



Q & A

RELATED TO ESTABLISHMENT AND
OPERATION OF FOREIGN-INVESTED
COMPANY IN VIETNAM



CATEGORY

01

INVESTMENT PROJECT AND ESTABLISHING A COMPANY

02

INVESTMENT CAPITAL

03

TAX

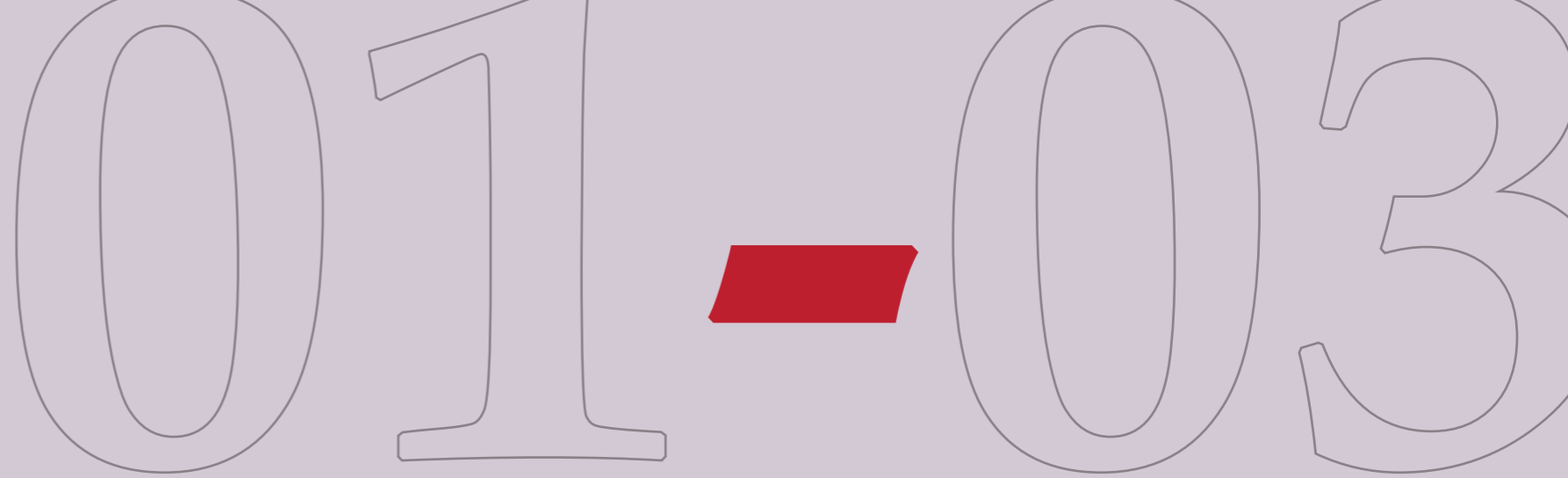
04

LABOR

01

INVESTMENT PROJECT

AND ESTABLISHING A COMPANY



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

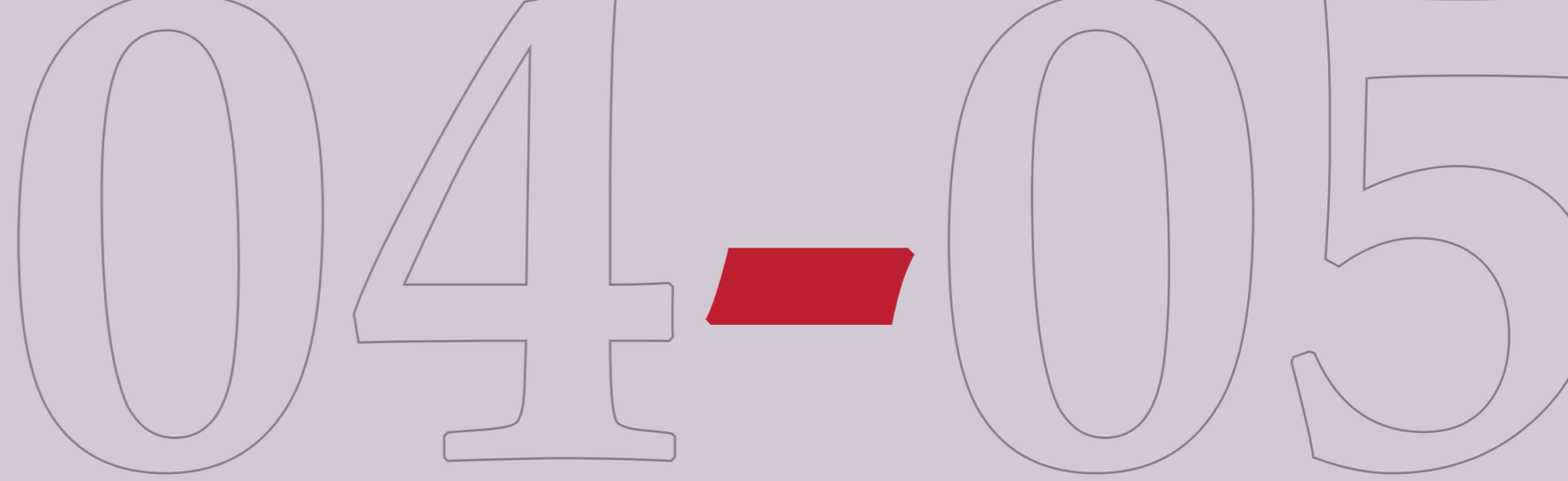
Foreign Investors may establish a 100% foreign-invested capital in Vietnam to conduct business activities such as manufacturing, import-export, wholesale trade and retail of goods, business management consultancy services, ... However, in cases where the Foreign Invested Company operates in areas where 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.

