

COMMON QUESTIONS RELATED TO ESTABLISHMENT OF FOREIGN-INVESTED COMPANY IN VIETNAM

When establishing a foreign-invested company in Vietnam ("**Foreign Invested Company**"), Foreign Investors realize the difference between the laws of Vietnam and the laws of their countries while they are running a business. Besides the difference procedures, or regulations between a Foreign Invested Company and a company with 100% capital of Vietnamese Investors ("**Vietnamese Company**"). Accordingly, we have listed the following questions and answers that we frequently answer to Foreign Investors:

Common questions related to investment and corporation.

1. Can Foreign Investors set up a company with 100% foreign-invested capital in Vietnam?

Foreign Investors may establish a 100% foreign-invested company in Vietnam to conduct business activities such as manufacturing, import-export, wholesale trade and retail of goods, business management consultancy services,... However, in cases where the Foreign Invested Company operates in areas where the law requires a joint venture with a Vietnamese Investor, the Foreign Investor is limited in the rate of capital contribution in the Foreign Invested Company. Depending on the industry that this limit may change. For instance, with advertising that the ownership limit is 99.99% while for the waterway transport, the ownership limit is 49%. In case the Foreign Invested Company has many lines of business, the limit of the capital contribution ratio of the lowest line of business will be applied to Foreign Investors.

2. What type of enterprise can Foreign Investors choose?

Under Vietnamese law, Foreign Investors may choose to establish any type of enterprise such as a private enterprise, limited liability company, joint-stock company, partnership. However, due to the advantages of limited liability company and joint-stock company, Foreign Investors frequently choose between limited liability company and joint-stock company.

3. Business Line that Foreign Invested Company is allowed to operate?

Foreign Invested Company are allowed to operate in most industries not banned from business investment in Vietnam. However, for industries that Vietnam has not committed to opening markets or allowing Foreign Investors to invest in business such as machinery and equipment leasing services; labor subleasing service, etc., the licensing agency will consult the relevant Ministries to get approval for each specific case. If the Ministries approved, the licensing agency would issue a license/certificate of permission for the Foreign Invested Company to operate.

4. Must a Foreign Invested Company have a Legal Representative or a Director who is Vietnamese?

Foreign Invested Company do not need to have a Legal Representative or Director to be Vietnamese. However, it should be noted that the Foreign Invested Company must have at least one Legal Representative who is residing in Vietnam (could be a foreigner). If the Foreign Invested Company has only one legal representative, that person must reside in Vietnam and must authorize in writing another person to perform the legal representative's rights and obligations upon exit from Vietnam.

5. What licenses does a Foreign Invested Company need to do business in Vietnam?

Unless the Foreign Investor contributes capital, purchases shares/stakes of an existing and operating Vietnamese Company, the Foreign Invested Company normally must have two basic licenses: Investment Registration Certificate and Enterprise Registration Certificate. Depending on the lines of the business investment sector, the Foreign Invested Company must apply for one or several other licenses as prescribed by Vietnamese law. For example, if the Foreign Invested Company operates an e-commerce trading floor, the Foreign Invested Company must apply for a Business License issued by the Department of Industry and Trade and register website/mobile app operating e-commerce trading floor at Ministry of Industry and Trade. Please note that many licenses/certificates only apply to Foreign Invested Company and do not apply to Vietnamese Companies (according to the example above, Vietnamese Companies do not need to apply for Business Licenses issue by the Department of Industry and Trade).

6. How long does it take to establish a Foreign Invested Company?

In case of setting up a company doing business and investment activities in the field of market opening by Vietnam and the Foreign Investor meeting all the legal requirements, the lead time to set up an ordinary Foreign Invested Company is 18 working days (excluding weekends and holidays) from the date of submitting complete dossiers to licensing agencies. However, in case of establishment of a Foreign Invested Company doing business and investment activities in the field of market opening by Vietnam but the Foreign Investor does not meet the conditions or the business investment industry has not been market opening or some other special cases, the time to establish a Foreign Invested Company can be extended from 30 to 45 working days (or maybe denied by the licensing agency).

7. What should be paid attention to the operational address of the Foreign Invested Company?

Vietnamese Companies are registered to apply for a license to operate according to their self-declaration information and self-responsibility. Therefore, the licensing agency does not request to provide documents proving the right to use/own the address for the headquarters of the Vietnamese Company (except for the case that this address is an apartment building, a place where business activities are not permitted). This is different from the Foreign Invested Company that they must prove the address is legally rented/owned and suitable lines of the business investment sector. The licensing agency may consult with some competent state agencies about the use of this place for business. For example, when a Foreign Invested Company invests in a restaurant, they will ask the People's Committee of the district where the Foreign Invested Company is located to seek approval before granting the permit certificate.