

Banking and Finance

Legislation

It is practical that the current banking law system has firmly been set up since 12 December 1997 when the two basic laws, the Law on State Bank of Vietnam and the Law on Credit Institutions have been introduced, which were amended on 17 June 2003 and 1 October 2004. These Laws have been replaced by new ones adopted on 16 June 2010 and effective since 1 January 2011 in which the new Law on Credit Institutions was amended in 2017 and replaced by Law on Credit Institutions No. 32/2024/QH15 effective from 1 July 2024, except for some provisions effective from 1 August 2024.

Banking System

The local banking sector has two tiers. The first tier is SBV being responsible for conducting monetary policy; inspection, supervision and State management on monetary, banking and foreign exchange activities; and the function of the central bank on the issuance of currency, bank of credit institutions, and provision of monetary services to the GoV. The second tier includes commercial banks, cooperative banks, policy banks, people's credit funds, micro-finance institutions, financial leasing companies and insurance companies. This Section focuses only on the commercial banks which consist of State-owned commercial banks, joint stock commercial banks, joint venture commercial banks, wholly foreign-owned commercial banks, foreign bank branches, and foreign bank ROs.

Foreign banks wishing to establish a presence in Vietnam has a choice of the last four types, i.e. wholly foreign-owned commercial banks, joint venture commercial banks, foreign bank branches and foreign ROs. Joint venture commercial bank is established with capital contributed by Vietnamese bank(s) and foreign bank(s) on the basis of a joint venture contract in

the form of a limited liability company with two members or more; and wholly foreign-owned commercial bank is established with 100% charter capital owned by foreigners, which must have at least a foreign bank owning more than 50% of charter capital (the parent bank) in the form of a limited liability company with two members or more. Management organization structure of wholly foreign-owned commercial banks and joint venture commercial banks includes: the Board of Management, Supervisory Board, General Director and the assisting apparatus.

All the application procedures and files related to the issuance of License for establishment and operation to wholly foreign-owned commercial banks and joint venture commercial banks, License for establishment of a Branch to a foreign bank branch, License for establishment of a foreign RO to a foreign bank RO must comply with Law on Credit Institutions and its guiding documents.

In addition to the general conditions applicable to domestic banks, the joint venture commercial banks, wholly foreign-owned commercial banks, foreign bank branches, foreign bank ROs are required to meet specific conditions separately applicable to each type of these organizations to be licensed. The license is also the Enterprise Registration Certificate of the bank or the Operation Registration Certificate of foreign bank branch/foreign RO. After being licensed, wholly foreign-owned commercial banks, joint venture commercial banks, foreign bank branches, and foreign bank ROs will have to publish information on the SBV's media and on a printed newspaper in 3 consecutive issues or on a Vietnamese electronic newspaper for at least 30 days prior to the intended date of operation commencement.

Subject to specific licenses issued by the SBV, joint venture commercial banks and wholly foreign-owned commercial banks can offer a wide range of banking services and other services in Vietnam. The local partner to a joint venture commercial bank

must be an existing commercial bank. The minimum legal capital level for joint venture commercial banks and wholly foreign-owned commercial banks is VND3,000 billion, equal to around USD150 million (effective 2010).

Foreign bank branches are entitled to provide the permitted banking services in Vietnam as specified in the license of that branch and the laws; excluding capital contribution, purchase of shares/ portion of capital contribution, and activities which parent banks are not allowed to perform in countries where they are headquartered. The minimum legal capital level for a branch is USD15 million. To establish a second or more branches in Vietnam, a foreign bank must ensure that the foreign bank branch operating in Vietnam for 3 consecutive years prior to the year of the request to establish a new branch does not violate any law, maintains safety ratios and has profitable business results. If there are two or more branches operating in Vietnam and implementing a consolidated financial, accounting and reporting system, the foreign bank must authorize the General Director/Director of a branch to be legally responsible for all activities of the foreign bank branches in Vietnam. The General Director/Director of a foreign bank branch cannot concurrently be the Head of the RO in Vietnam of the foreign bank, a manager or operator of a credit institution or other economic organization.

