Choosing an Effective Entry Model for Vietnam Investments

P.04 Understanding Vietnam’s Investment Landscape

P.07 Considering Your Market Entry Options

P.11 Optimizing Investments in Conditional Sectors

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Foreign investors in Vietnam are realizing increasing profitable opportunities because of steady regulatory reform and the gradual expansion of market access to previously restricted sectors. While the market may be opening, many foreign investors still find it challenging to establish their operations effectively in Vietnam. Those who are ill prepared to act upon regulatory updates, revisions to investment restrictions, or other changes to Vietnam’s investment environment can quickly find the setup and expansion process to be an overwhelming experience.

Regulatory changes, and the complexity of Vietnamese bureaucracy, are challenges, but foreign investors can significantly reduce their headaches by selecting a corporate structure that is well suited to their business plans and keeping abreast of the latest regulatory changes. Foreign investors that understand corporate structuring options – along with their purpose, benefits, and future outlook – make a critical first step toward managing market selection and entry challenges.

In this issue of Vietnam Briefing we detail the structure of Vietnam’s investment landscape and outline of the most prudent market entry models for foreign enterprises seeking to take advantage of ongoing reforms. We highlight opportunities for 100 percent foreign owned investment projects, discuss the utility of representative offices in pursuing market expansion, and showcase the role that joint ventures can play in maximizing access to restricted sectors.

Dezan Shira & Associates has a time tested team of corporate structuring specialists throughout Vietnam providing our clients with years of combined experience in assisting foreign enterprises navigate and effectively manage their corporate establishments within Vietnam. We are always available to discuss questions on how to best structure or scale operations and navigate conditional investment.

With kind regards,

Alberto Vettoretti
This Issue’s Topic
Choosing an Effective Entry Model for Vietnam Investments

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This Month’s Cover Art from Green Palm Gallery
Twilight moment, Le Thanh Son, Oil on canvas, 80x125 cm
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Foreign investment in Vietnam has grown substantially in recent years. This growth began in the 1980s with the Doi Moi reforms, which started Vietnam’s transition to a socialist oriented market economy, and picked up again in 2007 with the country’s entry into the WTO, which significantly reduced barriers to entry for foreign investors and extended most favored nation status to Vietnamese goods. The rapid pace of liberalization seen since 2007 continues to act as the cornerstone of the Vietnamese economy to this day.

To put this in perspective, FDI inflows amounted to US$11.8 billion at the end of 2015, representing over six percent of Vietnam’s GDP. This far surpasses the relative performance of regional competitors, such as China, India, or Thailand, where FDI accounted for 2.25, 2.10, and 2.32 percent of GDP, respectively, over the same period.

While Vietnam’s foreign direct investment figures are impressive, they should not come as a surprise. Structural shifts in market access and business regulation have and continue to improve investment conditions, and are projected to help keep GDP growth above five percent until at least 2050.

**State divestment from industry**

A core component of Vietnam’s Doi Moi reforms is the steady embrace of free market participation in the Vietnamese economy by the Vietnamese communist party. In the years since the Doi Moi’s inception, Vietnam has seen a gradual shift away from state owned and supported business towards a reliance on private enterprise.

This transition has included notable divestments from state owned enterprises (SOE), such as Vinamilk, and a set of 2017 draft revisions to the Law on Public Debts, which were announced by the Minister of Finance and relinquished the state’s mandate to bail out SOEs with bad debts. These measures have led to significant changes in the economy: SOEs accounted for 28.6 percent of Vietnam’s total GDP in 2016, while foreign and non-state firms represented 18 and 43 percent of the GDP, respectively.

