

# Luther.

## Doing Business in Vietnam

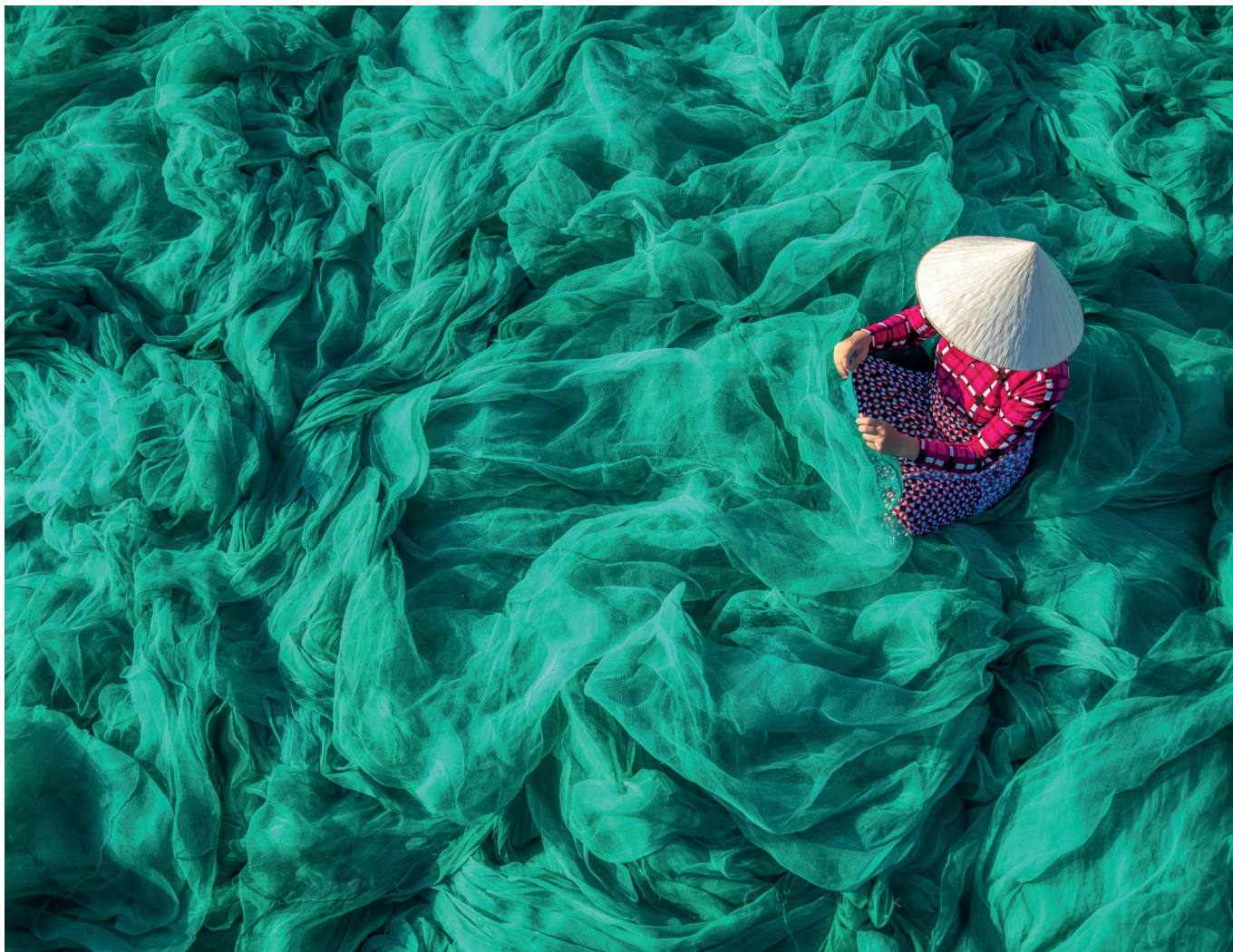
A brief guide to better choices  
for your investment





# Contents

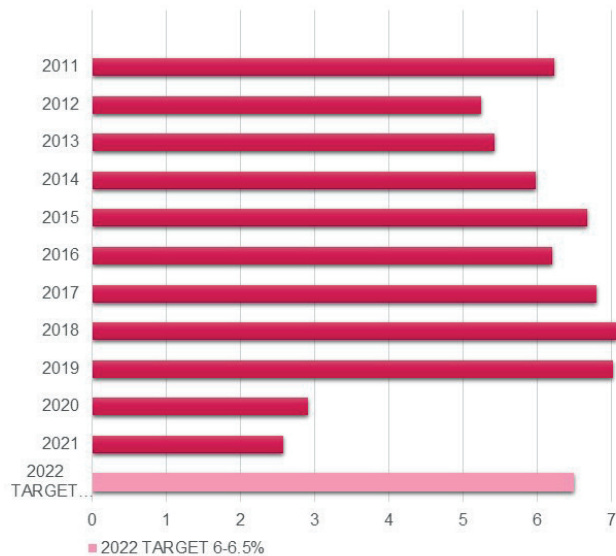
<b>Market conditions &amp; business environment</b>	<b>4</b>
<b>Investment forms &amp; legal framework in Vietnam</b>	<b>6</b>
<b>I. Location matters</b>	<b>7</b>
<b>II. Chances and challenges under the revised LOI 2020 framework</b>	<b>7</b>
1. Categories of investments under the LOI 2020	7
2. Privileged investments & areas	7
<b>III. Market entry</b>	<b>8</b>
1. Incorporation of your entity	8
1.1. Foreign Investment registration certificate and high-level in-principal investment approval	8
1.2. Assembling the application dossier for an IRC	10
1.3. Enterprise registration certificate and further conditions	10
1.4. Choosing between business vehicles	11
2. Acquisition of shares or equity interest in existing enterprises	15
2.1. Challenges when structuring the deal	15
2.2. DPI pre-approval requirements	15
2.3. Purchase price & tax implications	15
2.4. Signature requirements and merger control	16
3. Representative office or branch office	16
<b>IV. Growing your business in Vietnam</b>	<b>17</b>
1. Owning, protecting and transferring commercial use rights in Vietnam	17
2. FTAs and their impact on Vietnamese laws & economics	17
3. Maintaining general corporate compliance	18
3.1. Accounting	18
3.2. HR & payroll	18
4. Suing and being sued in Vietnam	18
4.1. Private sector dispute settlement	19
4.2. Special public – private dispute settlement	19
<b>V. Packing up – riskmanagement for divestment from Vietnam</b>	<b>19</b>
1. Dissolution of an entity	19
1.1. Procedure & timeline	19
1.2. Reasons to terminate operations	20
1.3. Alternative: suspension of business operations	20
2. Termination of operations of a branch or representative office	20
<b>Luther in Vietnam</b>	<b>21</b>
<b>Our Legal &amp; tax advisory services</b>	<b>23</b>
<b>Luther in Asia</b>	<b>25</b>
<b>Hits the mark. Luther</b>	<b>26</b>
<b>Our locations</b>	<b>27</b>
<b>Our awards</b>	<b>28</b>
<b>Our practice areas</b>	<b>29</b>
<b>Contact</b>	<b>30</b>



