TMF GROUP

Global reach
Local knowledge

Doing business in Vietnam

Contents

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Country summary

Vietnam, officially the Socialist Republic of Vietnam is one of the fastest growing economies in South-East Asia, and registered a nominal GDP growth of 5.03% in 2012 and an average growth rate of 6.95% over the last 10 years. It is a member of several trade organisations, such as AFTA, the WTO, APEC, ASEAN, TPP and the FAO.

Significantly affected by the global recession, Vietnam has launched several policies to stabilise the economy, such as the 'doi moi' or open-door policy. The amendment of the Enterprise Law in 2005 has made the country investor friendly and has helped foreign companies partner with local private firms to establish businesses in Vietnam.

Legal Structures:

- Limited liability companies are the most attractive form of business representation.

Incorporation Procedures:

- Every foreign company in Vietnam is required to obtain a foreign investment certificate from the Municipal People's Committee.

On-going Obligations:

- Auditing of annual financial statements of all foreign-invested business companies must be carried out by an independent auditing firm operating in Vietnam.

Tax Implications*:

- Value Added Tax("VAT"): 10.0%
- Personal income tax ("PIT"): progressive rate within the range from 5% to 35% for resident and 20% for non-resident.
- Corporate Income Tax ("CIT"): 25.0% (2014: 22% and 2016:20%)

*Refers to general tax rates. Actual rates may vary

Labour Environment:

- Vietnam's Labour Code regulates labour contracts, work hours, labour outsourcing, internal labour rules and foreign employees in the country.

Country Capital	Vietnam, Hanoi
Population	90 million (World Bank, 2013)
Language	Vietnamese
Currency	Vietnamese Dong (sign: ₫; code: VND)
GDP	$141.7 billion (World Bank, Nominal, 2012)
GNI Per Capita	$1,400 (World Bank, Nominal, 2012)

Legal structures – company formation

The following business structures are commonly used in Vietnam:

- **Limited Liability Companies (LLCs):** LLC members have liability limited to the extent of their capital contributions. These companies are not authorised to issue shares. Types of LLCs include:
  - **Single Member Limited Liability Companies (SLCC):** Can be established with a single member.
  - **Multiple Member Limited Liability Companies (MLLC):** Require a minimum of two and a maximum of 50 members.
  - LLCs can also be established by foreign companies as 100% - foreign owned enterprises (WFOE), or a joint venture between a foreign and a local investor.
- **Joint Stock Companies:** It is the only type of company in Vietnam that can issue shares. The company is required to have at least three shareholders, and may be wholly or partially owned by foreigners.
- **Partnership:** Can be formed between an individual, a legal entity, and a partner. The general partner, who has unlimited liability must be an individual.
- **Representative Office:** It is not an independent entity, and is not eligible to do direct commercial activities in the country. However, it can act on behalf of its head office to monitor the head office's projects in Vietnam.
- **Branches:** This is not a common form of business entity in the country. Branches are used to conduct commercial or business activities only in Vietnam.

Apart from the above mentioned business entities foreign investors can also enter into the below mentioned contracts:

- **Business Cooperation Contracts (BCC):** This is not a separate legal entity, but is a cooperation agreement between foreign investors and a local partner for doing business.
- **Build-operate-transfer ('BOT'), Build-transfer ('BT') and Build-transfer-operate ('BTO') Contracts:** These types of projects are set up by foreign investors in collaboration with a state body to carry out infrastructure projects in the region, such as transportation, electricity production, water supply, drainage and waste treatment.

Incorporation procedures

S. No	Procedure	Time to Complete
1	Authentication/Regularisation of the parent company's documentation overseas	1 day
2	Obtaining a foreign investment certificate from the Municipal People's Committee	57 days
3	Applying for a company seal from the Administrative Department for Social Order (ADSO) within the Municipal Police Department	2 days
4	Picking-up the company seal	1 day
5	Opening a bank account	1 day
6	Publishing an announcement of incorporation in a daily newspaper (three times)	5 days
7	Applying for a tax code and pay business licence tax to the Municipal Taxation Department	7 days (simultaneous with previous procedure)
8	Printing of VAT invoices at a printer authorised by the General Taxation Department of Vietnam and notifying to the General Taxation Department.	7 days
9	Registration with the Municipal Department for Labour, Invalids and Social Affairs (the labour office), to declare information on the employment of labour	Appendix 1. 1 day (simultaneous with previous procedure)
10	Registration of employees with the Social Insurance Fund, for the payment of their health insurance and social insurance	1 day (simultaneous with previous procedure)
11	Registration of the trade union with the Vietnam General Confederation of Labour	7 days (simultaneous with previous procedure)

