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MAHANAKORN PARTNERS GROUP



The European House

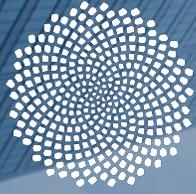
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Guide to Business Internationalization in Vietnam

How to effectively manage your business's legal,
tax and other regulatory obligations

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MPG

Who We Are

The Mahanakorn Partners Group (MPG) is a leading professional services firm, whose mission is to be a One-Stop Platform to assist any company or individual with a wide-range of Legal, Accounting, Auditing, Tax Advisory, and Management Consulting service offerings.

MPG is headquartered in Thailand, with an ASEAN presence and a global footprint. Our lawyers, accountants, auditors, business consultants and administrative staff are committed to supporting our clients in seamlessly navigating through the complexities of business, regulatory and legal matters, domestically and internationally.

What We Do



Corporate Services

Company Registration,
Corporate Secretarial,
BOI, FBL, Business
Licenses, Trademarks



Accounting & Audit

Accounting Packages,
Bookkeeping, Payroll, Half
Year Report, Personal
Income Tax, Annual Audit



Legal Services

Civil & Commercial Law,
Criminal Defense, Property
Law, IP, Notary Services, etc.



Tax Advisory

Tax Structuring, Transfer
Pricing, Tax Planning, Cross-
Border Tax Compliance



Global Mobility

Visas & Work Permits,
Permanent Residency,
Cross-Cultural Training



Banking & Finance

Advisory and Structuring of
Debt/Equity Model, TAS,
Trade Finance & Project
Finance Advisory



Management Consulting

Business Process Optimization, IT
Administration, Market Entry
Strategies, Project Management

Our Core Strengths Underpin Our Value Proposition



Committed to clients

We listen, we partner, and we bring the power of our organization to the table as we help you unlock opportunities.



Scale and reach

Our global network and deep local knowledge means we deliver where our clients need us.



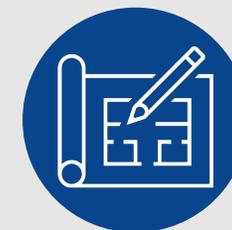
Expertise

We are experts in guiding clients through regulatory change with agility and speed.



Strategy

Our strategic planning enables our clients to quickly, efficiently and accurately perform at their best.



Execution

We provide professional services to our clients with the highest standards with our multidisciplinary approach.



MPG

Our Worldwide Presence



Asia Pacific

- Bangkok
- Singapore
- Hong Kong
- Beijing
- Shanghai

Europe

- London
- Milan
- Madrid

North America

- New York

“ I highly recommend Mr Luca Bernardinetti and Mahanakorn Partners Group for their qualified activity in the field of legal advice, and business and finance. MPG has a longstanding collaboration with the Embassy of Italy in Bangkok and has been instrumental in the solution of several complex judicial cases. They are renowned in the Thai business community and play an active role also as a member of the Thai-Italian Chamber of Commerce ”
 – H. E. Lorenzo Galanti Ambassador of Italy to Thailand

Global Reach, Local Knowledge

ADR in **166** Countries

Leading **ASEAN** Expert

Licenses & Affiliations



- ✓ Thai Bar Association Under The Royal Patronage
- ✓ Lawyers Council of Thailand Under The Royal Patronage
- ✓ The International Chamber of Commerce (ICC)
- ✓ Federation of Accounting Professions of Thailand (FAP)
- ✓ European Association for Business and Commerce (EABC)
- ✓ Thai-Italian Chamber of Commerce (TICC)



- ✓ Certified Consultant of the Public Debt Management Office (PDMO) under the Ministry of Finance
- ✓ Recommended Law Firm by the World Bank Group
- ✓ Recommended Financial Advisor by Arthur J. Gallagher
- ✓ Recommended Law Firm by most Embassies in Thailand
- ✓ German-Thai Chamber of Commerce (GTCC)
- ✓ American Chamber of Commerce in Thailand (AmCham)