**Legislative reform**

Perhaps the most important developments following Vietnam’s WTO accession have been a steady stream of regulatory reforms. Notable examples include Vietnam’s laws on Enterprise (Law No. 68/2014/QH13) and Investment (Law No. 68/2014/QH13) which were passed in 2014 and have been in effect since 2015. Both laws significantly improve regulatory clarity for investors and increase the continuity of Vietnam’s business environment with international norms. In parallel to legislative reform, Vietnam’s Ministry of Planning and Investment has sought to build on this progress through the release of an online portal for business registration. Companies are now able to view their requirements and submit documents online.
Foreign Direct Investment in Vietnam

Vietnamese Economic Output (2011-2030)

6.2% 5.2% 5.4% 6.0% 6.7% 6.2% 5.6% 5.0%

Source: World Bank & PWC projections

E: Estimate P: Projection

Vietnam’s Market Ownership Structure in 2016

43.2% Non-state

28.6% State

18.1% Foreign investment sector

10.0% Products taxes less subsidies on production

Source: General Statistics Office of Vietnam

Foreign Investment in Vietnam (2006-2016)

FDI inflows (US$ billions)
Mergers & acquisitions (number)

P: Projection

Top 5 Investor Countries in 2016 (#Projects)

South Korea 828
Japan 341
China 278
Singapore 210
Hong Kong 166

Source: Vietnamese Ministry for Planning and Investment

Top 5 Locations for FDI in 2016 (#Projects)

HANOI 185
BINH DUONG 256
LONG AN 122
HO CHI MINH CITY 836

Source: Ministry of Planning and Investment

Top 5 Industries for Investment (#Projects)

1. Manufacturing 102
2. Wholesale and retail 95
3. Professional services 82
4. Information and communication 19
5. Construction 24

Method of Vietnamese Market Entry 2016 (% Share)

<table>
<thead>
<tr>
<th>Method</th>
<th>% of project number</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Foreign capital</td>
<td>71.4%</td>
</tr>
<tr>
<td>Joint venture</td>
<td>23.2%</td>
</tr>
<tr>
<td>Public private partnership</td>
<td>3.6%</td>
</tr>
<tr>
<td>Other</td>
<td>1.8%</td>
</tr>
</tbody>
</table>

Source: Vietnamese Ministry for Planning and Investment
Investors have a number of options for entry into the Vietnamese market. Vietnam’s Law on Enterprise (Law No. 68/2014/QH13) and Law on Investment (Law No. 68/2014/QH13) implemented in 2015, define all market entry options; the Law describes the advantages and limitations for different types of investors and projects. Despite this, new market entrants should work closely with local advisors that are able to help identify which of the available options is best suited for their needs within the Vietnamese market.

Interested parties should select an entry model that strikes a balance between their current objectives and long-term market interests. Companies seeking a light footprint with room to scale their operations are often well served by careful consideration of their options. Below, we outline the most common forms of market entry for foreign investors, touching on the requirements, timeframe for establishment, and best structure suited for each mode of investment.

**Representative Office**

Representative Offices offer 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, activities permitted for representative offices extent to:

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

**Requirements**

**Capital**

Vietnam’s Ministry of Planning and Investment (MPI) does not currently specify required capital for representative offices. 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.

**Documentation**

The MPI requires the following of companies seeking to set up representative offices in Vietnam:
Application for registration of a representative office operation (Found in Appendix II-11, Circular No.20 / 2015 / TT-BKHĐT) inclusive of company name, address, business registration certificate, lines of business, name of the head of the representative office;

1. A decision and related documentation from company leadership with respect to the establishment of a representative office;
2. A notarized copy of the decision appointing the head of the representative office (this individual must be a resident in Vietnam);
3. A notarized copy of one of the identification documents of the head of the representative office (Vietnamese nationals may use an unexpired ID card or Vietnamese passport, while foreigners require a passport).

**Timeframe for Establishment**

ROs can be set up in between 6 to 8 weeks. Given the absence of in-country revenue and associated licensing requirements, the setup process for this option does not entail as many bureaucratic procedures as others.

**Benefits**

Representative offices do not face the level of compliance requirements levied upon fully established enterprises by the Ministry of Planning and Investment. Further, companies are not subject to corporate income tax or compliance under a representative office structure.

