DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

An Introduction to

Doing Business in Vietnam 2020

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This edition of Doing Business in Vietnam was produced by a team of professionals at Dezan Shira & Associates, with Pritesh Samuel as Senior Editor.
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About Dezan Shira & Associates

At Dezan Shira & Associates, our mission is to guide foreign companies through Asia's complex regulatory environment and assist them with all aspects of establishing, maintaining and growing their business operations in the region. Since its establishment in 1992, Dezan Shira & Associates has grown into one of Asia's most versatile full-service consultancies with operational offices across China, Hong Kong, India, Singapore and Vietnam, as well as liaison offices in Italy, Germany and the United States, and partner firms across the ASEAN region. With over 26 years of on-the-ground experience and a large team of professional advisers, we are your reliable partner in Asia.

Preface

ALBERTO VETTORETTI
Managing Partner
Dezan Shira & Associates

Vietnam follows an export-led growth model, as can be found in several emerging economies, combining trade liberalization and foreign direct investment promotion to spur exports. Vietnam's growth has accelerated in recent years in part due to the US-China trade war, which kicked off in July 2018. As part of the fallout, Vietnam's exports to the US rose by 28.8 percent year on year in the first quarter of 2019, making the US the largest importer of Vietnamese goods. A number of manufacturing businesses have also moved operations to Vietnam, including Foxconn, Samsung, and LG.

In addition to building the country's export capacity through the private sector, the government has pursued strategies to join several free trade agreements. With the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in effect and the EU-Vietnam (EVFTA) expected to be ratified soon, Vietnam's Ministry of Planning and Investment forecasts Vietnam's GDP could increase by 1.35 percentage points by 2035 with the EVFTA boosting GDP by 15 percent. These trade deals along with already signed FTAs are likely to ensure that Vietnam remains competitive in the short-to-medium term.

Vietnam has been enjoying strong growth since the 1990s despite crisis and uncertainties in the global market. Its government has also worked to improve business policies. Vietnam continues to prioritize infrastructure investment and does not shy away from looking at countries outside ASEAN to fuel its growth. The government has also invested in industrial zones and this investment is expected to further increase as foreign investment pours in.

These reasons have made Vietnam one of the fastest growing economies in Asia maintaining a 7 percent Gross Domestic Product (GDP) in 2019. In addition, Vietnam's labor force is a competitive advantage and is an important part of Vietnam's future economic growth. Vietnam is known for its young, hardworking, literate and easy to train workforce.

All these factors make Vietnam an attractive destination for business, however challenges remain such as bureaucracy, language barriers, supply chain constraints, grey areas in regulations and infrastructure. We hope this business guide will provide investors with an insight into key aspects of undertaking and doing business in Vietnam and help you make an informed decision when beginning your operations in Vietnam.

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Dezan Shira & Associates expanded to Vietnam in 2008, and quickly set up offices in Hanoi and Ho Chi Minh City. The year 2008 also saw the launch of Vietnam Briefing which has now become a premier source of business intelligence related to Vietnam. Last year in 2019, we also established our third office in Da Nang.

Our staff includes a growing number of Vietnamese chartered accountants and lawyers, all of whom have multiple years of experience advising foreign companies.

Specifically, our services include pre-investment and entry strategy advisory, business advisory, accounting and reporting, treasury administration, tax and compliance, payroll and human resources, and audit and financial review. Dezan Shira & Associates' experienced business professionals are committed to improving the understanding and transparency of investing in emerging Asia.

Our business advisors, tax experts and accountants in Hanoi, Ho Chi Minh City and Da Nang can help you with any questions related to establishing or conducting your business in Vietnam. To talk to an accountant or business consultant, please contact us today.

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An Introduction to Vietnam

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- Legal and political structure

Business etiquette 101

Vietnam has one of the oldest cultures in Southeast Asia. While national identity can be complex given Vietnam's history, locals are proud of their language and its complexities, as well as the distinctiveness of their society and culture. The expression dat viet (Vietnamese land), for example, encapsulates the notion that Vietnamese society have an organic relationship to their environment.

Since the introduction of Doi Moi – or 'renovation' policy – in the 1980s, which began the transition from the country's socialist economy to a market economy, Vietnam has experienced many significant changes, including a rise in the standard of living. These factors have in turn inspired a flurry of foreign businesses looking to start operations or expand in the country.

But for those planning to do business in Vietnam for the first time, it is important to learn about the country's vibrant culture and traditions. Those that do will find it easier to work in the country.

Greetings in Vietnam

While English is gaining in popularity, Vietnamese remains the dominant language: it is spoken by 86 percent of the population. Vietnamese appreciate it if a foreigner tries to learn simple phrases in their language such as xin chao (pronounced as 'seen chow'), meaning "hello" in Vietnamese.

A handshake and a slight bow of the head is the general custom for saying hello and goodbye. Meanwhile, Vietnamese names are written and introduced in the following order: last name, middle name, first name.

Business protocols and nuances

When possible, business meetings should be done in the presence of someone who can translate. Be prepared to attend several meetings as successful deals are rarely completed in a few encounters. Conversations held in person are preferred over online communication and emails.

Cold calling is not recommended. It is recommended to be introduced to a potential business contact by a common acquaintance or third-party reference. Business meetings should be scheduled in advance and should avoid major public holidays, such as Tet, which is the Vietnamese New Year celebration.

For first time meetings, it's best to meet at your potential partner's office. This avoids the possibility of a last-minute cancellation because of any travel difficulties on behalf of your business partner.

When giving or receiving business cards, do so with both hands. Time should be taken read the name on the card – hastily stuffing a business card or barely giving it a glance is deemed offensive. When possible, seek to create a business card that has both English and Vietnamese translations.

If offered tea at the reception, accept it, as this is a sign of hospitality. In the North, hot tea is typically served, while in the South, meetings take place with iced tea or soft drinks.

It's best to have an agenda before the meeting so the business partners can acquaint themselves with what will be discussed. It is also helpful to have all documents translated in Vietnamese.

Silence is common in meetings and means that your partners are thinking about your interests. Interrupting this time of reflection can be considered rude. Further, silence may be used when someone disagrees, and so not cause a loss of face for attendees.

Seniority and hierarchy are important in Vietnam. For example, showing the eldest person respect by giving them your business card first is appropriate.

Saying "yes" may merely indicate understanding, rather than actual agreement. It is best to follow up and confirm with your business partner to understand if you have agreed on a deal.

It is typically the guest's responsibility to signal the end of the meeting.

The first few meetings will involve getting to know each other, as compared to the West, where first meetings tend to remain on a business level. Social connections are important, and Vietnamese may make most of their business decisions based on how they see you as a person outside of the business.

Many Vietnamese will ask questions that may seem personal to a foreigner. Discussing one's family and personal life is normal and is seen as a sign of friendliness and interest.

It's common to give gifts at the end of a business meeting. These can be small and does not need to be expensive. A possible item could be a pen or stationary with a company logo or an item typical from your country of origin.

Business attire

Business attire will depend on the location of the meeting. For example, Hanoi is known for its white-collar environment, while Ho Chi Minh City is more business casual.

Typically, business partners should dress modestly, avoiding bright colors. Suits are appropriate for men, while skirts and blouses are fine for women.

The Vietnamese working week is typically from Monday to Friday with office hours from 8:00 a.m. to 5:00 p.m.

The concept of 'face'

As with many other Asian countries, the concept of face is extremely important in Vietnam. While in the West being frank and direct is considered a good trait, direct disagreement or raising of questions in public can be seen as causing a person to "lose face" in Vietnam. Face is a concept that can be roughly described as reflecting a person's reputation, dignity, and prestige.

Foreigners should be aware of unintentionally causing a loss of face due to their words or actions. The important takeaway is to treat your business partners with respect. If you have suggestions or challenges, its best to bring them up carefully in private.

Eating and drinking

If invited as a guest in a Vietnamese home, bring fruit, sweets, flowers, or incense. Avoid giving handkerchiefs, anything black, yellow flowers, or chrysanthemums. The best dishes will likely be offered to you; be sure to taste and share these dishes.

Wait for the host to give the signal to start the meal before sampling any of the food. It is considered good manners to finish all the food in your plate.

At a restaurant, wait to be seated. In most cases, the oldest in the group will be seated first. Use both hands to pass items and never pass anything over someone's head. When motioning for a person to come over, do not use your finger, and use your hand to beckon instead.

If paying, tipping of five to 10 percent is appreciated, though not customary.

Safety

Vietnam is a relatively safe country to travel. However, business travelers need to be aware of petty and opportunistic theft, particularly in major cities, such as Hanoi and Ho Chi Minh City.

Valuables should be stored in hotel safes, while mobile phones and wallets should be kept out of sight to minimize the risk of pickpocketing, particularly in tourist areas. While the police are not always helpful, they will generally treat foreigners with respect.

