreign investors need to prepare for that purpose? Is notarization or certification required?**

Depending on each form of investment’s procedures that the laws shall stipulate different documents. Normally, other than forms as prescribed by the laws, foreign investors have to provide documents including:

* A document about the legal status of the investor(s); the legal representative of the company that the foreign investor intends to establish in Vietnam;
* Document(s) providing the financial capacity and experience of the investor(s);
* Document(s) providing the project address and other relevant documents in accordance with the regulations of law.

All document(s) relating to foreign investors need to be legalized to be valid in Vietnam.

1. **How long does it normally take to complete the entire registration and incorporation process?**

In case the investment project does not require investment approval, the procedures for the establishment of the foreign-owned company in Vietnam shall comprise 2 steps:

1. Step 1: Application for the Investment Registration Certificate for the investor with the expected time of 15 working days; and
2. Step 2: Application for the Enterprise Registration Certificate for the investor with the expected time of 03 working days.

The time frames above are stipulated by laws, but they may be prolonged in practice due to the appraisal of the competent authorities. Different localities may have different timelines.

***Disclaimer:***

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1. ***The series on the investment and M&A laws in the member countries of RCEP are launched by DeHeng Law Offices. In each article of the series, a leading local law firm is invited to offer an overview of investment and M&A laws in the jurisdiction.***

***The above answers are prepared by***

	* ***John Yue (岳强), Associate***
	* ***Nguyen Hoang Huong, Legal Assistant******from LuatViet – Advocates & Solicitors in Vietnam by February 26th, 2022.*** [↑](#endnote-ref-1)
2. Vietnam’s commitments in the WTO [↑](#footnote-ref-1)
3. Article 26.3 Law on Cyber Security 2018 [↑](#footnote-ref-2)