



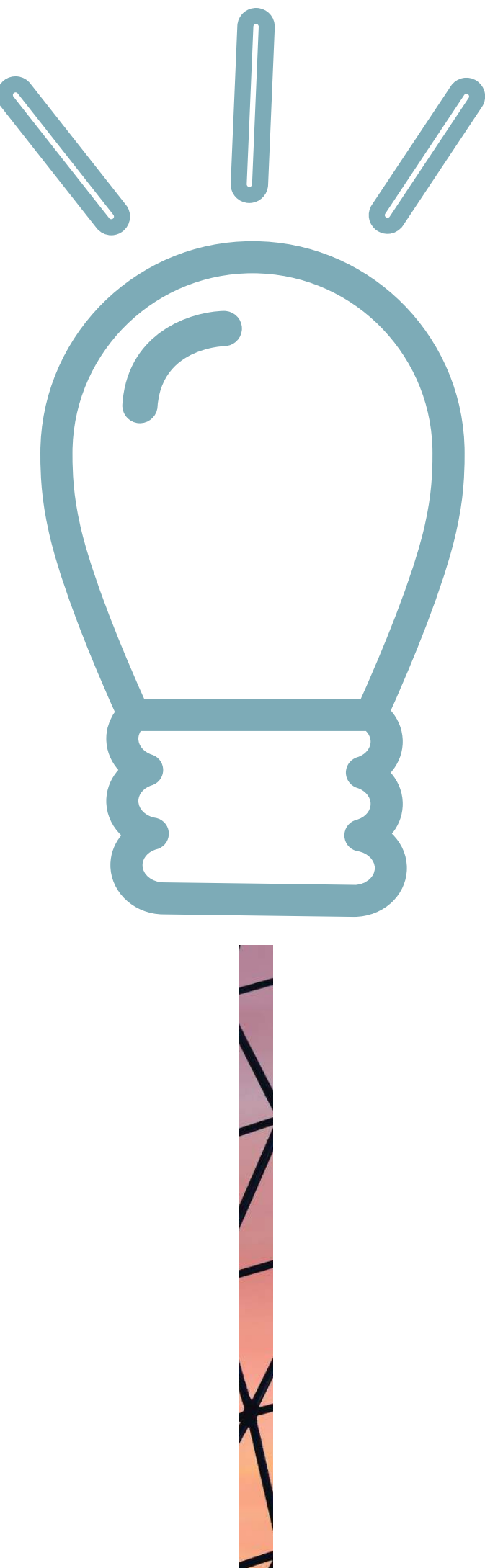
Q & A

OFFSHORE
INVESTMENT
ACTIVITIES



01

**ENTERPRISE
& INVESTMENT**



1. Who has the right to carry out the offshore investment activities?

Investors being the following organizations and individuals are entitled to carry out offshore investment activities:

- (i) Enterprises, cooperatives, cooperative unions, credit institutions, business households established and operating under the Vietnamese law;
- (ii) Individuals whose nationality is Vietnamese, except for individuals who are pro establish and manage enterprises in Vietnam in accordance with the law on enterprises such as cadres, State officials and State employees, etc.;
- (iii) Other organizations carrying out business investments in accordance with Vietnamese law.

2. What forms of the offshore investment are there?

According to the law on investment, Investors can carry out offshore investment activities in the following forms:

- (i) Establishment of an economic organization in accordance with the law of the investment recipient country;
- (ii) Investment on the basis of an offshore contract;
- (iii) Capital contribution, purchase of shares or purchase of a capital contribution portion in an offshore economic organization to participate in the management of such economic organization;
- (iv) Purchase or sale of securities or other valuable papers or investment via securities investment funds or other intermediary financial institutions in a foreign country; and
- (v) Other investment forms in accordance with the law of the investment recipient country (if any).



3. What are the business lines for which offshore investment is permitted?

In principle, Investors are permitted to carry out offshore investment activities of any fields and business sectors, provided that those are not prohibited by Vietnamese law.

Industries and fields prohibited for offshore investment include:

- (i) Trading in narcotics, firecrackers, and human cloning,... that is prohibited by the law on investment of Vietnam and other international treaties to which Vietnam is a member.
- (ii) Business lines using technologies or products that are prohibited from exporting under the law on foreign trade management, such as weapons, ammunition, samples of endangered wildlife, some chemicals, etc.,
- (iii) Business lines prohibited by the law of the investment recipient country.