Taxi scams are common, including the use of faulty meters, or taking a longer route to a destination. Business travelers should book transport through their hotel or use registered taxis such as Mai Linh (green) or Vinasun (white with green and red stripes). These taxi companies also have card machines for direct payment.

Vietnam in a Snapshot

Capital
Hanoi

Large economic centers
Ho Chi Minh City, Da Nang, Nha Trang, Hai Phong

Provinces
63

Area
330,972 km^2

Population
95 million

Currency
Vietnamese dong (VND)

GDP (2019)
7%

Major sectors contributing to GDP
Services, manufacturing and construction, agriculture, forestry and fishery

Major FDI sources (2019)
South Korea, Japan, Singapore, Taiwan and Hong Kong

Official Language
Vietnamese

Business hours
8:00 to 17:00

Average annual income
US$2,587

Major export partners
US, EU, China, ASEAN, Japan, South Korea

Legal and political structure

Vietnam is a socialist country operating under the single-party leadership of the Communist Party. A nationwide congress ('National Congress') of the Communist Party of Vietnam is held every five years, with the most recent being in early 2016. This gathering is held to determine the country's orientation and strategies and adopt its key policies on policies for socio-economic development. The National Congress elects the Central Committee, which in turn elects the Politburo.

Executive power is concentrated in the government. The government is charged with the general management of the economy and the state. The head of government is the Prime Minister.

The Head of State, also known as the President, represents Vietnam in internal and foreign affairs, and helps to appoint prime ministers and other officials with the help of the National Assembly.

Below the Central government are People's Councils and People's Committees. People's Councils are directly elected by the people and People's Committees are elected by People's Councils. There are three levels of People's Committees and People's Councils: provincial, district and commune (or ward).

The National Assembly is the highest representative and legislative body and determines domestic and foreign policies, socio-economic tasks, national defense, and security issues. Its members are elected by popular vote to serve five-year terms. While the Constitution in general establishes the rights of the people under the leadership of the Communist Party, the power of the people is exercised through the National Assembly at a central level and through People's Councils at a local level.

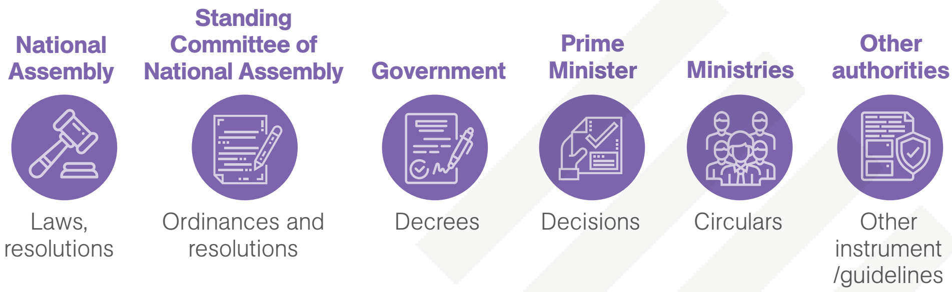
The Vietnamese judiciary is independent of the executive. The legal system consists of the Constitution, codes, laws, ordinances, decrees, decisions, circulars, directives and official letters. Although all have the force of law, only laws passed by the National Assembly are referred to as such. The Constitution is the Supreme Law of the country.

The court and prosecution system in Vietnam have a structure similar to the administrative system. At a central level, the Supreme People's Court is the highest judicial body in Vietnam. At a local level, courts exist at provincial and district levels. Legal decisions are made by the People's Courts, the People's Inspectorate, Military Tribunals, and Special Tribunals.

The court system is based on the two-tier system, which ensures that the rulings of one court can be appealed to a higher authority. Such higher authority may either uphold or reverse the ruling from the lower court. Most cases begin at the district or provincial court level with the possibility of appeal to the high courts. If a case has been heard initially at a district court, it may in special cases even be brought for a third hearing before the Supreme Court.

All Courts, barring the District People's Courts, are divided into five divisions: criminal, civil, administrative, economic, and labor. Under the Civil Procedure Code, all disputes, whether civil, commercial or labor, are subject to the same set of procedural rules. A dispute may, depending on the type and the value of the dispute, either be heard at the district court or the provincial court at first instance. The recognition of foreign judgments and foreign arbitral awards fall under the jurisdiction of the provincial court.

The current legal system is similar to civil law jurisdictions in that its sources of law comprise only written legislation commonly referred to as legal instruments. These are laws and regulations enacted by state bodies, which are binding on citizens and enforceable by the state. Court judgments are not officially considered a source of law as judges do not have the power to interpret the law and court judgments are not binding in subsequent cases.



The legal system is organized in a hierarchy in which higher-ranking legal instruments set out general rules and lower-ranking legal instruments provide the details. The Constitution stands at the top of this legal hierarchy and forms the foundation of the entire legal system. Under the Constitution are laws, ordinances, decrees, decisions, circulars and other subordinate legal documents dealing with different aspects of social life.

One of the government's priorities is to enhance the legal system, which will result in a more business friendly regulatory environment. In 2020, the government is expected to implement several laws including ones to make it easier to do business.

4

How to Set Up in Vietnam?

- Set up procedures
- Intellectual property
- Vietnam’s free trade agreements

Due to the country's complex legal processes, when establishing a company in Vietnam, we recommend that professional assistance be sought in order to guide companies through the setup process and to help them understand the roles and responsibilities of key positions. This will help ensure that your company is set up for success.

Here, we discuss:

- Set-up procedures;
- Key positions in foreign-invested entities; and
- Intellectual property

Set up procedures

Phase 1 – Corporate structure

Investors have a number of options for entry into the Vietnamese market. In this chapter we will outline the most common forms of corporate structure options for foreign investors.

Representative office

A Representative Office (RO) offers a low-cost entry for companies seeking to gain a better understanding of the Vietnamese market. As such, this option is among the most common for first-time entrants to the Vietnamese market and often precedes a larger presence within the country. Currently, ROs are permitted to engage in the following activities:

- Conducting market research;
- Acting as a liaison office for its parent company; and
- Promoting the activities of its head office through meetings, and other activities, that leads to business at later stages.

Vietnam's Ministry of Planning and Investment (MPI) does not currently specify required capital for ROs. While the MPI does not impose specified capital requirements, companies will be required to show that their capital contributions are sufficient to fund the activities of their operations. As a result, potential investors should prepare to commit a minimum of US$10,000 to fund their operations. ROs can be set up in between six to eight weeks.

Branch office

A Branch Office (BO) can conduct business activities in Vietnam with the parent company's business scope. To set up a BO, a parent company must have conducted business in its home country for at least five years. BOs are limited to certain types of service businesses, such as finance and banking. BOs can hire staff directly, make it easier to do contracts between parent company and Vietnamese companies, and serve in similar ways to a liaison office. BOs are permitted to engage in the following activities:

- Rent offices;
- Lease or purchase the equipment and facilities required for operations;
- Recruit local and foreign employees;
- Remit profits abroad;
- Purchase and sell goods and commercial activities per licensing; and
- Set up accounting, marketing, and HR departments to represent the parent company.

The BO will need to obtain an establishment license and have a seal with the name of the parent company. The BO will also need to appoint a branch manager who is a Vietnam resident.

Foreign companies may appoint a manager from their countries of origin; however, this employee must get a Vietnam work permit to be hired as a BO manager.

The Department of Industry and Trade approves the registration of the BO after the company submits all the documents with the process taking 20 working days.

100 percent foreign owned enterprise

A 100 percent Foreign Owned Enterprises (FOE) in Vietnam can operate under the following structure:

- Joint stock companies; and
- Limited Liability companies.

Limited liability Companies (LLC) are the most common form of investment for foreign investors due to their reduced liability and capital requirements.

LLCs can be broken down into single member LLCs, where there will only be one owner, and multiple member LLCs, where there will be more than one stakeholder. These owners can be private individuals or companies, depending on the requirements of a given investor.

The setup time for a 100 percent FOE ranges between two to four months on average.

Joint venture

A joint venture (JV) entails the partnership of companies or individuals for a specific business purpose. JVs are not a unique corporate structuring option; partners usually establish an LLC for standard JVs and a Joint Stock Company (JSC) if there is a desire to list on Vietnam's stock exchanges.

For investors purchasing stakes in state owned enterprises equitized on Vietnam's exchanges, the JSC structure is required. When entering the Vietnamese market, foreign investors can choose to enter into joint ventures as a majority (ownership more than 50 percent) or minority (ownership less than 50 percent) stakeholder.

The capital requirements for JVs are the same as for 100 percent FOEs.

Unconditional sectors are not subject to specified capital requirements. However, Vietnam's MPI does apply industry specific capital requirements in many cases.

