

## FDI Guide Vietnam

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**Foreword:** There is no single law governing foreign direct investment (FDI) in Vietnam. The main laws and regulations related to foreign investment include the following:

1. World Trade Organization (WTO) commitments (the Schedule of Specific Commitments in Services) and other international or bilateral treaties signed by Vietnam;
2. Law on Enterprises No 59/2020/QH14 adopted by the National Assembly of Vietnam on 17 June 2020, effective from 1 January 2021 ('Law on Enterprises 2020');
3. Law on Investment No 61/2020/QH14 adopted by the National Assembly of Vietnam on 17 June 2020, effective from 1 January 2021 ('Law on Investment 2020');
4. Law on Securities No 54/2019/QH14 adopted by the National Assembly of Vietnam on 26 November 2019, effective from 1 January 2021 ('Law on Securities 2019');
5. Ordinance on Foreign Exchange Control; and
6. other specific legislation applicable to foreign investment in certain regulated areas (eg, banking, financial services and insurance).

<b>Questions</b>	<b>Page</b>
Principle .....	3
Legal regime.....	3
Authority(ies) in charge.....	3
Transactions that may be subject to FDI .....	4
Sectors falling under the FDI scope .....	5
Qualified investors .....	7
Procedure.....	7
Before or post-closing filing .....	8
In the case of pre-closing filing.....	8
In the case of post-closing, what are the powers of the authority?.....	8
Advance ruling .....	8
Timing of various steps .....	8
Filing .....	8
Review by the authority .....	9
Negotiation with the authority.....	9
Filing fees.....	9
Information needed for filing .....	9
Final decision .....	9
Conditionality of approval.....	10
Type of conditions or commitments.....	11
Level of discretionary power of the authority .....	11
Risk of veto .....	11
Role of other national authorities .....	11
Sanctions .....	11
Covid – special regime .....	12

	<b>Topic</b>	<b>Explanation/Description of what is expected</b>	<b>Vietnam</b>
1.	<b>Principle</b>	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p><b>Regime by exception</b></p> <p>Through the accession to the WTO and other international or bilateral treaties, Vietnam committed to provide market access to foreign investment in certain key service sectors. This commitment is reflected in Articles 5.5. and 5.6 of the Law on Investment 2020, which is the primary law for foreign investment activities in Vietnam and is stated as follows:</p> <ul style="list-style-type: none"> <li>• Vietnam provides equal treatment between investors and has policies to encourage and create favourable conditions for investors to conduct business investment activities and sustainably develop economic industries.</li> <li>• Vietnam respects and implements international treaties on investment of which Vietnam is a member.</li> </ul> <p>However, FDI is subject to restrictions as provided in Vietnam’s WTO commitments and other international treaties and domestic laws (including the Law on Investment 2020), including, inter alia, those on national defence or security. Please see our analysis in item 17 below for further discussion on the restrictions/conditions applicable.</p> <p>Based on this exception principle, Vietnam has implemented screening/clearance procedures on FDI in Vietnamese target companies.</p>
2.	<b>Legal regime</b> <b>Authority(ies) in charge</b>	Describe source(s).  Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>Please refer to the Foreword of this FDI Guide, which sets out the main sources of laws and regulations that govern the FDI regime.</p> <p>The authorities in charge of applying the FDI Rules are as follows:</p> <p><b>M&amp;A approval</b></p> <p>Written M&amp;A approval from the Department of Planning and Investment (DPI) must be obtained if the transaction is subject to the FDI regime (as discussed in item 3 below).</p> <p><b>IRC and ‘in-principle’ approvals</b></p>

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			<p>Investment registration certificates (IRC) issued by the DPI, or the industrial zone’s management authorities if the investment projects are located in industrial zones, must be obtained.</p> <p>‘In-principle’ approvals from state authorities, including the National Assembly, Prime Minister or Provincial People’s Committees, may be required in certain investment projects (as discussed in item 3 below).</p>
3.	<p><b>Transactions that may be subject to FDI regime</b></p> <ul style="list-style-type: none"> <li>• Type</li> <li>• Materiality thresholds</li> <li>• Rights of evocation</li> </ul>	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p><b>Type of transactions that are subject to FDI regime/clearance procedures</b></p> <p><i>M&amp;A approval (in respect of acquisition of shares or contributed capital)</i></p> <p>An acquisition of shares or contributed capital would require obtaining written M&amp;A approval if:</p> <ul style="list-style-type: none"> <li>• the target company is engaging in any business line that is conditional for foreign investors (please see the discussion in item 4 below for more details) and the share acquisition or capital contribution by the foreign investor results in an increase in the foreign ownership ratio of such a company;</li> <li>• the foreign investor acquires shares or contributed capital in a target company with the right to use land plots located on islands, border or coastal areas, or other areas affecting national defence and security; or</li> <li>• the foreign investor acquires more than 50 per cent of the target company’s shares or contributed capital.</li> </ul> <p><i>IRC and ‘in-principle’ approval (in respect of establishment of new investment projects)</i></p> <p>Foreign investors applying for a new investment project in Vietnam are required to register such a project and obtain an IRC.</p> <p>Foreign investors may also need to obtain ‘in-principle’ approvals (before obtaining the IRC) in certain cases, particularly:</p> <ul style="list-style-type: none"> <li>• National Assembly’s approval where such a project has a significant impact on the environment (eg, nuclear power plants) and so on;</li> <li>• Prime Minister’s approvals for investment projects that involve relocation of</li> </ul>