In addition, when conducting offshore investment activities of conditional business lines, such as banking; insurance; stock; press, radio and television; or real estate, Investors must obtain written approval from competent State agencies and/or relevant authorities subject to specialized laws in each field.



4. What are the procedures that need to be done when carrying out offshore investment activities?

For the offshore investment, Investors need to carry out the following procedures:

- (i) Obtaining the confirmation of the Investor's fulfillment of tax obligations at the Tax Authority;
- (ii) Obtaining an Offshore Investment Registration Certificate at the Ministry of Planning and Investment ("OIRC");
- (iii) Obtaining a written confirmation of foreign exchange transaction registration regarding offshore investment activities (in case of remittance of investment capital overseas) ("WCFETR").

Note: For the matters related to the procedures and regulations of the investment recipient country, Investors need to consult with law firms or experts in the investment recipient country for advanced advice.

5. What is the Investor's liability if failing to apply for the OIRC?

Applying for an OIRC is the obligation of Investors when conducting offshore investment activities in the forms prescribed by law. If the Investors carry out offshore investment activities without the approval of the competent authority, an administrative penalty from VND 50,000,000 to VND 60,000,000 will be imposed on those being organizations or from VND 25,000,000 to VND 30,000,000 on those being individuals. Besides, Investors cannot legally repatriate the profits to Vietnam.



6. What types of assets can be used for capital contribution when conducting offshore investment activities?

Investors can use money and other lawful assets, including the capital of owner, loans in Vietnam to remit to the foreign country, and profits earned from offshore investment projects to be retained to carry out offshore investment activities. Those assets mentioned above can be one of the following assets:

- (i) Foreign currency on the account that is opened at an authorized credit institution or purchased from an authorized credit institution in accordance with the law;
- (ii) Vietnam Dong in accordance with the law on foreign exchange management;
- (iii) Machinery, equipment, supplies, raw materials, fuel, finished goods, semi-finished goods;
- (iv) Value of intellectual property rights, technology, trademarks, property rights;
- (v) Shares, capital contributions and projects of Investors are exchanged at economic organizations in Vietnam and overseas economic organizations.

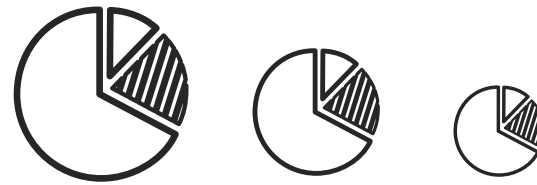


02

**CAPITAL ACCOUNT
& FOREIGN EXCHANGE**

1. How to remit the investment capital outward?

The law of Vietnam allows Investors to remit money in Vietnam Dong or foreign currency overseas to conduct investment activities. However, all remittance transactions from and to Vietnam pertaining to offshore investment activities must be made via the Investment Capital Account. After obtaining the OIRC, the Investor needs to open one Investment Capital Account in foreign currency suitable for investment needs or simultaneously open one more investment capital account in Vietnam Dong in case of remitting investment capital outward in Vietnam Dong. Then, the Investors shall register for foreign exchange transactions at the State Bank of Vietnam's branch in the province/city where the Investors' headquarter is located (or the permanent residence address for the Investors being individuals) to be granted the WCFETR. Investors are entitled to remit investment capital abroad under the progress recorded in the WCFETR via the Investment Capital Account.



2. What should be of concern to the Investors when opening an Investment Capital Account?

In principle, an Investment Capital Account must be opened at a licensed commercial bank in Vietnam. The number of Investment Capital Accounts will be subject to the numbers of Investment Projects, the Investors in each project and types of investment currency, specifically as follows:

- For each Investment Project, the Investor is only allowed to open 01 (one) investment capital account in 01 (one) single foreign currency suitable to the needs of remitting investment capital abroad. In case of remitting investment capital abroad in Vietnam dong, the Investor will be allowed to open and use an additional 01 (one) investment capital account in Vietnam dong in parallel with the investment capital account for foreign currency at the same licensed commercial bank in Vietnam.
- In the event that an Investment Project has many involved Investors, each Investor must separately open an investment capital account to remit money abroad within the scope of the total investment capital and the ratio of contributed capital according to the OIRC.
- For the Investor involved in many Investment Projects abroad, he must open an investment capital account separately for each Investment Project.