Nothing in this material shall be understood to constitute legal or tax advice or any other form of a recommendation for business management decisions and we have not created any of the content of this material with regard to a particular legal assignment. All information and conclusions used, provided or envisaged herein are merely of general nature, neither exhaustively nor relating to specific legal questions with regard to individual situations or cases. Though we take due care sourcing our information, we do not represent or guarantee the information and sources to be accurate, complete and reliable, or up to date or unchanged at the time of your lecture. We will be glad to provide individual, up to date advice tailored to your specific circumstances upon your request. Feel free to contact our colleagues any time.

# Market conditions & business environment

GDP GROWTH OVER THE YEARS (%)



Source: General Statistics Office

Thanks to its strong economic annual growth since its economic reforms that started with the so called “Doi Moi” policy in 1986, with current growth rates mostly between five to seven % in the last two decades, modern Vietnam has become an **aspirational emerging market**, 98 mio. people comprise the region’s fastest growing middle class and customer segment, an ambitious work force, plenty of business opportunities and favourable conditions for market entry and continuous growth.

With a younger-than-average workforce, a dedicated government policy to overcome the throw-backs of the last two years and committed to leapfrog into a technologically advanced export champion, Vietnam has all it takes to attract foreign investment and establish at eye level with other **manufacturing and production hubs** in SEA. Moreover, it seeks to become a reference point in a new global order as **China+1** (and subsequently even +2, +3) has become a legitimate out-spoken strategy, and technology is the new key industry.

Most recently, Vietnam has proven market resilience in a global pandemic when it maintained positive growth of 2.6%, now striving to return to its 6.5% annual GDP growth in 2022. Recent forecasts predict even 7% and beyond. It has switched decisively from zero-COVID to a live-with-the-pandemic-strategy and is a fresh subscriber to the Regional Comprehensive Economic Partnership, currently the world’s largest free trade agreement. For the 2022/23 period, it has launched a USD 15 bln. recovery program while holding its governmental institutions accountable to ditch the risk-averse approach of previous years and invest in notable tech and science start-ups.

**Vietnam itself is a noteworthy consumer market** (for food & dairy, tech & communications, renewables, education, textile and garments) and boasts partnership opportunities with its neighbours. Manufacturing, agriculture, hospitality and construction are yet again picking up, with complementary digitalisation and finance/banking on the rise. The ASEAN+3 format and bilateral relations such as Double Taxation Agreements (**DTAs**) and Free Trade Agreements (**FTAs**) with the EU, US and Asian partners foster its position as viable option in supply chain diversification and growth strategies – set up as **the next “Asian Tiger”** leaping into an exciting future.

However, as is common practice in most jurisdictions, foreign investment is subject to particular regulations before, during and after commencing business activities in Vietnam. Both compliance and effective communication with authorities must be understood as crucial to success. As of now, communication with local and central authorities are in Vietnamese language only. An **experienced and reliable partner** at base is a valuable asset and competitive advantage in this approach.

**Market entry** begins before establishing a commercial presence or making an investment, which can vary in form, size and capacity. Depending on your particular field of industry, your **corporate strategy** of governance and control and the operational prospect of your footprint in Vietnam, legal and **formal requirements** vary and may have undergone recent changes. Some industries are restricted to foreign investment and therefore subject to further regulations, while others may be inaccessible.

**Immigration laws and work permit procedures** have also been subject to multiple amendments in recent attempts to conquer the pandemic. Since the beginning of 2022, a careful **re-opening strategy** has been implemented and prioritises production and manufacturing, followed by tourism, before most other business lines. Location matters, too: Numerous dedicated subsidised special zones across 63 provinces each come with their local incentives, preferences and requirements.

**The banking and finance sector** developing around the HCMC Stock exchange (**HOSE**) is relatively young and on the brim to qualify as emerging market. Besides insurance companies, it sports real estate, tech and the renowned consumer food enterprises as top tiers and for those not listed yet, recent years have shown a trend towards IPOs after a short time.



The current implementation of a modern trading system provided by the Korean Exchange (**KRX**) will boost efficiency and accessibility, too.

This investment briefing aims to provide you with an overview on chances and challenges of (I) making your **market entry into Vietnam** a success story and (II) **maintaining compliant** operations along the life cycle of your business to (III) **closing and leaving** with added-value in different exit scenarios.

We are proud of **our track record** of successful foreign business establishments, foreign investment projects and foreign-local partnerships across SEA and China. As a large law firm of German origin, our commitment to excellence and reliable expertise has been available in SEA for more than 15 years and we are proud to extend it to Vietnam this year with our HCMC presence at INC Legal Vietnam.

In this publication, we share our views and introduce our services to you. We believe that we can enable you to make well-informed establishment and out-sourcing decisions when setting up your business in Vietnam with us. We have done our job well if you find this briefing a useful source for your next steps – and we would like to hear your input for improvement, if not.

At Luther, we look forward to supporting you with:

- choosing the best legal framework for your business
- approaching local business partners for joint ventures
- preparing transaction documents, translations and applications
- our Expat Mobility Services
- registering trademarks & protecting intellectual property
- advising on cross-border commercial and corporate transactions (mergers, acquisitions, import/export) and much more.



# Investment forms & legal framework in Vietnam



We see investment vehicles as living instruments or as a shell to grow and nurture your business in and to alter, transform or sell once your ideas have outgrown their form.

We accompany a **business' life cycle from cradle to coffin**, in some cases more extensively from the idea to **post-trans-action procedures**. Whichever vehicle you choose, it will be embedded in a complex regulatory environment. We believe in providing comprehensive advice borne by systemic support in each of your business processes (legal, tax, accounting, employment, etc.). Consequently, we consider our services most beneficial to you if rendered single-handedly.