The percentage of ownership, and thus the amount of capital contributed, is the more important metric to use when evaluating the capital requirements for JVs in Vietnam. At present, statutory guidelines impose a foreign contribution floor of 30 percent for JVs, as well as a ceiling in specific conditional sectors. The government also mandates minimum contributions for domestic investors on an industry specific basis. Set ups for JV take about two to four months.

Public private partnership

A Public Private Partnership (PPPs) entails a partnership between a foreign or domestic enterprise and the government for the completion of key infrastructure projects. Vietnamese authorities are aggressively pursuing PPPs for a variety of infrastructure projects as a means of filling gaps left by a reduced role of state-owned enterprise, rising population, and increasing urbanization.

The five types of PPPs are Build-Transfer-Operate (BTO), Build Transfer (BT), Build- Operate-Transfer (BOT), Build-Own-Operate (BOO) and Build, Transfer and Lease (BTL).

FIE Structure Type	Common Purpose	Pros	Cons
Representative Office	• Non-separate legal entity • Market research • Liaison with overseas parent company	• Easy registration procedure	• Cannot conduct profit making activities • Parent company bears liability
Branch Office	• Non-separate legal entity • Commercial activity within parent company's scope	• Can remit profits abroad	• Limited to certain industry sectors • Parent company bears liability
Limited Liability Company	• Separate legal entity	• Liability limited to capital contribution • No restriction on the scope of business	• Cannot issue shares • Maximum of 50 shareholders
Joint-Stock Company	• Separate legal entity	• Liability limited to capital contribution • No restriction on the scope of business • Can issue shares and go public	• Three of more shareholders requires • Supervisory board required for most joint stock companies
Joint Venture	• Partnership of companies or individuals for specific business purpose	• Unconditional sectors not subject to specific capital requirements	• Minimum contribution guidelines for domestic investors for industry specific cases • Two to four months to set up
Public Private Partnership	• Entails partnership between foreign or domestic enterprise and government for infrastructure projects	• Government aggressively pursuing PPPs to develop infrastructure	• Several PPP models • Investors unsure of returns

Phase 2 – Four step set up guide

While Vietnam is a highly attractive investment destination for foreign investors, it still has a complex legal process for establishing a company.

In this section, we discuss the different set up procedures for companies that want to begin operations in the country. We also recommend professional assistance to guide companies through the myriad of laws and procedures in the country.

Step 1 – Pre-investment approval

For some types of investment, companies need to seek the approval of Vietnamese authorities prior to starting establishment procedures. As a result, it is important to understand if an investment will require approval, and if so, preparing requisite documentation and working against the application processing times.

Step 2 – Investment registration certificate application

The first step in the Vietnamese corporate establishment process is an application for an Investment Registration Certificate (IRC). This is required of all 100 percent foreign owned investment projects and establishes the right of the foreign enterprise to invest within Vietnam.

To apply an investor must:

- Application for implementation of investment project (this should include details of the project in Vietnam);
- Proposal of investment project (should include the details of the investment project, including lease agreements or land use needs); and
- Financial statements (to be provided for the last two years of a company's operation; additional information may be required to prove financial capacity).

Timeframe: 15 days from the date when documents are submitted.

Step 3 – Enterprise registration certificate application

The Enterprise Registration Certificate (ERC) is required for all projects that seek to set up new entities within Vietnam. When obtained, the ERC will be accompanied by a number that will double as the tax registration number of the entity.

As part of the application process, the following information should be prepared:

- Application for enterprise registration;
- Company charter;

- List of all board members;
- List of legal representatives; and
- Letters of appointment and authorization.

Any foreign documents or supporting information provided will need to be notarized, legalized by consular officials, and translated into Vietnamese by competent authorities.

Timeframe: Three days from the date when documents are submitted. It should be noted that applications for the ERC and IRC can be processed concurrently; both can be obtained within 15 days when applied concurrently.

Step 4 – Post licensing procedures

Once the IRC and ERC have been issued, additional steps have to be taken to complete the procedure and start business operations. This includes:

- Seal carving;
- Bank account opening;
- Labor registration;
- Business license tax payment;
- Charter capital contribution; and
- Public announcement of company establishment.

Charter capital

Charter capital can be used as working capital to operate the company. It can be combined with loan capital or constitute 100 percent of the total investment capital of the company. Both charter capital and the total investment capital (which also includes shareholders' loans or third-party finance), along with the company charter, must be registered with the license issuing authority of Vietnam.

Investors cannot increase or decrease the charter capital amount without prior approval from the local licensing authority.

Capital contribution schedules are set out in foreign-invested enterprise (FIE) charters (articles of association), joint venture contracts and/or business cooperation contracts, in addition to the FIE's investment certificate.

Members and owners of a limited liability company (LLC) must contribute charter capital within the capital contribution schedules set out in these documents and within the contribution timeframes established by the Law on Enterprises, 2014.

To transfer capital into Vietnam, after setting up the FIE, foreign investors must open a capital bank account in a legally licensed bank. A capital bank account is a special purpose foreign currency account designed to enable tracking of the movement of capital flows in and out of the country.

The account also allows money to be transferred to current accounts in order to make in-country payments and other current transactions.

1	2	3	4
Pre-investment approval	Application for Investment Registration Certificate	Application for Enterprise Registration Certificate	Post licensing procedures

Investments and projects requiring approval	Agency	Requisite documentation	Time (days)
• Projects which currently make use of technology outlined in the Law on Technology Transfer • Projects where government land is obtained without the use of the tendering process	Provincial People's Committees	• Application • Financial statements • Detailed use of restricted technology • Proposed use of land	35
• Relocations of local populations (10,000–20,000 people) • Petroleum exploration • Seaports • Airports • Gambling • Development of Infrastructure in economic zones • Sea Transport • Telecommunications • Press and publications • Science or technological enterprises with 100% foreign owned capital	Various government agencies	All documents listed above in addition to: • Environmental impact assessment • Socioeconomic efficiency evaluation	60
• Projects involving nuclear power plants • Projects involving the mass relocation of local populations (20,000-50,000) • Projects involving protected environmental areas • Projects that repurpose land for rice cultivation	National Assembly	All documents listed above in addition to: • Relocation plan (if applicable)	Should be submitted 150 days before the start of national assembly sessions

Intellectual property

Domestic protection

Vietnam's National Assembly passed the Law on Intellectual Property Rights (IPRs) in 2005, which forms the basis for IP protection within the country. In September 2010 and October 2013, in an effort to strengthen the protection of IPRs after entering into a Bilateral Trade Agreement (BTA) with the US and participation in the World Trade Organization (WTO), the government issued stricter administrative sanctions for violations of industrial property rights, along with some important changes to IPR regulations in Vietnam.

The National Office of Intellectual Property of Vietnam (NOIP) is the agency, under the aegis of the Ministry of Science and Technology, which assumes the functions of exercising state management and providing services in the field of intellectual property. This includes administrating the registration of industrial designs, trademarks, brand names and other IPRs and conducting legal appraisals to settle intellectual property disputes.

Vietnamese Protection of Intellectual Property			
Industrial property	• Patents • Trademarks	• Law on Intellectual Property via the National Office of Intellectual Property (NOIP) • Vietnamese Criminal Code	• The Paris Convention • The Hague Agreement • The Madrid Agreement • WIPO • The Patent Cooperation Treaty
Copyright	• Copyrights • Related rights	• Law on Intellectual Property via the Copyright Office of Vietnam • Vietnamese Criminal Code	• The Geneva Universal Copyright Convention • The Berne Convention • WTO via TRI

International protection

Aside from local IPR legislation, Vietnam also participates in international IPR conventions such as the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the World Intellectual Property Organization (WIPO), the Patent Cooperation Treaty, and the Madrid Protocol.

In addition to the aforementioned treaties, Vietnam has recently signed on to several ambitious trade agreements including the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP) and the upcoming European Union Vietnam Free Trade Agreement (EVFTA).

In addition, Vietnam recently signed the Hague Agreement which allows the protection of design in multiple countries through a single filing. The agreement came into effect in January 2020. These agreements are projected to provide great assistance to Vietnam as it brings its national IP protection up to par with international best practices.

Vietnam's free trade agreements

Free trade agreements (FTAs) are when two or more countries agree on the terms of trade between them. They determine the value of tariffs and duties that countries impose on imports and exports. In 2007, with Vietnam's ascension into the World Trade Organization (WTO) – it took a significant step integrating with world trade and subsequently entering into several free trade agreements.

Over the past few years, Vietnam has been active in signing bilateral trade agreements with countries throughout the world. Additionally, due to its membership in the Association of Southeast Asian Nations (ASEAN), Vietnam has become a party to several FTAs that the regional trade bloc has signed.

