

Newsletter:

Establishment of enterprise in Vietnam what foreign investors need to consider



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In Brief

In recent years, Vietnam has been considered as a high potential investment environment thanked to its fast-growing economy among Southeast Asia countries and the supportive policies issued by the Vietnamese Government, including but not limited to tax reductions and preferential tax rates, etc. that would attract the foreign investors to enter into this dynamic market.

To ensure the effectiveness in investment, labor management, resources and leverage the utmost support from governmental policies, it's crucial for the investor to anticipate the basic steps should be taken into account for consideration of its investment in Vietnam. Therefore, some highlights shall be given below for consideration by the foreign investor whom might be interested in establishing an enterprise in Vietnam.

Key Takeaways

1. Defining the business line

As a member of WTO, Vietnam has opened its market since 2007 widely, but not completely. Accordingly, Vietnam stipulates several distinct regulations governing the investors in doing business in Vietnam, and has the ultimate power in accepting or rejecting the specific investment projects in Vietnam. Therefore, before making the initial steps to do business in Vietnam, the investors should determine whether the intended business line has been welcomed for opening in Vietnam under WTO commitments and if there are any conditions for doing such businesses in Vietnam.

The investor should be aware of some industries may require a separate license issued by the specific governmental authority as condition for conducting its business in Vietnam, which mean that after completing the establishment of an enterprise in Vietnam, the investor must meet various specific legal requirements prescribed by laws to be eligible in starting its business. For instance, to complete the investment into restaurant and hotel service business, the investor must obtain the Food hygiene and safety certificate, Fire prevention and fighting certificate following the issuance of Investment Registration Certificate and Enterprise Registration Certificate.

2. Identifying the proper form of enterprise

Investors may choose the proper form of enterprise based on operational needs and business plans. The Enterprise Law currently specifies the following enterprise forms:

- Private Enterprise
- Partnership
- Single – member Limited Liability Company
- Multi – members Limited Liability Company
- Joint Stock Company

In practice, the limited liability company and joint stock company are the forms being preferred by the foreign investor. In consideration of on some elements such as intended industry, number of investors, the flexibility level of changing of investors or capital transfer in the company, and financial plans..., the investors may decide which form of enterprises they may choose.

3. Charter Capital

The investors must identify the charter capital of the enterprise based on their financial capacity to ensure that the registered capital contribution schedule should be met. The investors should be aware that the direct investments into Vietnam are required by the governmental bodies of Vietnam for having a detailed and feasible capital contribution plan in order to evaluate the effectiveness of the investment project at later stage. In case the investors don't comply with the schedule or the amount of capital contribution, the investors will face some significant issues when working with the banks and tax authorities, as well as the administrative sanction would be applied, including the severe consequence of terminating or cancelling the investment projects in Vietnam.

4. How the working place creates economic value

The Government of Vietnam have applied many preferential tax policies, in which, the enterprises operating in some special industries or locations, such as in high-tech parks, industrial parks, economic zones, difficult economic areas, etc would enjoy a preferential tax rate (10%) lower than the standard tax rate (22%) or the scheme on tax exemption and reduction for a certain period.

Thus, the Investor needs to determine if the expected business lines, the desired project implementation place is located at the geographical areas that are being entitled to any incentive, and estimate the annual tax obligations.

5. What location cannot be used as a head office address?

Condominiums and apartments:

We can see many enterprises have placed the offices in apartments or mixed-use buildings, however, not all of them are allowed for having the lawful head offices.

The Investor must check on the related legal document issued by the competent authority to the lessor if the purpose of use of the intended rental place has been recorded as “residential” or “multi-function apartment” – a form of apartment that has both functions of living and working as an office. It is unlawful if the Investor rents the residential apartment for office purpose, and the business registration agency will reject the Investor’s establishment application dossier accordingly.

Restricted business areas:

Apart from the apartments, there are some prohibitions or restrictions of business lines or industries would be applied at the specific sites. Accordingly, some local authorities may have their own plans on the areas and streets that have not been allowed for doing some certain business activities or they may limit the number of enterprises operating in the same business line in such geographical area, which is common in the big cities like Ho Chi Minh, Hanoi, Da Nang, etc.

Environmental influences:

Some industries may have the significant impacts to the surrounding environment. As a principle, subjected to the laws and the granted power in environmental protection, the competent authority may identify and decide which areas are not opened for investment or the projects located therein could be limited on the capacity of operation. Many factors of estimated water consumption, electricity consumption, the waste expected to be discharged into the environment, hazardous or non-hazardous waste could be assessed carefully by the authorities of Vietnam before accepting any establishment and operation of the business therein.

Conclusion

All the above factors will have its own impact to the choice of the location of the enterprises, thus CDLAF suggests the Investor to determine the business line, the industry and production capacity, leasing areas at early stage, the expansion plan in the future, etc. It is highly recommended that any legally binding document between the Investor and the lessor should be entered after the Investor has determined the suitable rental location based on the consideration of all related factors, in order to eliminate the dispute between the parties.

The article contains general information, which is of reference value, in case you want to receive legal opinions on issues you need clarification on, please get in touch with our Lawyer at info@cdlaf.vn.