INTRODUCTION TO VIETNAMESE LAW

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Ho Chi Minh City / Viet Nam
Australian Chamber of Commerce and Industry
• **Politics:** One-party socialist republic, led by the Communist Party of Vietnam

• **Law system:** Civil law

• **Current Constitution:** Constitution 2013

• **Source of law:** Legal normative documents
GOVERNMENTAL FRAMEWORK

ORGANIZATIONAL STRUCTURE

President
National Assembly
Government
Supreme People’s Court
Supreme People’s Procuracy

People’s Council
People’s Committee
People’s Court
People’s Procuracy

People’s Council
People’s Committee
People’s Court
People’s Procuracy

People’s Council
People’s Committee

Central level

Provincial level

District level

Municipal level

Monitor
Select / appoint
## GOVERNMENTAL FRAMEWORK

### LAW-MAKING BODIES

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<th>Issuing bodies</th>
<th>Legal instruments</th>
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<td>Constitution, Laws, Resolutions</td>
<td></td>
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<tr>
<td>Standing Committee of the National Assembly</td>
<td>Ordinances, Resolutions</td>
<td>Joint resolutions with the central bodies of political-social organizations</td>
</tr>
<tr>
<td>President</td>
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<td></td>
</tr>
<tr>
<td>Government</td>
<td>Decrees</td>
<td>Joint resolutions with the central bodies of political-social organizations</td>
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<td>Prime Minister</td>
<td>Decisions</td>
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<td>Council of Judges of the Supreme Court</td>
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<td>Chief Judge of the Supreme Court</td>
<td>Circulars</td>
<td></td>
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<tr>
<td>Procurator-General</td>
<td>Circulars</td>
<td>Joint circulars</td>
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<td>Ministers or head of ministerial-level entities</td>
<td>Circulars</td>
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<tr>
<td>General State Auditor</td>
<td>Decisions</td>
<td></td>
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<tr>
<td>Local People’s Committee</td>
<td>Decisions; Directives</td>
<td></td>
</tr>
<tr>
<td>Local People’s Council</td>
<td>Resolutions</td>
<td></td>
</tr>
</tbody>
</table>
GOVERNMENTAL STRUCTURE
LEGISLATION HIERARCHY

National Assembly → The Constitution → Laws → Ordinances

The Standing Committee

Government → Prime Minister → Ministries → Minister

The Constitution

Local policies: applicable to specific localities

International treaties: prevail domestic laws in case of discrepancy

Decrees

Decisions

Decisions

Circulars

Official letters/dispatches: correspondences between governmental entities or in response to business entities to guiding the implementation of the laws or giving opinions on specific issues.
COMPANY LAW

OVERVIEW

• Main regulations
  ▪ The Law on Enterprise 2014
  ▪ The Law on Investment 2014
  ▪ Related specialized laws, guiding decrees and circulars

• Management authorities:
  ▪ Ministry of Planning and Investment (regulator)
  ▪ Local Department of Planning and Investment ("DPI")
  ▪ Business sector management authorities
  ▪ Management boards of industrial parks, economic zones, etc.
• **Right to do business:** companies can engage in any and all business lines that are not prohibited by laws.

• **Types of business lines:**
  - **Prohibited business lines:** companies cannot engage in business activities involving addictive drugs, highly endangered species, prostitution, human organ trafficking, human cloning, and forbidden chemicals/minerals.
  - **Conditional business lines:** companies must satisfy certain requirements to be established and operate.
    - Conditions for operations in specific sectors: skilled staff with practicing license, satisfactory infrastructure & facilities, etc.
    - Limitation on foreign ownership: according to WTO commitment and restrictions in specific sectors.
  - **Unconditional business lines:** companies need only to obtain the standard Enterprise Registration Certificate (and investment registration certificate where applicable).
<table>
<thead>
<tr>
<th>Company type</th>
<th>Features</th>
</tr>
</thead>
</table>
| Limited liability company        | - 1-50 members (individuals and/or organizations)  
                                    - Liable by the capital contributed to the company                                                                                           |
| Joint-stock company              | - 3 or more shareholders (individuals and/or organizations)  
                                    - Wide options to raise capital (including stock and bonds)  
                                    - Liable by the capital contributed to the company                                                                                         |
| State-owned enterprise           | - Limited liability company with one member being the State                                                                                                                                             |
| Partnership                      | - 02 categories of members: partners (individuals only) and capital contributors  
                                    - Raising capital from members  
                                    - Liable by the assets of the partnership and partners                                                                                       |
| Sole proprietorship              | - One Vietnamese individual managing all activities of the company  
                                    - Raising capital from the proprietor  
                                    - Liable by the assets of the proprietor                                                                                                        |
COMPANY LAW
LIMITED LIABILITY COMPANY