3. What is the procedure for the registration of offshore investment remittance transactions?

The procedure for the registration of offshore investment remittance transactions, also known as the registration of outward investment-related foreign exchange transactions in order to be granted the WCFETR, must be carried out by the Investor after:

- The OIRC is issued by a competent authority and is still valid as prescribed by law;
- The investment activities have been approved or licensed by a competent authority in the investment recipient country, or the Investor has been granted documents proving the right to conduct investment activities in accordance with the investment recipient country's laws;
- Having opened an Investment Capital Account at a commercial bank and before remitting investment capital abroad.

The sequence of carrying out procedures for the registration of outward investment-related foreign exchange transactions is as follows:

- Step 1: Investors send by hand or by post 01 (one) set of applications for the registration of outward investment-related foreign exchange transactions to the State Bank provincial/city branch where the Investors' headquarter is located (not a credit institution) or where the Investors being individuals are registered the permanent residence address.
- Step 2: Within 05 (five) working days from the receiving date of the application, State Bank shall send a written request for modification or supplementation to the investor if the submitted application is invalid or insufficient.
- Step 3: Within 10 (ten) working days from the receiving date of the valid application from the Investor, the State Bank shall approve or reject the Investor's registration of outward investment-related foreign exchange transactions. In case that the Investor's registration is registered, the State Bank shall issue a written notice of reasons.



4. What is the Investor's Liability if remitting investment capital abroad does not comply with the law?

Under the Vietnam law, Investors remitting investment capital abroad without compliance with the statutory conditions will face administrative penalties from VND 50,000,000 to VND 60,000,000 for being organizations. In which, there is a prerequisite condition that the Investor must have an Investment Capital Account when remitting investment capital abroad.

In addition, Investors may also be sanctioned for administrative violations in foreign exchange activities in the following cases:

- A fine ranging from VND 40,000,000 to VND 60,000,000 shall be imposed on Investors being organizations in case of failing to comply with regulations of the law on administrative procedures for accepting the remittance of foreign currency abroad; registration or registration of changes in foreign exchange transactions in respect of outward investment.
- A fine ranging from VND 60,000,000 to VND 100,000,000 shall be imposed for committing one of the following violations:
 - + Failing to comply with regulations of the law on opening, closing, and using accounts in Vietnam for conducting outward investment activities from Vietnam;
 - + Remitting money to serve overseas investment activities inconsistent with the law;
 - + Remitting foreign currency or Vietnam Dong abroad or into Vietnam inconsistent with the law.

The fine imposed on the Investor for being an individual will be equal to $\frac{1}{2}$ (one-half) of the one for the Investor being an organization as mentioned above.



5. Is it possible to remit investment capital abroad before registration?

Before the OIRC is granted, the Investor is entitled to remit foreign currency overseas to cover the costs of activities on setting up the investment project, including: (i) Market and investment opportunity research; (ii) Field survey; (iii) Researching Data; (iv) Collection and purchase of data and information relating to the selection of the investment project; (v) Collation, assessment, appraisal of the project including selection and hiring of a consultant to carry out the assessment and appraisal; (vi) Organization of scientific seminars and conferences; (vii) Establishment and operation of overseas contact offices relevant to formation of the investment project; (viii) Participation in international bidding; lodging a deposit, escrow or other financial guarantees; paying costs and charges as requested by inviting tender, the investment recipient country or territory in connection with the conditions for participating in bidding or executing of the investment project; (ix) Participation in a merger or acquisition of companies, in lodging a deposit or an escrow deposit or some other form of financial guarantees, or paying costs and charges as requested by sellers or as prescribed by laws of the investment recipient country; (x) Contract negotiation; (xi) Purchasing or hiring assets for supporting the formation of the offshore investment project.

The Investor can only remit foreign currency to a foreign country before the issuance of the OIRC through 01 (one) foreign currency account that has been opened at one (one) licensed commercial bank before investing. After the investment project is granted the OIRC, the Investor must use this foreign currency account as an Investment Capital Account and register it with the State Bank of Vietnam as the registration of outward investment-related foreign exchange transactions. In case of having many investment projects, Investors wishing to transfer foreign currency abroad before being granted the OIRC must separately open a foreign currency account before investing for each of those projects. In addition, the transfer of foreign currency abroad before being granted an IRC must follow the below principles:

- The limitation on the amount of the foreign currency remittance shall not exceed 5% of the total outward investment capital and not exceed USD 300,000, which is included in the total outward investment capital;
- The total amount of money remitted abroad before the issuance of the OIRC and the amount registered for remitting abroad after the issuance of the OIRC must not exceed the total investment capital under the OIRC.
- In case an overseas investment project has the participation of many Investors, the total amount of money remitted abroad before the issuance of the OIRC and the amount remitted abroad after being granted an OIRC of each Investor must not exceed the outward investment capital under the OIRC.