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			<p>more than 10,000 people; construction and operation of airports, air transport, seaports and golf courses; petroleum exploration, extraction, and refinery; casinos; cigarette production; and so on; and</p> <ul style="list-style-type: none"> <li>Provincial People Committee’s approval for investment projects in which the state allocates or leases land without auction, tender or transfer and projects involving conversion of land-use purposes and so on.</li> </ul> <p>Acquisition of more than 50 per cent of shares or capital contribution in a target company would be subject to M&amp;A approval.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>The indirect acquisition of assets or shares in the jurisdiction are not subject to Vietnamese FDI rules.</p> <p>Share transfers (or transfers of capital contribution) involving internal restructuring in Vietnam may be subject to M&amp;A approval.</p> <p>Greenfield investments are subject to the IRC requirement and ‘in-principle’ approval requirement, if required.</p>
		<p>Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>Vietnamese authorities are entitled to monitor transactions being carried out in Vietnam and to require that the FDI rules be complied with if a given transaction falling within its scope is not properly referred to them.</p>
4.	<b>Sectors falling under the FDI scope</b>	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p>	<p><b>Sectors in which foreign investment is prohibited or conditional</b></p> <p>Under the Laws on Investment 2020, foreign investors are not allowed to invest in sectors that fall within the list for which foreign investment is prohibited (‘Prohibited List’). In addition, where the foreign investment is made in a sector that is on the list for which foreign investment is subject to market access conditions (‘Conditional List’), such an investment is allowed, provided that the relevant market access conditions are satisfied.</p>

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			<p>The <i>Prohibited List</i><sup>1</sup> comprises 25 sectors. Some notable sectors include: (1) press activity, news collection and public opinion polling; (2) services that send Vietnamese workers to work in foreign countries under contract; (3) services of industrial property representation and intellectual property assessment; and (iv) tourism services (except for international tourism services for inbound tourists).</p> <p>The <i>Conditional List</i><sup>2</sup> comprises 59 sectors, including both manufacturing and service sectors.</p> <p>Foreign investment in sectors that are not on the Prohibited List and Conditional List are subject to the same market access rules that apply to domestic investment (ie, national treatment).</p> <ul style="list-style-type: none"> <li>In addition to the Prohibited List and Conditional List, foreign investors are also subject to the nationwide list of prohibited and conditional sectors set out under the Law on Investment 2020, which is applicable to both domestic and foreign investors.<sup>3</sup></li> </ul> <p>The conditional list includes franchising, commercial arbitration, debt trading services and shipping agency services, insurance auxiliary activities, data centre services and the provision of payment services without using customers' payment accounts.</p> <p><b>Licensing requirement for unbound sectors</b></p> <p>For sectors that are unbound or not committed under international treaties ('Unbound Sectors'):</p> <ul style="list-style-type: none"> <li>where local law provides clear market access restrictions, such market restrictions apply. That said, if such a sector appears on the Prohibited List or Conditional List, the foreign investor will be subject to the relevant restrictions accordingly; and</li> <li>where local law does not provide any market access restriction, the foreign investment will be subject to the same market access rules that apply to domestic investment.</li> </ul>