02. 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.

03. 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.

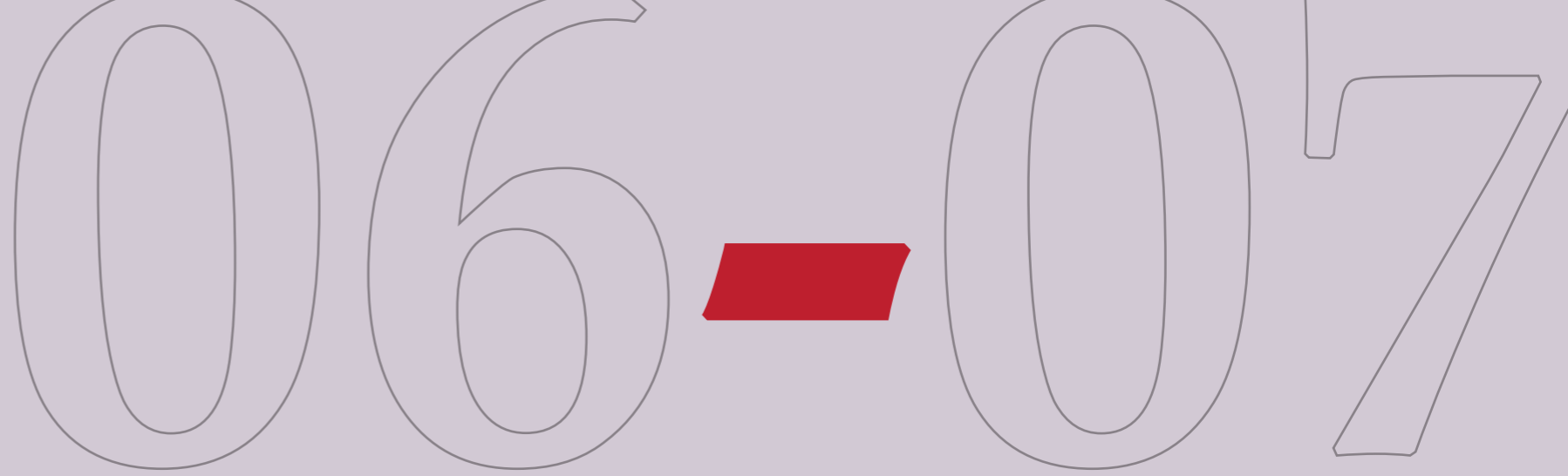


04. Must a Foreign Invested Company have a Legal Representative or a Director who is Vietnamese?

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.

05. 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).



06. 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).



07. 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.

08. 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.

Q2'20

INVESTMENT CAPITAL



01

01 . 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.

02-03

02. 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.

03. 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.

04. 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.

05. 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.

06. 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.