With some exceptions and particularities, Vietnamese legislation on incorporation and commerce allow you to approach customers and business partners, suppliers and providers, distributors and competitors from the security of an investment vehicle, directly through branches or as indirect stakeholder by means of governance tools as may be familiar from your domestic legal framework. The most common forms for foreign investments in Vietnam today are probably:

- Establishment of new, foreign-owned investment vehicles in the form of
  - Single-member limited liability company (LLC)
  - Multi-member limited liability company (LLC)
  - (listed & unlisted) Joint Stock Corporation (JSC)
  - Private Partnership (LLP)
- Acquisition of existing enterprises
- Representative & Branch Office(s) (RO & BO)
- Public-Private Partnership (PPP)

- Business Cooperation Contract (BCC)
- Non-governmental and non-profit organisations in specific sectors (NGO)
- Investment project without establishment

The **legal framework for foreign investment** is diverse and manifold. Regulations governing incorporations of new vehicles and acquisitions of existing enterprises comprise of the Law on Enterprises 2020 (**LOE 2020**) and the Law on Investment 2020 (**LOI 2020**), both of which have been effective as of 1 January 2021, and numerous specific sectoral regulations. Other investment forms, such as the formation of branch(es) and representative office(s) are governed by the Law on Commerce, whereas PPP are regulated by the Law on PPP Investment. The sectoral regulations are complemented by countless decrees, resolution, ordinances, instructions, interpretations, etc. from ancillary sectors.

For now, applications for establishment of a corporate set-up (including mandatory notice of any corporate changes) must be submitted in Vietnamese copies of signed and stamped forms adhering to the local authorities' requirements. The **diverse landscape** of the provincial administration may result in variations depending on whether you are setting up business in Hanoi, Da Nang or Ho Chi Minh City. It is therefore crucial to a successful application process to work with partners familiar and up to date with the respective local requirements. While foreign investors are free to engage any registered agents for submitting applications and/ or receiving official notices, licences and certificate on their behalf, it may prove beneficial to have the entire process managed from a single point of contact allowing for synergetic and time-saving coordination of the various procedures and documents.



## I. Location matters

Your choice of where to settle or invest will determine the relevant local authorities for years to come. The provinces distinguish zones for industrial establishments, export-processing, high-tech and economic projects (**Zones**).

Whichever structure and location you choose will determine which of the local authorities must be involved and what type of approvals, certificates or registrations have to be obtained before going operational.

Eligibility to settle in a zone will depend on your industry sector and capacities as well as local policies, e.g. the recent (change of) focus of the competent Zone's authority/management board from textile & garments to technology & manufacturing.

We recommend to set yourself apart with the options early in the process as later changes of production sites may cause timely and costly set-backs. We are happy to advise and connect you to the local business community.

## II. Chances and challenges under the revised LOI 2020 framework

Complementary to the LOE 2020, foreign investors and their commercial undertakings in Vietnam are subject to the LOI 2020.

It aims to govern and control domestic and foreign investment, which is generally welcome and necessary to achieve domestic growth aspirations. However, the LOI 2020 also serves to protect critical infrastructure or sensitive industries and sets forth a strict regime on how investments may be used.

### 1. Categories of investments under the LOI 2020

Generally, any foreign investment is subject to registration according to the LOI 2020 prior to incorporation and operation. In other words, the journey begins with a pre-assessment before the actual establishment. The LOI 2020 provides for the following general categories of investments:

- prohibited investments: any commercial activity with regard to substances (banned chemicals, minerals, drugs) and items (endangered species) listed in Appendix I and II of the LOI 2020

- conditional investments which are required to satisfy certain conditions for reasons of national defence and security, social order and security, social ethics, or public health
- privileged investments which include the list of businesses
- to be eligible for (special) investment incentives
- investments restricted to foreign investors for access to the Vietnamese market

### 2. Privileged investments & areas

Vietnam does nudge investment behaviour in terms of locality and innovation potential. In recent regulations, certain investment sectors were declared eligible for **tax and duty exemptions or reliefs** and specific areas were promoted in which investors, depending on their level of development, are designated for corporate income tax exemptions or **eligible for long-term land use rights**.

Vietnam employs a decentralised concentration scheme by establishing special zones and categorising the areas across the country into groups based upon their socio-economic conditions. **Business settlement in such special zones** and specifically or extremely disadvantaged areas **comes with benefits** in terms of policy, taxation, network, symbiosis and leverage, however, it may be subject to additional licensing and local formal requirements.

Zones adjacent to major infrastructure projects may include air and sea ports, power grids and pipelines, national highways and border-crossings. Several such zones are currently under development in Vietnam, one being the sea port of Ho Chi Minh City Province. Certain industry lines pertaining to the purpose of such zones respectively may be privileged if not exclusively permitted here, such as import/export, warehousing, transport, provision of services regarding hazardous goods, raw materials and packaging, freight forwarding, fuel and power supply. In any case, the investor should check the local authorities' preferences for business types in the envisaged Zone.

When assessing an investment application, the zones' competent authorities will consider certain criteria of the proposed investment project, such as creation of employment opportunities, technology transfer, export, energy and water demand and the reputation of the investor. The specific guidelines and regulations for every Zone provide details regarding the application, orders and procedures, specifying the economic activities that may be operated in the Zone and the requirements for obtaining the IRC.



### III. Market entry

The most practical and common ways available to foreign investors to enter the Vietnamese market may be:

- acquisition or incorporation of a locally registered company that the foreign investor participates in
- establishment of locally registered representative or branch office(s) of the foreign investor
- partnership with a Vietnamese entity in a joint venture
- direct investment activity without local establishment

#### 1. Incorporation of your entity

##### 1.1. Foreign Investment registration certificate and high-level in-principal investment approval

Where foreign natural or legal person(s) mutually contribute more than 50% to the charter capital of an entity, such entity qualifies as foreign-invested (**FDI**) entity. Establishing a new FDI entity – irrespective of the foreign ownership ratio – is considered an investment project that requires registration with the (provincial) Department of Planning and Investment (**DPI**), or the competent authority (**management board**) of the envisaged Zone. If successful, the DPI or the Zone's authority will issue an Investment Registration Certificate (**IRC**) for the investment project. Exemptions may apply to the establishment of small or medium-sized start-up enterprises and start-up investment funds in accordance with the Law on Small and Medium-sized Enterprises.

**The locality, the business line and the legal form of your business will determine the relevant authorities to involve for years to come. These should be conscious and well-informed choices.**

Without distinguishing between foreign or local investors, Appendix IV of the LOI 2020 contains a list of 227 conditional business lines with specific regulation due to national defence and security, social order and security, social ethics or public health, imposing further requirements on any investor type. More extensively, some investment forms may be subject to prior in-principle approval from central high-level authorities (Prime Minister, National Assembly, (provincial) People's Committee).