FTAs – The benefits

The benefits of the free trade agreements will enable Vietnam's economic development to continue to shift away from exporting low-tech manufacturing products and primary goods to more complex high-tech goods like electronics, machinery, vehicles and medical devices.

This can be done in two ways – first, through more diversified sourcing partners through larger trade networks and cheaper imports of intermediate goods from partner countries, which should boost the competitiveness of Vietnam's exports.

Second – through partnership with foreign firms that can transfer the knowledge and technology needed to make the jump into higher value-added production. An example of this is the recently launched VSmart phone manufactured by Vietnamese conglomerate Vingroup.

Vietnam is touted as a low-cost manufacturer with several companies such as Samsung and Nokia setting up shop to manufacture and then export electronics, but the latest example shows how Vietnam can develop its own products from the transfer of know-how technology.

Such sophisticated business practices and technology will help boost Vietnamese labor productivity and expand the country's export capacity.

With recent trade agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the upcoming Vietnam – EU (EVFTA) – Vietnam seems to prioritize international trade integration trade partners outside ASEAN.

Once in effect, such trade agreements will allow Vietnam to take advantage of the reduced tariffs, both within the ASEAN Economic Community (AEC) and with the EU and US to attract exporting companies to produce in Vietnam and export to partners outside ASEAN.

The EVFTA Report 2018 by the European Chamber of Commerce (EuroCham) in Vietnam revealed that 72 percent of EuroCham members believed that the EVFTA will make Vietnam more competitive and turn it into a hub for European businesses.

Vietnam's entry into these trade deals will also ensure alignment with national standards ranging from employee rights to environmental protection. Both the CPTPP and EVFTA require Vietnam to conform to the International Labor Organization's (ILO) standards. The ILO has noted that this is an opportunity for Vietnam to modernize its labor laws and industrial relations systems.

Challenges posed by FTAs

The FTAs may also come with some added downsides. Such agreements are likely to trigger aggressive competition from foreign rivals on local businesses – particularly in the agriculture sector including meat and dairy products from the EU, Australia and Canada.

If local firms do not adapt, make use of new market opportunities and potential partnerships with foreign firms – they could find competing in the market challenging.

The Vietnamese government would also need to continue on its path of reforms – strengthening the banking sector, removing corruption, refining legal and tax structures, and improving trade facilitation.

Vietnam's Ministry of Planning and Investment forecast that the CPTPP could increase Vietnam's GDP by 1.3 percentage points by 2035, while the EVFTA could boost GDP by 15 percent. These trade deals along with already signed and upcoming FTAs are likely to ensure that Vietnam remains competitive in the short-to-medium term.

5

Tax and Accounting

- Vietnam's major taxes
- Accounting and Bookkeeping
- Introduction to Transfer Pricing

Vietnam's major taxes

Many small and medium sized businesses are prioritizing investments in Vietnam and are acting on the business potential it holds. In this chapter, we examine the tax landscape so that new investors can better understand their in-country tax exposure before setting-up.

All taxes in Vietnam are imposed at the national level; there are no local, city, or provincial taxes. Enterprises should pay tax in localities where they are headquartered or have duly registered branches.

Most companies and foreign investors in Vietnam are subject to the following six major taxes:

- Business license tax;
- Corporate income tax;
- Value-added tax;
- Special consumption tax;
- Foreign contractor tax; and
- Customs duties.

Business license Tax (BLT)

BLT is an indirect tax imposed on entities conducting business activities in Vietnam, paid by enterprises annually for each calendar year that they do business in the country. All companies, organizations or individuals (including branches, shops, and factories) and foreign investors operating businesses in Vietnam are subject to BLT.

Corporate Income Tax (CIT)

All income arising inside Vietnam is subject to CIT, no matter whether a foreign enterprise has a Vietnam-based subsidiary, or whether that subsidiary is considered a Permanent Establishment (PE). CIT is a direct tax levied on the profits (gross revenue minus expenses) earned by companies or organizations.

Value-added Tax (VAT)

VAT is imposed on the supply of goods and services at three different rates: 0, 5 and 10 percent, with the latter being the standard rate. All organizations and individuals producing and trading goods and services in Vietnam are liable to pay VAT, regardless of whether the organization has a Vietnam-based establishment.

Special Consumption Tax (SCT)

SCT is a form of excise tax that applies to the production or importation of 11 categories of products and six types of services which are considered to be luxurious or non-essential such as alcohol and tobacco products. Companies are liable for SCT both at the time of import and sale. However, to prevent an excessive tax burden, import SCT will be creditable against SCT incurred at the point of sale.

Customs duties

Most goods exported across the borders of Vietnam, or which pass between the domestic market and a non-tariff zone are subject to export or import duties. Exceptions to this include goods in transit, goods exported abroad from a non-tariff zone, goods which are imported from abroad into a non-tariff zone and only used within that non- tariff zone and goods passing from one non-tariff zone to another. Most goods and services being exported are exempt from tax.

Foreign Contractor Tax (FCT)

Foreign businesses and individuals without legal entity status are considered foreign contractors if they conduct business or earn income in the country under contract with local organizations including foreign owned companies. FCT, normally referred to as “withholding tax”, is not a separate tax type. It comprises of VAT and income tax (either CIT or PIT) imposed on payments of local organizations to foreign contractors. Such payments are considered income earned in Vietnam in which the Vietnamese parties are liable to declare and make payments on behalf of foreign contractors.

Payments subject to FCT include interest, royalties, service fees, goods supplied within Vietnam’s territories or associated with services rendered in Vietnam. The applicable tax rates vary depending on the payment method and the nature of the transactions. Certain distribution arrangements where foreign entities are directly or indirectly involved in the distribution of goods or provision of services in Vietnam are also subject to FCT.

FCT exemption is applicable in certain circumstances such as pure supply of goods, services performed and consumed outside Vietnam and various other services performed wholly outside Vietnam.

Accounting and Bookkeeping

Local and foreign-invested companies doing business in the country are required to comply with Vietnam Accounting Standards (VAS) when recording their financial transactions.

Foreign companies may choose to manage two accounting records: one based on the VAS and another compiled specifically for the overseas head office. In practice, many foreign companies maintain an accounting system according to VAS and only convert financial statements into the International Financial Reporting Standards (IFRS) on a quarterly basis for the foreign parent company's reference.

In brief, the VAS requires that accounting records:

- Are in the Vietnamese language, or can be combined with a commonly used foreign language;
- Use VND as the accounting currency (however, FIEs are allowed to select a foreign currency as their accounting currency);
- Comply with the Vietnam chart of accounts; and
- Include reports specified by VAS regulations, printed on a monthly basis, signed by the General Director, and affixed with the company seal.

An accounting period in Vietnam is generally determined according to the calendar year, or January 1 to December 31. However, after registering with the Tax Department, this can be adopted to 12-month periods beginning the first day of each quarter.

Tax authorities can penalize companies for VAS non-compliance through the disallowance of input VAT credits and withdrawal of CIT incentives.

Annual finalization

Based on the accounting periods specified above, investors and other enterprises operating in Vietnam will be required to prepare audit and file annual financial statements 90 days following the close of the annual accounting period.

As per current regulation, annual finalization must be filed with the following offices:

- The General Statistics Office;
- The Ministry of Planning and Investment;
- Tax office at the provincial or city level.

For those companies operating in export processing zones (EPZs or industrial zones (IZs)), financial statements may be required to be filed with the management board of the respective EPZ or IZ. Most economic zones will qualify an investor for tax holiday incentives. Foreign investors should check with each zone to clarify its incentives, which government officials grant on a case-by-case basis.

Retention of documentation

Following annual finalization, companies will be required to retain a variety of documents that may arise as a result of the bookkeeping and accounting process. The period of retention is tied to the nature of the documentation generated and is broadly split into five-year, 10-year, and indefinite periods of retention.

- The five-year retention period applies to all documentation that is used in the management and operation of the enterprise;
- The 10-year retention period applies to all accounting data, accounting books, financial statements, and reports of independent audit firms that have been prepared on behalf of the company in question; and
- The indefinite retention period is limited to documents that are deemed to be of significance to the economics, national defense, or security of the Vietnamese state.

Whether it be convergence with IFRS, the growth of e-filing, or simple efforts to improve business competitiveness, Vietnam has a continually changing set of audit procedures that must be followed closely in order to ensure compliance.

Below we provide a step-by-step guide on this process for one of the most common investment vehicles of foreign enterprises in Vietnam: Foreign Owned Enterprises (FOEs).

Audit procedures for FOEs

The FOE compliance process, which is also applicable to JVs, can be complex and time consuming. The successful completion requires the compilation of a statutory annual audit report, and the finalization of corporate and personal income taxation. Following successful submission of this information to various government bodies, it becomes possible for firms to repatriate profits from their operations.

With rules constantly changing, prospective and established investors alike should contact a service provider or relevant government officials to ensure that reports are prepared in accordance with the most up-to-date regulations.