WORLD BANK GROUP



Today's Agenda



Why Vietnam

Facts & Figures



Company Structures

Laws, Rules & Regulations



RCEP

Competitive Advantage



Processes

Company Incorporations



Cross-Border Trade

FTA, ATIGA, Customs



Ongoing Compliance

Financial & Regulatory



Investment

Vietnamese Laws



Solutions

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Doing Business in Vietnam



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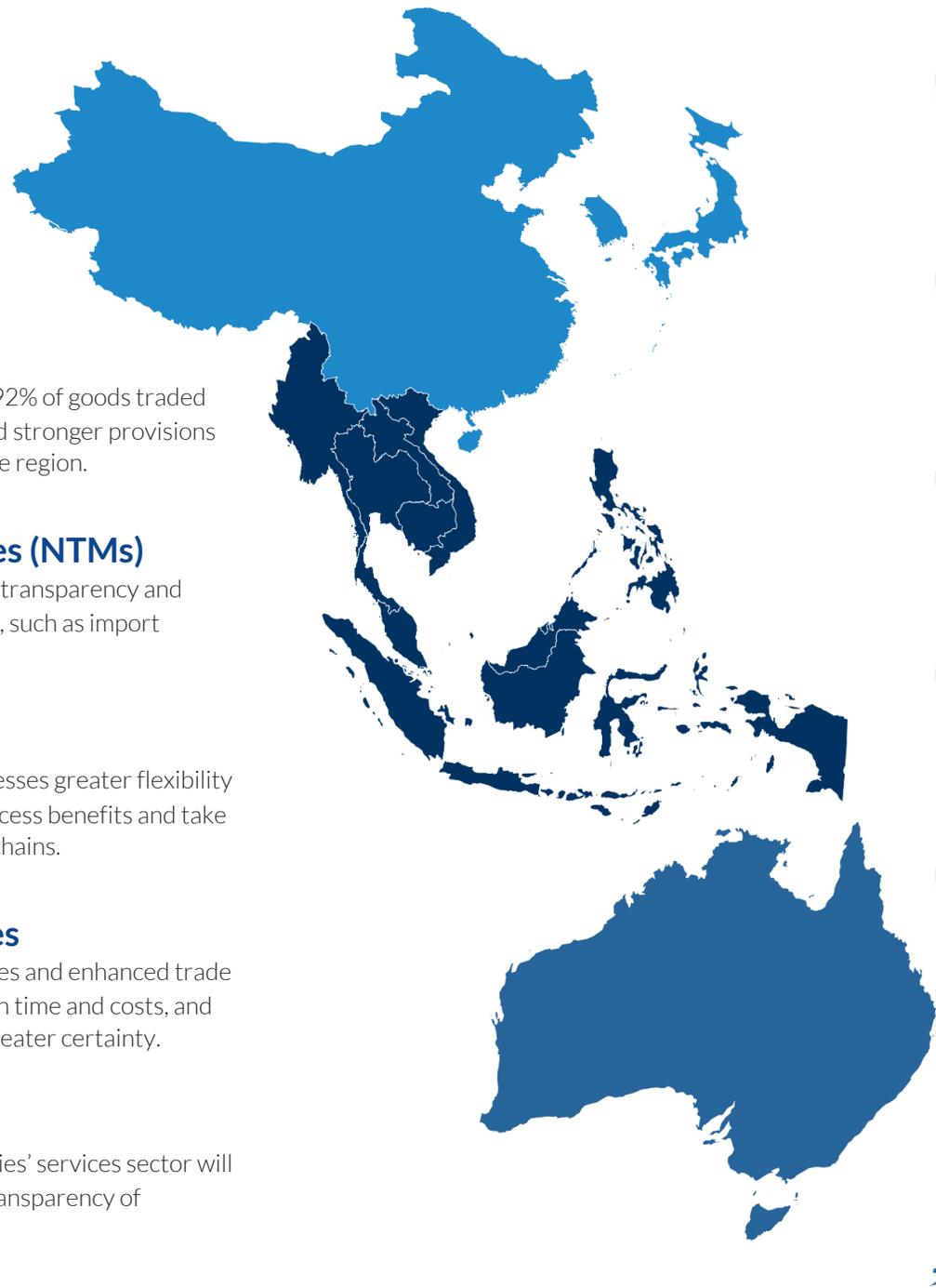
-  Political System: Socialist Republic
-  Capital: Hanoi
-  Economic Center: Ho Chi Minh City
-  Population: 96.2 million
-  Currency: Vietnam Dong (VND)
-  Language: Vietnamese
-  Provinces: 63
-  Total Area: 331,210 Sq. Km
-  Neighbours: China, Laos, Cambodia
-  Time Zone: UTC+7 (ICT)
-  2019 GDP Growth: 7.02%
-  Labor Force: 55.4 million
-  Middle Class Population: 10%
-  Average Annual Income: USD 2,587