#### Prime Minister

- Relocation of >20,000 pax. (10k pax. in some areas) required
- airport construction or operation exceeding certain thresholds
- seaport construction exceeding certain thresholds
- residential housing construction & establishment of new urban zones and rural areas exceeding certain thresholds or in certain protected locations
- development of industrial park infrastructure, export-processing zones
- gambling, lottery, casino construction or operation (with exemptions)
- oil, gas or petroleum (supply, processing, refinery)
- telecommunications, press & publishing, networks

#### National Assembly

- Significant environmental impact: change of land use (Deforestation, reclamation from sea, wet rice cultivation) exceeding certain thresholds
- (nuclear) power plants
- Relocation of >50,000 pax. (20k pax. in certain areas)
- Implementation of designated regulatory provisions in the capacity of the National Assembly required

#### People's Committee

- Unless covered under PM's or NA's approval: transfer of land ownership from state- to privately owned outside common auctions & tenders
- Construction of residential housing, development of urban and rural areas below certain thresholds
- Location in frontier or coastal island, town, ward, area relevant for national defense & security
- Construction and operation of golf courses

Investors may submit the IRC application dossier themselves at the place of envisaged establishment, but experience shows that it helps to liaise with a local partner familiar with the local authority's orders and procedures. The LOI 2020 contains the general relevant provisions for the IRC process and the local authority may have additional requirements in place.

A FDI entity engaging in business lines without market access limitations for foreign investment may be owned 100% by foreign investors, i.e. the total charter capital of a LLC may be foreign-held. In sectors where market access is conditional to foreign investors, restrictions under the LOI 2020 include:

- ratio of foreign and domestic investors' charter capital
- investment form and scope of investment
- business partners joining the investment activity
- capacity of the investor; partners participating in the investment activities
- and other conditions stipulated under international treaties with Vietnam as subscriber and Vietnamese federal laws.

Additionally, the investment project itself will be assessed for compliance with sector-specific conditions. These may typically comprise of proof of expertise and legitimate engagement or satisfaction of the protective requirements as specified in the laws and resolutions of the National Assembly,

ordinances and resolutions of the Standing Committee of the National Assembly, decrees of the Government and international agreements to which Vietnam is a signatory. Such requirements may include foreign licences, credentials, certificates and written confirmation or approval, environmental impact assessments and reports for projects with potentially environmentally adverse effects (e.g. high-level approval projects, land conversions in national parks, biosphere, national preservation or world heritage sites, historic, cultural or scenic sites).

The latest Law on Environmental Protection replaced the formerly required environmental protection plan (**EPP**) and environmental impact assessment report (**EIAR**) with a preliminary, ordinary environmental impact assessment and an environmental licence per 1 January 2022. This applies generally to any FDI project, but vast exemptions apply where no environmental impact is to be expected from the project.

The time frame for the IRC is generally one month of preparation and another one to three months from submission of the complete dossier until the IRC is issued. However, delays often occur as the required documents are not readily available or need to be changed during the process. It proves helpful to make the foreign entity management aware of the pending process in Vietnam as to refrain from non-urgent changes of signatories etc. in the meantime.

## 1.2. Assembling the application dossier for an IRC

When applying for the IRC, the investor will be required to produce some of the corporate documents itself, such as resolutions to establish, financial information and proof of existence and representation powers. We support in drafting templates for these if required.

Generally, except for statutory forms of the application dossier, any accompanying document intended for submission to Vietnamese authorities must be a notarised (pursuant to domestic laws) and authenticated (local court or other competent authority), translated (certified translator) and legalised (Vietnamese authority) copy of the original. We support in each of these steps with trusted partners. The application dossier to be filed for the IRC generally comprises the following documents and information, subject to local particularities:

- information on the foreign investor (certificate of incorporation, company register excerpt, evidence of business and financial conditions, shareholders' list, company profile)
- type of proposed investment, business organisation form
- certificates of technical experience, proficiency in the industry, qualification of key personnel
- detailed list of foreign capital to be brought in and of local capital to be contributed
- employee plan with numbers of foreign and local employees, professions and positions, salaries, social security plan for employees, social welfare plan
- business plan, annual investment schedule, sales
- projections (including internal rate of returns)
- corporate social responsibility regulation, corporate compliance regulation, training evidence
- evidence of financial conditions (bank account statement)
- signed lease agreement or reservation agreement, together with land ownership documents of the lessor.

Depending on the business line and the impact the investment project may have on the area of establishment (e.g. large-scale production plants or import/export of hazardous materials), authorities may request additional documentation such as:

- quality management documentation, equipment certification, monitoring and auditing certificates, standards and guidelines;
- (preliminary) assessment report, evidence of arrangements for the proper storage and handling of chemical materials; proof of qualification of responsible engineers, fire prevention plan, accident reaction plan, map of location and layout of relevant sites;

- annual production plan; lists of equipment, machinery and construction materials to be imported and purchased locally; electricity and water requirements.

## 1.3. Enterprise registration certificate and further conditions

Once the IRC has been obtained, the foreign investor may continue with the incorporation process for the business vehicle by applying for an **Enterprise Registration Certificate (ERC)** at the provincial Business Registration Office. By law, such ERC should be issued within three working days upon submission of a complete and sufficient dossier.

After the ERC is issued and the company seal (stamp) has been obtained, regular registrations and administrative obligations are triggered (with time limits). These include tax registration and payment of fees and the charter capital and the submission to National Business Registration Portal (**NBRP**), employment related approvals and – depending on the field of industry of your business – further licences may be required before operations may commence. Such operational licences must be obtained from the relevant local authorities governing for the particular field.

The process should be prepared and approached well in advance to scheduled business transactions. For one, a vehicle cannot act in its own capacity before concluding the registration process. Secondly, each step, though notice and decision periods may be defined by days in the laws, may take between weeks and months at a time (the clocks will run only after complete and correct submissions are confirmed by the authority) and cannot be cut short given their consecutive nature.

An electronic publicly accessible and reliable register exists as a pilot (**NBRP**), however it still lacks actuality, reliability and accuracy as entries are made by the enterprises themselves and no formal control applies. Until a comprehensive level of digitalisation has been achieved, all amendments and changes must be re-registered with the IRC and ERC authorities by means of submitting hard-copies.

