

Guide for

INVESTMENT ENVIRONMENT

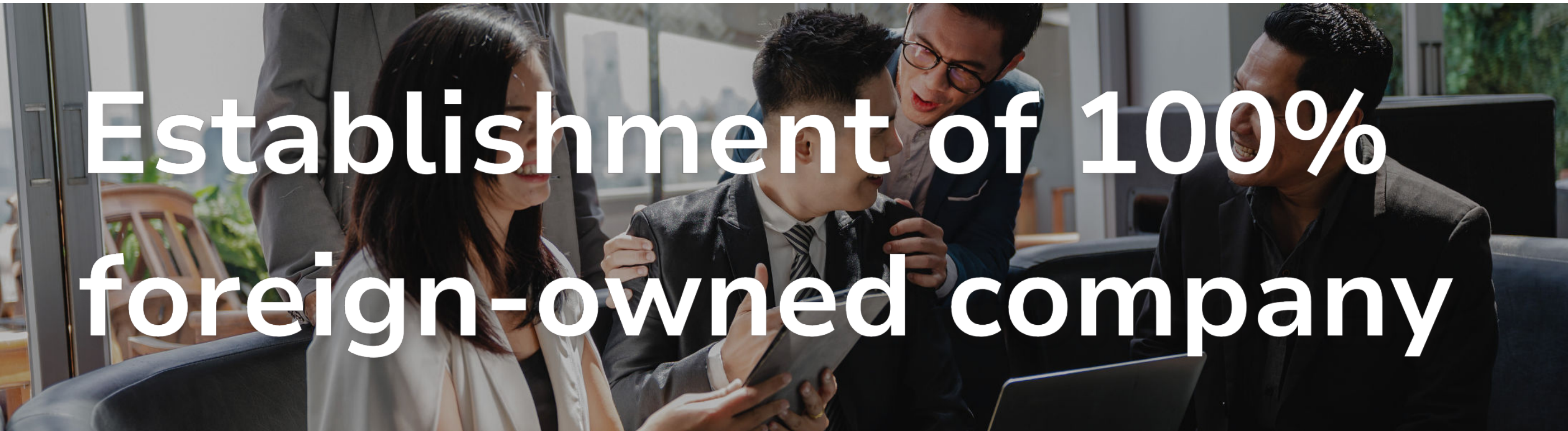


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Establishment of 100% foreign-owned company

1. 24 business sectors that foreign investor are allowed to establish 100% foreign-owned company in Vietnam

No.	Sector	CPC Code
1	Manufacturing	
2	Accounting services, tax services (except foreign accounting service enterprises)	862, 863
3	Architectural services	8671
4	Technical consulting services, integrated technical consulting	8672, 8673
5	Urban planning and urban landscape architecture services	8674
6	Computer services and related services, software business, production	841-845, 849
7	Research and development services for natural sciences	851
8	Market research services	864
9	Management consulting services	865
10	Services related to management consulting	866
11	Services related to production	884, 885
12	Services related to scientific and technical consulting	86751, 86752, 86753

No.	Sector	CPC Code
13	Repair, maintenance services for machinery, equipment (excluding repair, maintenance of ships, airplanes, or other transport vehicles and equipment)	633
14	Courier services	7512
15	Construction services and related technical services	511-518
16	Import-export services, wholesale, retail distribution of goods	621, 622, 631, 632
17	Franchise services	8929
18	Education services	923, 924, 929
19	Wastewater treatment, waste management	9401, 9402
20	Hospital services, dental services, medical examination	9311, 9312
21	Hotel accommodation services, Food and beverage services	64110, 642, 643
22	Warehousing services, freight forwarding agents	742, 748
23	Computer reservation services	
24	Aircraft maintenance and repair services	8868

2. 5 ways for foreign investors to invest in Vietnam

2.1 Establishment of a new economic entity

The popular conducted economic entities applicable to the foreign investors include: Limited liability company of 01 member or more than 02 members, Joint stock company, partnership company (Law on Enterprises No.59/2020).

Applicable condition: Foreign investors must have certain investment project. The procedures is processed through 02 steps: 1/ Procedures for being granting the Investment Registration Certificate (IRC), 2/ Procedures for being granting the Enterprise Registration Certificate (ERC)

2.2 Investment via Mergers & Acquisitions (M & A)

Depending on percentage of foreign capital ownership and kinds of businesses, the foreign investors shall process the investment procedures through 01 step or 02 steps

2.3 Implement the investment projects

A Vietnam-based foreign invested enterprise (FIE) is able to implement various investment projects, including establishment of a new enterprise. Depending on percentage of foreign capital ownership, the FIE shall process the investment procedures as applied for domestic investors or as applied for foreign investors (Article 23).