Multiple-member LLC
- Members’ Council
- (General) Director
- Supervisory Board
- Compulsory to company with 11 or more members;

Single-member LLC
- Company’s Chairman/Members’ Council
- (General) Director
- Supervisor
- Number of supervisors is determined by the Company’s owner;

MC Chairman
Compulsory to company with 11 or more members;

Company’s Chairman/
Members’ Council
Appointed by the owner of the Company
COMPANY LAW
LIMITED LIABILITY COMPANY

Multiple-member LLC

Conditions for meeting of Members’ Council:

- **First call**: representation of at least 65% of charter capital
- **Second call**: within 15 working days from the first intended meeting, representation of at least 50% of charter capital
- **Third call**: within 10 working days from the second intended meeting, no ratio for representation required

Voting: ratification of resolutions by the Members’ Council requires

- A number of votes that represents at least 65% of charter capital
- A number of votes that represents at least 75% of charter capital in case of
  - Required by the company’s charter
  - Sale of 50% or more of company’s assets
  - Restructuring or dissolution

Single-member LLC

Conditions for meeting of Members’ Council:
attended by 2/3 members

Voting: ratification of resolutions by the Members’ Council requires

- Approval by 1/2 members
- Approval by 3/4 members in case of:
  - Amending charter;
  - Transferring charter capital (partially or entirely)
## Types of shares:

<table>
<thead>
<tr>
<th>Types of shares</th>
<th>Benefits</th>
<th>Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinary share</td>
<td>- Attend and vote at GMS</td>
<td>Founding shareholders cannot transfer their shares within 03 years from the establishment of the company.</td>
</tr>
<tr>
<td></td>
<td>- Receive dividends</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Priority in buying new shares</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Transfer shares</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Examine list of voting shareholders,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>company’s charter, minutes and resolutions of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>GMS</td>
<td></td>
</tr>
<tr>
<td>Voting preferred share</td>
<td>- Higher number of votes</td>
<td>Shares cannot be transferred.</td>
</tr>
<tr>
<td></td>
<td>- Other rights similar to ordinary shareholders</td>
<td></td>
</tr>
<tr>
<td>Dividends preferred share</td>
<td>- Higher or fixed dividends</td>
<td>No rights to vote, attend GMS or nominate for Board of Management and Supervisory Board</td>
</tr>
<tr>
<td></td>
<td>- Other rights similar to ordinary shareholders</td>
<td></td>
</tr>
<tr>
<td>Redeemable preferred share</td>
<td>- Capital contribution via shares can be</td>
<td>No rights to vote, attend GMS or nominate for Board of Management and Supervisory Board</td>
</tr>
<tr>
<td></td>
<td>return to shareholders upon request or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>agreed conditions.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Other rights similar to ordinary shareholders.</td>
<td></td>
</tr>
</tbody>
</table>
General Meeting of Shareholders: consisting of all voting shareholders

Supervisory Board: compulsory for companies with 11 or more shareholders or institutional shareholders holding more than 50% charter capital

Supervisory Department: for Company with no Supervisory Board; at least 20% members of the Board of Management being independent
• **Conditions for General Meeting of Shareholders:**
  - **First call:** representation of at least 51% of charter capital
  - **Second call:** within 30 days from the first intended meeting, representation of at least 33% of charter capital
  - **Third call:** within 20 days from the second intended meeting, no ratio of representation required

