



Vietnam: Investment Regulatory Framework

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Foreign Investment – Key Points

- Foreign investment highly regulated and restrictive
- Cost of entry significant – budget for time, cost, effort (reward: business opportunities and potential for high growth)
- Foreign direct investment is project/business-specific
- Distinctions between Vietnamese and foreign owned companies
- 100% foreign-owned (unless conditional sector – WTO Commitments)
- 49% foreign ownership cap for public company – relaxed for certain industries
- Acquisition of Vietnamese company: generally can acquire 100%, unless in conditional activities or public company
- Can repatriate lawful after tax profits

Legal Framework (not exactly the wild east)

- Investment and Enterprise Laws
 - Securities
 - Trade and Commerce
 - Competition/Consumer Protection
 - Anti-corruption/Penal Code
 - Labor Code
 - E-Transactions/IT
 - Forex
 - Tax
 - Environment
 - Construction
 - Property and Real Estate
- Education
 - Mining
 - Aviation
 - Pharmaceuticals
 - Telecommunications
 - Infrastructure
 - Transfer pricing / customs valuation
 - Issues: irregular consistency and clarity in interpretation, implementation and enforcement
 - Blue, red or cold blooded – corporate governance and compliance

Legal Framework - FDI/M&A (cont'd)

- **Investment Law**
 - Investment Registration Certificate (IRC) and Enterprise Registration Certificate (ERC)
 - Conditional sectors (see WTO and domestic regs)
- **Enterprise Law**
 - Limited liability company (LLC, capital contribution, no shares)
 - Joint stock company (JSC, shares)
- **Securities Law**
 - 49% cap on foreign ownership of listed companies; relaxed for certain industries
- **Competition Law**
 - Economic concentration approval (30%/50%)

Types of Corporate Entities

- **Limited Liability Company (LLC)**
 - No shares, capital contribution
 - One, or more than one, member/investor (ROFR)
 - Board of Members (investors, vote by equity) and General Director
 - 65% simple majority (except for WTO services schedule)
- **Joint Stock Company (JSC)**
 - Shares: common and preferred
 - Minimum 3 shareholders, founding shareholders (3 year lock-up)
 - General Meeting of Shareholders, Board of Management (appointed by cumulative vote), and General Director
 - From 51% simple majority
 - Public company: 100 or more shareholders, OTC

Treaties and Market Access

- From US-Vietnam BTA, to WTO, to...???
- ASEAN Economic Community (AEC) 2015 / 2025
 - Integration
 - Harmonization
 - Movement of goods/services/capital
 - Mobility
- TPP? [Australia](#), [Brunei](#), [Canada](#), [Chile](#), [Japan](#), [Malaysia](#), [Mexico](#), [New Zealand](#), [Peru](#), [Singapore](#), the [United States](#), and [Vietnam](#).
- RCEP? ASEAN plus [Australia](#), [China](#), [India](#), [Japan](#), [South Korea](#), and [New Zealand](#).

Example: Logistic services

Vietnamese law		WTO's Commitments		AFAS Commitments (8th pack)	
Transportation agency services, including customs agency services and the services of preparing plans for unloading goods:	JV unlimited foreign ownership	Freight transport agency services (including freight forwarding services)	100% foreign ownership	Freight transport agency services (including freight forwarding services)	100% foreign ownership
		Customs clearance services (as part of maritime auxiliary services)	JV unlimited foreign ownership	Customs clearance services (as part of maritime auxiliary services)	JV unlimited foreign ownership
Maritime transport services:		Maritime transport services:		Maritime transport services:	
• fleet operation	JV not exceeding 49% foreign ownership	• fleet operation:	JV not exceeding 49% foreign ownership	• fleet operation:	JV not exceeding 49% foreign ownership
• international freight transport service	100% foreign ownership	• international freight transport service:	100% foreign ownership	• international freight transport service:	100% foreign ownership
Internal waterways freight transport services	JV not exceeding 49% foreign ownership	Internal waterways freight transport services	JV not exceeding 49% foreign ownership	Internal waterways freight transport services	JV not exceeding 51% foreign ownership
Air transport services	JV not exceeding 30% foreign ownership	Air transport services	No commitments	Air transport services	No commitments
Rail transport services	JV not exceeding 49% foreign ownership	Rail transport services	JV not exceeding 49% foreign ownership	Rail transport services	JV not exceeding 51% foreign ownership



Thank you

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