2.4 Investment via Business Cooperation Contract (BCC)

BCC is executed without the establishment of a new legal entity. Instead, parties to a BCC shall establish a co-ordination board to implement and oversee the BCC. The investors to a BCC mutually agree on allocation of responsibilities and sharing of profits / losses arising from a BCC (Article 27).

2.5 Other new forms of investment and legal entity as prescribed by the Government

Q: Can foreign investors contribute 100% of capital?

Depending on the industry in which investors conduct business in Vietnam, the law may regulate the ownership ratio of capital for investors. Some industries allow foreign investors to own 100% of the capital, such as construction, trade, management consulting, etc. However, there are certain sectors where foreign investors are only allowed to contribute a certain percentage of capital or engage in joint ventures, such as advertising, tourism, logistics, transportation, etc.



Land Use Rights of Foreign Investor

1. The regulations regarding land use rights of foreign investors in industrial zones in Vietnam

Based on Article 55(3), Clause d of Article 56(1), and Clause b of Article 169 of the 2013 Land Law, foreign enterprises can utilize land in Vietnam through the following methods:

- Land allocation;
- Land lease;
- Land use rights transfer.

Currently, the law specifies two main cases for State land leasing, including:

- One-time lease with a lump-sum payment;
- Annual lease with annual payments.

According to Clause 3 of Article 149, Clauses 1 and 2 of Article 174, and Article 175 of the 2013 Land Law, foreign-invested enterprises investing in production and business in industrial zones or clusters can lease land attached to infrastructure of other economic organizations; foreign-invested enterprises investing in construction and business of infrastructure have the following rights:

In the case where an enterprise pays land rental fees in a lump sum for the entire lease term:

- The enterprise shall be granted a Certificate of Land Use Right, House Ownership Right, and Other Assets Attached to Land;
- The enterprise shall enjoy the fruits of its labor and investment on the land;
- The enterprise shall enjoy the benefits of State-constructed works serving the protection and improvement of agricultural land;
- The enterprise shall be guided and assisted by the State in the improvement and enrichment of agricultural land;

- The enterprise shall be protected by the State when its legitimate land rights and interests are infringed upon by others;
- The enterprise shall be compensated when the State reclaims land in accordance with the provisions of the Land Law;
- The enterprise may file complaints, denunciations, and lawsuits against acts of violation of its legitimate land use rights and other acts of violation of land laws;
- The enterprise may transfer the right to use land and its own property attached to the land;
- The enterprise may lease the right to use land and its own property attached to the land in the case of land granted by the State with a land use fee; sublease the right to use land and its own property attached to the land in the case of land leased by the State with a lump sum land rental fee for the entire lease term;
- The enterprise may donate the right to use land to the State; donate the right to use land to the community to build works serving the common interests of the community; donate houses of affection attached to the land in accordance with the law;
- The enterprise may mortgage the right to use land and its own property attached to the land at credit institutions permitted to operate in Vietnam;
- The enterprise may contribute capital by using the right to use land and its own property attached to the land to cooperate in production and business with organizations, individuals, Vietnamese people residing abroad, foreign-invested enterprises in accordance with the law.

In the case where an enterprise pays annual land rental fees:

- The enterprise shall be granted a Certificate of Land Use Right, House Ownership Right, and Other Assets Attached to Land;
- The enterprise shall enjoy the fruits of its labor and investment on the land;
- The enterprise shall enjoy the benefits of State-constructed works serving the protection and improvement of agricultural land;
- The enterprise shall be guided and assisted by the State in the improvement and enrichment of agricultural land;
- The enterprise shall be protected by the State when its legitimate land rights and interests are infringed upon by others;
- The enterprise shall be compensated when the State reclaims land in accordance with the provisions of the Land Law;

- The enterprise has the right to file complaints, denunciations, and lawsuits against acts of violation of its legitimate land use rights and other acts of violation of land laws;
- The enterprise may mortgage its own property attached to the leased land at credit institutions permitted to operate in Vietnam;
- The enterprise may sell its own property attached to the leased land when it meets the conditions specified in Article 189 of the Land Law; the buyer of the property shall be continued to be leased land by the State for the purpose that has been determined;
- The enterprise may contribute capital using its own property attached to the leased land; the person receiving the capital contribution by property shall be continued to be leased land by the State for the purpose that has been determined;
- The enterprise may sublease the land use right in the form of annual land rental fees for land that has been completed with infrastructure construction in the case of being permitted to invest in infrastructure construction for land in industrial parks, industrial clusters, export processing zones, high-tech parks, and economic zones.