Board members – Personnel

- Foreign enterprises are allowed to recruit Vietnamese workers directly or through a recruitment agency.
- A limited liability company is required to have a members' council, a chairman of the members' council, a director or general director, and a controller (or a board of supervisors if it has more than 10 members). For single LLC, they can choose the structure: Owner – President – Director/General Director – (Controller).
- Joint Stock Company is required to have a board of management and a chairman of the board, a general director and a board of supervisors (if the company has more than 10 individual shareholders or if a corporate shareholder holds more than 50% of the company's shares).
- According to the Vietnamese Enterprise Law, either the chairman of the member's council or director or general director are the legal representative of the company, as stipulated in the company charter.

On-going obligations

Frequency of Board/Shareholder Meetings

- According to the Enterprise Law of Vietnam, the general meeting of shareholders for Joint Stock Company must be conducted once a year, on a specified date each year or on an ad-hoc basis, within four months (can be extended to six months upon a request to business registrar) from the end of the financial year
  - The location of shareholder meetings must be in Vietnam
  - The general meeting of shareholders must be attended by shareholders representing at least 65% of voting shares or total contributed capital or a specific percentage as stipulated by the company charter
  - If the first meeting cannot take place, a second meeting may be called within 30 days of the scheduled first meeting and a third meeting within 20 days of the prior meeting (if the second meeting is not held).
- Shareholder meetings should discuss and approve key issues, such as annual financial report, the report of the board of management on company’s performance, the report of the board of supervision on company's management and the dividend payable on each class of shares.

Audit Requirements

- Foreign companies are required to follow the Vietnamese Accounting System and report their financial statements in the Vietnamese Dong (VND).
- Records must be maintained in the Vietnamese language. A commonly used foreign language can be used in addition to the Vietnamese language.
- The auditing of annual financial statements of all foreign-invested business companies must be carried out by an independent auditing firm operating in Vietnam, and should be completed within 90 days after the end of the financial year.

Filing Requirements

- Large public companies (LPC)* in Vietnam must file audited financial statements annually, semi-annually and quarterly, while non-LPCs should disclose financial statements only annually. These statements should be filed within 90 days of the end of the financial period, with the State Securities Commission and the stock exchange.
- All listed companies must file corporate governance reports every six months with the State Securities Commission and the stock exchange. These reports should include a summary of the resolutions of the board, a list of related persons, a list of internal shareholders and share transactions.
- Additionally, companies must submit extraordinary disclosures within 24 hours of the event to the State Securities Commission and the stock exchange.
- Foreign enterprises in Vietnam must file financial statements, including a balance sheet, the schedule for off-balance sheet items, an income statement, a cash flow statement, and notes to financial statements, with the relevant delegated investment licence-granting authority.
- Other companies can file their statements with the city or provincial tax office, the Ministry of Finance (MOF) or provincial department of finance, or the industrial zone or export zone management board.

*LPCs are listed companies with minimum capital of VND 120 billion or 300 or more shareholders; all other listed companies are defined as Non-LPCs

Tax implications

VAT and Sales Tax

- The VAT rates in Vietnam are 0%, 5% and 10%
  - The 0% rate is applied to exported products and services, including those sold to companies in non-tariff zones and duty-free shops, and goods produced for exports.
  - The 5% rate is applied to goods and services which are considered essential for the growth of the economy, such as clean water, fertiliser production, teaching aid, books, and medicine and medical equipment.
  - A VAT of 10%, which is considered as the standard rate, is applied to activities not specified as not subject to VAT, exempt or subject to 0% or 5%.

Withholding Tax

- **Dividends:** No withholding or remittance tax is imposed on dividends paid to foreign corporate shareholders; a 5% withholding tax is imposed in case of dividend payments to individuals.
- **Interest:** A withholding tax of 5% is applied to interest paid on loans from foreign entities.
- **Royalties:** A 10% royalty withholding tax is applied to payments made to a foreign party for technology transfer**.**
- **Branch Remittance Tax:** Vietnam does not levy a branch remittance tax.
- **Payments to Foreign Contractors**: A withholding tax on payments to foreign contractors is applied where a Vietnamese party is in contract with a foreign party that does not have a licenced presence in Vietnam.