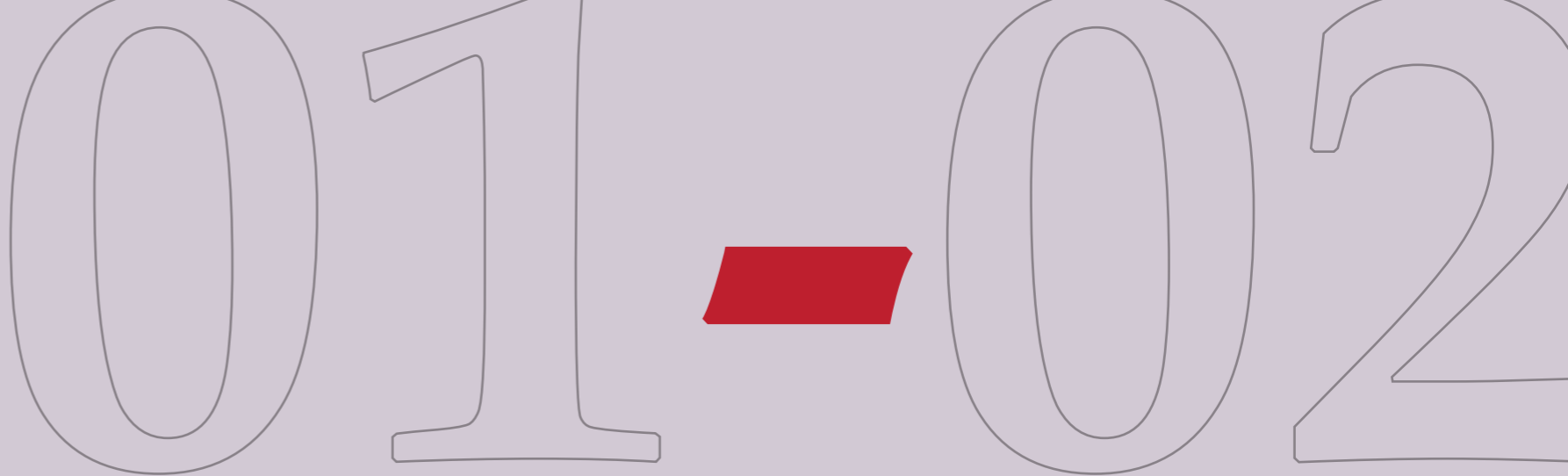
In case the Foreign Invested Company and Foreign Investors fail to comply with the law relating to the capital transaction conducted via the Direct Investment Capital Account, Foreign Investors can find it difficult to remit profits and be pay sanction administrative violations.

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.

OSB

TAX





01. Is there any distinction in tax liability between a Foreign Invested Enterprise and a Vietnamese Enterprise?

Foreign Invested Enterprise and Vietnamese Enterprise are registered to establish and operate under Vietnamese laws. Therefore, both Foreign Invested Enterprise and Vietnamese Enterprise must fully and accurately fulfill their tax obligations according to the law, and there is no distinction in tax obligations between them. However, the annual financial reports of a Foreign Invested Enterprise must be audited by an independent auditor authorized to operate in Vietnam.

02. What are the basic tax obligations that a Foreign Invested Enterprise needs to fulfill?

The Foreign Invested Enterprise is obliged to comply with basic taxes such as License Fee, Corporate Income Tax, Value Added Tax. In addition, for specific business activities, a Foreign Invested Enterprise may be subject to Excise Tax, Export Tax, Import Tax, etc.

In case the Foreign Invested Enterprise pays wages to the Employee, it is obliged to declare and pay Personal Income Tax on behalf of the Employee monthly, quarterly, or every time it appears.

03. What types of tax reports need to be filed and their deadline for submission ?

STT	Application form	Duration		
	Report	Monthly	Quarterly	Annually
1	License Fee			30/01
2	Value Added Tax	The 20 th of the next month. Applying to enterprises with their revenue in the previous year are over 50 billion VND.	The 30 th or 31 st of the first month of the following quarter. Applying to enterprises with their revenue in the previous year are 50 billion VND or less, and new enterprises.	
3	Personal Income Tax (PIT)	The 20 th of next month. Applying to the Enterprises paying income arising PIT deducted in this month from 50 million VND or more.	The 30 th or 31 st of the first month of the following quarter. Applying to enterprises that are not subject to monthly reporting.	Tax finalization no later than the last day of the 4th month from the end of the year for personal records that directly finalize tax. In case, the Employee authorizes the Enterprise to finalize PIT, the deadline is the last day of the 3 rd month from the end of the year or fiscal year.

4	Corporate Income Tax (CIT)		Temporarily calculate and pay CIT in Quarter.	Tax finalization by the last day of the 3 rd month from the end of the year or fiscal year.
5	Report the status of using invoices ¹	The 20 th of next month. Applying to the Enterprises using self-printed or pre-printed invoices, commits violations and are not allow to use self-printed or pre-printed invoices; the Enterprises are in the category of high tax risk and are eligible to purchase invoices from the tax authority.	The 30 th of the first month of the following quarter. Applying to enterprises selling goods and providing services (except for those who are issued the invoices by the tax authority and who are subject to monthly reports).	
6	Financial Report ²			The deadline for submitting annual financial reports is 90 days from the end of the annual accounting period.