Step 1 – Prepare statutory annual audit report

All FOEs are required to produce audited financial statements on an annual basis. These statements must be prepared in accordance with Vietnamese Accounting Standards (VAS) and follow the most up to date guidance available.

As per Vietnamese law, a compilation of all reporting must be conducted externally from invested enterprises by an independent auditor. The following audit procedures must be followed, and documentation prepared to ensure compliance:

Statutory Audit Requirements

- Statement of income;
- Statement of financial position;
- Statement of changes in equity (if any);
- Statement of cash flow;
- Balance sheet; and
- Notes.

Requisite Documentation

- From 04-CS/SXK: Report on Production and Business Activities, including:
  - » Actual Operating Business Lines;
  - » Labor Statistics (Number of Employees, turn over, etc.);
  - » Labor Income and employer payments of social insurance, health insurance, unemployment insurance, and trade union fees;
  - » Production and business activity results (revenue, profit, cost, etc.) and
  - » Taxes and other amounts payable to the state.

- From 04-CD/GVGL: Report on Charter Capital
  - » Contribution, including
  - » Initial registered charter capital;
  - » Current registered charter capital;
  - » Implemented charter capital in the reporting year;
  - » Charter capital accumulated by the end.

The Goods and Services Tax (GST) system requires taxpayers to self-assess their tax liability and pay their tax without any intervention by the tax authorities. The law provides for a robust audit mechanism to measure and ensure compliance by the taxable person.

Deadlines

Within 90 days after the end of the fiscal year, FOEs need to submit audited reports to the following three government departments:

- Provincial Department of Planning and Investment (DPI) (or the Provincial- Level Export Processing and Industrial Zone department in the case of FOEs based in IZs or EPZs);
- Provincial Level Tax Departments; and
- Provincial level Statistical offices.

Upon receipt of documentation, these offices place an incoming stamp directly on one copy of submitted reports for confirmation purposes.

Step 2 – CIT Finalization

In addition to the quarterly remittance of provisional CIT payments, FOEs in Vietnam must conduct CIT finalization at the end of every year. The standard tax year applied in Vietnam is the duration of one calendar year. If a different year is utilized, the enterprise must report this to the local tax agency as mentioned earlier.

When preparing finalization paperwork, enterprises should pay close attention to revenue streams to ensure all requisite income is included in finalization statements. Currently, revenue applicable for CIT includes any and all income arising from production, trading, and service, irrespective of whether it has been generated within Vietnam.

Following an assessment of revenue streams, outstanding obligations, and investment incentives, it is a possibility that taxes may be reduced substantially or avoided altogether. In the event that no tax liability has arisen, or taxation has been exempted under applicable tax incentives, enterprises must still complete tax filings with tax authorities by established deadlines.

It should be noted, however, that filing is not required for enterprises whose tax-generated activities are terminated or have ceased business operations and no tax liabilities have arisen. Those finalizing corporate income taxation should prepare CIT reports in accordance with the following requirements and deadline:

Requisite Documentation

- Form 03/TNDN CIT finalization statement;
- Annual Financial Statements and other related documents; and
- One or more annexes enclosed with the declaration (depending on the actual arising of the enterprise).

Deadlines

Submission of finalization paperwork must be submitted to the head of relevant tax agencies 90 days prior to the end of the fiscal year. For cases of operation termination, contract termination, or corporate ownership transformation tax offices must be made aware within 45 days following the date at which changes were made.

Step 3 – PIT Finalization

FOEs, as employers, are responsible for the finalization of all personal income taxation (PIT) of their employees covering deductions from salaries throughout the year.

Enterprises finalizing PIT for their employees should make sure that the following forms are successfully completed by the deadlines outlined below:

Requisite Documentation

- Form No. 05/QTT – PIT finalization statement;
- Form No. 05-1/BK-QTT-TNCN – Detailed list of taxable income and tax deductions from salaries and wages of individuals who are subject to progressive tax rates; and
- Form No. 05-2/BK-QTT-TNCN – Detailed list of taxable income of individuals who are subject to direct tax rates; and
- Form No. 05-3/BK-QTT-TNCN - Detailed list of employees' registered dependents.

In the event that enterprises are consolidated or merged, they must complete PIT finalization for deducted tax in advance of these changes and provide a voucher to employees for their PIT finalization at the end of the year.

Deadlines

The submission of finalization paperwork must be completed no later than 90 days from the end of the calendar year and sent to the tax office that directly manages the enterprise. In most circumstances, this is the department of taxation in the province or city that the enterprise conducts its operation; however, there may be instances where local tax offices authorize alterative state bodies to collect taxes.

Step 4 – Social Insurance Finalization

In addition to their Vietnamese counterparts, all foreign employees working in Vietnam under labor contract with indefinite terms, or definite terms of over three months, need to be included in the mandatory social insurance scheme.

Step 5 – Profit Remittance

Following tax finalization, or the termination of investment projects in Vietnam, profits may be remitted to offshore accounts. For enterprises whose investments are still in operation within Vietnam, profits may only be remitted in the event that the FOE in question has not accumulated losses.

Deadlines

In the event that a FOE has completed tax finalization, the relevant tax office must be notified of any plan to remit profits at least seven working days before the scheduled transfer.

Tax Declaration and Finalization Timeline for a Fiscal Year (F/Y)*

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar

Monthly declaration (20th day after month end)

Quarterly declaration (30th day after quarter end)

Annual declaration (30th day after F/Y end)

Annual finalization (90th day after F/Y end)

FOE Compliance Procedures

1. Audit
2. CIT Finalization
3. PIT Finalization
4. Social Insurance Finalization
5. Profit Remittance

Document Checklist		
FOEs		
1	From No. 04-CS/SXK	Report on Production and Business Activities
2	From No. 04-CD/GVGL	Report on Charter Capital Contribution
3	Form No. 03/TNDN	CIT Finalization Statement
4	Form No. 05/QTT-TNCN	PIT Finalization Statement
5	Form No. 05-1/BKQTT-TNCN	Detailed list of taxable income and deductions from salary of individuals subject to progressive tax rates
6	Form No. 05-2/BK-QTT-TNCN	Detailed list of taxable income of individuals who are subject to direct tax rates
7	Form No. 05/3/BK-QTT/TNCN	Detailed list of employees' registered dependents

Introduction to Transfer Pricing

Many foreign businesses delocalize their production facilities in Vietnam and charge their foreign outposts for administrative, technical, financial, and commercial services. However, financial administration teams need to be aware that their transactions must comply with the arm's length and substance-over-form principles.

Before the government released "Providing tax administration applicable to enterprises having controlled transactions" ('Decree 20') in April 2017, transfer pricing rules in Vietnam were lax. Investors could enter the market without worrying too much about their transfer pricing policies.

Now, companies that are considering an investment into Vietnam, as well as those companies that are already operating in the country, need to comply with the stricter regulatory requirements in Decree 20, which are based on Organization for Economic Cooperation and Development (OECD) and Base Erosion and Profit Shifting (BEPS) guidelines and actions.

Key Compliance in Vietnam

Transfer pricing rules are almost the same everywhere as they are generally based on the same principles and share common approaches. Of course, there are small differences between Vietnam's rules and other countries, but the core is the same.

Before Decree 20 was issued, transfer pricing rules in Vietnam incorporated the arm's length principle as their foundation. Accordingly, Decree 20's biggest impact is the introduction of the substance-over-form principle: foreign investors should review this when structuring supply chains.

Substance-over-form is a principle by which tax authorities look past the legal forms of transactions and operating structures, and instead consider and analyze their economic substance.

What does it means in practice?

Foreign parent companies that delocalize their production facilities in Vietnam may seek to act solely as a subcontractor, operating through their Vietnamese subsidiary alone. The foreign parent company then seeks to charge its subsidiary on a monthly basis for commercial services performed in regard to developing sales in Vietnam.

According to the substance-over-form principle, those commercial services should contribute to the creation of operating sales revenue or income for the Vietnamese subsidiary. As a consequence, expenses related to commercial services are not deductible from the subsidiary's taxable income.

Alternatively, if the same Vietnamese subsidiary were engaged in sales activities, then those same commercial service expenses would comply with the substance-over-form principle.

Accordingly, the expenses could then be deducted if the prices charged were at arm's length (or market rate).

Some companies, however, may seek to engage in more complicated relationships. A multinational enterprise may like to interpose a Vietnamese entity in transactions between two member companies that are residents of countries, which have not signed a double taxation agreement.

According to the substance-over-form principle, associated transactions should have a significant purpose (aside from reduction of tax liability) and an economic effect (aside from any tax effect) in order to be accepted by authorities. In this case, no related expenses would be deductible from the Vietnamese entity's taxable income.