Corporate Income Tax

- The standard corporate tax rate in Vietnam is 25%.
- The tax rates for business activities in the search, exploration and exploitation of oil and other scarce resources is from 32% to 50% in accordance with each project and each business. The preferential rates of 10 % and 20% will be applied to investment projects on their fields of particular business and/or geographical location pursuant to the CIT law.
- Besides, income from capital assignment or immovable property is also subject to CIT at the normal rate of 25%.

List of countries with Free Trade Agreements

- Vietnam has a number of free-trade agreements (FTAs), most of which are through the Association of Southeast Asian Nations (ASEAN):

FTAs	Entered into Effect
United States-Vietnam FTA	December 2001
ASEAN - China FTA	July 2003
ASEAN - Korea FTA	July 2006
ASEAN - Japan FTA	December 2008
Vietnam - Japan FTA	October 2009
ASEAN - India FTA	January 2010
ASEAN Trade in Goods Agreement FTA	May 2010

Customs Policy

- The Vietnamese government imposes three types of import duties (which are subject to frequent changes) on goods imported into the country, namely preferential rates, special preferential rates and ordinary rates:
  - Preferential rates (MFN rate) are applicable to the goods traded with Most-Favoured Nation (MFN) countries;
  - Special preferential rates are applicable to the goods that are imported from countries with which Vietnam has a special preferential trade agreement;
  - The ordinary rate is the rate that is applicable to non-preferential treatment countries (MFN rate plus a 50% surcharge);
- To avail preferential and special preferential rates, the imported goods must be accompanied by an appropriate 'Certificate of Origin'.
- A Special Sales Tax (SST) is also imposed on selected imported goods and services, such as cigarettes, wine, beer, airplanes and petrol, while exported products are free from SST. STT rates vary across product and services.

Import Restrictions

- The Vietnamese government imposes restrictions on the quantity of certain goods imported such as liquor, tobacco products (cigars and cigarettes) and non-perishable food items.
- Further, several items are prohibited from being imported into the country, including military equipment, radio transmitters, weapons, motor bikes, and satellite dishes, among others.

Customs Incentives

- There are 20 categories of products that are eligible for import duty exemptions, such as machinery, equipment, specialised means of transportation which cannot be produced in Vietnam
  - Raw material imports for manufacturing goods for exports are exempted from duty provided they are exported within 275 days of manufacture
- Export duties are charged only on a few items, including natural resources such as sand, chalk, marble, granite, ore, crude oil, forest products, and scrap metal, and range from 0% to 40%.

Labour environment

Social Security System

- Under Vietnam's Labour Code, the employer is required to contribute to the social security scheme, which includes social insurance, health insurance and unemployment insurance for all full-time employees.
- For employees who are not eligible for the compulsory social security scheme, such as those with employment contracts of less than three months, employers must compensate by paying an additional amount equal to the premiums of social insurance, health insurance and unemployment insurance, along with paid annual leave.
- According to the laws on social insurance, an employee who has made at least 20 years of social security contributions, can enjoy old-age pension after completing 60 years in case of a male employee, and 55 years in case of a female employee.

Social Security	Paid by Employer (% of Salary)	Paid by Employee (% of Salary)
Social Insurance	17%	7%
Health Insurance	3%	1.5%
Unemployment Insurance	1%	1%

Hiring/Retrenchment Issues

- According to Vietnam's Labour Code, the employer must have a legitimate reason to terminate an employment contract.
- The employer or the employee must give the other party 45 days of prior notice in the case of termination of a labour contract with an indefinite term, and 30 days in the case of termination of a labour contract with a definite term.
- In the case of unilateral termination, when the labour contract is terminated by mutual consent, the employer must pay the employee a statutory severance allowance, which is equivalent to a half-month salary; plus a salary allowance, if applicable; and any other outstanding dues.

Foreign Personnel

- All organisations can hire foreign workers if Vietnamese are not able to meet the requirements.
- The company must publicly announce recruitment for the position in a Vietnamese newspaper or online portal, thirty days prior to recruiting the foreign employee, which works as evidence for a work permit.
- Alternatively, the company can also use the services of a government-owned employment service centre to recruit foreigners.

