

COMMON QUESTIONS RELATED TO ESTABLISHMENT AND OPERATION 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. Thus, there are numerous questions have taken into account and need to be analyzed in order to make Foreign Investors to be clear on Vietnamese legislation before investing.

Over the operation process, Apolat Legal has consulted a lot of Foreign Investors on relevant matters, we have listed the following questions on the matters which Foreign Investor should pay attention to implement a duly process, starting from the period of decision on establishing Foreign Invested Company to stable operation. In which, the following notable matters are: (i) Investment project and establishing a company; (ii) Investment Capital; (iii) Tax; (iv) Labor.

I. INVESTMENT PROJECT AND ESTABLISHING A COMPANY

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

Foreign Investors may establish a 100% foreign-invested capital 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 lines of business 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 is allowed to operate in most business lines not banned from business investment in Vietnam. However, for business lines 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, instead of that, Vietnamese Company shall register on the website/app on e-commerce exchange).

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, the time to establish a Foreign Invested Company can be extended from 30 to 45 working days).

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

Vietnamese Companies are registered to establishment according to their self-declaration information and self-responsibility, 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, or 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 establishment. For example, when a Foreign Invested Company invests in a restaurant, they will ask the District People's Committee where the Foreign Invested Company is located to seek approval before granting the certificate.

8. What type and term of investment project report?

Foreign Invested Company implements the investment project shall report on the implementation of the submitting all types of reports in light of table below to the Register Office and the Local Statistical agencies, the reporting is implemented via National Investment Database.

No.	Types	Contents	Terms
1	Monthly Report	The implementation of capital in case of raising the capital in the month.	12 days from the end of the reporting month.
2	Quarterly Report	Capital, net revenue, exports, imports, labor, taxes, and payment to government budget, land and water using process.	Prior to the 12 th of the first month of the quarter following the quarterly report.
3	Annually Report	The content of quarterly report and the target of revenue, employee’s incomes, expenditures and investments in scientific research and technological development, environmental protection and treatment, and the technological using origins.	Prior to the 31 th March of the following year of the annual report.

II. INVESTMENT CAPITAL

1. What is the difference between charter capital and project invested capital?

The company’s charter capital (shown on the Enterprise Registration Certificate - ERC) is understood as the total value of assets contributed or committed to contributing by members or shareholders in a certain period when the company is established, it is recorded in the company

charter. And the maximum time for charter capital contribution is within ninety (90) days from the date of issuance of the Enterprise Registration Certificate under Law on Enterprises.

Project investment capital (shown on the Investment Registration Certificate - IRC) is understood as total capital contributed to an investment project to implement the project. Investment capital can include contributed capital, a loan, and mobilized capital ...

So the question is whether the capital contribution to implementing the project is the company's charter capital?

For the first project, when Foreign Investors establish a Foreign Invested Company, the Foreign Investors' capital contribution will be equal to the charter capital. Thus, it can be generally understood that the company's charter capital is also the contributed capital to implement the project. However, for the second and separated project Foreign Investors can also increase its charter capital to implement the new project without increasing the Foreign Investors' capital contribution to the project implemented before.

2. What is the minimum charter capital required to establish the Foreign Invested Company?

Currently, There is no regulation on the minimum charter capital required by Foreign Investors to contribute to the establishment of the Foreign Invested Company, nor does it require a maximum charter capital, except for the business lines that must meet the legal capital requirements such as real estate business of 20 billion VND, multi-level sales of 10 billion VND, international travel of 500 million VND, ... the minimum charter capital must be equal to the legal capital required.

However, in fact, depending on the field that Foreign Investors invest in Vietnam, the licensing authority will consider financial capacity conditions to approve Foreign Investors to do business. Besides, Foreign Investors depend on the business strategy, target customers and strategic partners to determine the amount of appropriate charter capital for the company's operations after its establishment.

3. How long the Duration for charter capital contribution?

Depending on the type of enterprise that the Foreign Investors are expected to establish in Vietnam, the duration for charter capital contribution varies as follows:

- For the type of limited liability company: Within 90 days from the date of issuance of Enterprise Registration Certificate, the capital contributor in a limited liability company with two or more members or the owner in a single-member limited liability company must make a contribution of capital to the company in full and in the type of assets as undertaken. After the members of a limited liability company with two or more members contribute their capital fully as committed, the Company must issue a Certificate of capital contribution corresponding to the contributed capital's value.