Why Vietnam is a good business destination

-  One of the fastest growing economies, both regionally and globally
-  Known for being a manufacturing hub, with a burgeoning domestic consumer goods market
-  Strategic location with strong regional connectivity
-  Strong industrial, manufacturing, and service sectors supported by a skilled, diversified, cost-effective labor force
-  Economically and politically stable country with FDI-friendly policies
-  The 4th largest economy in Southeast Asia and a participant in many bilateral and multilateral FTAs



Vietnam Inks RCEP



Trade in Goods

Tariff elimination of at least 92% of goods traded amongst RCEP countries, and stronger provisions to allow duty-free trade in the region.



Non-Tariff Measures (NTMs)

Provisions to ensure greater transparency and stronger discipline for NTMs, such as import licensing procedures.



Rules of Origin

Streamlined rules give businesses greater flexibility to tap preferential market access benefits and take advantage of regional value chains.



Customs Procedures

Simplified customs procedures and enhanced trade facilitation lowers transaction time and costs, and gives exporters/importers greater certainty.



Trade in Services

At least 65% of RCEP countries' services sector will be fully open, with greater transparency of regulations and measures.



Investment

Performance requirements on investors, such as conditions for entering, expanding and operating in RCEP countries, are prohibited.



E-Commerce

Online consumer protection, online personal information protection, transparency, paperless trading, etc. are conducive to safer trade.



Intellectual Property (IP)

Businesses can obtain protection, including for non-traditional trademarks and wider range of industrial designs in the RCEP region.



Competition

Commitment to maintaining competition law regimes based on international best practices protect businesses from anti-competitive practices.



Government Procurement

Transparent laws, regulations and procedures provide greater clarity for businesses bidding for public procurement projects in RCEP countries.





ASEAN Trade in Goods Agreement (ATIGA)

ASEAN Free Trade Area (AFTA)

Exemptions from Customs Duties are available in the following ways:

- ✓ Promoted business activities under the BOI
- ✓ Petroleum concessionaries under the Petroleum Act
- ✓ Free Trade Agreements (FTA)

ASEAN Trade in Goods Agreement (ATIGA)

A mechanism to eliminate customs import duties for trade between ASEAN member states in order to facilitate the free flow of goods. Under ATIGA, companies looking to export goods originating in Thailand to another ASEAN member should:

1. Check whether the goods to be exported are on the list of products eligible for preferential tariff rates.
2. For eligible goods, the exporter or manufacturer must undergo pre-export verification.
3. Apply for Certificate of Origin (Form D).

Rules of Origin (ROO)

- ✓ ROO are criteria used to determine where a product was made, and its eligibility for preferential tariff treatment under FTAs. Goods that comply with ROO criteria are classified as being of ASEAN origin and will enjoy preferential tariff rates under ATIGA.
- ✓ Cumulative Rules of Origin: If production takes place in Thailand, partial cumulation is allowed.
- ✓ Qualifying goods are: 1) wholly obtained or produced in an ASEAN member country, 2) have undergone a “substantial transformation”.
 - The good has an RVC (Regional Value Content) of no less than 40% of its Free on Board value.
 - The non-originating raw materials used in the production of the good do not have the same HS classification as the final good (Change-in Tariff Classification)
 - Specific Process Rule: A good is considered originating if it is produced through specific production activities or processing operations in an ASEAN member country