**Limitations**

While permitted to engage in specific activities, such as market research, representative offices are subject to a variety of restrictions that make them less effective for companies with plans to establish a operational presence in the country. Representative offices are not legally independent from their parent company; the parent company is liable for all representative office actions in Vietnam. In addition, representative offices cannot conduct conducting profit generating activities within Vietnam, including, but not limited to:

- Execution of contracts;
- Receipt of funds;
- Sale of goods;
- Provision of services.

**100 Percent Foreign Owned Enterprise**

**Types of foreign owned enterprises**

100 percent foreign owned enterprises in Vietnam are permitted to operate under any of the following structures pursuant to Vietnam's laws on enterprise and investment:

- Joint-stock companies;
- Limited Liability Companies;
- Branch Offices.

Limited liability Companies (LLC) in Vietnam 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.

Other options for investment include branch offices, which are often overlooked by investors due to the liability extending to the parent company, and joint-stock companies, which have relatively high capital requirements, and are best suited for investors seeking to list on a Vietnamese exchange.

**Timeframe for establishment**

The setup time for a 100 Foreign Owed Enterprise (FOE) ranges between two to four months on average. Investments made in the manufacturing sector usually stay between two and three months while service oriented investments can take up to four months to set up.

**Benefits**

FOEs provide the greatest level of access to and maneuverability within the Vietnamese market. In contrast to representative offices, investors are able to engage in profit generating activities across all unconditional investment sectors. Already, unconditional sectors constitute a significant portion of the economy, and as liberalization opens new sectors on an annual basis, the 100 percent FOE structure should be sufficient for the majority
of businesses. In addition to profit generation, 100 percent FOEs allow foreign investors to maintain full control of their Vietnamese entity, while limiting their liability to the capital of the Vietnamese entity.

**Limitations**

While 100 percent FOEs can be an effective market entry strategy, they can inhibit investment into certain conditional sectors that impose foreign ownership ceilings. Furthermore, the FOE model leaves the development of sales and marketing networks exclusively to the foreign enterprise. Investors involved in the sale and distribution on consumer goods in particular should carefully consider options before diving into the Vietnamese market.

**Joint venture**

Joint ventures (JVs) entail the partnership of companies or individuals for a specific business purpose. JVs are not a unique corporate structuring option; partners usually establish an LLCs for standard JVs and a Joint Stock Company (JSC) if the there is a desire to list on Vietnam’s stock exchanges. Investors purchasing stakes in state owned enterprises being equitized on Vietnam’s exchanges, the JSC structured will be required by default. When entering the Vietnamese market, foreign investors can choose to enter into joint ventures as a majority (ownership >50 percent) or minority (ownership <50 percent) stakeholders.

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**Document Requirements for Establishment of 100 Percent Foreign Owned Enterprises in Vietnam**

<table>
<thead>
<tr>
<th>Single Member LLC</th>
<th>Multiple Member LLC</th>
<th>Joint Stock Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Application for enterprise registration (Appendix I-2 to Circular No. 20/2015 / TT-BKHTT)</td>
<td>1. An application for enterprise registration (Appendix I-3 to Circular No. 20/2015 / TT-BKHTT)</td>
<td>1. An application for enterprise registration (Appendix I-4 to Circular No. 20/2015 / TT-BKHTT)</td>
</tr>
<tr>
<td>2. Charter of the company</td>
<td>2. Charter of the company</td>
<td>2. Charter of the company</td>
</tr>
<tr>
<td>3. A legalized copy of personal identification papers mandated in Article 10 of Decree No. 78/2015 / ND-CP</td>
<td>3. List of members made (Appendix I-6 to Circular No. 20/2015 / TT-BKHTT)</td>
<td>3. List of founding shareholders (Appendix I-7 to Circular No. 20/2015 / TT-BKHD T) and shareholders being foreign investors (Appendix I-8 to Circular No. 20/2015 / TT-BKHD T). List of authorized representatives (Appendix I-10 to Circular No. 20/2015 / TT-BKHD T) for foreign shareholders being organizations</td>
</tr>
<tr>
<td>• Where founder is an individual – the personal identification papers specified in Article 10 of Decree No. 78/2015 / ND-CP</td>
<td>• Where founders are individuals – the personal identification papers prescribed in Article 10 of Decree No. 78/2015 / ND-CP</td>
<td>• Where founders are individuals - The personal identification papers prescribed in Article 10 of Decree No. 78/2015 / ND-CP</td>
</tr>
<tr>
<td>• Where owner is a company - Establishment decision or enterprise registration certificate</td>
<td>• Where the founders are enterprises – The establishment decision or enterprise registration</td>
<td>• Where the founders are enterprises - The establishment decision or enterprise registration</td>
</tr>
<tr>
<td>• Certificate of registered investment for business</td>
<td>• Investment registration certificate, for cases where an enterprise is established or joined by a foreign investor or a foreign-invested economic organization.</td>
<td>• Investment registration certificate, for cases where an enterprise is established or joined by a foreign investor or a foreign-invested economic organization.</td>
</tr>
<tr>
<td>5. Authorization document of the owner to a legal representative in case the company owner is an organization.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Requirements