5 Business Entity Types When Starting a Business in Vietnam: Pros and Cons

Sole Proprietorship

A sole proprietorship is a business run and owned by an individual who is personally responsible for all aspects of the business's operations and finances.

Advantages:

- Straightforward company setup procedures.
- The business owner has full control over decision-making regarding business operations. Sole proprietorships inspire trust in partners and customers due to the unlimited liability policy regarding business activities.
- As there's no separation between the business's assets and the individual's assets (the business owner), sole proprietorships can easily access loans from banks or other credit institutions.

Disadvantages:

- Each individual can only establish one sole proprietorship.
- Individuals who've set up a sole proprietorship can't head another business entity nor can they be members of another partnership company.
- Due to the lack of legal distinction, there's no separation between the owner's (individual's) assets and the business's assets, resulting in a high risk level for the sole proprietor.
- The business is liable for debts using not only the company's assets but also the owner's personal assets.
- Limited capital raising ability due to the inability to issue any type of securities.

Single-Member Limited Liability Company

A single-member limited liability company is a business entity owned by either an organization or an individual (referred to as the company's owner). The company's owner is liable for the company's debts and other asset obligations within the scope of the company's charter capital.

Advantages:

- The owner retains full authority to make decisions on all matters related to the company's operations.
- Management of the company is simplified.
- Being a legal entity, the business is recognized as a distinct legal entity capable of entering into legal relationships independently.
- The owner's liability is limited to the extent of the company's charter capital (as per Article 1, Article 74 of the 2020 Enterprise Law).
- Organizational structure of the company has a hierarchical, top-down power arrangement.
- The company's owner has the power to transfer all or part of the company's charter capital (as outlined in Article 76 of the 2020 Enterprise Law).
- Charter capital can be augmented through additional contributions from the owner, attracting further investment from individuals or other organizations (per Article 87 of the 2020 Enterprise Law), or by issuing bonds.

Disadvantages:

- The legal framework governing single-member limited liability companies is more stringent compared to sole proprietorships.
- Limited ability to raise capital as single-member limited liability companies are not permitted to issue shares.
- If there's a need to raise additional capital through contributions from individuals or other organizations, it will necessitate converting the business entity to a multi-member limited liability company or a joint-stock company.

Multi-Member Limited Liability Company

A multi-member limited liability company is a business setup where owners can be either organizations or individuals, and the number of members can range from 2 to a maximum of 50.

Advantages:

- Members of the company are only liable for the capital they've put into the company.
- Having multiple owners, unlike sole proprietorships or single-member limited liability companies, can mean access to potentially higher capital.
- Increasing the company's capital is possible by adding more contributions from members or accepting new ones.
- The rules for transferring and buying back contributed capital are strict, making it easier for investors to keep track of membership changes.

Disadvantages:

- The company isn't allowed to issue shares, and membership is capped at a maximum of 50

Partnership Company

A partnership company must have at least 2 members who are joint owners of the company, conducting business under a common name. Additionally, the company may have additional contributing members.

Advantages:

- Due to the joint and several liability of the partners, a partnership company easily garners trust from customers and business partners.
- Managing and operating the company is not overly complex.
- Partners in a partnership company are often individuals with high professional qualifications and reputations.
- Banks are more inclined to lend and defer debts due to the joint and several liability regime of the partners.

- The organizational structure is streamlined and easy to manage, making it suitable for small and medium-sized enterprises.
- As a legal entity, the partnership company is recognized as a separate legal entity, capable of engaging in legal relationships independently.

Disadvantages:

- Due to the joint and several liability regime (as per Article 2 of Article 181 of the 2020 Enterprise Law), the risk level for partners in a partnership company is very high.
- A partnership company is not permitted to issue any type of securities (as per Article 3 of Article 177 of the 2020 Enterprise Law).
- Partners in a partnership company cannot be sole proprietors, nor can they be partners in another partnership company without the unanimous consent of the other partners (as per Article 1 of Article 180 of the 2020 Enterprise Law).
- Partners withdrawing from the company still bear responsibility for the company's debts incurred before the termination of their membership for a period of 2 years (as per Article 5 of Article 185 of the 2020 Enterprise Law).
- Despite being a legal entity, a partnership company does not have a clear distinction between company assets and personal assets, thus, even though it has legal personality, it lacks independence in bearing responsibility for the company's debts.