Like foreign economic organizations' ROs which are described in Section 6 above, foreign credit institutions and other foreign organizations conducting banking activities may establish only one RO in each province or centrally-run city. Foreign ROs are only allowed to perform the following activities according to the contents of the licenses granted by the SBV: (i) functions of a liaison office, (ii) market studies, (iii) promotion of investment projects of foreign credit institutions or other foreign organizations with banking activities in Vietnam, (iv) promotion and monitoring

of the implementation of the contracts and agreements signed between the foreign credit institutions, other foreign organizations with banking activities with Vietnamese banks and enterprises, and projects financed by the foreign credit institutions and other foreign organizations with banking activities in Vietnam, and (v) other activities consistent with Vietnamese laws.

Generally, joint venture commercial banks, wholly foreign-invested commercial banks, and foreign bank branches are subject to the same taxes applicable to other businesses herein, which are further described in Section 16 below.

Foreign Exchange and Transfer

The State management on this matter is shared amongst several State agencies. The GoV charges with overall policy on foreign exchange management, based on the recommendation submitted to by MPI. MOF is responsible for making plans for implementing such overall policy, and SBV is liable for the day-to-day management and supervision of MOF's plans.

(i) Bank Accounts

Under the prevailing regulations, foreign-invested enterprises and foreign investors can open bank accounts with banks licensed and operating in Vietnam. All the receipts and expenditures including capital contributions, in principle, must be made through such bank accounts.

Subject to the using purposes, bank accounts which a foreign-invested enterprise or foreign investor can open comprise the followings:

(a) Foreign investor's payment account in Vietnamese Dong or foreign currency at a credit institution licensed to operate in Vietnam in order to transfer investment capital meeting lawful expenses during the stage of investment preparation in Vietnam according to written agreements among relevant

parties; transfer investment capital abroad in case of failing to obtain an IRC or discontinues the implementation of investment project in Vietnam; conduct transactions on purchase of foreign currency, transfer of investment capital and lawful revenues abroad in the event the foreign-invested enterprise has to close its direct investment account due to its dissolution or operational termination, or assignment of investment capital changing the initial legal status of the FIE. Payment account in foreign currency may be foreign investor's account for borrowing and repaying foreign loans;

(b) DICA in Vietnamese Dong or foreign currency selected by the FIE, IICA in Vietnamese Dong; foreign investor conducting capital contribution to, purchase of shares/ portion of capital contribution in, local companies; or participating in PPP or BCC contracts. In principle, all the revenues and expenses related to investment activities, including capital contributions, must be made through this account. DICA may be also the FIE's account for borrowing and repaying foreign loans.

(c) deposit bank account, and

(d) off-shore foreign currency bank account, which includes:

- Account of the FIE or foreign investor to implement transactions relating to foreign loans (capital withdrawal, repayment of the principal, payment of interest) according to agreements with foreign lenders. Each of foreign loans is only transferred through 1 (one) bank providing bank account service. The borrower may use 1 (one) bank account for 1 (one) or more foreign loan(s).
- Account of the FIE to satisfy conditions for licensing the establishment of operations of its branches and ROs as prescribed by the laws of foreign countries; for operations of its overseas branches and ROs; to carry out its commitments under the PPP contract with foreign party.

Practically, not every FIE is entitled to open offshore foreign currency bank account because this requires to meet several criteria and be subject to a license from SBV.

(ii) Foreign Exchange Balancing

The State does not require investors to balance their foreign currency from exports to meet demand for imports. Based on socio – economic development orientations, foreign exchange control policies and the ability of foreign currency balance in each period, the PM shall decide to guarantee the satisfaction of demands for foreign currency of investment projects subject to investment policy decision of the NA and PM as well as projects on investment in important infrastructure development. This assurance shall be extended for the entire duration of those projects.

When implementing the revenue and expenditure transactions relating to investment activities in Vietnam of FIEs and foreign investors, licensed credit institutions are responsible for selling foreign currencies to foreign investors to be transferred abroad based on foreign currency balance of their organization and in accordance with the law.