04. Does Foreign Invested Enterprise enjoy tax incentives? What tax incentives are available?

In order to attract Foreign Investors to invest in Vietnam, investment incentive policies in general and tax incentives in particular are constantly being updated gradually, creating favorable conditions for Foreign Investors in many different investment fields. Taxes having incentives are corporate income tax, import tax, and some other taxes. In detail:

CIT incentives : Enterprises, including Foreign Invested Enterprises and Vietnamese enterprises, that meet the conditions for applying CIT incentives will enjoy a lower tax rate than the normal tax rate, for part or full the duration of the investment project; tax exemption, tax reduction, and other incentives in accordance with the law on corporate income tax. Eg:

- Incentive tax rate of 10% : Applied within 15 years from the first year of having taxable income from investment projects, for new enterprises from investment projects in geographical areas with especially difficult socio-economic conditions, economic areas, high-tech areas, new enterprises from investment projects in the field of high technology, scientific research, and technology development, investment in developing the especially important infrastructure of the State, software production, etc. or applied during the operation period for the Enterprises in the sectors of education - training, vocational training, health, culture, sports, and the environment, etc.
- CIT exemption : Tax exemption for 4 years, 50% reduction of payable tax for the next 9 years for CIT from implementing new investment projects to enjoy 10% tax incentives in the 15 years mentioned above.

However, for a Foreign Invested Enterprises to enjoy tax incentives, it must complete all procedures for investment registration, tax registration, etc. in accordance with the law.

In addition, Foreign Invested Enterprises are also exempt from import tax on goods imported to create fixed assets, raw materials, supplies, and components for the implementation of investment projects. Simultaneously, exemption and reduction of land rent, land use charge, and land use tax.

05. What are the conditions to enjoy tax incentives?

In order to enjoy incentives, a Foreign Invested Enterprises must meet the conditions prescribed by law . Specifically, implementing investment projects in Vietnam in the industries being eligible for investment incentives, in the areas being suitable for investment incentives; Investment projects in areas with difficult socio-economic conditions or areas with especially difficult socio-economic conditions; Investment projects with a capital scale of 6,000 billion VND or more, disbursed at least 6,000 billion VND within 3 years from the date of the decision on investment policies, for projects that do not have to carry out procedures for granting Investment Registration Certificate IRC, or having a total revenue of at least 10,000 billion VND per year within 03 years at the latest from the year of having revenue or employing more than 3,000 regular employees on average annually according to the labor law no later than 03 years from the year of revenue; Investment projects on construction of social housing; investment projects in rural areas employing 500 regular employees on average annually or more in accordance with the labor law (excluding part-time workers and employees with labor contracts less than 12 months); Investment projects employing at least 30% of the annual average regular employees who are disabled according to Law on People with disabilities and labor law; High-tech enterprises, science and technology enterprises, science and technology organizations enterprises; Innovative start-up investment projects, innovation centers, research and development centers, etc.

In addition, when meeting all conditions to enjoy investment incentives for foreign investment projects in Vietnam according to the provisions of law, based on the written approval of investment policy (if any), Investment Registration Certificate (if any), other relevant regulations, Foreign Invested Enterprise shall themselves determine their investment incentives and carries out procedures for enjoying investment incentives at tax authorities, financial authorities, customs offices, and other competent authorities corresponding to each type of investment incentive . E.g.:

For investment projects subject to the issuance of an Investment Registration Certificate or a decision on investment policies, the Foreign Invested Enterprise shall base on the contents of investment incentives specified in the Investment Registration Certificate or decision on investment policies to enjoy investment incentives. The basis for applying investment incentives to science and technology enterprises is the certificate of science and technology enterprise; for agricultural enterprises applying high technology is the Certificate of agricultural enterprise applying high technology; for high-tech application projects, the certificate of high-tech application projects; for supporting industry projects, it is the Certificate of Incentives for the production of supporting industry products; for projects with technology transfer on the list of technologies encouraged for transfer, it is the Certificate of technology transfer enabled for transfer according to the Prime Minister's regulations.

For projects in which Foreign Investors do not fall into the above cases, the Foreign Invested Enterprise shall base on the beneficiaries of investment incentives to themselves determine their investment incentives and carry out the procedures for enjoying investment incentives at the agency applying investment incentives.

06. When transferring capital/shares, do Foreign Investors have any tax obligations?

When transferring capital/shares, Foreign Investors who are organizations or individuals will have to fulfill different tax obligations:

- Corporate Income Tax:

For a Foreign Investor being an organization that is obliged to pay foreign contractor tax on income arising from the transfer of capital/shares in a Foreign Invested Enterprises, the applicable tax rate is 20%, the tax calculation method is as follows :

$$\text{CIT} = (\text{Transfer price} - \text{Purchase price of the transferred capital} - \text{Transfer cost}) \times \text{Tax rate 20\%}$$

Note: If the transfer contract does not stipulate the transfer price or the tax authority has a basis for determining the transfer price is not suitable according to the market price, the tax authority has the right to inspect and fix the transfer price. The basis for setting the transfer price is based on the investigation documents of the tax authority or the capital transfer price of other cases at the same time, the same economic organization, or similar transfer contracts at the same time.