Capital

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 Ministry of Planning and Investment 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 revaluating 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.

Documentation

Joint ventures are not a legally recognized form of investment and therefore do not face a unique set of document requirements for establishment. Instead, investors should follow the requirements for an LLCs or JSCs depending on the type of JV required. See page 8 for a full list of requirements for both structures.

Timeframe for Establishment

The setup time for JVs is two to four months and is the same 100 percent FOE investment in terms of processing. However, this does not include the lead time needed to negotiate an agreement between JV stakeholders. Negotiations over stakes, leadership, and structure of stakeholder obligations can prolong the amount of lead-time needed to initiate the standard establishment process. Although negotiations can often delay setup, they are integral to a successful JV and should not be rushed.

Benefits

The primary benefit of a JV lies in its ability to grant an investor unprecedented access to the market. Investors will gain access to conditional sectors which often impose ownership restrictions. The extent of the investor’s access to conditional sectors depends on its business lines.

The second potential benefit of a JV lies in the knowledge of the local company. For foreign investors entering into the market for the first time, local partners can provide greater access to suppliers, customers, and sometimes improve a foreign brand’s reputation within the domestic market.

Limitations

Foreign investors engaged in JVs cannot act with the same level of independence as other models. Decision making over issues such as expansion, remittance of profits, or winding up of operations can create significant divisions between foreign and local counterparts. While these issues can and should be settled during initial negotiations, differences in opinion and cultural barriers can often slow down the establishment process and lead to lowered maneuverability upon incorporation in Vietnam.

PPP Agreements in Vietnam

Public Private Partnership (PPPs) agreements are a new, and increasingly effective, means of initiating or expanding operations in Vietnam. PPPs entail a partnership between a foreign or domestic enterprise and the government for the completion of key infrastructure project.

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 construction of subway systems in Ho Chi Minh City and Hanoi both present lucrative opportunities for medium to large investors as well as the parallel industries which supply them.

Types of PPP agreements

The following types of PPP agreements are permitted under Vietnamese law:

- Build-Transfer-Operate (BTO): after completing the project, the investor transfers ownership to the state. The government then grants the investor the right to operate that facility for a specified period to recover investment capital and earn a profit.
### Vietnamese Corporate Establishment: Common Structuring Options Compared

<table>
<thead>
<tr>
<th></th>
<th>100 percent FOE</th>
<th>Joint venture</th>
<th>Representative office</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ideal for</strong></td>
<td>Companies involved in unrestricted sectors seeking to retain complete control over their operations.</td>
<td>Investors seeking to gain access to conditional sectors, and Vietnamese consumers or logistic networks.</td>
<td>Companies seeking to study the Vietnamese investment environment for further expansion or provide support for entities outside of Vietnam.</td>
</tr>
<tr>
<td><strong>Capital requirements</strong></td>
<td>Subject to the business line(s) of the company in question as well as the intended structure of operations that are submitted to the Vietnamese authorities as part of the setup process.</td>
<td>Subject to the industry(s) of the company in question. May also be influenced by minimum capital requirements applied to conditional sectors.</td>
<td>No capital requirement is currently applied. Instead, the company must prove that the capital is sufficient to support the operational structure of the representative office.</td>
</tr>
<tr>
<td><strong>Setup time</strong></td>
<td>Two to four months</td>
<td>Two to four months + negotiation time</td>
<td>Six to eight weeks</td>
</tr>
<tr>
<td><strong>Liability</strong></td>
<td>Liability is limited to the Vietnamese entity rather than the parent company.</td>
<td>Limited to charter</td>
<td>Full liability with the parent company.</td>
</tr>
<tr>
<td><strong>Control</strong></td>
<td>Foreign investor</td>
<td>Foreign and domestic investor*</td>
<td>Foreign Investor</td>
</tr>
</tbody>
</table>