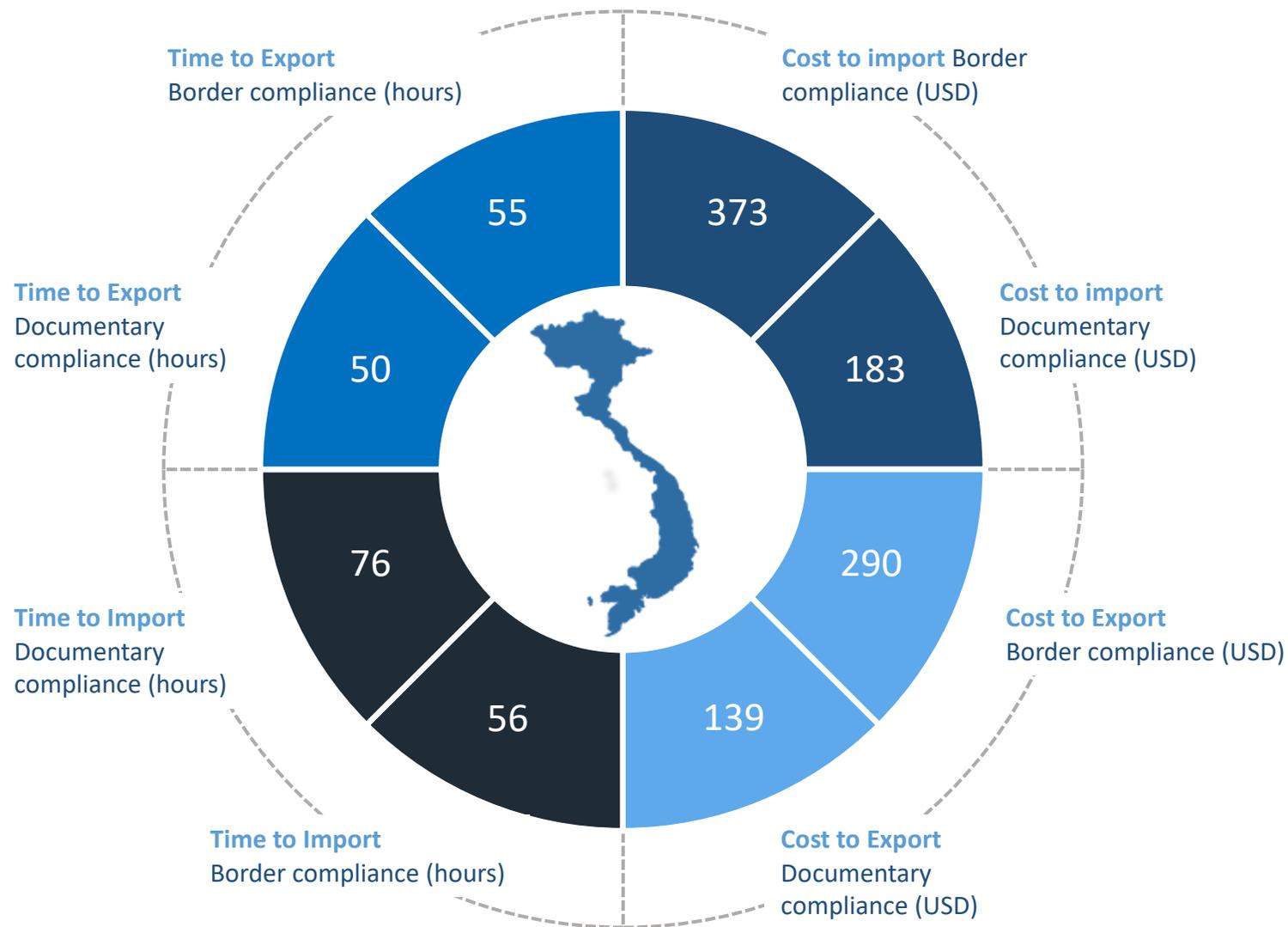
Export – Trade Documents

- ✓ Bill of lading
- ✓ Terminal handling receipts
- ✓ Commercial invoice
- ✓ Packing List
- ✓ Customs declaration
- ✓ Certificate of Origin (Form E)
- ✓ Technical standards certificates
- ✓ SOLAS certificate



Import – Trade Documents

- ✓ Bill of lading
- ✓ Commercial invoice
- ✓ Packing List
- ✓ Delivery order
- ✓ Customs declaration
- ✓ Import license
- ✓ Technical standards certificates
- ✓ Certificate of Origin (Form D)
- ✓ SOLAS certificate



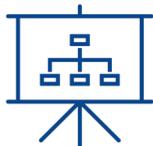
Types of Business Structures



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1. Investment Structures

Foreign investment in Vietnam can be divided into two distinct categories.



1.1 Direct Investment

Direct Investment is a form of investment in which the investor provides investment capital and **directly participates in the management** of investment activities, including the following forms:

- ✓ Establishment of a new legal entity (a company), in which foreign investors own 100% of the capital, or where the company is jointly owned by domestic and foreign investors;
- ✓ General Partnerships;
- ✓ Business Cooperation Contracts signed with other local or foreign investors;
- ✓ Public Private Partnership contracts with Vietnamese State bodies; and
- ✓ Investing by way of the acquisition of the shares/capital of an existing Vietnamese entity.