(iii) Cash Transactions

In principle, all payments and receipts in Vietnam must be made in Vietnamese dong, except for some circumstances as permitted by the prevailing laws and depending upon SBV's approvals, which include commercial banks and financial institutions, foreign exchange bureaus, etc. Foreign investors to BCCs and JVCs are permitted to withdraw cash in foreign currency from bank accounts for paying salary and other allowances to their expatriates or travel allowance to local employees for work-related overseas trips.

To keep an international balance, the GoV actively seeks to channel foreign currency inflows whilst strictly monitoring the outflows. There appears no restriction upon inward

payment, which however must be either converted into Vietnamese dong or deposited into a foreign currency bank account. With respect to outward payment, they are allowable in some special cases, including:

- (a) Payment for imported goods and services;
- (b) Abroad transfer by foreign investors, of: invested and reinvested capital, earning profits from undertakings in Vietnam, principals and interests of off-shore loans and credits, and other legal benefits;
- (c) Payment for travel allowances to employees traveling abroad, payments of salary to the executives of foreign capital enterprises and Vietnamese employees working in a foreign country; and
- (d) Abroad payment of salaries and other legal incomes of foreigners.

To limit cash transactions, the prevailing Vietnamese laws require invoices worth VND20 million or more to have a certificate of non-cash payment for goods and services purchased (including those imported) of which the value is VND20 million or more, except for the cases where value of goods or services imported each time worth less than VND20 million; goods and services purchased each time worth less than VND20 million according to invoices at current prices inclusive of value-added tax and the cases where businesses imported goods which are gifts or donated things of organizations and individuals abroad, in order that the costs of purchase of goods and services according to the invoices will be considered as reasonable costs for calculation of corporate income tax.

(iv) Exchange Rates

Any conversion will be based on the exchange rates published by the authorized bank at the time of conversion. The rates announced by SBV will be the references.

Capital and Financial Market

With the efforts made by the GoV and State Securities Commission (“SSC”), the first opening of the Securities Transaction Center (“STC”) in HCMC was in 2000 (now called Ho Chi Minh City Stocks Exchange or HOSE/ HSX), and the smaller one in 2004, in Hanoi, called Hanoi Securities Trading Center or HASTC (now called Hanoi Stocks Exchange or HNX). Additionally, an Unlisted Public Company (UpCom) Market is organized in HNX. For more simplified procedures for listing by enterprises and more efficient management by the State agencies, the GoV has a project to convert these two stock exchanges into two subsidiaries wholly owned by Vietnam Exchange (“VNX”), a State-owned company with the Ministry of Finance acting as the owner’s representative and holding 100% of its charter capital.

In terms of trading scale, the Vietnamese stock markets have now surpassed Singapore, ranking second in ASEAN after Thailand. By 26 July 2024, the total value of listed and registered transactions is approximately VND 2.28 million billion, equivalent to 22% of GDP in 2023. The total market capitalization of enterprises on three stock exchanges HoSE, HNX and UPCoM is up to VND 6.9 million billion (USD 270 billion), up 16% from the beginning of 2024 and equivalent to 67% of GDP in 2023 and is a market with a capitalization ranked 30-35 in the ranking of breakthrough markets in the world. Of which, there are up to 49 billion-dollar enterprises and hundreds of names with capitalization over VND 10,000 billion. Liquidity in 2024 is at nearly USD 1 billion/trading session (not including the trading volume in the Government bond and corporate bond markets). 2024 continues to be a year with a sharp increase in the number of newly opened investor accounts with 500,000 accounts compared to 2023, bringing the total number of domestic investors’ securities transaction accounts to more than 8 million accounts, equivalent to nearly 8% of the population, exceeding the 5% of the population