• **Voting:** ratification of GMS’ resolutions requires

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ratio of votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type and amount of shares</td>
<td></td>
</tr>
<tr>
<td>Changing business lines</td>
<td></td>
</tr>
<tr>
<td>Changing organizational structure</td>
<td></td>
</tr>
<tr>
<td>Investing or sale of 35% or more of company assets</td>
<td>at least 65%</td>
</tr>
<tr>
<td>Restructuring and dissolution</td>
<td></td>
</tr>
<tr>
<td>Required by company’s charter</td>
<td></td>
</tr>
<tr>
<td>Other cases</td>
<td>at least 51%</td>
</tr>
</tbody>
</table>
COMPANY LAW
RESTRUCTURING AND DISSOLUTION

• Restructuring:
  • Division: one limited liability company or joint stock company is divided to 02 or more new companies. Divided company ceases to exist.
  • Separation: one limited liability company or joint stock company is separated by transferring part of its assets or rights & obligations to set up 1 or more new companies. Company being separated remains existent.
  • Consolidation: 02 or more companies are integrated to a new company.
  • Acquisition: one company acquire another company as part of itself.

• Dissolution: only after fulfilling all obligations to other parties
  • End of operational term in the company’s charter and the company do not wish to extend such term
  • Upon decision of the sole proprietor (for sole proprietorship); partners (for partnership); Members’ Council or company’s owner (for LLC); and General Meeting of Shareholders (for JSC)
  • Lack of minimum members required by laws and the company do not wish to convert to another type of companies
  • Revocation of the ERC
The labour laws, whilst providing a fair framework to support and govern the employment relationship, are widely recognized as being skewed towards the benefit of the employee.

• **Main regulations**
  - The Labour Code 2012
  - Guiding decrees and circulars

• **Management authorities:**
  - Ministry of Labour, Invalids and Social Affairs (regulator)
  - Local Department of Labour, Invalids and Social Affairs
• **Probation**: maximum 2 months, 85% salary

• **Types of contract**: There are three types of labour contract:
  - Indefinite term labour contract (no specific term is defined);
  - Definite term labour contract for a term of 12 to 36 months; and
  - Seasonal labour contract for a term less than 12 months for a specific or seasonal job

• **Compulsory provisions**: Nature of the work to be performed, place of work, wages, allowances and additional payments, working hours and rest breaks, contract duration, social and health insurances, and conditions on occupational safety and hygiene.

• **Conditions**:
  - not less favourable to the employees than the provisions of the labour laws
  - consistent with the collective labour agreement and internal labour rules of the company.
• **Extension and Renewal**
  - A definite term may be renewed only once (except for certain special cases). Upon its expiry, an indefinite term labour contract must be signed for continuance of employment.
  - A new labour contract must be signed within 30 days of the expiry date of a definite term or a seasonal labour contract. Otherwise, the existing definite labour contract will automatically become an indefinite term labour contract and a seasonal labour contract will become a 24-month labour contract.

• **Termination:**
  - Automatic and mutual termination
  - Unilateral termination
  - Redundancy
  - Dismissal
• **Working hours:** normally 8 hours/day; 48 hours/week

• **Overtime:**
  - Including hours worked other than normal working hours, or worked on public holidays, paid leave days, or week days off; and will be paid in accordance with the penalty rates specified under the law.
  - Not exceed 50% of the daily working hours, 30 hours per month and 200 hours per year (300 hours in exceptional cases).

• **Leave:**
  - Annual leave: 12 days for employees working full-time for 12 months (higher annual leave entitlements for those working under dangerous/disadvantaged conditions).
  - Public holidays: 10 days
  - Maternity leave: six months
EMPLOYMENT

SALARY & INSURANCE

- **Salary**: agreed and stipulated in labour contract, not lower than the regional minimum salary level

<table>
<thead>
<tr>
<th>Region</th>
<th>Example Areas</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Region I</td>
<td>e.g., urban districts of Ha Noi, Ho Chi Minh City, Hai Phong</td>
<td>VND3,100,000 (USD144)</td>
</tr>
<tr>
<td>Region II</td>
<td>e.g., Da Nang, Nha Trang, Da Lat, Phan Thiet, Ha Long</td>
<td>VND2,750,000 (USD127)</td>
</tr>
<tr>
<td>Region III</td>
<td>e.g., rural districts of Hue, Quang Nam, Binh Thuan, Long An</td>
<td>VND2,400,000 (USD111)</td>
</tr>
<tr>
<td>Region IV</td>
<td>e.g., Nghe An, Quang Binh, Bac Lieu, Soc Trang</td>
<td>VND2,150,000 (USD100)</td>
</tr>
</tbody>
</table>

- **Insurance**: calculated based on contract salary (Cap: 20 months of basic salary provided by the Government (current: VND1,150,000/month)).

