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LEGAL UPDATE



GENERAL REGULATIONS ON INVESTMENT ACTIVITIES IN VIETNAM OF DUAL-NATIONAL INVESTORS

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Thanks to the trend of integration, market openness and an improved legal framework, the Vietnamese market has been attracting both domestic and foreign investors. In fact, there are many individual investors with dual citizenship, Vietnamese and foreign nationality, conducting investment activities in Vietnam. How does Vietnam's Investment Law regulate investment activities of investors with dual nationality?

In this Legal Update, we are updating to Clients some of the main legal regulations pertaining to investment activities in Vietnam of dual-national investors.

GENERAL REGULATIONS ON INVESTMENT ACTIVITIES IN VIETNAM OF DUAL-NATIONAL INVESTORS

The investment activities of a dual national investor will be governed by the following main sources of law: (i) International Treaties in which Vietnam is a member; (ii) Law on Investment No. 61/2020/QH14 amended, supplemented by Law No. 03/2022/QH15 ("**Law on Investment**"); (iii) Decree No. 31/2021/ND-CP of the Government dated 26 March 2021 on detailing and guiding some articles of Law on Investment ("**Decree 31**"); (iv) Circular 186/2010/TT-BTC of Ministry of Finance dated 18 November 2010 on guiding the remittance abroad of profits earned by foreign organizations and individuals from their direct investment in Vietnam under the law on investment ("**Circular 186**").

1. Market Access Conditions & Investment Procedure

The Law of Vietnam stipulates that an investor who is a Vietnamese citizen and has foreign nationality has the right to select market access conditions and investment procedure applicable to domestic or foreign investors.¹ Accordingly, the investor has the right to select market access conditions, which means investing in Vietnam (i) as a domestic investor or (ii) as a foreign investor. As such:

- The investor will use Vietnamese's nationality and undertake investment activities as domestic investor; or
- The investor will use foreign nationality and undertake investment activities as foreign investor.

In case the investor conducts investment activities as a domestic investor, market access conditions and procedures applicable to domestic investors shall be applied. As a result, rights and obligations which are applicable to foreign investors shall not be applicable to such investors.²

¹ Clause 2 Article 16 Decree 31

² Clause 2 Article 16 Decree 31

2. Applicable Laws For Investment Activities

For each investment activity status, the investor's investment activities will be regulated by a number of legal sources:

- As a domestic investor: main sources of regulations are Law on Investment, documents that guide Law on Investment and other Vietnam's legal documents;
- As a foreign investor: Other than the country receiving investment - Vietnam, the Investor's investment activities may be governed by the law of the country where Investor is national, and international treaties in which Vietnam is a member, such as WTO Commitment, GATS, CPTPP, etc.

3. Advantages & Disadvantages

The choice of status to perform investment activities will be different as it depends on the specific objective of the investor. For each investment activity status, the investor may be confronted with some of the following basic advantages and disadvantages when conducting investment activities in Vietnam:

a. Industry & market access conditions

- Both domestic and foreign investors have the right to conduct business investment activities in industries and business lines that are not prohibited by Law on Investment in Vietnam.³ However, for foreign investors, such investors must ensure that they satisfy the conditions for market access of the industries authorized to enter the market.⁴ Then, on a case-by-case basis, the investor may have to meet the following conditions:
 - (i) Ratio of charter capital owned by foreign investor in economic organizations;
 - (ii) Investment forms;
 - (iii) Scope of investment activities;
 - (iv) Investor's capacity; partners participating in investment activities; and
 - (v) Other conditions (if any).⁵
- In addition, Vietnamese laws also stipulate that foreign investors do not have access to the market for certain industries, such as press activities, temporary import for re-export, etc.⁶

³ Clause 1 Article 5 Law on Investment

⁴ Section B, Appendix I Decree 31

⁵ Clause 3 Article 9 Law on Investment

⁶ Section A, Appendix I Decree 31

b. Procedures for carrying out investment activities

- As regards the establishment of economic organizations: when carrying out investment activities, the domestic investor is not required to carry out the procedures for applying for an Investment Registration Certificate.⁷ By contrast, foreign investors must carry out this procedure.⁸
- With regard to capital contribution, share purchase, contributed capital purchase: domestic investors are not required to carry out the procedures for registration of capital contribution, shares or contributed capital purchase. Meanwhile, foreign investor must carry out this procedure if capital contribution, shares or contributed capital purchase leads to:
 - (i) An increase of foreign investors' ownership ratio in economic organizations or conducting business in the market approach industry or trade subject to conditions applicable to foreign investors; and/or
 - (ii) Foreign investor, economic organizations specified at points a, b and c, clause 1, Article 23 of Law on Investment holding more than 50% of the charter capital of the economic organization in the following cases: an increase of ratio of charter capital of foreign investors from 50% or below 50% to more than 50%; or an increase of the ratio of charter capital of foreign investors who already owned more than 50% of the charter capital in the economic organizations; and/or
 - (iii) Contribution to capital, shares purchase, capital contribution purchase from economic organizations having land use right certificates for lands on an island or a coastal or border communes, wards and towns or in another areas which affect national defense and security.⁹

c. Contribution to capital and transferring profits abroad:

- Contribution to capital: when conducting investment activities as a domestic investor, the investor will not be obliged to open, maintain and use a direct investment capital account or an indirect investment capital account in order to contribute/transfer capital.
- Transferring profits abroad: transferring profits abroad will be applicable to foreign investors, in this case, the investor should note that:
 - (i) Must comply with regulations on transferring profits abroad in accordance with Circular 186 and the provisions of relevant laws on foreign exchange management;

⁷ Point a Clause 2 Article 37 Law on Investment

⁸ Point a Clause 1 Article 37 Law on Investment

⁹ Clause 2 Article 26 Law on Investment

- (ii) Being allowed to transfer profits abroad (divided or obtained from direct investment activities in Vietnam in accordance with Law on Investment) after fulfilling financial obligations to the State of Vietnam.

It can be seen that the provisions of Law on Investment of Vietnam impose more conditions and restrictions on investment activities of foreign investors than domestic investors.

Therefore, although legal advice would be different in specific circumstances and contexts, in general, when conducting business investment in Vietnam, investors should choose as domestic investors in order to have easier access to the market, unless the investors have other specific purposes, so they must act as foreign investors.

We hope this Legal Update will bring useful information to Clients and readers. For specific advice and more detailed information, please contact us via the contact information listed at the end of this Legal Update.

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