Finally, from a tax planning perspective, it is worth noting that Decree 20 introduced limitations on the deductibility of loan interest costs, which now should not exceed 20 percent of earnings before interest, taxes, depreciation, and amortization (EBITDA).

This measure is aimed at addressing thin capitalization, as Vietnam lacks specific thin capitalization rules. However, the Ministry of Finance reportedly plans to introduce thin capitalization rules in the near term to limit the deductibility of interest costs if specific debts to equity ratios are breached.

How to comply with transfer pricing regulations

Taxpayers in Vietnam that have entered into related-party transactions have a number of obligations under Decree 20. These have been summarized and set out below:

Forms

Companies in Vietnam that engage in related party transactions need to disclose their relationships and transactions in their annual tax returns.

Taxpayers subject to transfer pricing regulations need to file Form 01 – which is attached to Decree 20 – to disclose what transfer pricing transactions they have entered into, and the value of these contracts. Furthermore, taxpayers need to provide what the arm's-length prices of the related-party transactions would be to enable a comparison.

The timeframe to do this is 90 days after the end of the financial year. This may prove very challenging given the short amount of time to collect and collate all necessary information and data – careful planning and observance are therefore prudent.

Contemporaneous documentation

Transfer pricing contemporaneous documentation is designed to document taxpayers' relationships and transactions with related parties, as well as their global transfer pricing policies and the allocation of profits among all members/entities within a corporate group.

Taxpayers meeting specific thresholds must, in accordance with Decree 20, prepare, and then maintain transfer pricing contemporaneous documentation, which encompasses a Local File, and one or more of the Master File and Country-by-Country Report (CbCR).

It is likely that the Master File and CbCR will be prepared by headquarters, as they are likely to have direct access to all necessary information. All those documents must be declared by filing Form 02, 03, and 04, which are all attached to Decree 20.

Safe harbors from contemporaneous documentation

According to Decree 20, enterprises are exempted from preparing the transfer pricing documentation if any of the following conditions are satisfied:

- Total revenue < VND 50 billion (USD 2.5 million) and total revenue of related-party transactions < VND 30 billion (USD 1.5 million);
- Entered into an Advanced Pricing Agreement (APA) and submitted annual APA report(s);
- Exercise only simple functions, sales < VND 200 billion (USD 10 million) and EBIT, depending on business, of at least 5% (distribution), 10% (manufacturing) or 15% (toll manufacturing).

Audits

In case of transfer pricing audits, taxpayers will have 15 working days to provide the transfer pricing documentation, while they will have 30 working days to provide it during the consultation procedures prior to the audit.

Risk/Penalties

If the tax authorities believe the transaction was not priced according to the arms' length principle, they will adjust the value of the transaction and impose tax accordingly. Furthermore, according to the substance-over-form principle, costs arising from services rendered for the sole purpose of providing other affiliates with benefits or values will not qualify for a deduction from taxable income.

Companies can also be held criminally liable if found to be evading tax. The tax authorities also publish the details of companies that are non-compliant, or report irregularities, on their national and provincial websites – a critical reputational risk.

Managing risk

In light of the recent developments in local transfer pricing rules and the increasing interest on transfer pricing worldwide, it is important that companies take the necessary steps to ensure that they are compliant and effectively managing their risk. There are a variety of measures that companies can take. These include:

- Providing disclosures: All companies should disclose information about their related-party relationships and transactions in the prescribed forms and in accordance with the requisite timeframes.
- Risk assessments: Conducting risk assessments to monitor and revise intercompany transactions and planning ahead to create a robust transfer pricing strategy is also an important risk mitigation tool.
- Contemporaneous documentation preparation: Taxpayers meeting the abovementioned thresholds are required to prepare contemporaneous documentation. Companies not meeting the thresholds should however still accurately document their associated party transactions and be able to substantiate the rationale adopted in case they receive any queries or audit notices from the tax bureau.
- Advanced Pricing Arrangements: Taxpayers have the option to proactively manage their transfer pricing risk profiles by entering into an Advanced Pricing Agreement (APA) with the local tax authority. An APA is a binding agreement as to how taxpayers' transfer pricing arrangement will be taxed.

Key takeaways

In light of the recent focus internationally on tax and transfer pricing through the Organization for Economic Cooperation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) program, as well specifically in Vietnam through the introduction of Decree 20, companies engaging in related/associated party transactions are under increased scrutiny. It is important that these companies seek the appropriate advice to ensure that they are compliant and that effective risk mitigation measures are put in place.

HR and Payroll

- How do I hire staff?
- Types of visas
- Employment contracts in Vietnam
- Tax obligations for company employees

After setting up your business in Vietnam, the next big hurdle is actually hiring the staff that you will need to help grow your business. Hiring, and the associated legal obligations that go along with it, can be a confusing process. It is recommended that businesses take a careful look at all relevant regulations and engage with a professional services firm where appropriate to ensure proper compliance with all laws.

Vietnam is an attractive place for businesses of all types. The country has a growing consumer class and a young and dynamic workforce that is building its skills set. In fact, Vietnam's labor force is growing by more than one million people per year.

There are a number of important HR trends occurring in Vietnam. While labor costs are still low, wages are steadily increasing. Over the past five years, this increase in salaries has come without a corresponding increase in productivity. Compounding the costs of employing staff in Vietnam are the comparatively high social insurance contribution and income tax rates.

Due to the developing nature of the workforce in Vietnam, it is natural that there exists some difficulty in finding highly skilled employees. Skills and talent shortages are particularly acute in industries such as high tech and banking. However, many international companies, in partnership with the Vietnamese government, are sponsoring training programs to ensure that there are a growing number of highly skilled employees to choose from.

The country has a young and growing workforce with new demands and high expectations for their futures. As the workforce continues to grow there is a resulting rise in competition in the job market.

There tends to be a high turnover rate at companies as employees are often shopping their skills around to potential employers. Higher salaries elsewhere are certainly an attraction, but money may not be the only factor in what makes employees stay longer at a company – those that find ways to build employee loyalty will be particularly successful.

Companies may find it difficult to transfer employees to different cities or areas because of their strong local connections. This has the potential to put a drag on a company's expansion plans as it may struggle to relocate experienced employees. Thus, finding the right partner to aid in the recruitment process is crucial.

Many companies rely primarily on outsourced providers when it comes to HR, particularly for advice related to recruitment, training and payroll. In fact, many multinationals report that they would like to outsource more of their operational HR practices to a regional shared services function.

How do I hire staff?

Foreign companies wanting to do business in Vietnam must ensure they follow the provisions of the Labor Code, which contains the legal framework for the rights and obligations of employers and employees with respect to working hours, labor agreements, social insurance, overtime, strikes, and termination of employment contracts, to name a few.

Here we discuss:

- Foreign employees
- Contracts
- Compliance

Foreign employees

A Vietnamese entity is permitted to recruit foreign workers in order to work as managers, executive directors and experts where local hires are not yet able to meet production and business requirements. Unlike in certain other Asian countries, Vietnamese representative offices are also able to hire staff directly.

To demonstrate the necessity of a foreign employee, 30 days prior to recruiting the foreign employee, the entity must publicly announce recruitment for this position to Vietnamese job seekers in a Vietnamese newspaper or online portal.

Evidence of this announcement must be presented in the application for a work permit for a foreign employee. The other option is to recruit foreigners through a government-owned employment service center.

When hiring foreign staff in Vietnam, there are a number of procedures and legal frameworks that must be understood.

Types of visas

In order to enter Vietnam, a foreigner needs a visa issued by the Vietnamese Embassy or Consulate. A Vietnamese visa can be granted while in a third-party country or from within Vietnam. Citizens of ASEAN countries receive a free entry visa to Vietnam that lasts between 15 and 30 days, while Vietnam also has an e-visa policy for 80 nationalities lasting until 30 days. However, to work in Vietnam and remain for an extended period, foreigners need to apply for a longer-term three-month single or multiple entry visas.

Relevant visa types include:

Vietnam Visa Types		
Visa Type	Description	Validity
DL	Tourist visa	3 months
HN	Meetings/Conferences	3 months
LD	Foreign workers/Working visas	2 years
LV1-LV2	Working with Vietnamese authorities	12 months
DT	Investor Visas	5 years
DN	Working with Vietnam businesses	12 months
NN1-NN2	Chief Representative Office in Vietnam, Head of Project Office of foreign NGO	12 months
NN3	NGO Staff, Represenative Office	12 months
DH	Student/Internship	12 months
NG1-NG4	Diplomatic visas	12 months

Work permit procedures and requirements

A work permit is required when working in Vietnam for more than three months. This should ideally be applied 15 days by the employer with the provincial Ministry of Labor, Invalids and Social Affairs (MoLISA) before the foreign worker commences their employment. Work permit processing times take up to 10 business days.