6. How is the repatriation of profits and investment capital to Vietnam done?

The law on investment also stipulates explicitly the procedures and conditions for Investors to repatriate profits generated from overseas investment activities to Vietnam or recover investment capital if necessary. The repatriation of all legitimate profits and proceeds must be made by the Investor within 06 months from the date on which the tax finalization report or an equivalent document is made under the investment recipient country's law (except for certain cases as prescribed by law such as reinvestment, implementation of new investment projects...) and must be transferred directly to the Investment Capital Account. Particularly in the case that the investor terminates the outward investment project by transferring the entire outward investment capital to a foreign investor, he must report to the State Bank of Vietnam or the branch of State Bank of Vietnam in a province or city where the registration of outward investment-related foreign exchange transactions is carried out.

7. Do investors have to repatriate profits to Vietnam every year?

From a Vietnamese legal perspective, investors will have two options after generating profits from overseas investment activities: repatriating profits to Vietnam or using these profits to continue conducting offshore investment activities.

In case the Investor does not need to retain profits for reinvestment, the Investor shall repatriate the entire profit and other proceeds derived from outward investment within 06 (six) months from the date on which the tax finalization report or other equivalent documents is made in accordance with the investment recipient country's law. Suppose the above time limit is not met. In that case, the Investor may apply for an extension to repatriate profits and other proceeds but shall send a written notification to the Ministry of Planning and Investment and the State Bank of Vietnam. However, the time limit for repatriation of profit may be extended by no more than 12 months from the expiry of the time limit for repatriating profits to Vietnam.

On the other hand, the Investor is entitled to retain profits derived from outward investment for re-investment in the following cases: (i) Continuing to contribute outward investment capital if the capital has not yet been fully contributed as registered; (ii) Increasing the outward investment capital; (iii) Executing a new investment project overseas, specifically as follows:

- In case the Investor retains profits to contribute enough investment capital as registered or to increase investment capital abroad, the Investor needs to adjust the OIRC to be suitable and must report in writing to the State Bank of Vietnam within 30 (thirty) days from the date of issuance of the amended OIRC.
- If the Investor retains profits to carry out a new investment project abroad, the Investor needs to carry out the necessary procedures for applying an OIRC for the new project. At the same time, the Investor must register a capital account and the progress of transferring investment capital in cash at the State Bank of Vietnam in accordance with regulations on the registration of outward investment-related foreign exchange transactions.



03

TAXES

1. Are profits earned from offshore investment activities subject to pay tax in Vietnam?

In principle, Investors earning income from offshore investment activities must declare and pay corporate income tax (for the Investor being an organization) and personal income tax (for the Investor being an individual). The declaration and payment of income tax must comply with the provisions of the Treaty on avoidance of double taxation between Vietnam and the country in which the enterprise implements the investment project (if any), Law on corporate income tax, Law on personal income tax, and their guiding documents.

Taxation is a specialized and complex area. Therefore, Apolat Legal encourages Investors to contact a reputable and highly specialized tax consulting firm to receive advice suitable for each specific case.

2. What are the incentives for Investors to invest overseas?

Up to the present time, Vietnam has no regulations on enjoying incentives when Investors invest overseas.

3. Are the investors obligated to pay/declare tax when transferring capital/shares in an offshore company?

Whenever the proceeds arise from the transfer of capital/shares of the Investor in the offshore company, the Investor shall comply with the provisions of the Treaty on avoidance of double taxation between Vietnam and the investment recipient country. In case there is no Treaty on avoidance of double taxation between Vietnam and the investment recipient country, the following procedures shall be followed:

(i) For the Transferor being an individual:

In case the Investor transfers the capital contribution, Tax declaration will be made for each transfer. The time limit for tax declaration is 10 days from the date on which the transfer contract comes into effect. For the Investors being resident individuals, the tax rate is 20% of the profit, and for those being non-resident individuals, it is 0.1% on the capital transfer price (deducted by the party receiving the capital contribution).