Joint Stock Company

A business entity where the charter capital of the company is divided into equal parts called shares. Shareholders can be organizations or individuals who own shares. The minimum number of shareholders is 03, with no limitation on the maximum number.

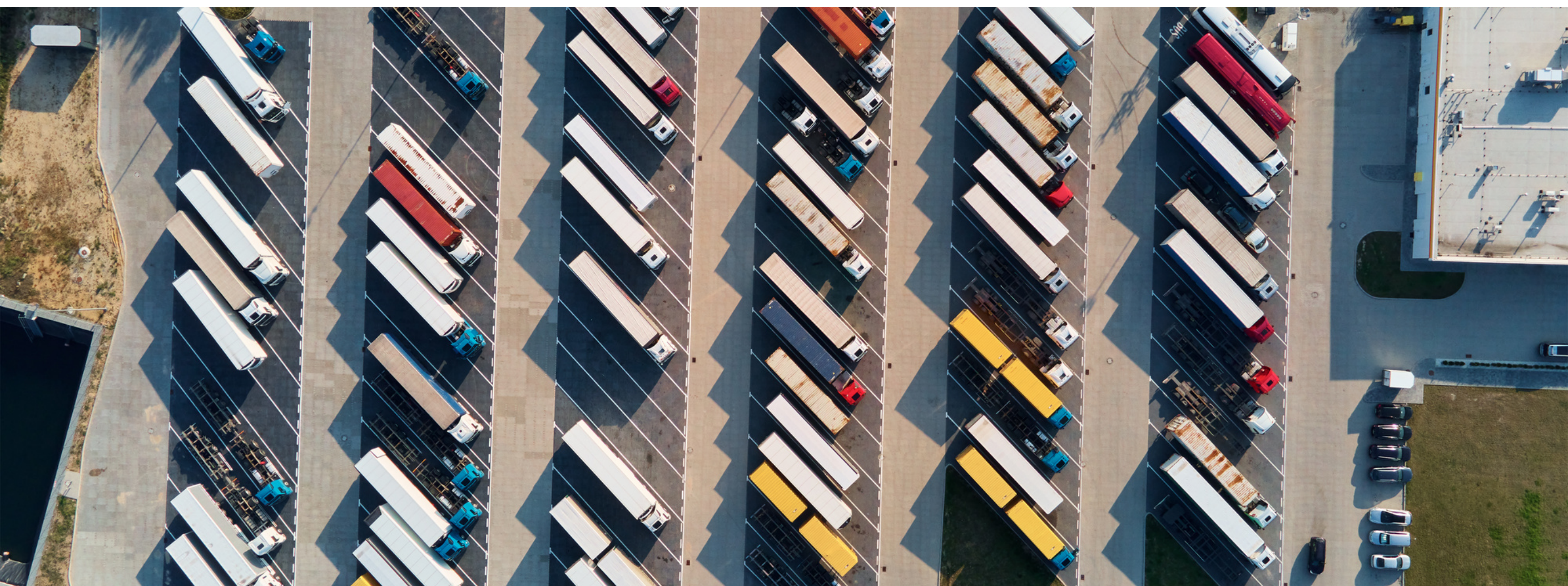
Advantages:

- Shareholders are only liable for debts and other asset obligations of the company within the scope of their capital contribution, hence the risk level is not high.

- High potential for capital mobilization through issuing shares to the public.
- The company has no restriction on the number of shareholders and can raise capital worldwide.
- Shareholders can easily transfer, buy, sell, or inherit shares through trading stocks on the stock market.
- The company operates efficiently due to the separation of management and ownership.
- The salaries and bonuses of contributing shareholders in management positions are counted as operational expenses to reduce corporate income tax.

Disadvantages:

- Managing and operating a Joint Stock Company can be very complex due to the potentially large number of shareholders.
- Business and financial security may be compromised as the company is required to disclose and report to shareholders.
- Managing and operating a Joint Stock Company is more complicated.





Business Registration Certificate for Foreign Investors in Vietnam

Investment Registration Certificate

Step 1: Determine if the project requires investment policy approval

Based on Articles 30, 31, 32 of the 2020 Investment Law:

Depending on the scale of the projects, some may require investment policy approval, but most foreign-invested projects and projects in industrial zones, export-processing zones, and high-tech zones do not require investment policy approval, only an Investment Registration Certificate.