<table>
<thead>
<tr>
<th>Contributors</th>
<th>Social insurance</th>
<th>Health insurance</th>
<th>Unemployment insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer</td>
<td>18%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>Employee</td>
<td>8% (currently applied to all Vietnamese nationals and foreign employees from 2018)</td>
<td>1.5% (currently applied to all Vietnamese and foreign employees)</td>
<td>1% (currently applied to all Vietnamese nationals only)</td>
</tr>
</tbody>
</table>
• **Internal labour rules (ILR):**
  - Companies with 10 or more employees must have ILR in writing.
  - The ILR must be registered with the provincial Department of Labour, Invalids and Social Affairs (DOLISA).
  - The ILR must not limit or diminish the employee’s interests stipulated in the labour laws.

• **Trade Union (TU):**
  - Various employment issues are required to be approved by/consulted with the TU.
  - Termination of a TU officer’s labour contract is subject to certain regulatory conditions.
  - The employer must contribute 2% of the payroll for the operations of the TU.
EMPLOYMENT
FOREIGN EMPLOYEES

• Requirements:
  ▪ Foreigners can only be recruited for the positions of managers, executives, experts and technicians with adequate qualifications and experience.
  ▪ The employer must obtain an approval regarding the need to employ foreigners from the authority in advance.

• Work permit (WP):
  ▪ The employer must apply to the DOLISA for a WP at least 20 days before the foreigner starts to work.
  ▪ The term of a WP shall be maximum 24 months.

• WP exemption:
  ▪ Foreigners working less than 3 months to resolve complex incidents, technical situations;
  ▪ Owner of a limited liability company;
  ▪ Member(s) of the board of management of a joint stock company;
  ▪ Foreign lawyers licensed to practice in Vietnam; and
  ▪ Intra-corporate transferees (or secondees) of companies operating in eleven service sectors within Vietnam’s WTO Commitments.
The Law on Immigration No. 47/2014/QH13, issued on June 2014 – effective on 1 Jan 2015

- More detailed classifications of visa: 20 types of visa according to specific purpose of entry.
- Purpose of entry must be identified exactly at the beginning. Changes in type of visas require exit and re-entry.
- Longer duration of Visa, Temporary Resident Card and Permanent Resident Card.
- Greater restrictions on entry and exit.
- Visa exemptions widened.
## VISA CLASSIFICATIONS

Among 20 types of visa, below are typical visas

<table>
<thead>
<tr>
<th>Type</th>
<th>Purpose of entry</th>
<th>Duration of visa</th>
<th>Temporary Residence Card</th>
</tr>
</thead>
<tbody>
<tr>
<td>DT</td>
<td>Investors/foreign lawyers</td>
<td>&lt;= 5 years</td>
<td>&lt;= 5 years</td>
</tr>
<tr>
<td>LD</td>
<td>Working</td>
<td>&lt;= 2 years</td>
<td>&lt;= 2 years</td>
</tr>
<tr>
<td>DN</td>
<td>Working with Vietnamese enterprises</td>
<td>&lt;= 12 months</td>
<td>N/A</td>
</tr>
<tr>
<td>NN</td>
<td>Chief of Rep offices in VN, Head of Branches, NGOs</td>
<td>&lt;= 12 months</td>
<td>&lt;= 3 years</td>
</tr>
<tr>
<td>HN</td>
<td>Attending seminar/workshop</td>
<td>&lt;= 3 months</td>
<td>N/A</td>
</tr>
<tr>
<td>DL</td>
<td>Travelling</td>
<td>&lt;= 3 months</td>
<td>N/A</td>
</tr>
<tr>
<td>TT</td>
<td>Dependents</td>
<td>&lt;= 12 months</td>
<td>&lt;= 3 years</td>
</tr>
<tr>
<td>VR</td>
<td>Visiting relatives, other purpose</td>
<td>&lt;= 6 months</td>
<td>N/A</td>
</tr>
</tbody>
</table>
• Purpose of visa cannot be converted from one purpose to another and foreigners must exit and re-enter Vietnam if there is a change in visa type, i.e. if you enter Vietnam with tourist visa (DL) and would like to convert into working visa (LD) you must exit then re-enter.