target set by the Government in the Project on Restructuring the Securities and Insurance Markets to 2020, with an orientation to 2025. According to the Strategy for developing the securities market to 2030, Vietnam aims to reach the milestone of 9 million securities transaction accounts of investors on the stock markets by 2025 and 11 million accounts by 2030; in which, the Government requires focusing on developing institutional investors and professional investors, and attracting the participation of foreign investors. Up to the end of 31 August 2024, there are 9,659,225 securities transaction accounts owned by local investors, of which 8,641,944 are owned by local individual investors and 17,281 are owned by local institutional investors, and 47,004 securities transaction accounts owned by foreign investors of which 42,446 accounts are owned by foreign individual investors and 4,558 accounts are owned by foreign institutional investors; 53 fund management companies, 110 securities investment funds (58 open-end funds, 3 closed-end funds, 33 member funds, 15 ETF funds and 1 real estate fund), and 144 securities companies (75 are members of HNX) licensed by SSC are still active after 11 years of restructure on both HOSE/ HSX and HNX including UpCom market, and then restructure of the stock market and insurance market to 2020, with orientations to 2025. These companies provide a full range of services relating to securities business. They all have either head offices or branch/ liaison offices in Hanoi or HCMC. Three kinds of goods are well available for sale in the securities market. They are: (i) shares listed by around 396 enterprises on HSX, 312 enterprises on HNX and 878 enterprises on UpCom market in which about 50% of these enterprises originate from the SOEs; (ii) bonds issued by the GoV (400), issuing banks and enterprises (73 listed on HNX); (iii) close-end fund certificate (4 listed on HSX), Exchange Traded Fund – ETF certificate (16 listed on HSX) and Covered Warrant – CW (95 listed on HSX) and (iv) derivative securities, which are financial instruments whose value depends on the price of an underlying asset. Those are permissible for being transacted

on Vietnamese market include: futures contract, listing option contracts based on underlying assets being securities, stock indices or other assets as prescribed by the Government, which are taken as the basis for determining the value of derivative securities; (ii) forward contracts, put-through trading options contracts based on underlying assets being securities, stock indices on the Stock Exchange; and (iii) swap contracts, mainly involving in foreign currency swaps and interest rate swaps. At present, Vietnam is the market with the best prospects in Southeast Asia. FTSE will have an assessment period and by September 2024, Vietnamese stock market may be considered for an official upgrade. MSCI's analysis department expects that Vietnamese stock market can be considered for inclusion in the watch list soon, by June 2025. If upgraded, Vietnamese stock market can receive a huge capital flow from investment funds using the MSCI Emerging Market Index as a reference and at the same time re-evaluate the market with a higher P/E. According to estimates, the capitalization of the MSCI Vietnam Investable Market Index (MSCI Vietnam IMI) would reach USD 32 billion on 31 May 2024, while the capitalization of MSCI Emerging IMI would reach USD 7,239 billion.

Applying for registration of securities trading code at former Vietnam Securities Depository Center ("VSD") and now Vietnam Securities Depository and Clearing Corporation ("VSDC"), opening the securities trading account with a securities company in Vietnam, opening an indirect investment account in Vietnamese Dong with a licensed bank in Vietnam, and opening the securities depository account with a commercial bank or securities company granted by the SSC with depository activity registration certificate and registered as member of VSDC are compulsory with respect to foreign individuals and organizations who wish to buy listed securities in the Vietnamese securities market, while the simpler requirements are made to a purchase of unlisted securities by foreign individuals and organizations in the Vietnamese securities market. With respect to listed stocks, foreign investors can

hold up to 100% of the total of stocks in circulation of an issuer, except for some special cases such as investments in specific industries (e.g. banks) or in public companies operating with business lines where investment is conditional applicable to foreign investors but there is no specific regulations on foreign ownership (up to 49%) or the charter of a public or listed company limits foreign ownership and the SSC has been reported thereon. With respect to listed bonds, foreign individuals and organizations can hold up to 100% of the total of bonds in circulation of an issuer, of which a private individual can hold up to 5% and an organization can hold up to 10%. With respect to unlisted stocks, foreign ownership limits are different (which in theory may go up to 100%), varying from business sector to business sector, and in accordance with the Vietnam's commitments to the WTO, other international treaties to which Vietnam is a party, and the relevant specific provisions of domestic laws. If companies operate with multiple business lines subject to different rules on foreign ownership ratio, the foreign ownership ratio shall not exceed the lowest of foreign ownership ratios applicable to these business lines (which are being conducted by the company), unless otherwise provided by an international treaty.