Setting Up a Foreign-Invested Enterprise in Vietnam

By continually issuing favorable policies and incentives aimed at attracting inflows, and deciding to decrease the country's corporate income tax levels to 20 percent from January 1, 2016, it is clear that Vietnam's government is intent on taking a proactive approach to foreign direct investment. Enterprises and individuals interested in taking advantage of the country's friendly investment environment therefore need to be aware of the various market entry structures available to foreign investors.

There are two main types of vehicles for foreign investment in Vietnam: 100 percent foreign-owned enterprises (FOEs) and joint venture enterprises (JVEs).

100 percent FOEs can be established by one or more foreign investors, under the form of either a limited liability company (LLC) or a joint-stock company (JSC). JVEs can be established as an LLC, a JSC, or a partnership, and the profits and risks in a JVE are distributed among the parties in proportion to their charter capital contributions. Other options for establishing a commercial presence in Vietnam include representative offices and branch offices, but these are not legal entities.

In this article, we discuss the establishment requirements, common purposes, as well as the pros and cons for the following foreign investment vehicles:

- Limited liability companies
- Joint-stock companies
- Partnership companies
- Representative offices
- Branch offices
- Business cooperation contracts
- Specific authorized projects

Limited Liability Companies

100 percent FOEs and JVEs can be established as limited liability companies. In an LLC, members are only liable for the debts of the company to the extent of the capital contribution they have poured into the company.

There is usually no minimum capital requirement for foreign investors that intend to establish an LLC in Vietnam, although authorities will expect the investor to commit a reasonable amount of charter capital according to the scale and business scope of the project.

An LLC can consist of a single member or multiple members, but the total number of members cannot exceed 50. Investors can be corporations or individuals.

Note: An LLC cannot issue shares.

Joint-stock Companies

FOEs and JVEs can also be established as joint-stock companies. A JSC can issue securities and bonds, so investors will often choose this form if they plan to go public in the future.

The JSC's charter capital is composed of shares belonging to founding shareholders in proportion to the capital they have subscribed. There is no minimum requirement for the charter capital of the foreign investors.

A JSC is required to have at least three shareholders. There is no limitation on the maximum number of shareholders, nor on their nature – they can be individuals or institutions, Vietnamese or foreigners.

Partnership Companies

A partnership company is a legal entity established by at least two individuals who are the members of the partnership and co-owners of the enterprise. They are the general partners and are liable for all obligations of the partnership without limit. Unlimited liability partners must be individuals who shall be liable for the obligations of the company to the extent of all their assets.

In addition, a partnership company can consist of limited liability members (individuals or organizations) who only contribute part of the capital and have limited liability and rights in the operation of the company.

Note: Partnerships cannot issue any type of securities.

Representative Offices

In contrast to JVs and 100 percent FOEs, a representative office (RO) is forbidden from conducting any revenue-generating activities. Rather, ROs are permitted to conduct market research, serve as a liaison with an overseas parent company and/or serve other supporting roles such as ensuring quality control, acting as a product showroom and helping to facilitate the execution of the contracts of the parent company. Unlike in certain other Asian countries, ROs in Vietnam are permitted to hire staff directly, both Vietnamese and expatriate.

Branch Offices

A branch office is the subsidiary of a parent company and does not constitute a separate legal entity according to Vietnamese law.

Unlike an RO, a branch office is entitled to do business in Vietnam, although the law prohibits it from carrying out commercial activities other than those stated in the parent company's business license. If a branch conducts business in a conditional sector, it is only allowed to operate upon meeting the prescribed conditions.

To set up a branch, a parent company must have had conducted business in its home country for at least five years.

Vietnam's Foreign-Invested Entity Market Entry Options			
Structure Type	Common Purposes	Pros	Cons
Limited Liability Company	• Separate legal entity	• Liability limited to capital contribution • No restrictions on the scope of business	• Cannot issue shares • Maximum 50 members
Joint-stock Company	• Separate legal entity	• Liability limited to capital contribution • No restrictions on the scope of business • Can issue shares and go public • No limitation on the maximum number of shareholders	• Three or more shareholders required • Supervisory Board required for most joint stock companies, depending upon the number and type of investors
Partnership Company	• "Half-separate" legal entity • Generally used for professional services offered by individuals (e.g.: architects)	• One of the partners can be excluded from unlimited liability	• Requires at least two general partners • Individually liable for the partnership debts without limit
Representative Office	• Non-separate legal entity • Market research activities • Liaison with overseas parent company • Supporting activities	• Easy registration procedures	• Cannot conduct profit-making activities • Parent company bears liability
Branch Office	• Non-separate legal entity • Commercial activities within the parent company's scope	• Can carry out commercial activities within the parent company's scope	• Business scope limited to that of the overseas parent company • Parent company bears liability

Alternative Structures

Business Cooperation Contracts
A business cooperation contract is signed between multiple parties, typically between a foreign investor and a local company or the government with the objective of jointly conducting business operations in Vietnam on the basis of mutual allocation of responsibilities and sharing of profits or losses without creating or forming a legal entity in Vietnam. This form of business is a means of private financing without transferring management control to a foreign partner.

Specific Authorized Projects
Build-operate-transfer contracts, build-transfer-operate contracts and build-transfer contracts are specific projects carried out by foreign investors and an authorized governmental agency.
These additional investment vehicles have been introduced in Vietnam to entice international capital into the infrastructure sector. Business scopes can range from traffic, electricity, production and business or a number of restricted sectors as stipulated by the Prime Minister.

The difference between these contract types is at what point the title of the project is transferred to the government, namely after the investor commences the project, before the investor commences operations on a project, or immediately following completion of a project.

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