1.2 Indirect Investment

Indirect Investment is a form of investment where the investment **forms part of a portfolio**, and does not participate in the management of investment activities.

Forms of Indirect Investment include:

- ✓ The purchase of shares, share certificates, bonds and other securities traded on stock exchanges;
- ✓ Through securities offered by investment funds; and
- ✓ Investment through other intermediary financial institutions.



2. Company Structures

2.1 Company Formation

Foreign individuals, along with lawfully established foreign incorporated companies (together known as “Foreign Investors”), may invest in Vietnam by establishing a new Vietnam company or by acquiring shares in a pre-existing company. The company may be either 100% foreign owned or jointly owned by foreign and domestic shareholders.

Corporate structures:

Limited Liability Companies (“LLC”)

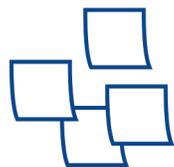
LLCs can either be:

- ✓ Single-Member Limited Liability Companies (“SLLC”) or
 - ✓ Multiple-Member Limited Liability Companies (“MLLC”)
- and
- ✓ Joint Stock Companies (“JSC”).

2.2 Key Characteristics of Vietnam Companies

	Limited Liability Companies		Joint Stock Companies
	Single-Member	Multiple-Member	
Ownership Structure	The company is established and owned by one Member (Owner), which may be a corporate entity or an individual, either foreign or domestic;	There can be from two to fifty Members (Owners) of the company;	The minimum number of Shareholders (Owners) is three, with there being no maximum number;
	The company is not permitted to issue shares.	The company is not permitted to issue shares.	Paid-up (Charter) Capital is divided into Shares; a Joint Stock Company is entitled to issue Shares and other Securities.

	Limited Liability Companies		Joint Stock Companies
	Single-Member	Multiple-Member	
Member / Shareholder Oversight & Governance Structure	<p>A Chairman is appointed to represent the Owner (Member).</p> <p>When the Owner is a corporate entity, the company must also have a Controller.</p> <p>A Members' Council is required if more than one authorized representative is appointed by a corporate Owner.</p>	<p>A Members' Council is required, along with the position of Chairman of the Members' Council.</p> <p>Where there are more than 10 Owners (Members), then a Board of Supervisors is required.</p>	<p>The General Meeting of Shareholders is the highest overseeing body.</p> <p>A Board of Management is required, along with a Chairman of the Board of Management.</p> <p>A Board of Supervisors (also known as an Inspection Committee) is also required where there are more than 10 Shareholders, or where corporate Shareholders hold more than 50% of the shares.</p>
Company Representative	<p>A Legal Representative is appointed as the primary individual to represent the company and is responsible for regulatory or corporate matters. Companies may appoint more than one Legal Representative, however, one of the Legal Representatives must reside in Vietnam, and if all Legal Representatives are out of the country for more than 30 days, they must appoint another to fulfil their responsibilities.</p>		
General Director	<p>The General Director is responsible for the management of the company, including signing documents to conduct its daily affairs.</p>		
Chief Accountant	<p>Each company is required to appoint a Chief Accountant. Together with accounting and tax obligations, this role also assumes many of the "Corporate Secretarial" roles as seen in other jurisdictions.</p>		
Dividends	<p>Can be distributed from profits after the company has fulfilled its tax and other obligations in a year. The company must ensure that its debts can be paid in full after distribution of profits.</p>	<p>Can be distributed from profits after the company has fulfilled its tax and other obligations in a year. Companies must ensure that their debts can be paid in full. Dividends may be paid in cash, shares, or in other assets.</p>	



2.3. Miscellanea



2.3.1. The Corporate Seal

After establishing the company, a company seal must be engraved at a permitted agency. Before using the seal, an announcement on using the seal must be submitted to the licensing authorities. The company may have one or more copies of its corporate seal. The company can decide on the form and contents of its seal (ie, a logo), but all seals must contain the company's name and registration number.



2.3.2. Term of an Enterprise

The term of a company and its underlying investment project may not exceed 50 years. However, investment projects in economic zones may be granted a term of up to 70 years. Foreign investors can renew the investment project's term upon its expiration.



2.3.3. Enterprise Capital

The company's enterprise capital ("Investment Capital") comprises Charter Capital and Loan Capital.

The Charter Capital is the amount of funds that Members or Shareholders contribute, or commit to contribute, within a certain period stated in the charter. They must be fully contributed within 90 days from the date on which the company is established.