- For Joint Stock Company: Shareholders must pay in full for the number of shares that have been registered for subscription within ninety (90) days from the date of issuance of the Enterprise Registration Certificate, except where the company's charter or share subscription agreement stipulates a shorter time-limit. The Board of Management is responsible for supervising, and monitoring to ensure that shares that have been registered for subscription shall be paid in full and on time by the shareholders.

Note: The term of capital contribution of Foreign Investors is usually recorded in the Investment Registration Certificate. For a newly established project, this period is ordinarily equal to the charter capital contribution period of 90 days to the date of the Enterprise Registration Certificate issue as mentioned above.

4. What assets can be used for capital contribution?

Under the Law on Enterprises, assets contributed as capital include the following assets:

- Vietnamese Dong;
- Freely convertible foreign currencies;
- Gold;
- The value of land use right, the value of intellectual property rights (include copyrights and relevant rights, industrial property rights, plant variety rights, and other intellectual property rights prescribed by regulations of law on intellectual property);
- Technologies, technical know-how, and other assets which can be assessed in Vietnamese Dong.

5. How can Foreign Investors contribute capital?

Foreign Investors contribute capital in Vietnamese Dong or freely convertible foreign currency to establishing the Foreign Invested Company in Vietnam, which must be performed through the investment capital account opened at an eligible bank in Viet Nam. Such a capital account could be a direct or indirect investment capital account because it depends on the Foreign Invested Company's proportion of Foreign Investors' charter capital. As follows:

- If the Foreign Invested Company opens the direct investment capital account: The contribution of charter capital through a direct capital account might be implemented in foreign currencies or Vietnamese Dong. And the ratio of charter capital to be contributed, and owned by the Foreign Investor shall be indicated in documents proving the investor's right to contribute capital such as Investment Registration Certificate; Enterprise Registration Certificate; Notice of applying the conditions for capital contribution, buy shares, repurchase stakes... For each type of currency to be contributed (Vietnamese Dong, foreign currencies), the Foreign Invested Company must open a direct investment capital account for the corresponding type of currency and can open only one direct investment capital account for a type of currency, except for the case the Foreign Investors joined many BCC Agreements or

directly executed many PPP Agreements, such Investor has to open separate direct investment capital accounts for each BCC and PPP Agreement.

- If the Foreign Invested Company opens to the indirect investment capital account: All the indirect investment activities of Foreign Investors in Viet Nam must be executed in Vietnamese Dong and through the indirect investment capital account. Transactions relating to foreign indirect investment activities in Viet Nam must be conducted through 01 (one) indirect investment capital account opened at authorized banks.

6. Which cases the Foreign Invested Company must open a Direct Investment Capital Account?

The Foreign Invested Company has to open a Direct Investment Capital Account in the following cases:

- To be established in the form of establishing an economic organization, in which the Foreign Investor is a member or shareholder and must carry out the procedure for issuance of an Investment Registration Certificate under the law on investment;
- Foreign Investor contributing capital, buying shares or capital contributions to Company (operating in a conditional business lines or unconditional ones applied for Foreign Investors) resulting in foreign investors owning 51% or more of the Company's charter capital but being not required to carry out the procedures for issuance of an Investment Registration Certificate under the law on investment;
- Being established after the split, merger, consolidation results in Foreign Investors holding 51% or more of the charter capital of the Company and is not required to carry out the procedures for issuance of an Investment Registration Certificate under the law on investment;
- Newly established in accordance with the specific law having Foreign Investors owning 51% or more of the charter capital of the Company and is not required to carry out the procedures for issuance of an Investment Registration Certificate under the law on investment.

In case the Foreign Invested Company and Foreign Investors fail to comply with the law relating to the capital transaction conducted via the Direct Investment Capital Account, Foreign Investors can find it difficult to remit profits and be pay sanction administrative violations.

For Foreign Invested Company is not required to open a Direct Investment Capital Account, foreign investors shall open an Indirect Investment Capital Account to perform capital transactions.