Step 2: Determine if the project requires an Investment Registration Certificate

Based on Article 37 of the 2020 Investment Law:

Cases requiring an Investment Registration Certificate:

- Projects invested by foreign investors;
- Projects invested by economic organizations with foreign investment capital.

Cases not requiring an Investment Registration Certificate:

- Projects invested by domestic investors;
- Economic organizations, investors holding less than 50% of charter capital, or having no majority of members being foreign individuals, follow the investment conditions and procedures for domestic investors when investing in establishing other economic organizations;
- Investments in the form of capital contribution, share purchase, purchase of capital contribution portions of economic organizations;
- Investment under the form of BCC contracts.

Step 3: Documentation for issuing an Investment Registration

Certificate for a 100% foreign-owned company

- Letter proposing project implementation;
- Documentation on the legal status of the investor;

↗ For individual investors: Copy of ID card, citizen ID card, or passport;

↗ For institutional investors: copy of the Certificate of Establishment or equivalent document confirming legal status;

- Project proposal including: investor or investor selection form, investment objectives, investment scale, investment capital and capital mobilization plan, location, duration, implementation progress, information on land use status at the project location and proposed land use needs (if any), labor needs, proposed investment incentives, project socio-economic impacts, preliminary environmental impact assessment (if any) as required by environmental protection laws.
- Documentation proving the financial capacity of the investor including at least one of the following: financial reports for the last 2 years of the investor; financial support commitment from the parent company; financial support commitment from financial institutions; financial capacity guarantee of the investor; other documents proving the financial capacity of the investor.
- In cases where construction laws require the preparation of a feasibility study report, investors may submit a feasibility study report instead of a project proposal;

- In cases where construction laws require the preparation of a feasibility study report, investors may submit a feasibility study report instead of a project proposal;
- In cases where the investment project does not request the State to allocate land, lease land, or allow land use change, submit a copy of the land use rights documents or other documents identifying the right to use the location to implement the investment project;
- Explanation of the technology used in the investment project for projects subject to appraisal, soliciting opinions on technology as required by technology transfer laws;
- BCC contract for investment projects under the form of BCC contracts.
- Other documents related to the investment project, requirements on investor conditions, and capacity as required by law (if any).

Enterprise Registration Certificate

After obtaining the investment registration certificate, investors need to prepare documents to establish the enterprise.

- Documents for establishing a 100% foreign-owned company:
- Application for enterprise registration;
- Company charter;
- List of founding members/shareholders;
- Copies of the following documents: Citizen ID card, ID card, passport, or other legally valid personal identification documents of individual members;
- Decision on establishment, Enterprise Registration Certificate, or equivalent documents of the organization and authorization documents; Citizen ID card, ID card, passport, or other legally valid personal identification documents of the authorized representative of the organization;
- For foreign organizational members, a copy of the Enterprise Registration Certificate or equivalent document must be legalized by consular offices;
- Investment Registration Certificate for foreign investors as required by the Investment Law.

Requirements and Procedures for Foreign Direct Investment (FDI) Enterprises to Transfer Profits from Vietnam to Overseas

Timing of Profit Repatriation

- According to Article 4 of Circular 186/2010/TT-BTC, profit repatriation is scheduled annually or upon completion of investment, after fulfilling financial obligations to the Vietnamese State.
- Conditions for Profit Repatriation
- As outlined in Article 2 of Circular 186/2010/TT-BTC, profits eligible for transfer from Vietnam to overseas destinations are those derived from legal activities under the Investment Law, provided the investor has met all financial obligations to the Vietnamese State. Such profits can be remitted in either cash or kind.
- Article 3 of the same circular specifies:
- Annual profit repatriation (=) profit distribution or earnings for the fiscal year... (+) additional profit (-) amounts allocated or committed to reinvestment...
- Profit repatriation upon investment completion (=) Total investor profits obtained (-) reinvestment amounts, profits already transferred abroad, and other expenses.
- Foreign investors are prohibited from repatriating profits earned from direct investments in Vietnam during fiscal years where the invested enterprise records cumulative losses after adhering to tax laws regarding income loss transfers.

Procedures for Profit Repatriation

- Article 5 of Circular 186/2010/TT-BTC mandates that foreign investors or their authorized enterprises notify the tax authority managing the invested enterprise at least 07 working days before initiating profit repatriation.

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