All business vehicles must have a valid official office address in Vietnam that is registered with the authorities and enables receipt and processing of official notices and mail. Established shared office space and mailbox service providers have been common practice, however, authorities have recently taken a stricter approach and requested to submit copies of commercial lease agreements, bank statements and utility bills as evidence of the office establishment, so it is cru-

cial to ensure the provider will timely forward incoming mail and can provide any documentation required for the set-up process until clients establish their own premises. Since authorities are decentral, moving office or production sites across the country must involve the relevant local authorities at the original and the designated business residence.

**Both, IRC and ERC are essential before commencing business activities as a foreign invested entity in Vietnam. The process takes on average three months (pre-COVID), but longer in specific cases. Stamps showing the registration number may be issued after completion of the registration and are a key tool for official company correspondence.**

#### 1.4. Choosing between business vehicles

The commonly known principles of several, self-content entities exist in the present Vietnamese business environment. Exceptions apply in joint ventures and private-public-partnerships (**PPP**) or Business Cooperation Contracts (**BCC**). To commence business operations with a safe and familiar vehicle similar to a German GmbH or UK Limited, with functions resembling your domestic structure, we recommend to acquire or establish a private limited liability company under Vietnamese laws (**LLC**).

Alternatively, if the intention behind the investment includes raising capital by issuance of shares, then the Joint Stock Corporation under Vietnamese laws (**JSC**) might be more suitable. A shareholder's liability is similarly limited to his or her own contributed capital, as would be in the LLC.

For the construction and public infrastructure sector, new FDI opportunities have opened up with the Law on Public Private Partnerships (18 June 2020) which allows foreign contractors to bid on projects in partnership with the respective national agencies. This can be seen as a significant step towards the national privatisation agenda recently emphasised by Vietnam's central authorities.

##### a. Setting up the LLC

Most foreign investors of large or SME backgrounds tend to establish a private limited liability company (**LLC**) for their initial business activities in Vietnam. LLCs combine familiar benefits of severability, risk mitigation and control with flexibility and access to most legitimate business activities under Viet-

namese laws. Liability is limited to the paid-up charter capital of the respective member.

The LLC must have a minimum of one owner subscribing to its charter capital (a "**member**" – then creating a "**single-member**" LLC), being either a natural or legal person. The "**multi-member**" LLC on the other hand may be comprised of two to 50 members, each contributing a portion to the charter capital. No minimum charter capital is required for either form of LLC and the ownership can be 100% foreign, unless the field of industry is conditional to a minimum Vietnamese investment as prescribed in the relevant regulations.

Foreign-invested LLCs may be restricted in terms of land use and real estate ownership, access to financing and product and service sectors. Incidentally, they may be privileged for tax and other regulatory purposes in their particular Zone of establishment. Set-up procedures generally require two to four months from the date of filing a complete and correct dossier, but may take up to 12 months depending on particular sectoral and local conditions.

To the overseas investor, governance and shareholder control are of essence. Investors should note that control within the LLC is slightly **different from continental vehicles**. Investors are represented by designated natural persons authorised to act in the board of members also called members' council, or – in a single-member LLC – as president. These corporate functions are the **general decision-making authority for internal matters** and have the capacity to resolve on topics as assigned to it by law or the LLC's charter, including the capacity to appoint and revoke other positions, raise or decrease of charter capital and amend the charter as central ruling document. However, practically, control is divided between (general) director(s) and the members' council as stipulated in the charter and/or the LoE.

For a **single-member LLC**, the investor can choose between two structures: either a two-tier model where the power is divided between a president (of the LLC) and a (general) director, or a more complex model consisting of the members' council, comprised of three to seven individuals and headed by a "chairman", plus the (general) director. Only in a single-member LLC, the members' council may be replaced by the president as alternate corporate body with the same capacity.

The (general) director is not by default identical with the legal representative (but may be authorised accordingly) and has, in general, the following rights and obligations:



- implementation of resolutions and decisions of the members' council or the president
- everyday operational matters of the company
- recruitment of employees
- implementation of business and investment plans
- implementation of the internal rules and regulations
- appointment/dismissal of the company's executives on lower levels
- proposal of the company's organisational structure
- submission of annual financial statements and proposal of plans for use of profits or settlement of business losses to the owner(s) via the members' council or the president

Further rights and obligations may be specified in the company's charter and the director's service contract. Basically, all **day to day business decisions** are in the director's capacity. S/he is in possession of the company seal, a mandatory tool applied to any written statement to be with legal effect on the company

Under the LOE 2020, a company, irrespective of its form of establishment, may have **one or multiple legal representative(s)**, who may or may not be identical to the director and/or president or chairman of the members' council, or even a third person. Such person must be named in the company's charter and registered with the DPI. Contingent upon their specific corporate governance structure, we encourage investors to appoint multiple legal representatives, since it is not only a right, but a duty of the members aimed at ensuring the LLC's legal capacity to act at any given time.

The LOE 2020 requires the LLC to have at least one legal representative residing in Vietnam. When this person leaves the territory of Vietnam, s/he shall authorise another person in writing to act on his/her behalf. When the company's sole legal representative is absent from Vietnam for more than 30 days without due authorisation given to another person or if s/he is incapable of fulfilling his/her duties under the LOE 2022, the company must appoint a new legal representative. In practice, to meet the demand of clients who need their legal representatives to travel overseas, we may connect clients with providers of personnel services based on PoA in general or for particular matters.

Unless set forth otherwise in the charter, the president or chairman of the members' council has full capacity to bind the LLC as its legal representative and, in such function, oversees execution of the LLC's rights and obligations from third-party transactions and represents the LLC in formal, in-and out-of-

court proceedings and other rights or obligations as required by the laws of Vietnam or in the charter.

The members' council may further appoint a company accountant who is responsible to keep proper corporate records and maintain the requisite corporate registers as well as the corporate filings required under the LOE 2020. In order to ensure the timely discharge of these duties, it is common practice to outsource this function to external service providers.

Financial control may be effected by the inspection committee, comparable to a (financial) supervisory body, however, under the LoE 2020 the **inspection committee** is not mandatory unless the LLC qualifies as (even partly) state-owned enterprise (**SOE**).

The **charter constitutes the central governance and reference** document throughout the LLC's life cycle comparable to articles of association, memorandum of incorporation or statutes in continental entities. It may reflect statutory and governance provisions with extensive reference made to the applicable laws of Vietnam. Though foreign investors are not entirely free in their governance decisions, they may customise the charter to some extent, mainly it being the source of representational and governance powers of its appointed corporate bodies. It serves as the script for all rights and obligations pertaining to the roles within the LLC subject to mandatory law. The LLC is responsible to reflect any (personal and regulatory) changes by amendments to the charter and must keep its own records additionally to discharging its filing requirements. The (general) director takes care of these duties.