Deadline for CIT declaration : Foreign Investors make tax declarations for each time they are incurred. Organizations and individuals receiving transfer capital are responsible for determining, declaring, deducing, and paying on behalf of Foreign Investors. In case the receiving party is also a foreign organization that does not operate under the Law on Investment or the Law on Enterprises, the Foreign Invested Enterprises established under the law of Vietnam where the foreign organization invests its capital is responsible for declaring and paying CIT derived from capital transfer activities on behalf of foreign investors.

The deadline for declaring tax is the 10th (tenth) day from the date the competent authority approves the capital transfer or the 10th (tenth) day from the date the parties agree to transfer the capital in case the capital transfer does not need approval .

- Personal Income Tax:

For Foreign Investors who are individuals, when transferring capital/shares in a Foreign Invested Enterprises, personal income tax must be paid , specifically:



(i) In case of transfer of capital in a limited company:

If the Foreign Investor is a resident individual, the applicable tax rate is 20%, the tax calculation is as follows :

$$\text{PIT} = (\text{Transfer price} - \text{Purchase price of the transferred capital} - \text{Transfer cost}) \times \text{Tax rate 20\%}$$

(ii) If the Foreign Investor is a non-resident individual, the tax calculation is as follows :

$$\text{PIT} = \text{Transfer price (excluding any cost)} \times \text{Tax rate 0,1\%}$$

Note: If the sale and purchase contract does not stipulate the transfer price or the tax authority has a basis to determine that the transfer price is not suitable according to the market price, the tax authority has the right to fix the transfer price in accordance with the law on tax administration.

Deadline for PIT declaration : Foreign investors are residents who transfer capital and declare tax on each transfer, regardless of whether or not income is generated. Foreign investors being non-resident individuals and earning income from the transfer of capital in Vietnam are not required to declare tax directly to the tax authority, but the organization and individual receiving assignment shall deduct tax and declare tax. The deadline for submitting tax declaration dossiers is the 10th (tenth) day from the effective date of the capital sale and purchase contract.

In addition, if the Foreign Invested Enterprises implement the procedure for changing the list of shareholders in the case of capital transfer without documents proving that the foreign investor transferring capital has fulfilled its tax obligations.

The Foreign Invested Enterprise is responsible for declaring and paying taxes on behalf of this Foreign Investor.

(iii) In case of transfer of shares in a joint-stock company/stocks according to the law on securities, collectively referred to as transfer of securities:

If the Foreign Investor is a resident individual, the applicable tax rate is 0.1% and the tax calculation is as follows:

$$\text{PIT} = \text{Securities transfer price each time} \times \text{Tax rate 0,1\%}$$

If the Foreign Investor is a non-resident individual, the tax calculation is as follows:

$$\text{PIT} = \text{Transfer price (excluding any cost)} \times \text{Tax rate 0,1\%}$$

Deadline for PIT declaration : Foreign investors who transfer securities declare tax according to each time they are incurred. The deadline for declaring tax is the 10th (tenth) day from the effective date of the securities sale and purchase contract. In case the Foreign Invested Enterprise pays tax on behalf of an individual, the time to submit the tax declaration dossiers is before the procedures for changing the list of shareholders as prescribed by law.

In addition, if the Foreign Invested Enterprise carries out the procedures for changing the list of shareholders in case of securities transfer without documents proving that the foreign investor transferring securities has fulfilled its tax obligations, The Foreign Invested Enterprise is responsible for declaring and paying taxes on behalf of this Foreign Investor.



07. Obligations of Foreign Invested Enterprise when transferring real estate

When there is a real estate transfer, the Foreign Invested Enterprises must declare and pay CIT each time it is incurred (in case the Enterprise does not have a real estate business function) . The deadline for submitting tax declaration dossiers is the 10th (tenth) day from the date of arising tax obligations . CIT is calculated as follows :

$$\text{CIT} = (\text{Revenue from real estate transfer} - \text{Purchase price of real estate} - \text{Transfer cost} - \text{Loss of real estate transfer in previous years (if any)}) \times \text{Tax rate 20\%}$$

Note: In case the price of transferring land-use rights under the real estate sale and purchase contract is lower than the land price on the land price list set by the Provincial People's Committee at the time of signing the contract, it shall be calculated according to the land price set by the Provincial People's Committee at the time of signing the real estate sale and purchase contract.

