

INCORPORATION OF A LIMITED LIABILITY COMPANY IN VIETNAM

(A) Who can set up a company in Vietnam?

Foreign individuals and organizations (“**Investors**”) can set up a limited liability company (“**LLC**” or the “**Company**”) in Vietnam. Before incorporation of LLCs, Investors are required to register an investment project (the “**Project**”) in accordance with the Law on Investment No. 61/2020/QH14 dated 17 June 2020 (the “**Investment Law**”), and then the LLC shall be duly established under the Law on Enterprises No. 59/2020/QH14 dated 17 June 2020 (the “**Enterprise Law**”). There may be additional requirements depending on the business investment sector of the Company, but in general there are no prohibitions against foreign investors for setting up LLCs.

(B) How to set up a company in Vietnam?

Under the current laws, a foreign invested company in Vietnam may be in the form of an LLC (limited liability company, with either one member / sole owner, the “**SM-LLC**” or multiple members / from two members or more, the “**MM-LLC**”). Accordingly, the SM-LLC is mostly recommended because the Investor will be the sole owner who wholly controls and manages its subsidiary in Vietnam.

In general, the Investors seeking to set up an LLC shall apply for obtaining the following certificates / licenses:

- (a) An Investment Registration Certificate (“**IRC**”) for registration of the Project is obtained from the Department of Planning and Investment (the “**DPI**”) of the City/Province where the Project is located and outside of economic / industrial parks or the Management Board of economic / industrial parks in case the application is located inside of economic / industrial parks (collectively called the “**Licensing Authority**”). The application dossier for issuance of IRC shall be submitted directly by paper or electronically on the National Information System on Foreign Investment (“**NISFI**”) to the Licensing Authority. The statutory time to obtain an IRC upon submission of the proper application dossier is fifteen (15) working days;
- (b) An Enterprise Registration Certificate (“**ERC**”) for setup of the Company is obtained from the DPI, i.e., Business Registration Bureau of the DPI. The application dossier for issuance of an ERC may be done directly, via post, or electronically on the National Business Registration Portal (“**NBRP**”) to the DPI. The DPI will then consider the application dossier and announce its decision on whether to grant the ERC within three (3) working days of receipt of a proper application dossier; and
- (c) Upon receipt of the ERC, Investors must conduct post-licensing procedures (“**Post-licensed Jobs**”), including but not limited to:
 - (i) announce the Company’s establishment on the NBRP as required by the Enterprise Law;
 - (ii) make (a) corporate seal(s)¹ for the Company subject to the Company’s demand;
 - (iii) open a direct investment capital account (DICA) at a commercial bank in Vietnam

¹ Under the Enterprise Law, the Company may have more than one seal and no longer require registration of seal sample before use.

- for capital contribution by the Investor as required by the laws; and
- (iv) open and activate an enterprise account online on the NISFI for reporting periodically implementation of the Project, including the first report on status of investment capital once paid-up in full.

(C) Which documents are needed?

Apart from documentation drafted by local advisors/ lawyers, the following are the common documents required to bind a conventional application for the establishment of a LLC by individuals or organizations as Investors. These documents may differ slightly based on the kind of Investors:

No.	Docs required to be prepared by Investors as an organization	Docs required to be prepared by Investors as an individual
1.	Certificate of Incorporation or an equivalent document that can certify the legal status	Passport of Investors
2.	Memorandum and Articles of Association	N/A
3.	Register of director(s) or an equivalent document that can identify responsible director(s) to pass decision/ resolution to incorporation of an LLC in Vietnam	N/A
4.	Passport of key personels for managing and controlling the Project and the Company in Vietnam	
5.	Audited financial reports in two recent years. Accordingly, total assets and profit after tax shall be at least equal to an amount of total invested capital and capital to be contributed to the Project respectively	N/A
6.	In case the audited financial reports are not available and/or insufficient, a bank statement on balance of account will be alternative, in which the balance must be shown at least equal to an amount of total invested capital of the Project	Bank statement issued by any bank (local or overseas banks) as long as it shows that account owner is the Investor. The balance of account should be at least equal to an amount of total invested capital of the Project
7.	Memorandum of Understanding (MOU) or lease agreement for premises to be used as location of the Project as well as head office of the Company. The premises must be a physical office / working space, at least 1 – 2 fixed seats	
8.	Landlord/ lessor's documents to show their right to lease the premises, including: <ul style="list-style-type: none"> ▪ Certificate of ownership or duly use right in respect of the premises to be leased/ sub-leased; and ▪ Enterprise registration certificate of the landlord/ lessor (<i>in case of legal entity</i>). 	