• Work permit must be applied before work visa can be granted. Duration of work visa will match with the term of the work permit.

• Work permit and visa application should be lodged way before commencement.

• The visa application fee is unchanged, $45 for a single-entry visa and from $65 to $135 for a multiple-entry visa. There is a draft circular by MoF to increase the visa fee, but the single-entry visa will remain unchanged to avoid impact on tourism.
Prohibited conditions for entrance:

- Person having been deported from Vietnam within the last 3 years;
- Person who has been compelled to leave Vietnam within the last 6 months.
- Who presenting forged paper or providing false information to obtain entry/exit/residence permit.
- A child under 14 years of age traveling without an accompanying parent or custodian.

Prohibited conditions for exit: up to 3 years in the following circumstances

- Failure to comply with tax obligations;
- Enforcement of an administrative sanction;
- Criminally charged or must serve a criminal sentence; or
- Is a defendant or a person with related rights and obligations in a civil, economic, labor, administrative or marriage litigation case.
Foreigners are exempted from visa to visit Phu Quoc island.

In addition, tourists from some countries can stay up to 15 days without visas, i.e. Denmark, Finland, Japan, Norway, Russia, South Korea, and all ASEAN members. Visa exemption under unilateral agreement are only allow to re-enter at least 30 days from the last exit.

Foreigner who holds multiple passports may only use one of them for every entry, exit, transit and residence in Vietnam.

Temporary Residence Card and Permanent Residence Card can be granted with a longer duration, up to 5 years and 10 years, respectively in comparison with 3 years in the past.
Eligible foreign individuals
Foreign individuals permitted to enter Vietnam without any diplomatic privilege or exemption.

Eligible foreign organizations
FIE; branches, representative offices of foreign companies; foreign funds and foreign bank branches licensed to operate in Vietnam (collectively “foreign organizations”)

The above foreign organizations must invest in residential housing projects.

Eligible residential properties
Property in development project including:
  - Apartments; and
  - Separate landed-houses such as villas
PROPERTY
PURCHASE BY FOREIGN ENTITIES

• Ownership rights
Owners may sell, transfer, mortgage, contribute as capital, gift, bequest.

• Restriction of ownership rights
  ▪ Property leasing is only permitted if the property is built on leased land.
  ▪ Foreign individuals must notify the authorities if leasing property and must pay the applicable taxes.
  ▪ Foreign organizations can only use houses for accommodation of their staff, not for other purposes.
  ▪ Before making capital contribution by house ownership, foreign landlords must notify the tenant.
  ▪ Payment of purchase price for the house purchase or lease-purchase must be made through a licensed credit institution in Vietnam – no hard cash or gold bullion.

• Duration of ownership
  ▪ Foreign individuals: up to 50 years and can be extended upon request
  ▪ Foreign organizations: in respect of investment in the construction of a development project, the duration is the same term as the investment certificate.

• Limitation on number of houses
  ▪ Up to 30% of the number of apartments in a apartment building.
  ▪ Up to 250 separate dwelling in a ward.
Three ways for a foreign entity to invest in property development and own up to 100% of the project:

**Transfer of an existing development project (in whole or in part)**
- Must still be in the construction phase or additional investment is made to upgrading facility.

**Land lease from the State**
- To invest in residential housing project for lease
- To invest in the construction, building (other than residential purpose eg commercial) of property for sale, lease, lease-purchase.

**Allocation of land from the State**
- Construction of residential houses for sale, lease, lease-purchase.
GET IN TOUCH
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