2.3.4. Bank Accounts

After establishment, the company may proceed to open bank accounts. If it has foreign investment, the company will open a Direct Capital Account, in which the foreign Charter Capital and foreign Loan Capital will be received. The company will also open operating (current) bank accounts with commercial banks.



3. Investment through Cooperation Contracts



3.1. Public Private Partnerships

A Public-Private Partnership (“PPP”) is a form of investment made on the basis of contracts between State agencies and investors. PPPs undertake the implementation, management and operation of infrastructure projects or provision of public services. PPP contracts may take a variety of forms, including:

- ✓ Build, Operate, Transfer (“BOT”) contracts;
- ✓ Build, Transfer, Operate (“BTO”) contracts;
- ✓ Build, Transfer (“BT”) contracts;
- ✓ Build, Own, Operate (“BOO”) contracts;
- ✓ Build, Transfer, Lease (“BTL”) contracts;
- ✓ Build, Lease, Transfer (“BLT”) contracts; and
- ✓ Operation and Management (“O&M”) contracts.



3.2. Business Cooperation Contracts

A Business Cooperation Contract (“BCC”) is a contract signed by investors with the objective of jointly conducting one or more commercial business operations in Vietnam. One party to the contract will represent all the parties. To implement the contract and co-ordinate the daily operation of a BCC, if necessary, a coordination board will be established with functions, duties and powers agreed upon by the parties.

A BCC signed between a local investor and a foreign investor, or between foreign investors, must apply for an Investment Registration Certificate.



3.3. Representative Offices

A Representative Office is a dependent unit of a foreign entity that may conduct market research and undertake commercial promotion activities permitted by the laws of Vietnam. A Representative Office is not allowed to engage in profit-making activities or to facilitate commercial contracts signed by the parent company.



3.4. Branches

A Branch is a dependent unit of a foreign entity that is permitted to conduct commercial activities for profit-making purposes. Establishing a Vietnam branch of a foreign company is, in practice, most relevant for banks, airlines or other regulated sectors; however, it is also an option when considering investment or trading structures in Vietnam.

Conditions for Establishment	
Representative Office	Branch
The foreign company must be in the list of countries / territories with which Vietnam has signed bilateral agreements;	The foreign company is incorporated and registered to do business in countries that have treaties to which Vietnam is a signatory or is recognized by the country;
The foreign company needs to have been established (operating) for at least one year;	The foreign company has operated for at least five years from the date of establishment or registration;
The Certificate of Business Registration of the foreign company (or an equivalent document) must be valid for at least one year from the date of submission of the application;	The Certificate of Business Registration of the foreign company (or an equivalent document) must be valid for at least one year from the date of submission of the application;
The scope of operations of the Representative Office is consistent with Vietnam's commitments in treaties to which Vietnam is a signatory.	The scope of operation of the branch conforms with Vietnam's commitments to market access stipulated in treaties to which Vietnam is a signatory, and shall be consistent with the lines of business of the foreign company.

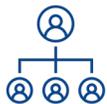
4.1. Procedures and Timelines

Foreigners investing in Vietnam by establishing a new company will:

- i. Apply for an Investment Registration Certificate (“IRC”) for their investment project, then after the IRC is issued,
- ii. Apply for and obtain an Enterprise Registration Certificate (“ERC”) to establish the new company.

In addition, certain major projects require in-principle approval on investment policy by the National Assembly, the Prime Minister, or the provincial People’s Committee (“In-Principle Approval”). Where in-principle approval is required, investors must first apply for such approval before applying for the IRC & ERC. Projects which require approval include the construction and operation of airports, construction and operation of golf courses, construction of nuclear power plants, and projects that require the relocation and resettlement of 20,000 people or more in mountainous areas or 50,000 people or more in other areas.

Step	Procedure	Statutory Processing Period
1	Application for an In-principle Approval (if applicable)	35 days or more, depending on whether the investment project needs to be approved by the National Assembly, the Prime Minister, or the provincial People’s Committee.
2	Application for an IRC	<ul style="list-style-type: none"> ✓ 3 weeks from receipt of required documents, if the investment project is not subject to a decision on investment policies, or ✓ 1 week from receipt of an In-principle Approval for the project, if it is subject to a decision on investment policies.
3	Application for an ERC	1 week from receipt of required documents.