In case the Investor transfers shares: Tax declaration will be made for each transfer. The time limit for tax declaration is 10 days from the date on which the transfer contract comes into effect. The applicable tax rate is 0.1% on the share transfer price.

(ii) For the Transferor being an enterprise: Income earned from the transfer of shares/capital contribution is considered as the other income. The enterprise determines and declares the corporate income tax for the proceeds derived from the shares/capital contribution transfer in the quarterly provisional declaration and the annual settlement.



04

LABOUR



1. Is it permitted to send Vietnamese employees to work abroad for Investment Projects in a foreign country?

Vietnamese employees are allowed to work for Investment Projects in a foreign country. However, Investors are only allowed to send employees to work in a foreign country if all of the following conditions are met:

- Being approved by the Ministry of Labor, War Invalids and Social Affairs;
- Only sending employees to work at manufacturing factories and business premises established in a foreign country by the Investors;
- The Investors have plans to employ and manage employees in a foreign country; have a financial plan to repatriate employees in case of arising force majeure events; and
- Ensuring the rights and obligations of employees working at production and business premises established in a foreign country by the Investor in accordance with the laws of the country where the employees work and the laws of Vietnam.

From January 1st, 2022, the Law on Vietnamese Employees Working Abroad in 2020 will take effect and replace the current one in 2006, the conditions for the Investors to bring employees to work abroad for Investment Projects in a foreign country are amended and supplemented in a more specific and expanded way, specifically as follows:

- Investors must have an OIRC;
- Investors shall have solutions for sending Vietnamese employees overseas in accordance with the Vietnamese law and the law of the country where the employees come to work, and report to the Ministry of Labor – War Invalids and Social Affairs according to Article 34 of this Law; and
- Investors shall only send employees to work abroad at the Investors' production, business and construction premises established in that foreign country.



INVEST- MENT

2. What are the procedures necessary to be conducted when sending Vietnamese employees to work abroad at offshore investment projects?

From January 1st, 2022, Investors are only allowed to send employees to work abroad for Investment Projects in a foreign country when they have been granted the OIRC and must satisfy the following procedures:

- (i) Investors set up their recruitment to employees to work abroad at the Investors' Offshore Investment Project.
- (ii) Investors conduct health checks, sign training contracts and conduct training and retraining courses on the necessary knowledge and foreign languages for the expected employees.
- (iii) Investors directly conclude/tailor the Contract for sending employees to work abroad in a foreign country to all the compulsory contents under the Vietnamese law and the law of the country where the employees come to work.
- (iv) Reporting to the Ministry of Labor – War Invalids and Social Affairs for approval of sending employees to work abroad:
 - Within 20 (twenty) days before the expected dates of sending employees to work overseas, Investors must report the plan on sending employees to work abroad to the Ministry of Labor – War Invalids and Social Affairs.
 - Within 05 (five) working days from the date of receiving the plan to send employees to work overseas, the Ministry of Labor – War Invalids and Social Affairs shall issue written approval or disapproval to the Investor. In the case of disapproval, the Ministry of Labor, War Invalids and Social Affairs shall clearly state the reasons.
- (v) Reporting to and cooperating with Vietnamese diplomatic and consular offices in a recipient foreign country to manage and protect the legitimate rights and interests of employees during working overseas.
- (vi) Within 05 (five) working days from the date the employees go abroad, the Investor must update information about those employees on the database system on employees working overseas under the contract.

3. Is it required to pay Social Insurance for Vietnamese employees working abroad in Offshore Investment Projects?

According to the law of Vietnam on labor, employees working abroad at Investment Projects in a foreign country under the Contract are subject to compulsory social insurance.



For employees who have participated in compulsory social insurance before working abroad, the monthly payment rate of the retirement and survivorship fund for employees working abroad is 22% of their monthly salary on which the employees pay social insurance before working abroad; while, for employees who have not participated in compulsory social insurance or who have participated in compulsory social insurance but enjoyed one-time social insurance, the rate is 22% of 02 times the basic salary. Employees can directly pay or pay through the Investor for a term of 3 months, 6 months or 12 months, or pay one time in advance for the entire period stated in the Contract on sending employees to work abroad.