Corporate control is exercised in the corporate bodies, first and foremost by the (general) director who is responsible for day-to-day business operations and ensures the LLC's compliance with procedural and public requirements. S/he may personally be held liable for breach of duty to the disadvantage of the LLC and for default in his/her public regulatory obligations.

Practically, a member's legitimate influence corresponds with its investment interest taking into account the LLC's proprietary interests. Its liability is limited to the capital contributed according to the charter. Its gains are comprised of profit distribution subject to the business performance and management proposal, and loan repayments, if any. Other (participatory and defensive) rights derive from its member status according to the charter's provisions on members.

**A member's power to govern the LLC is complementary to the director's – not superior. Its strongest means are the voting rights in the members' council to resolve on amendments to the charter and the right to appoint and revoke the director and legal representatives.**

We offer corporate law advice and corporate business outsourcing services to help navigate the process of choice and establishment of a suitable business vehicle in Vietnam. Tailored to your needs, we provide actionable advice for particular queries or deliver the entire process as a package service. The following documents comprise the minimum currently required to begin the process of incorporation of a LLC in Vietnam:

- Questionnaire provided by us to gather details of designated office/production site, industry, investment to help making sound choices and applying successfully
- Draft charter and application dossier documents in English and Vietnamese
- Copies of local ID (Vietnam citizens) or copies of the passport (foreigners) of the members (natural members themselves and corporate member's representatives), the designated director(s) and designated accountant, if any, and any other representative to be authorised to represent the LLC
- For every corporate shareholder, a copy of the corporate documents (e.g. company register excerpt and/or certificate of incorporation, statutes or other constitutional documents).

We correspond with you as you wish in English, German, French, Chinese (Mandarin) or Vietnamese, but the above documents need to be submitted in Vietnamese and translations need to be certified. We assist in this process if required. Application forms will be sent to your signatories for signing and certification in the process of submission to the relevant authorities. Generally, it is not required for the investors' representatives to attend in person, however the LLC's designated legal representative will have to execute final steps of the incorporation personally in Vietnam.

## **b. Private partnership**

Under the LoE 2020, a private partnership is required to have at least two general members (**General Partners**, only individuals). General Partners are unlimitedly liable with their private assets for debts incurred by the partnership. In addition

to the General Partners, the partnership may have further members (**Limited Partners**) who only pay money into the capital and their liability is limited to the extent of the amount of capital they have contributed.

## **c. (listed or unlisted) Joint Stock Corporation (JSC)**

The structure of Joint Stock Corporations (JSC) generally includes the following corporate bodies under either of two basis governance structures:

### **Structure 1**

- General Meeting of Shareholders (GMS)
- Board of Directors/Board of Management (BOD)
- (General) Director
- Supervisory Board (only mandatory in certain cases)

### **Structure 2**

- GMS
- BOD in which 20% of its members must be non-executive and independent directors
- (General) Director
- Audit Committee

Different from the aforesaid business vehicles, JSC are the only form of entity whose charter capital is divided into equitable shares subscribed by at least three shareholders. In this sense, the term shareholder applies where in an LLC it would be a "member".

The BOD must hold ordinary board meetings four times a year, one per quarter. The GMS is convened annually. Further requirements apply to public JSC under the Law on Securities.

The JSC's legal representatives may hold the position of a chairman of the BOD and/or the (general) director, if the charter prescribes two or more legal representatives. The (general) director is accountable to the BOD. Legislation, the charter and internal regulations of the JSC, the service contract signed between the (general) director and the JSC regulate the authority, capacity and appointment of the (general) director, as well as its relations with other governing bodies of the JSC.



#### **d. Foreign-domestic joint venture**

Where investors seek to make use of valuable local know-how or where engagement in specific conditional business lines prescribes domestic co-ownership, entering into a domestic-foreign joint venture may turn out to be a win-win situation. It allows individuals and entities to partner up for a specific business prospect. They may, pursuant to their principal joint venture agreement, then incorporate a multi-member LLC or any other form of entity that serves the mutual business' purpose. Its stakeholders are subject to the same regulations that apply to the respective entity form, plus their contractual agreement on how to govern the business.

Since the joint venture opens doors to conditional business lines subject to domestic ownership ratio, it is crucial to have a clear understanding of the relevant thresholds. These might also refer to minimum (latest at 30%) and maximum (depending on the business line) capital contributions (affecting the capital requirements).

As the joint venture is a contractual framework under which then the operational company is established, it is safe to say roughly the same timelines apply once the partners have reached an agreement. Then, the same procedures as described above for the individual vehicles are to be observed.

#### **e. Public private partnership (PPP)**

Taking JV one step further, in public-private partnership models (PPP), one of the partners will be a state-owned entity or a public institution with legal capacity to enter into business projects. Commonly, this form is used to participate in infra-

structure projects, most recently telecommunications, (renewable) energy, highway and railway connectivity or air- and sea ports. This is often administered in a bidding process, where overseas know-how and accessibility appear to be a competitive advantage. It is common to bid as a joint venture with a domestic business partner to meet LOI 2020 conditions.

PPP are often classified in one of five types descriptive of the scope and aim of the project (e.g. build-transfer-operate as opposed to lease models). However, projects are highly individualised and the state agency in charge will have sole discretion to change and adapt as needed.

#### **f. Business Cooperation Contract (BCC)**

The hallmark of a business cooperation contract (**BCC**) - as compared to the JV and PPP - is that no joint entity is required. In certain business fields the foreign and the Vietnamese investor may govern the project mutually and share the profits generated from operations on contractual basis without establishing a joint venture entity. The Vietnamese legal framework allows the parties to make autonomous decisions on the subject, content, interests, obligations and responsibilities and relations between them and to specify these in their (private commercial law) contract.

A coordination board can be set up, if necessary, with the function to coordinate the daily operation of a BCC. From a tax perspective, the considerations on capital contribution, tax liabilities and the agreed profit-sharing scheme are critical matters which the contracting parties need to take into account and reach a clear mutual agreement prior to commencing operations in this format.

## 2. Acquisition of shares or equity interest in existing enterprises

Alternatively, when incorporating seems yet too early or simply not feasible for the investment approach, foreign investors may acquire shares or equity interest from existing shareholder(s) of a JSC or member(s) of the target LLC, or subscribe newly issued shares of a JSC or make additional capital contribution to the charter capital of an LLC for their market debut.