4.2. Officers of the Company

When establishing a company, investors need to identify individuals to serve as officers of the company in three key positions:

- i. **Legal Representative.** Every company is required to have at least one Legal Representative, who may be of any nationality. At least one Legal Representative must reside in Vietnam.
- ii. **General Director.** The General Director runs the day-to-day operations of the company and may be of any nationality. The General Director and the Legal Representative may be the same person.
- iii. **Chief Accountant (“CA”).** The CA must review, approve and sign accounting vouchers and documents, along with other company lodgments. This role is filled after the company is established, and, with some exceptions, must be held by an individual with a Vietnamese Chief Accountants Certificate. Appointment of the Chief Accountant is usually required for a Vietnamese company to complete initial tax registrations and open bank accounts.

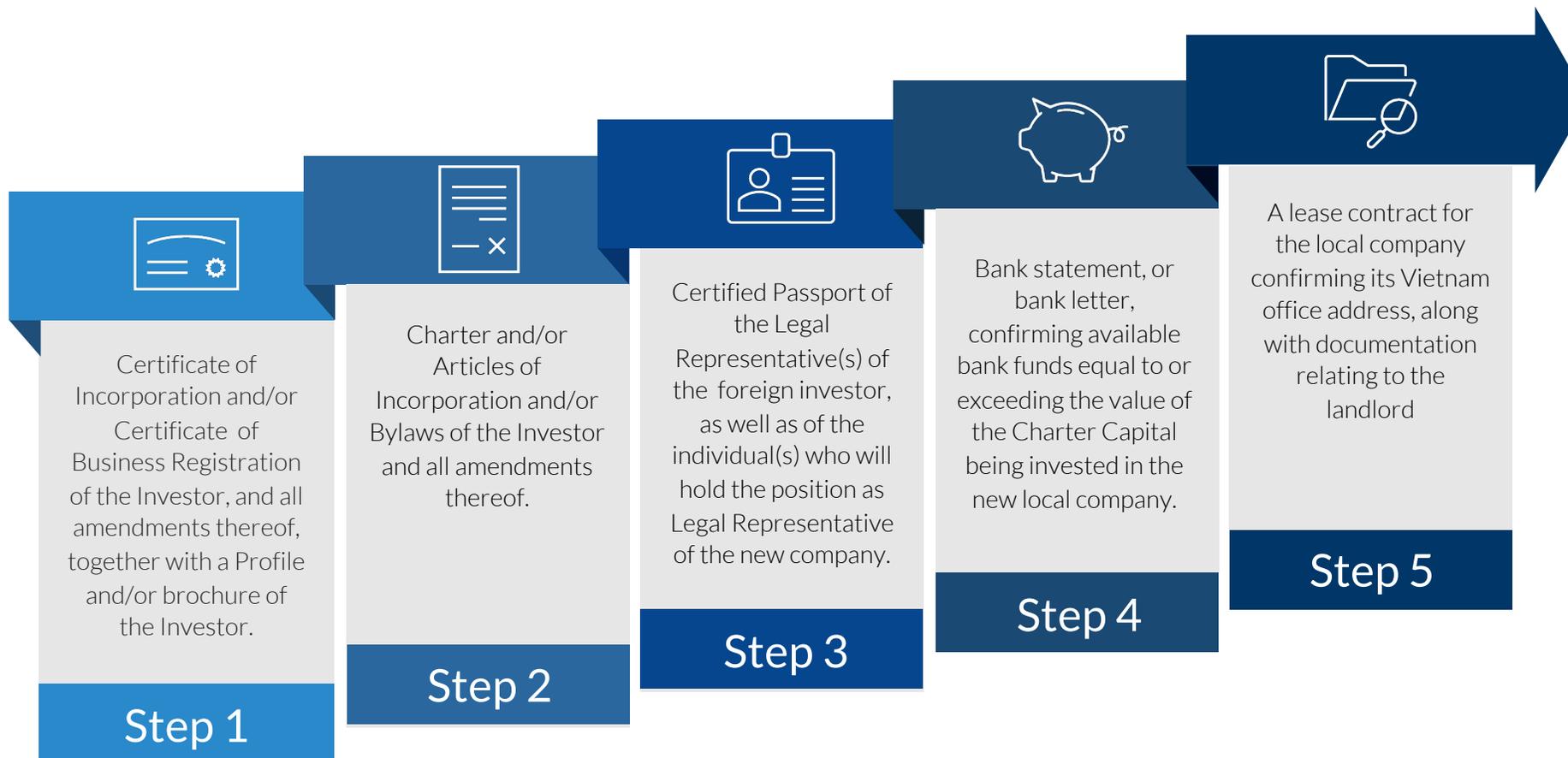


4.3. Company Address

To establish a company in Vietnam, the proposed company must have a formal address in Vietnam, with proof of its existence. Leased property (or property subject to an agreement-to-lease) must have the legal right to be leased to the new company, and documents showing the landlord’s right to lease will need to be presented to the authorities. Serviced offices are often used in the interim as the initial formal address for a company establishment application, with a more permanent location determined later on.

4.4. Documentation

The following are the necessary documents and steps, in compliance with the law, to establish a new company in Vietnam:





5.1. Purchase of Shares or Contributed Capital of an Existing Enterprise

Investment in Vietnam may be conducted by contributing capital to established companies, or by purchasing their shares or existing capital. Depending on the industry in which the investment is made, the ratio of capital contributed, or shares purchased by foreign investors may be subject to industry-specific regulations. Investors will follow procedures to register the purchase of shares or contributed capital, then amend the company's ERC and IRC (if applicable) to reflect changes in ownership.



5.2. Branch Office Establishment

Procedure. A foreign company that seeks to establish a Branch in Vietnam will submit the application dossier to the licensing authority (either the Ministry of Industry and Trade, or another specified Ministry for their specific sector). The licensing authority will consider and issue the Certificate of Branch Establishment within 2 to 3 weeks from the date of receipt of the required documents, depending on the branch's scope of operation, the country or territory of the parent company, and whether the branch's establishment is subject to specialized legislative documents.

Term. Branches are registered for a period of 5 years, but not exceeding the remaining term of the foreign company's Certificate of Business Registration or equivalent (for documents that have an expiration date).



5.3. Representative Office Establishment