In addition, the transfer of land use rights is not subject to VAT . However, when performing real estate transfer activities, including house and land use rights, the land price will be deducted when calculating VAT , the VAT rate for the rest when calculating VAT is 10% for normal goods and services that are subject to VAT, 0%, 5%. VAT is calculated as follows :

$$\text{VAT} = (\text{Transfer price} - \text{Deducted land price}) \times \text{Tax rate}$$

08. When transferring Real Estate, does the Foreign Investor as an individual have any tax obligations?

Foreign investors being individuals, have an obligation to pay PIT when they have income from real estate transfer transactions, except for the cases where they are exempt from PIT as prescribed in Article 3 Circular 111/2013/ TT-BTC .

(i) In case the Foreign Investor is a resident individual, Personal income tax is calculated as follows:

$$\text{PIT} = \text{Transfer price} \times \text{Tax rate 2\%}$$

Note: In case of transfer of real estate as joint ownership, the tax liability of each taxpayer is determined separately according to the percentage of real estate ownership. The basis for determining the ownership ratio is a legal document such as an initial capital contribution agreement, a will or a court's decision on division, etc. If there is no legal document, the tax liability of each taxpayer is determined according to the average rate.

(ii) Where the Foreign Investor is a non-resident individual. Personal income tax is calculated as follows:

$$\text{PIT} = \text{Transfer price (excluding any cost)} \times \text{Tax rate 2\%}$$

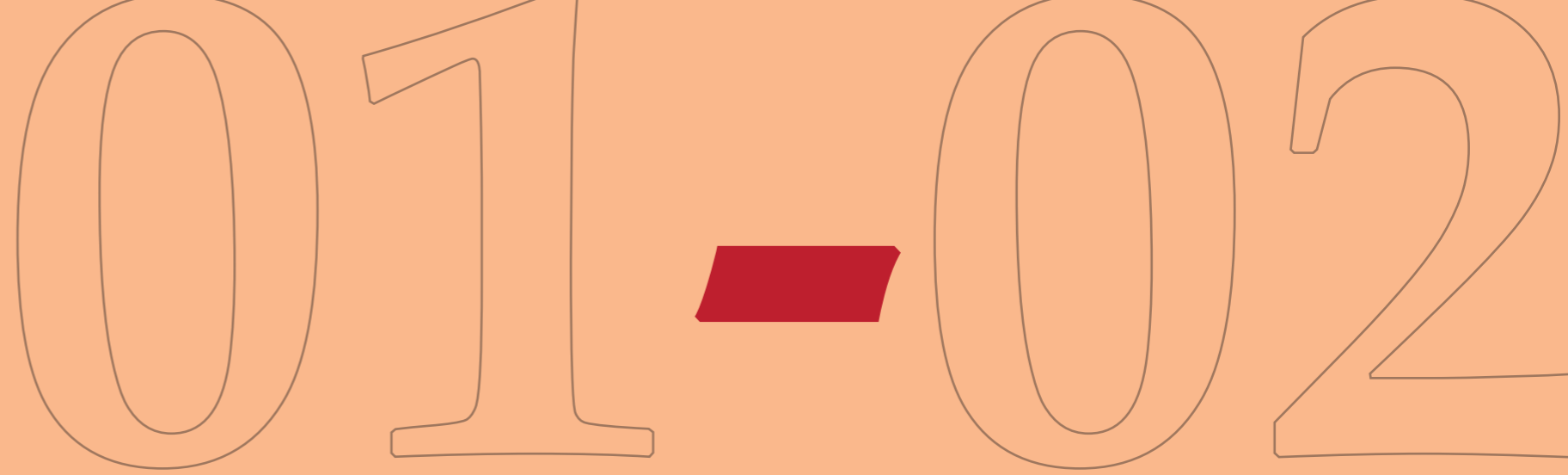
Deadline for PIT declaration:

- If the transfer contract does not agree that the buyer is the taxpayer on behalf of the seller, the tax declaration shall be submitted no later than the 10th (tenth) day from the effective date of the transfer contract in accordance with the provisions of law.
- If the transfer contract has an agreement stating that the buyer is the taxpayer on behalf of the seller, the tax declaration shall be submitted no later than the time of carrying out registration of real estate ownership and use rights. In case an individual receives the transfer of a house or future construction work, the time for ownership is the time when the individual submits a tax declaration to the tax agency.



0410

LABOR



01 . What are the labor regulations that the Foreign Invested Company needs to comply?

The Foreign Invested Company should note and strictly comply with the following labor laws:

First, the general labor regulations in Vietnam, the Company needs to determine the use of employee of appropriate age according to the law. Strictly complying with the regulations on recruitment procedures, duration and salary for probation, signing labor contracts. Regulations on termination of labor contracts are also an important point that the Company should strictly comply with, especially in cases where the Company's right to unilaterally terminate labor contracts and the order procedures for unilateral termination of labor contracts. In addition, the regulations on social insurance, the minimum salary and the working and rest regime of employee are also clearly defined by law, the Company should check and comply with the regulations.