1 Appendix I of Decree 31/2021/ND-CP.

2 Appendix I of Decree 31/2021/ND-CP.

3 Appendix IV of the Law of Investment 2020.

	Topic	Explanation/Description of what is expected	Vietnam
		Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	<p><b>Limitations of the foreign ownership ratio</b></p> <p>Certain sectors impose stricter limits (ie, lower threshold of investment by foreign interests). For instance, in local banks, the total equity held by foreign entities and individuals in Vietnam’s joint stock commercial banks may not exceed 30 per cent of the local bank’s charter capital.</p> <p><b>Prohibited sectors</b></p> <p>Please refer to the Prohibited List discussed in item No 4 above.</p>
5.	<b>Qualified investors</b>	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>The Law on Investment 2020 regulates business investment activities in Vietnam, which is generally defined as an investor expending investment capital to conduct business activities that include foreign investors and foreign-invested economic organisations in Vietnam.</p> <ol style="list-style-type: none"> <li>1. ‘Foreign investor’ means an individual holding a foreign nationality or an organisation established under foreign laws making business investments in Vietnam.</li> <li>2. ‘Economic organisation with foreign investment capital’ means an economic organisation with a foreign investor as a member or shareholder.</li> </ol> <p>In particular, such an economic organisation is one that falls into one of the following cases:</p> <ul style="list-style-type: none"> <li>• more than 50 per cent of its charter capital is held by foreign investor(s), or a partnership has a majority of partners that are foreign individuals in the case of an economic organisation being a partnership;</li> <li>• more than 50 per cent of its charter capital is held by an economic organisation(s) prescribed in sub-clause (1) above; or</li> <li>• more than 50 per cent of its charter capital is held by a foreign investor(s) and an economic organisation(s) prescribed in sub-clause (1) above.</li> </ul>
6.	<b>Procedure</b> 6.1 Before or post-		Required prior to the completion of the investment.

	Topic	Explanation/Description of what is expected	Vietnam
	closing filing		
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p>Generally, it is mandatory to apply for M&amp;A approval before the completion of M&amp;A transactions.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>the target enterprise's business lines are not conditional sectors where foreign investors are subject to conditions; or</li> <li>the proposed acquisition will result in foreign investors owning less than 51 per cent charter capital of the target enterprise.</li> </ul>
8.	6.3 In the case of post-closing, what are the powers of the authority?		<p><b>Post-closing procedures for M&amp;A transactions:</b></p> <ul style="list-style-type: none"> <li>limited liability company: updating the enterprise registration certificate (ERC); and</li> <li>joint stock company: notification of changes to information of foreign shareholders.</li> </ul> <p>Administrative penalties (eg, failure to satisfy conditions for the acquisition of shares/capital contribution).</p>
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>Not applicable.</p> <p>The investor may submit an official letter requesting guidance from the competent authority on the FDI rules.</p>
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	<ul style="list-style-type: none"> <li>IRC: 15 days from receipt of the valid application documents.</li> <li>M&amp;A approval: 15 days from receipt of the valid application documents.</li> </ul> <p>In practice, the timelines may be longer or extended.</p>



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11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	Refer to item 10 for the timelines.
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.  Are there any guidelines issued by the authority?	There are no regulations or guidance on negotiation with the competent authority.  In practice, the applicant may follow up verbally with the competent authority to amend the application documents.
13.	(iv) Filing fees	Is there a filing fee?	No filing fee is imposed.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	Information required about the investor: incorporation document, audited financial statements, articles of association, passport of the director/legal representative and so on.  There are no thresholds for the identity and nationality of minority passive shareholders.  Information on other FDI approvals by other authorities is not required.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	In practice, the issuance of the IRC and M&A approval may be prolonged; subject to several rounds of comments from the competent authority.
			When there are grounds for believing that an administrative decision or administrative act is contrary to law and infringes the lawful rights and interests of the investor, the investors may: <ul style="list-style-type: none"> <li>• make complaints or denunciations and institute legal proceedings in accordance with the law on complaints and denunciations; and</li> <li>• institute an administrative lawsuit in accordance with the law on administrative</li> </ul>

	Topic	Explanation/Description of what is expected	Vietnam
			procedures.
16.	<b>Conditionality of approval</b> (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p><b>Market approach conditions</b></p> <p>Under Article 9.3 of the Law on Investment 2020, market approach conditions applicable to foreign investors comprise:</p> <ul style="list-style-type: none"> <li>• ratio of ownership of the charter capital of foreign investors in economic organisations;</li> <li>• forms of investment;</li> <li>• scope of the investment operation;</li> <li>• capacity of investors and other parties participating in the investment activity; and</li> <li>• other conditions pursuant to the laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly, decrees of the government and international treaties of which Vietnam is a member.</li> </ul> <p><b>Other conditions</b></p> <p>Under Article 15.3 Decree 31, in addition to the market approach conditions above, foreign investors and economic organisations with foreign investment capital (FIE) must also satisfy the following conditions (if any) when conducting business investment activities in Vietnam:</p> <ul style="list-style-type: none"> <li>• land use, employment of labour, and use of natural resources and minerals;</li> <li>• production and supply of public goods and services, or goods and services for which the state has a monopoly;</li> <li>• ownership or commercial operation of housing and real estate;</li> <li>• application of forms of state assistance and subsidy to a number of industries and sectors or to the development of territorial areas and geographical locations;</li> <li>• participation in programmes and plans on the ‘equitisation’ of state-owned</li> </ul>