Procedure. For a foreign company to establish a Representative Office in Vietnam, it will submit the application dossier to the Department of Industry and Trade in the Province they wish to register the Office in (or the Management Boards of Industrial Parks, Export Processing Zones, Economic Zones or Hi-Tech Zones, if applicable). The authority will review the application and issue the Certificate, establishing a Representative Office within 2 weeks from receipt of the documents (except for special cases, i.e., where the country of the investor is not party to reciprocal agreements in Vietnam. In these cases, the application timeline will be extended).

To establish a Representative Office, foreign companies should prepare and submit the following documents:

- ✓ Legalized copies of the Certificate of Incorporation of the foreign company;
- ✓ Legalized copy of the Charter/Articles of Association;
- ✓ Legalized copy of audited financial statements of the Company for the most recent financial year, or certificates of fulfillment of tax liabilities or financial obligations of the Company in the most recent financial year;
- ✓ Legalized/Notarized copy of passport or Vietnam ID card of the head of the Representative Office;
- ✓ Lease agreement for the Representative Office in Vietnam, along with supporting documents from the landlord.

Term. Representative Offices are registered for a period of 5 years, but not exceeding the remaining term of the foreign company's Certificate of Business Registration or equivalent (for documents that have an expiration date).

Ongoing Compliance



VAT & Withholding Tax

Value Added Tax is applicable at 10% for most transactions, although certain activities may have a reduced or zero rate. Depending on size, companies are required to submit monthly or quarterly to the tax authorities, with an annual finalization



Labor Taxes & Insurances

Employers are required to withhold Personal Income Taxes and specified government insurances from staff salaries, as well as make contributions for insurances. Insurances are submitted monthly, with PIT submitted monthly or quarterly depending on the company size



Statistical Lodgments

Companies in Vietnam are required to prepare and lodge statistical reports with regulatory authorities on a monthly, quarterly, half-yearly and annual basis



CIT & Bookkeeping



The standard Corporate Income Tax (CIT) rate applicable to most companies is currently 20%, with quarterly submissions and annual finalizations required. Taxpayers may have certain tax incentives or reductions, depending on their sector, location or other factors

Payroll Management



Employers are required to comply with the payroll laws the government regulates, and make payroll for employees, including taxes, withholding, social security payments and other statutory requirements

Annual Audit



Enterprises with foreign investment require an annual financial audit, which is generally submitted to the authorities within 90 days from year-end, together with their annual tax finalization

We are passionate
about **exceeding** your
expectations.



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