Where a work permit is not compulsory, a notice must be submitted seven days in advance to the provincial MoLISA prior to working in Vietnam. Currently, work permits for foreigners are valid for a maximum of three years and are not renewable. A new application must be made if the company wishes to continue employing the foreign worker.

To be eligible for a work permit, the applicant must comply with the following conditions:

- At least 18 years of age;
- In good enough health to satisfy job requirements;
- A manager, executive director or expert with technical skills and knowledge necessary for the job; and

- Not currently subject to criminal prosecution or any criminal sentence in Vietnam or overseas or have a criminal record.

A work permit may be terminated in the following circumstances:

- Expiration of work permit;
- Termination of labor contract;
- The content of the labor contract is not consistent with the work permit granted;
- If the foreign employee is fired by the foreign employer;
- Withdrawal of work permit by authorized state agencies;
- Termination of operation of the company, organization, and partners in Vietnam; and
- The foreigner is sentenced to prison, dies or is proclaimed missing by court.

The following situations exempt the foreigner from needing a work permit:

- Working in Vietnam for less than three months;
- A member of a limited liability company with two or more members;
- The owner of a limited liability company with only one member;
- A member of the board of a joint stock company;
- Coming to Vietnam to market products and services;
- Coming to Vietnam for less than three months in order to resolve an emergency or technologically complex situation that could affect production, which Vietnamese experts or foreign experts currently in Vietnam are unable to resolve;
- Lawyers granted a professional permit in Vietnam;
- Heads of representative offices, chiefs of project offices or someone working for foreign non-government organization in Vietnam;
- Internally transferred within an enterprise, which has a commercial presence in the committed service list of Vietnam with the World Trade Organization, including: business service, information service, construction services, distribution service, education service, environment service, financial service, health service, tourism service, cultural and recreational services and transportation service; and
- Coming to Vietnam to supply consulting services on tasks serving to research, build, appraise, monitor and evaluate, manage and process programs and projects that use Official Development Assistance (ODA) in accordance with regulations or agreements in an international treaty on ODA signed between an authorized Vietnam agency and foreign agency.

Vietnamese authorities are becoming stricter regarding work permits. Those who violate the regulations by working in Vietnam without a work permit may be penalized or, if unable to meet work permit requirements, deported back to their home countries within 15 days. In addition, the employer's operations may be suspended for three months with a possible penalty of up to US$3,300.

Temporary residence cards

Foreigners who hold work permits valid for one year or more, as well as senior management, can be granted a Temporary Residence Card (TRC). A TRC is issued by the immigration agency under the Ministry of Public Security and is valid from one to five years depending on the visa type.

People granted a TRC can enter and exit Vietnam without a visa within the valid terms of their TRC. The processing time typically takes five working days while the fee varies between US$60 to US$100 depending on the duration of the card.

Holders of work visas are eligible for a TRCs, as well as members of management boards, members of councils and boards of directors, heads of company branches and Chief Representatives of representative offices of foreign enterprises in Vietnam.

Permanent residence cards

An expatriate who has a legal residence while earning a living in Vietnam may also apply for a Permanent Residence Card (PRC); however, they are subject to the following conditions:

- The expat works for the development of Vietnam and is awarded a medal or title by the government;
- The expat resides temporarily in Vietnam for three or more consecutive years and is sponsored by his parent, spouse or child who is a Vietnamese citizen and has a permanent residence in Vietnam; and
- Foreign scientists or experts recommended by the head of a ministerial or government agency.

The processing time typically takes five working days with a fee of US$100. A PRC holder can stay in Vietnam without a visa however, a PRC must be re-issued every 10 years.

Employment contracts in Vietnam

There are three types of labor contracts under Vietnamese law depending on the term:

- **Indefinite term** - A contract in which two parties do not determine the term and the time for its termination.
- **Definite term** - Two parties determine the term as a period of 12 months to 36 months and the time for its termination.
- **Specific/seasonal term** - A contract for a job position with a term of less than 12 months.

If an employee continues working after the expiration of his or her definite term or specific/seasonal labor contract, the contract must be renewed within 30 days after the expiry date or it will become an indefinite term labor contract.

Moreover, after two successive definite term contracts with an employee, an indefinite term labor contract must be signed.

A labor contract must contain provisions such as the scope of work, working hours, rest breaks, wages, job location, term of contract, occupational safety and hygiene conditions and social insurance.

Both employer and employee can unilaterally terminate a contract. A 45-day notice is required for indefinite term contracts, 30-day notice for definite term contracts and three-day notice for seasonal contracts. In some cases, the employer will be required to discuss the termination with the executive committee of the trade union.

Companies which employ ten or more people must have a copy of company rules or internal labor regulations registered with the provincial labor department. Company working rules include contents such as working and rest hours, rules and orders in the company, labor safety, hygiene in the workplace, protection of assets, business and technology confidentiality, and sanction methods to name a few.

Severance and payment in Vietnam

If a labor contract is terminated, employers may be liable for a severance payment to the employee in question. The nature of severance payment is dependent on the salary of a given employee, the amount of time that the employee in question has been working in their current position, and the amount of time the employee has been covered under social insurance.

Eligibility for severance payments is open to all employees who have been working for a company for 12 months or longer. Severance payments will be required in instances where an employer or employee can prove that one or more general termination triggers or unilateral termination provisions have occurred during employment.

Under the Vietnamese Labor Code, severance compensation shall amount to half a month's wages for every year that the employee has been working. For example, an employee that had been with a company for three years would be eligible for one and a half months' pay.

Grounds for the Unilateral Termination of Contracts in Vietnam	
Employee	**Employer**
1. Employee is not assigned to the job or workplace or is not given the working conditions as agreed in the labor contract*. **2.** Employee is not paid in full or on time as agreed in the labor contract. **3.** Employee is maltreated, sexually harassed, or is subject to forced labor. **4.** Employee is elected to perform a full-time duty in a people-elected office or is appointed to hold a position in the state apparatus. **5.** A female employee who is pregnant and must take leave as prescribed by a competent health establishment. **6.** If he/she is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days, in case he/she works under a definite-term labor contract, or for a quarter of the contract's term, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.	**1.** The employee often fails to perform his/her job stated in the labor contract. **2.** The employee is sick or has an accident and remains unable to work after having received treatment for 12 consecutive months, in case he/she works under an indefinite-term labor contract, or for 6 consecutive months, in case he/she works under a definite-term labor contract, or more than half the term of the labor contract, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months. **3.** If, as a result of natural disaster, fire or another force majeure event as prescribed by law, the employer, though having applied every remedial measure, has to scale down production and cut jobs. **4.** The employee is absent from the workplace after the time limit specified in Article 33* of this Code.

Source: Limitations as prescribed under Law No. 10/2012/QH13
**Article 33 allows for a 15 day grace period for all employees returning to work following a temporary suspension of their contracts.*

Compensation

In Vietnam, there are two kinds of minimum wages. The first type is the common minimum wage VND 1,490,000 (~US$64) which is used to calculate salaries for employees in state-owned organizations and enterprises, as well as to calculate the social contribution for all enterprises (i.e. the maximum social contribution is 20 times the common minimum wage). The second type of minimum wage is used for employees in all non-state enterprises based on zones as defined by the government.

Vietnam Minimum Wage 2020

Business enterprises' locations	2019 Minimum Monthy Wage (VND)	2019 Minimum Monthy Wage (VND)	Increase (%)
Region 1	4,180,000 (US$180)	4,420,000 (US$190)	5.74
Region 2	3,710,000 (US$159)	3,920,000 (US$169)	5.66
Region 3	3,250,000 (US$140)	3,430,000 (US$148)	5.54
Region 4	2,920,000 (US$125)	3,070,000 (US$132)	5.14

The above minimum wage rates only apply to Vietnamese employees doing the most basic work under normal working conditions. For those who have passed vocational training courses, including company training, wages are at least seven percent higher than minimum wage rates.

For Vietnamese employees that work in foreign companies in Vietnam, compensation is determined through negotiations between the two parties. However, the compensation should be no lower than the minimum monthly salary rates as stipulated by the government.

Employees who work extra hours are also paid for those extra hours based on their current hourly wages, as immediately below.

Vietnam Overtime Compensation	
Overtime Type	**Compensation Rate**
Weekday, day time	150%
Weekend, day time	200%
Public holiday, paid leave days	300%
Weekday, night time	30% extra, above aforementioned rates

In cases where an employee works extra hours at night, they are paid extra in accordance to the applicable regulations. Furthermore, employees who are given time off in compensation for working extra hours will need to be paid the difference between their wages during normal working hours and overtime work. Finally, employees who work night shifts should be paid at least 30 percent higher than normal.

Salaries paid to Vietnamese staff working for foreign companies must be denominated in Vietnamese Dong. Foreign employers may base salary rates in either Vietnamese Dong or US Dollars, but salaries that are based in US Dollars must be converted into Vietnamese Dong.