### 2.1. Challenges when structuring the deal

Even experienced foreign investors will have to prove flexible to navigate an acquisition process in Vietnam. The vendor/seller will likely not provide comparable quality of documents and information on the target as would be expected from your domestic registers. Vietnamese-invested or state-owned targets may have a tendency to disclose information only reluctantly and after intervention of a trusted business reference. Documents may be produced ranging in quality, and information may differ in detail, clarity and reliability, requiring timely adjustments in the due diligence phase.

Gathering information and verifying knowledge about liabilities, licensing status or litigation involvement of a target is a time-consuming, tedious affair, still. Though public search engines and databases exist, they are often run by private providers, limited in scope, accessibility, consistency and accuracy as most information is uploaded by the respective business or may be available only to qualified parties.

Depending on the pre-deal ownership of the target, additional requirements may be incurred by the envisaged transaction or

the outcome itself. It is important to start the process well-informed of the additional time lines and employ parallel or consecutive procedures. This also applies to the time between signing and closing which is not entirely up to the parties' control.

Clarity must be obtained of the targets' (active and registered) business lines. It is not uncommon to register a business for more or broader business lines than they end up actively conducting business in. However, since certain business lines are conditional or closed to foreign investment, any such registered business not actively in use by the target should be carefully considered as disposable or accessible prior to commencement of the transaction.

Unless it is intended to optimise manpower during the deal, there's no advance notification or negotiation required with regard to employees.

### 2.2. DPI pre-approval requirements

The parties will have to obtain a transaction approval from the relevant local licensing authority if the acquisition

- leads to an increase in foreign ownership ratio in the target company conducting businesses where market access is conditional to foreign investors
- first leads to an increase in foreign ownership ratio in the target company of more than 50% of the charter capital
- targets a company holding land use right certificate(s) in areas deemed vital to national security (e.g. islands and in border and coastal communes, wards and towns).

The investor will need to submit its mere intention to acquire shares or equity to the DPI which registered the target, and the DPI will then, sometimes upon consultation of other authorities, notify the investor whether or not it considers the investment conditions to be met. Upon obtaining the transaction pre-approval from the DPI and depending on the particularities of the deal, further authorities may have to be involved and the target's internal regulation may require certain corporate bodies to resolve on the transaction and amend the members' registry. In any case, the target's registration authority will need to amend the ERC of the target according to the new owner/member structure. Quantity and content of the documents differ pursuant to (unpublished) rules of each DPI, whereas from experience, the HCMC DPI currently accepts the completed and confirmed SPA or subscription documentation.

### 2.3. Purchase price & tax implications

The share or equity interest price is negotiable, but since it is subject to the tax authorities' assessment and accounting requirements, it should reflect a realistic market value.

Where completion of the transaction is conditional to payment of the purchase price, such proof of payment may have to be submitted to the competent DPI for pre-approval additionally, causing trouble with subsequent purchase price adjustment mechanisms, if later applied. Hence, any elaborate purchase price structure requires close observation and correspondence with the relevant DPI from the beginning.



Any payments under M&A contracts (other than cross-border loans) owed to a Vietnamese resident (natural person or entity) shall be stated and made in local currency, i.e. Vietnamese Dong. Applying (also) foreign currency may in some cases interfere with Vietnamese foreign exchange control laws and consequently raises the risk of the transaction being unenforceable.

#### 2.4. Signature requirements and merger control

As with any submissions to authorities, Vietnamese language is expected to be found in private contractual documents, too. Historic corporate documents of the target may have been created in Vietnamese only. When preparing for post-transaction integration, the investor should take care to have all relevant documents, decisions, meeting minutes and contracts in bilingual version. Reliable translation service providers may be an asset.

As for signing, though Vietnam does have regulation on electronic signatures and would technically allow for remote signing, in practice, this is currently not of significant help. Only specifically accredited service providers may be used and only upon pre-registration of each party to make use of such service. Hence, be prepared to ink each transaction document. Initialising each page is common and the Vietnamese registered entities can only validly sign through their legal representative or based on power of attorney with the company seal affixed.

Merger control mechanisms apply, if the envisaged transaction is in a particular sector and/or exceeds certain thresholds in terms of transaction value, market share or the purchase/sales revenue in the business year completed prior to the transaction:

<b>Transaction value</b>	for on-shore transactions conducted in Vietnam	>VND 1 trillion
<b>Total assets or total turnover</b>	in the Vietnamese market of the company or group of affiliated companies that the company is a member of in the previous financial year	>VND 3 trillion
<b>Combined marketshare of the parties</b>	in the relevant market in the previous financial year	>20%

### 3. Representative office or branch office

A viable alternative to incorporation and acquisition may be to register a branch or representative office for duly established and existing foreign corporations wishing to test the waters prior to larger investment or to carry out low-key business activities in Vietnam while finding their bearings.

Representative Offices (RO) can be set up without own capital within two months and are currently allowed to conduct solely activities of ancillary or supportive nature to the overseas operations of the foreign entity they belong to (**principal**), such as researching the relevant market parameters and networking on behalf of and promoting its foreign principal's business to establish customers. In any case, it may not conduct business operations that generate revenue streams.

The (provincial) Department of Industry and Trade requires the foreign principal to prove its financial capacity with regard to the intended business operations when registering the representative office in its name.

The concept behind the branch office (**BO**) is to spare the investment and effort of a full-capacity legal entity but still mirror the complete business scope of its foreign principal, provided it has been active in the industry for five years prior to opening the branch and engages in particular business lines. The establishment licence of a BO can be issued within a month from submission of documents to the (provincial) Department of Industry and Trade.

A BO is able to act independently in sales and purchase of goods and services on a licence-basis. It may engage in profit-remitting activities and may recruit and hire own staff and open bank accounts, lease property and purchase equipment. It can set up supportive functions like marketing and accounting for the foreign principal. However, the BO office will not be treated as an autonomous legal entity separate from its foreign principal. Visualise the branch as an extended arm reaching into the Vietnamese market rather than setting foot across the border. Its purpose is representative and its actions trace back to the foreign principal. Consequently, any and all contracts it enters into and the legal obligations, debts and liabilities arising therefrom, shall be binding and enforceable against the foreign principal it represents. Consequently, it will require a company seal assigned to the principal, an establishment licence in their name and must appoint a branch manager residing permanently in Vietnam.

Since the BO is not a separate legal entity, any changes relating to the representatives and other details of the foreign principal, and its audited annual accounts, must be filed with the local authorities in Vietnamese language.

Due to current regulations, the registration of the BO is recommended for certain regulated industries only such as banking, finance and insurance, whereas it does not provide any benefits over incorporation in most other business lines.