For Investors, the Investors do not have to pay social insurance for employees working abroad every month. However, in case the employees decide to pay social insurance through the Investors, the Investors shall collect or deduct, register the payment method, and pay social insurance on behalf of employees working overseas.

4. How is the personal income tax of Vietnamese employees working abroad handled?

Employees working on Investment Projects in a foreign country shall be deemed individuals subject to personal income tax under the Vietnamese law if they only reside in Vietnam for less than 183 days in a tax year but have a regular place of residence in Vietnam in accordance with the law on residence and cannot prove that they are individuals residing in another country based on the Certificate of Residence. Accordingly, the taxable income of the employee (in case there is no certificate of residence or the country where the employee is residing, has signed a tax agreement with Vietnam that does not have regulations on not issuing the Certificate of Residence) will be comprised of salaries, wages and other benefits arising in Vietnam and the country where the Investment Project that the employee work at is located, regardless of where paying and receiving income. Besides, if there is a treaty on avoiding double taxation between Vietnam and the country where the Investment Project is implemented, the employee is not subject to pay personal income tax 02 (two) times in Vietnam and that country.





5. What are conditions that Vietnamese employees must meet before working in an overseas investment project?

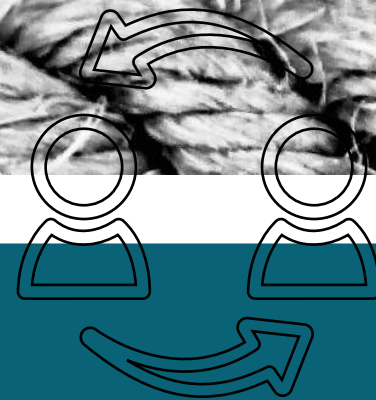
Sending employees to work abroad is encouraged by the State agencies due to the benefits of such activity, such as contributing to improving employees' skills, qualifications or increasing the income of employees, etc., However, if Investors wants to send employees to work abroad in Investment Projects, the employees must first meet certain conditions in accordance with the Vietnamese law, specifically as follows:

- The employee must have full capacity for civil act according to the civil law.
- The employee voluntarily works abroad and has an application to work overseas.
- The employee must be in good health conditions in accordance with the Vietnamese law and the requirements of the labor-recipient foreign country.
- The employee must have foreign language skills, expertise, qualifications, vocational skills and other conditions that meet the requirements of the foreign party receiving the labor.
- The employee has completed and been granted a certificate of completion of the orientation education course.
- The employee must not be prohibited from exiting, not allowed to leave or be subject to the temporary suspension of exit according to the Vietnamese law.
- The employees must also meet specific conditions set by the Investor suitable to the nature of the employee's work at the Offshore Investment Project.



05

**INVESTMENT ACTIVITY
REPORT**



1. How do the Investors report the investment activities?

The Investors must send quarterly and annual reports on the status of their offshore investment project activity to the Ministry of Planning and Investment, the State Bank of Vietnam and the representative office of Vietnam in the investment recipient country. In addition, the Investors are responsible for reporting obligations as follows:

- (i) Within sixty (60) days from the date on which the investment project is approved or licensed in accordance with the law of the investment recipient country, the investor must notify in writing the implementation of the offshore investment activities accompanied by a copy of the written approval of the investment project or a document proving the right to carry out investment activities in the investment recipient country to MPI, the State Bank of Vietnam and the representative office of Vietnam in the investment recipient country;
- (ii) Within six months from the date on which there is a tax finalization report or a document of equivalent validity prescribed by the law of the investment recipient country, the investor shall send a report on the status of operation of the investment project accompanied by the financial statements, the tax finalization report or a document of equivalent validity prescribed by the law of the investment recipient country to MPI, the SBV, the Ministry of Finance, the representative office of Vietnam in the investment recipient country and the competent State administrative agency in accordance with this Law and other relevant laws. The Investors can send written reports via the national information system on investment;
- (iii) Extraordinary reports upon request from a competent State agency.

2. What is the liability for the Investors if failing to report completely?

Reporting offshore investment activities is a mandatory obligation for Investors. Therefore, if the Investor fails to make a report, fails to notify and/or has a notification without sufficient information on investment activities, the Investors will be imposed an administrative penalty from VND5,000,000 to VND10,000,000 for Investors being organizations and from VND2,500,000 to VND5,000,000 for Investors being individuals. In addition, the Investor must also take the remedial measures of fulfilling a complete investment report.



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