In general, an employee's typical monthly salary package includes their gross salary and mandatory insurance contributions. Personal income taxes (PIT) will be levied on the balance after mandatory insurance contributions have been deducted.

Types of bonuses

Bonuses are given to employees based on company earnings and performance and as a way of boosting company morale and productivity. There are various kinds of bonuses that a company may grant its employees throughout the year.

For example, a 13th month's salary is usually given as a kind of "annual bonus" by both local and foreign companies in Vietnam to employees that have worked with the company for at least one year. Employees that have worked at a company for less than one year are typically given a bonus that is prorated and based on their actual employment period.

In addition, there is also a special bonus called the "Lunar New Year" bonus (or "Tet Bonus") that is often paid to employees prior to their leaving for the Lunar New Year holiday.

The amount of any Tet Bonus will be dependent on both company and employee performance, but the bonus typically ranges from smaller amounts of money (up to an entire month's salary) to larger amounts of money (up to an entire year's salary) depending on the company progress and goals.

Apart from the larger annual bonuses mentioned above, employees may also be given smaller bonuses for public holidays or other special days (e.g., International Labor Day or National Day). Senior management and other valued employees may be given bonuses during these days as well, including in the form of share certificates with a vesting period, for which the corresponding stock can be sold only after the employee had worked for the company for a certain amount of time.

All salaries and bonuses are subject to PIT in Vietnam.

Allowances and benefits

Apart from salary and bonuses, an employee may be entitled to several kinds of allowances and monetary or non-monetary benefits designed to retain staff. Some of these are subject to PIT. Taxable benefits include:

- Housing rent;
- Payments for power, water, and associated services for employees that amount to more than 15 percent of their total taxable income;
- Transportation allowances;
- Premiums for life insurance;
- Health care services;
- Entertainment fees; and
- Sports/athletics fees or membership fees to golf clubs, tennis courts, and other exclusive clubs.

Prefixed lump sum amounts (or "khoan chi" amounts) for telephone calls and services, stationery, uniforms and per diem allowances are not subject to taxes if the amounts are within the levels set out under the relevant regulations.

Foreigners that work in Vietnam are also exempted from PIT on various benefits such as relocation allowances for moving into the country, airfare to their home country, and education fees for their children.

Tax obligations for company employees

In addition to the basics of hiring contracts and monetary compensation, there are specific laws governing the levying of taxes and the paying of social security for the employee. The employer must be aware of these and be prepared to accommodate deductions made to the employee paychecks.

Withholding paying individual income tax

In general, a typical monthly salary package will include gross salary and mandatory social insurance. PIT will be levied on the balance after deducting mandatory social insurance contributions.

Vietnam's Law on Personal Income Tax recognizes ten different categories of income, with a host of different deductions, tax rates, and exceptions applying to each of them.

A tax resident is defined as someone residing in Vietnam for 183 days or more in either the calendar year or a period of 12 consecutive months from the date of arrival.

Tax residents are subject to PIT on their worldwide employment income, regardless of where the income is paid or earned, at progressive rates from five percent to a maximum of 35 percent. Non-resident taxpayers are subject to PIT at a flat rate of 20 percent on their Vietnam-sourced income.

Companies conduct PIT finalization on behalf of their employees at the beginning of the year for taxable income arising from the previous year.

Tax-exempt incomes

Vietnam's tax authorities have singled out a number of incomes that are exempt from PIT. These include:

- Income from transfer of residential houses by individuals who possess only one residential house or land plot;
- Interest earned on deposit from the bank or from life insurance contracts;
- Overseas remittance, retirement pension, scholarship;
- Income from compensation for insurance contracts or from charity funds;
- Wages paid for night shift or overtime work, which are higher than those paid for day shifts or prescribed working hours in accordance with the law; and
- Income received from governmental or non-governmental foreign aid for charity or humanitarian purposes approved by competent state agencies.

A resident taxpayer is allowed to deduct from his taxable income US$388 (VND9,000,000) every month or US$4,700 (VND108,000,000) every year. The yearly amount can be fully deducted, regardless of whether the taxpayer had an income every month.

Tax exemptions

In Vietnam, foreign individuals can be exempted from taxation for certain employment benefits. These exemptions include:

- One-off relocation allowance for foreigners to relocate to Vietnam;
- Round-trip airfares paid once a year by employers for foreign employees who are on annual leave; and
- General education school fees or tuition paid by the employer for the expatriates' children studying in Vietnam.

Additionally, other benefits can be treated as non-taxable income if certain conditions are met. These include:

- Employee housing costs exceeding 15 percent of the total taxable income (excluding housing benefit from employers);
- Expenses for means of transportation for a group of employees to and from work;
- Training fee for employees relevant to employees' profession and/or in accordance with the employers' plan;
- Mid-shift meal allowances if the employers directly cater such meals for their employees; and
- Presumptive expenditures for telephone, stationery, per diem, working outfit, etc. are not subject to tax if the amounts are within the levels set out under relevant regulations.

Tax payment

Foreign invested enterprises (FIEs) have to conduct PIT finalization on behalf of their employees at the beginning of the year for taxable incomes arising from the previous year.

If an employee has more than one source of income and wishes to conduct tax finalization on their own, FIEs can issue a certificate of deduction at the request of the employee. If an expatriate's labor contract in Vietnam expires before the end of a calendar year, they should conduct tax finalization before their departure.

The taxpayer pays PIT to the state treasury in one of two ways: cash or bank transfer. The taxpayer can pay cash directly to the state treasury to receive the voucher from state officials. Otherwise, they can transfer money to a tax office bank account at the state treasury. The deadline for tax payment is the same as tax finalization, meaning no later than 90 days from the end of the calendar year.

Social insurance funds

There are three types of mandatory social security in Vietnam that must be covered by foreign enterprises seeking to hire local staff:

- Social insurance;
- Health insurance; and
- Unemployment insurance.

Mandatory minimum contributions are required of both employer and employee. All domestic and foreign companies operating in Vietnam are required to pay these social insurances for all employees under labor contracts with a definite term of over three months or labor contracts with indefinite terms.

As of December 1, 2018, Social insurance was made compulsory only for foreign staff as well, in accordance with Vietnam's Labor Code. Employers register and pay insurance contributions monthly on behalf of their employees at the provincial Department of Labor, Invalids and Social Affairs (DoLISA).

Minimum Basic Salary

Social Insurance

Capped salary base subject to contribution	US$ 1,295	Employer contribution	17%	Employee contribution	8%

Health Insurance

Capped salary base subject to contribution	US$ 1,295	Employer contribution	3%	Employee contribution	1.5%

Labor Accident & Occupational Disease Insurance

Capped salary base subject to contribution	US$ 1,295	Employer contribution	0.5%

Contributions are determined based on employees' monthly salary or wage. While payable amounts will differ depending on the compensation of an employee, it should be noted that a wage ceiling for calculation of contributions is imposed at 20 times the common minimum wage for social and health insurance (Currently VND 29,800,000 (US$1,300)) and 20 times the regional minimum wage for unemployment insurance (VND 88,400,000 (US$3,800) depending on the region).

Social insurance covers employee benefits including sick leave, maternity leave, allowances for work-related accidents and occupational diseases, pension allowance, and mortality allowance. Health insurance entitles employees to a medical examination and inpatient and outpatient treatments at authorized medical establishments.

Unemployment insurance, which takes the place of severance pay, is paid out to employees in quantities depending on the period of time for which they and their previous employers contributed. The monthly unemployment allowance is equal to 60 percent of the persons' average salary of the last six months of employment.

It should be noted that under the Ministry of Labour, Invalids and Social Affairs (MOLISA), social insurance contribution was made mandatory for all working foreigners as of December 1, 2018 under *Decree 143/2018/ND-CP.*

To ease the transition, the government has gradually increased social insurance contributions for both employers and employees as shown in the table below.

Social Insurance Contribution

	Effective December 1, 2018	From January 1, 2022
Employer	3.5%	17.5%
Foreign worker	0%	8%

The salary subject to social insurance contribution is what is defined as per the labor contract, but this is capped at 20 times the minimum salary for social insurance contributions set by the government.

At present, the minimum salary for the social insurance contributions is US$1,200, but this will be increased to US$1,295 by July 1 as discussed earlier.

Once a foreign worker's employment in Vietnam expires, the foreign worker can claim a one-off payment on the contributed amount from the social insurance agency depending on the following circumstances.

- Reach retirement age, but have not contributed social insurance for the full 20 years;
- Suffer from a fatal disease such as cancer, polio, HIV or other diseases regulated by the Ministry of Health;
- Satisfied conditions for pension, but are not living in Vietnam anymore; and
- Their employment contract is terminated or work permit expires without renewal.