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			<p>enterprises; and</p> <ul style="list-style-type: none"> <li>other conditions prescribed in the laws and resolutions of the National Assembly, in ordinances and resolutions of the National Assembly Standing Committee, in government decrees and in international treaties on investment that contain regulations prohibiting or restricting a market approach for economic organisations with FIE.</li> </ul> <p>The Vietnamese authorities typically consider these FDI conditions/commitments in the application dossiers for obtaining IRC and M&amp;A approval. They can also monitor them via: (1) quarterly and annually investment reports submitted by the Vietnamese company implementing the investment project; and (2) periodical or unexpected inspection of the investment project or target company.</p>
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	No. There is no discretion to review transactions or investment projects that would not meet the conditions set out by Vietnamese law. However, the Vietnamese authorities have a wide discretionary assessment power to accept, conditionally accept or reject an application for IRC and M&A approval.
18.	(iii) Risk of veto	Describe a topical case. Statistics	Veto is possible, but we are not aware of any cases so far.
19.	<b>Role of other national authorities</b>	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	In considering applications for IRC, and M&A approval, the DPI may have the right to seek written opinions from other ministries (eg, Ministry of Finance, State Bank of Vietnam and Ministry of Industry and Trade), subject to the business lines of the target company/new Vietnamese company to be set up.
21.	<b>Sanctions</b>	Describe the type of sanctions that may be imposed by the authority in the case of: <ul style="list-style-type: none"> <li>breach of conditions and/or</li> </ul>	If there is a breach of conditions and/or commitments attached to the approval: <ul style="list-style-type: none"> <li>an administrative fine from VND 70–100m may be imposed for failure to comply with the contents of the IRC;<sup>4</sup> and</li> </ul>

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		commitments attached to the approval; and	<ul style="list-style-type: none"> <li>if an administrative fine has been imposed on the investor but the investor still does not comply with the content of the IRC, the Vietnamese authorities may decide to terminate a part or the entire operation of the investment project.<sup>5</sup></li> </ul>
		<ul style="list-style-type: none"> <li>investment carried out without prior approval.</li> </ul>	<p>If an investment subject to FDI rules is carried out without a prior approval:</p> <ul style="list-style-type: none"> <li>without IRC: an administrative fine from VND 100–200m;<sup>6</sup> and</li> <li>without M&amp;A approval: an administrative fine from VND 80–100m.<sup>7</sup></li> </ul>
21.	<b>Covid – special regime</b>	Please describe specific rules applicable as a result of the Covid-19 pandemic.	<p>We note that there are no new laws and guiding legislation passed specifically in response to the Covid-19 pandemic.</p> <p>With the severe impact of the Covid-19 pandemic outbreak, restrictions on travel and immigration, lockdowns and other stringent measures to prevent the spread of the virus, new and existing investment activities in Vietnam have been affected or delayed. However, with Vietnam’s advantageous position as an investment destination, coupled with the attempts of the government to improve the business environment for foreign investment, the situation is starting to improve and the trend of foreign investment is expected to gradually resume.</p>

5 Art 47.2(dd) Law on Investment 2020.

6 Art 19.3(a) Decree 122/2021/ND-CP.

7 Art 16.1 Decree 122/2021/ND-CP.

<b>Theme</b>	<b>Relevant Item</b>
Acquisition of shares or contributed capital .....	3
.....	8
Administrative fine.....	21
Commitments .....	1
.....	17
.....	21
Conditional list .....	4
Conditions .....	1
.....	4
.....	8
.....	17
.....	18
.....	21
Covid .....	22
Department of Planning and Investment .....	2
.....	20
Domestic investment .....	4
Economic organisation .....	5
.....	17
Filing fee.....	13
Foreign investor.....	3
.....	4
.....	5
.....	7
.....	17

<b>Theme</b>	<b>Relevant Item</b>
Foreign ownership ratio .....	3
.....	4
Greenfield investments.....	3
‘In-principle’ approval .....	2
.....	3
Indirect acquisitions .....	3
Industrial zone’s management authorities.....	2
Investment registration certificates .....	2
.....	3
.....	10
.....	15
.....	17
.....	18
.....	20
.....	21
Interests .....	4
.....	16
M&A approval .....	2
.....	3
.....	7
.....	10
.....	15
.....	17
.....	18
.....	20
.....	21

<b>Theme</b>	<b>Relevant Item</b>
Ministry of Finance .....	20
Ministry of Industry and Trade.....	20
National Assembly of Vietnam .....	2
.....	3
.....	17
Prime Minister.....	2
.....	3
Prohibited list .....	4

<b>Theme</b>	<b>Relevant Item</b>
Provincial People’s Committees .....	2
.....	3
Restriction .....	4
.....	22
State Bank of Vietnam .....	20
Threshold .....	4
.....	14
Unbound sectors.....	4
Veto.....	19
World Trade Organization .....	2