Secondly, for the employment of foreign employee in particular, the Foreign Invested Company needs to comply with the regulations on recruitment conditions of Foreign Employee in Vietnam, procedures at the competent authorities for the use of foreign employee and to issue work permits to foreigners working at the Company. If the Company's employment of foreign employee in accordance with the law, it will be punished for violations.

02. What are the conditions for foreigners to work in Vietnam?

Foreigners wishing to work in Vietnam need to meet the following conditions:

- Having full civil act capacity;
- Having professional qualifications, skills and health suitable to the job requirements;
- Not being a criminal or prosecuted for criminal liability in accordance with the law of Vietnam and foreign law;
- Having a Work Permit issued by a competent authority of Vietnam, except cases in which the work permit is not required in accordance with the law.

In addition, Foreign Employee work in Vietnam must comply with Vietnamese labor law, international conventions to which Vietnam is a member have different provisions and are protected by Vietnamese law.

03. What procedures should a Foreign Invested Company want to recruit Foreign Workers follow?

Foreign Invested Company is entitled to recruit Foreign Employee to work as manager, executive director, expert and technical worker that Vietnamese employee cannot meet according to production and business needs.

In order to recruit foreign employee, the Foreign Invested Company must carry out the procedures for explaining labor demand at least 30 days in advance from the expected date of employment of the Foreign Employee and obtain the written approval from a competent authority.

After obtaining the approval of the employment of the foreign employee from the competent authority, the Foreign Invested Company shall carry out the procedures for the new work permit or the procedure for the exemption of the work permit for the Foreign Employee at a competent authority.

Finally, after obtaining a work permit or the decision to exempt the work permit for the foreign employee, the Foreign Invested Company and the Foreign Employee enter into a Labor Contract and submit this Contract to the agency issuing the work permit for management.

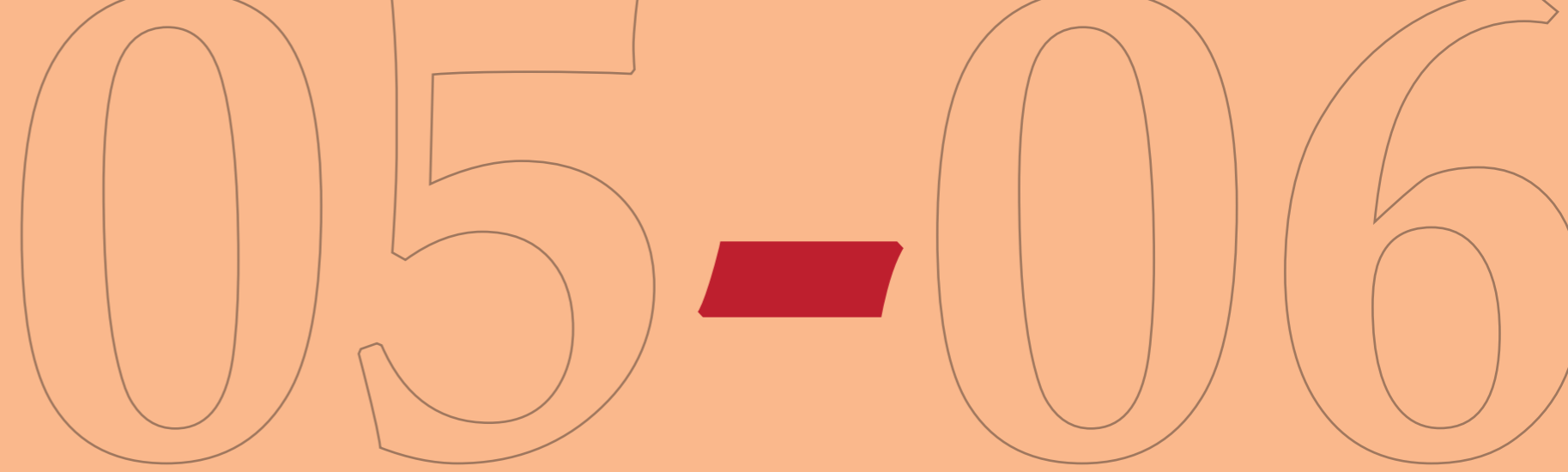
04. How to sign a labor contract?