Work Permits

- Work permits in Vietnam are issued by the Department of Labour, Invalids and Social Affairs, and have a maximum term of 24 months. Following expiry, foreigners are required to re-apply for a renewal permit.
- Under Decree 102 is effective from 01 November 2013, the timeline for issuance of a new work permit has been reduced to 10 working days from the earlier timeline of 15 days.
- A foreign labour using plan has to be filed to the municipal People's Committee at the beginning of each year.
- However, the Vietnamese laws exempt foreigners from a work permit in the following cases:
  - Foreigners entering Vietnam to work for a period of less than 03 (three) months.
  - Foreigners who are members of limited liability companies with two or more members.
  - Foreigners who are owners of one-member limited liability companies.
  - Foreigners who are members of Boards of Directors of joint stock companies.
  - Foreigners entering Vietnam to work as service salespersons.
  - Foreign lawyers who possess licenses to practice law in Vietnam which are granted by the Ministry of

Justice in accordance with law.
  - Heads of Project Offices, or foreigners authorized as representatives of non-governmental organizations.
  - Foreigners transferred internally by the parent company to the Vietnamese subsidiary.
  - Foreigners entering Vietnam to provide consultancy, technology, research, assessment, and execution services to Official Development Aid projects, programs, etc.
  - Foreigners who are issued permits for press and information activities in Vietnam by the Ministry of Foreign Affairs.
  - Foreigner teachers working for foreign organizations assigned to Vietnam by the foreign country's authority.
  - Foreigners who hold a Master's Degree or equivalent assigned to work in Vietnam for conducting research at universities/colleges for a period of less than 30 days.
  - Foreigners working in Vietnam within the framework of an international agreement involving central authorities and political/social organizations at the central level.
  - Internal transfer within an enterprise in the range of 11 business services in the services commitment schedule of Vietnam with World Trade Organisation, including: business, communication, construction, distribution, education, environment, finance, medical health, tourism, culture and transport
- The foreigner who is exempt from the work permit, still need apply to get an exempt confirmation .

Public Holidays

- There are 10 statutory holidays (public holidays) in a calendar year in Vietnam
- Foreign employees are entitled to two extra public holidays
- If the public holidays coincide with weekends, the employee is entitled to take compensatory leaves

Local Office Working Hours and Time Zone

- Although work hours vary from company to company, they generally fall between 7:30 a.m. to 4:30 p.m., with a one-hour break for lunch between 12:00 noon and 1:00 p.m.
- Normal work hours are limited by law to not more than eight hours a day and 48 hours a week (i.e. six days a week).
- Standard time zone is UTC/GMT +7 hour and the time zone abbreviation is ICT.

Payroll Cycles

- Employee salaries are paid monthly or once a fortnight, depending on the terms set forth in the employment contract
- In addition to normal wages, additional overtime and working at night salaries are also paid to workers
  - Overtime is paid at the rate of:
    - At least 150% of the proportional salary for overtime during weekdays
    - At least 200% of the proportional salary for working on weekly days-off
    - At least 300% of the proportional salary not including the salary of holiday and days-off for employee enjoying daily salary for working on a holiday or leave with pay

    Employee working at night (between 10 PM and 6 AM) is paid at least 30% additional salary over a normal working day salary. The employee working overtime at night, in addition to the salary as prescribed above, the employee shall also be paid an additional 20% of salary calculated by the salary unit price or the salary of work done in the day time.
  - Vietnamese laws also allow for bonus payments to be paid on an annual basis

HR Legislation

- In June 2012, the Vietnamese National Assembly passed two laws to govern labour matters, which will replace the current Labour Code:
  - Labour Code No. 10/2012/QH13, the New Labour Code, which will take effect from 1 May 2013
  - Law No. 12/2012/QH13 on Trade Union, the New Union Law, will be effective from 1 January 2013
- The government is also working on the new draft of the Employment Law, which is expected to take effect from 1 January 2015
- The new Labour Code introduces new developments relating to labour contracts, work hours, labour outsourcing, internal labour rules and foreign employees. It has also introduced several changes to the workplace, such as:
  - Increasing the minimum salary level during probation from 70% to 85% of full salary
  - Adding an extra day to the Lunar New Year holiday
  - Increasing maternity leave from four months to six months