The documents from No. 1 to No. 5 in the table above are requested to be consularized properly in home country of Investors before submitting to the Licensing Authority. Consularization involves the following steps:

- Step 1: To have the documents certified by Notary Public Office at home country / living country;

- Step 2: To have the documents (certified in Step 1) legalized by the Ministry of Foreign Affairs of home country/ living country; and
- Step 3: To have the documents (legalized in Step 2) finally consularized the Vietnamese Embassy/General Consulate of Vietnam at home country/ living country.

(D) Information needed for the preparation of the incorporating documents

- a. A request for enterprise registration shall contain the following particulars:
 - i. Name of the enterprise
 - ii. Address of the head office of the enterprise; telephone number, facsimile number, email (if any).
 - iii. Lines of business.
 - iv. Charter capital;
 - v. Information about registration of tax.
 - vi. Proposed number of employees.
 - vii. Full name, signature, contact address, nationality, and details of the personal legal document with respect to the legal representative of the LLC.
- b. The charter of a company shall contain the following main contents:
 - i. Name and head office address of the company; names and addresses of branches and representative offices (if any);
 - ii. Lines of business;
 - iii. Charter capital;
 - iv. Full names, contact addresses and nationalities of the company owner or of members. Capital contribution portion and its value for each member;
 - v. Rights and obligations of members;
 - vi. Organizational and managerial structure;
 - vii. Number, managerial positions and rights and obligations of legal representatives of the enterprise; allocation of rights and obligations of legal representatives in accordance with law where the company has more than one legal representative;
 - viii. Procedures for passing decisions of the company; rules for resolution of internal disputes;
 - ix. Bases and methods of determining wages, remuneration and bonuses of managers and inspectors;
 - x. Circumstances in which a member has the right to require the company to redeem its capital contribution portion;
 - xi. Rules for distribution of after-tax profit and dealing with losses in the business;
 - xii. Circumstances for dissolution, procedures for dissolution and procedures for liquidation of the assets of the company;
 - xiii. Procedures for amendment of or addition to the charter of the company.
 - xiv. The charter of the company upon enterprise registration must contain full names and signatures of the following persons:
 1. The company owner being an individual or the legal representative of the company owner being an organization in the case of a one [single] member LLC;
 2. The member(s) being individual(s) and the legal representative(s) or the authorized representative(s) of the member(s) being

organization(s) in the case of an LLC with two or more members [multi-member];

(E) Time schedule and costs

The whole establishment process takes approximately one to two months depending on the preparation of documents or working with the Licensing Authority to clarify points in the dossiers for issuance of IRC and ERC, if required. The timeline given below is only estimated and unexpected delays may occur:

1. Preparation and binding the documents: 10-15 working days.
2. Submission and obtainment of IRC: 15 working days.
3. Submission and obtainment of ERC: 3 working days.
4. Completion of the Post-licensed Jobs: 5-10 working days.
5. Contribution of charter capital: within 90 days (as maximum) as from the issuing date of ERC.

For the incorporation of an LLC, certain official fees to be paid to the Government are due which together with the notarization fees can amount in a range between VND3,000,000 and VND5,000,000, equivalent to EUR111 and EUR186.

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