When employing employee, the Company needs to comply with the law on signing labor contracts with the Employee. The Company may enter into a probationary contract with the Employee before entering into a labor contract but must comply with the law on probationary contract on term, salary

First, the conclusion of a labor contract must be based on the principles of voluntariness, equality, goodwill, cooperation and honesty, freedom but not against the law, collective labor agreement and communal morality. Then, the parties have the obligation to provide honest information to enter into a contract, the enterprise provides information about the job, location and working conditions, working hours, and rest time, occupational safety and health, salary, form of payment, social insurance, health insurance, unemployment insurance, ... employee provide information about identity, education level, health status, ...

After that, the parties choose the form of the contract and the type of labor contract and enter into it with the content of the contract that is not contrary to law and social ethics.

Finally, the authority to enter into a contract is also an important point to note in order for the employment contract to take effect, the Company may enter into a labor contract by either a legal representative or an authorized person according to the law.



05. After terminating contracts with employee, what procedures should the Company perform?

After terminating the labor contract with the foreign worker, the Company should:

Firstly, pay full amount of salary, benefits (if any) in accordance with the law or agreement within 7 days from the date of contract termination or another term as agreed by the parties.

Secondly, complete the procedure to confirm and return the social insurance book and other related documents to the employee.

06. Does the Company have to establish labor union and how do we pay labor union fee?

According to the law, labor union is a socio-political organization of employees established on a voluntary basis. Therefore, the Company is not required to establish an union.

However, the Company has to pay labor union fee in accordance with the law, regardless of whether the Company has or has not had a labor union. The rate of payment of the labor union fee is equal to 2% of the salary fund as a basis for paying social insurance premiums for the employees. The Company pays labor union fee once a month at the same time as payment for compulsory social insurance for employees.

07. Is it difficult to dismiss employees? What will be the liability if doing it wrongly?

To dismiss an Employee, the Company should meet the following factors and conditions:

- (i) The Company is required to have a legally effective Labor Code that specifies violations that will result in disciplinary action;
- (ii) The employee violates one of the acts that is subject to the dismissal in accordance with the law and the Labor Code of the Company, and the Company is responsible for proving the fault of the employee;
- (iii) The labor discipline must comply with the principles and procedures of the law:
 - The Company proves the fault of the employee and conducts the notice of a disciplinary meeting to dismiss the employee within the statute of limitations.
 - The meeting to handle the labor discipline must be notified in advance to all participants, and made in minutes.
 - Dismissal decisions must be issued by an authorized person of the Company, within the period of the statute of limitations for disciplinary action or an extended period of time for disciplinary action and must be sent to the employee, parent or legal representative of the person under 18 years old and the organization representing the labor at the grassroots level.
 - Disciplinary dismissal must have the participation of the representative organization of the Employee, the employee and the parent, or the legal representative if the employee is under 18 years old, in case of one of these people does not attend the meeting must state the reason.



In case the Company dismiss or unilaterally terminat the labor contract with the employee against the law, it shall:

- (i) Reinstating the employee to work under the signed labor contract and paying the salary, social insurance, health insurance for the days the employee is not working plus at least 02 months salary under the labor contract;
- (ii) In case the employee does not want to continue working, in addition to the compensation specified in point (i), the Company must pay the severance allowance in accordance with the law;
- (iii) In case the Company does not want to continuously hire the employee and the employee agrees, in addition to the compensation specified in point (i) and the severance allowance, the two parties agree to the additional compensation but at least equal to 02 months salary under the labor contract to terminate the labor contract;
- (iv) In case the employee no longer has the position or job specified in the labor contract but the employee still wants to work, in addition to the compensation amount specified in point (i), the two parties negotiate to amend, additional labor contracts.

The above contents are the questions that Apolat Legal often answers to Clients to resolve problems in the process of researching investment into Vietnam, Foreign Investors can refer to when meeting the similar cases. However, for each specific case, there will be the most suitable and effective solutions for application, Apolat Legal recommends the Foreign Investors should consult lawyers in such cases to best protect their legal rights and interests.

08. How to pay social insurance for the Employee?

Employers are responsible for paying social insurance, health insurance, compulsory unemployment insurance for Employees in accordance with the law with the following rate:

- **For Vietnamese Employee:**

Insurance deducted from salary	Social insurance	Medical insurance	Accident insurance	Total
Deducted from Company's expenditure	17.5%	3%	1%	21.5%
Deducted from Employee's salary	8%	1.5%	1%	10.5%
Total	22.5%	4.5%	2%	32%

- **For Foreign Employee:**

Insurance deducted from salary	Sickness, maternity fund	Occupational accident and disease insurance fund	Retirement and death fund	Total
Deducted from Company's expenditure	3%	0.5%	-	3.5%
Deducted from Employee's salary	-	-	-	-
Total	3%	0.5%	-	3.5%



APOLAT LEGAL LAW FIRM

M: (+84-28) 3899 8683

E: info@apolatlegal.com