#### Permitted activities

<table>
<thead>
<tr>
<th></th>
<th>Foreign ownership caps</th>
<th>Capital requirements</th>
<th>Limitations on business activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market research</td>
<td></td>
<td></td>
<td>☑</td>
</tr>
<tr>
<td>Profit generation</td>
<td>☑</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditional sector investment</td>
<td>☑</td>
<td></td>
<td>☑</td>
</tr>
</tbody>
</table>

*Dependent on the sector in question*

- **Build-Transfer (BT):** after completely building the facility, the investor transfers it to the state. The government will create conditions for the investor to implement other projects for recovering investment capital, earning profits, or will make payments to the investor as agreed in the BT contract.
- **Build-Operate-Transfer (BOT):** the investor builds and then operates an infrastructure facility for a specified period. Upon the expiration of this period, the investor transfers the facility to the state without compensation.
- **Build-Own-Operate (BOO):** after the building the facility, the investor shall own and have the right to operate the facility commercially for a fixed term.
- **Build, Transfer and Lease (BTL):** after the building the facility, the investors will transfer the facility to the authorized state agency and will have the right to provide services based on a commercial operation for a fixed term.

#### The tender process

PPP arrangements are subject to a competitive bidding process, where investors submit bids in response to tenders issued by the government. Currently the specifics relating to the submission of bids, and the tender process as a whole, are outlined under Law No. 43/2013/QH13 on Bidding and detailed through a series of decrees and circulars.
Optimizing Investments in Conditional Sectors

By Dezan Shira & Associates
Editor: Maxfield Brown

For many companies, Vietnam’s greatest potential lies in its conditional investment sectors. These areas of the Vietnamese economy are still largely untapped by foreign capital and present prime opportunities for investors to enter a new market with little competition.

Opportunities within conditional sectors are, however, tempered by a number of restrictions on control, activities, and capital contributions. Each conditional industry is subject to a specific set of restrictions and all investors should be sure to evaluate their exposure. The Ministry of Planning and Investment maintains a full list of conditional sectors and industry specific requirements on the National Business Registration Portal.

Foreign ownership caps
For several industries where investment is conditional for foreign parties, the Ownership percentage is limited to a specific ceiling. This not only limits the ability of a company to maintain full control over its investments, but will also dictate that market entry be conducted through a JV rather than 100 percent FOE.

Minimum capital requirements
In addition to foreign ownership caps, Vietnam’s MPI also imposes capital requirements for several conditional industries. These require that a company must invest, at minimum, the amount specified to enter the market.

Limitations on business activities
Under many conditional sectors, the government may impose additional limitations on business activities, which companies with foreign ownership may be required to adhere. These are similar to the licensing, approvals, and other requirements that are applied to all enterprises, however, these restrictions are specifically laid out for entities involving foreign enterprise.

<table>
<thead>
<tr>
<th>Conditions Applied to Key Sectors for FDI in Vietnam</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Foreign ownership caps</strong></td>
</tr>
<tr>
<td>Professional services</td>
</tr>
<tr>
<td>Real estate</td>
</tr>
<tr>
<td>Information services</td>
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<tr>
<td>Education</td>
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<td>Health services</td>
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<tr>
<td>Tourism</td>
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<td>Agriculture</td>
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