We currently require at least the following for the registration of a BO or RO:

**The BO opens opportunities for direct but limited access to business from abroad, but lacks the protection of a “limited liability” investment vehicle. Some corporate information of the foreign principal must be disclosed regularly in Vietnam. The RO is a pre-investment vehicle to familiarise with the market.**

- evidence of valid incorporation and current proof of existence of the foreign entity
- the foreign entity's corporate documents (articles of association, memorandum of incorporation, constitution or comparable statutory documents)
- copies of ID/ passport of the person who is designated as Head of the branch or Chief of representative office
- letter of consent of the designated Head of the branch or Chief of representative office

Note that all documents must be submitted as Vietnamese originals or certified translations. We can liaise you with our trusted partners to obtain translation and certification services if required.

## IV. Growing your business in Vietnam

### 1. Owning, protecting and transferring commercial use rights in Vietnam

Vietnam still bears the stigma of the south-east Asian copy cat per se despite some regulatory efforts to protect commercial use rights, most importantly intellectual property. In practice, it is safe to say: Once a brand has established positive market reputation, it will be only a matter of time before same or very similar named, colored or advertised products – not necessarily of the same quality or even product category – spring from all ends.

The existent Records of Intellectual Property Office of Vietnam and the Copyright Office of Vietnam are still vague and incomplete, not updated and scarcely used by businesses, which prevents any reliability or enforceability using this formal reference tool.

Legislation has been slow with the early 2005 Law on IP Rights, revised in 2010 and 2013. Vietnam's accession to the WTO and bilateral agreements are currently the best chance to stipulate awareness for the potential hidden in commercial use rights and its effective protection. From international perspective, Vietnam is a subscriber to the Paris Convention, the Rome Convention, the Hague Agreement, the Madrid Protocol, TRIPS, WIPO and the Patent Cooperation Treaty, the Geneva Universal Copyright Convention, the Berne Convention, further, more recently CPTIP, UK-Vietnam and EU-Vietnam FTA. These commitments sport the chance that IP protection may be improved through international leverage once the value of IP as a marketable asset has fully emerged in the local mindset.

However, for the moment, copy-resilient businesses have relied on the strategy to create either highly innovative, evolving products or to render services inoperable without specific training and expertise obtained abroad in order to protect themselves from the national free-copy mentality.

Given the status quo, professional branding agencies have made their debut to help with the marketing side, but have little impact on protection of established IP yet. Without effective protection against competitors, the asset value of IP is marginal and inseparable from the business or person owning it.

Where disputes regarding IP demand for action, claims may be filed to the National Office of Intellectual Property (**NOIP**), a department of the Ministry of Science & Technology and may refer to registrations for patents, industrial design, brands, names or trademarks.

### 2. FTAs and their impact on Vietnamese laws & economics

Free trade agreements (**FTA**), which Vietnam is not shy to subscribe to lately, have become an accelerator for foreign investment in Vietnam in recent years. They are considered a milestone in the opening policies of the country and expected to give momentum to domestic legislation as a reflex of the ambition to live up to international standards of its competition among south-east Asian investment destinations.

Expectations are high regarding the impetus of the latest FTAs to help Vietnam transition from the low-wage, low-complexity, low-quality exporter towards a high-tech manufacturer, digital services provider and supplier of mobility and medical appliances. Import becomes accessible and is much needed for primary and secondary goods to foster manufacturing.

A major transition is to be expected from know-how import, while other countries in the region experience alarming brain-drain of skilled and qualified employees, knowledge and technology migrating into Vietnam could nurture a step up the production chain to high-end products made-in-Vietnam. With higher demand in complex roles and positions, the education institutions and curricula of secondary and post-graduate education may leapfrog, too, providing well-trained, English-spoken workforce. Regulation will have to step up to comply with the treaties' and conventions' standards e.g. for labour, human rights, environment protection, fighting corruption and improving judicial and out-of-court law enforcement. This is also expected to be the most effective driver for IP protection.

The competitive pressure may be felt more clearly, too, in the private sector. EU, North America and Australia already import agricultural products that local producers have long left unadapted to international standards. The government emphasises the need to modernise the local agricultural industry and numerous regulations have been passed to move this very traditional and under-financed sector into the right direction, including tax privileges and specific labour regulation. Land use will have to be reconsidered, too, given the expansion of production and urbanisation of the central economic zones.

### **3. Maintaining general corporate compliance**

#### **3.1. Accounting**

Vietnam employs its own accounting standards (VAS) which any locally registered business must observe. Additionally, foreign-invested businesses may opt to have a second set of records compliant to international accounting standards (IFRS) or choose to convert only their relevant financial statements to IFRS before forwarding to their foreign shareholders or members. However, under current reforms, IFRS is to be adopted by Vietnamese registered entities in few years' time, proposed to be mandatory for state-owned, large or listed entities and optional for SMEs and other vehicles from 2025 on.

Currency and language settings can be international if easily convertible to Vietnamese and VND currency. The charts of

accounts must follow the local standard as well as the content of reports. The accounts need to be signed and stamped within the applicable timelines.

The financial year is generally the calendar year but can be altered to start with each quarter. The audited financial statements must be submitted by the last day of the end of the quarter following the financial year respectively.

Audit requirements change frequently and foreign-invested entities are under particular pressure to comply, making outsourcing a viable and attractive decision to ensure compliance and save resources. In any case, independent auditors must be engaged to comply with the regulatory requirements applicable to foreign-invested entities.

All personal and corporate income tax must be finalised at the time of filing the audited annual financial statements. Accounting documents related to the submission must be retained by the company, however, e-submission of statements is on the rise. Submissions must be made to several authorities separately.

Only after all contributions and payments owed under Vietnamese laws have been covered and the remains turn out as positive results, may the entity disburse profits to its foreign members, shareholders or stakeholders outside Vietnam.

#### **3.2. HR & payroll**

Employers are responsible to deduct personal income tax for their employees and to file and finalise accordingly on their behalf.

Further, employers ensure for all local employees plus any foreign employee with indefinite local employment contract, to contribute to mandatory social insurance (unemployment, retirement, maternity, accident, health and incapacity).

### **4. Suing and being sued in Vietnam**

Once, Vietnam was dubbed a high-risk destination for foreign investment due to its lack of accountability in dispute resolution and inaccessible jurisdiction. Things have shifted in this regard, too, and when COVID-19 shook and rattled supply chains around the globe, the Vietnamese judicial and arbitration system went through lessons learned and progressed in terms of transparency, reliability, accountability and enforceability of arbitration awards and court titles.

#### 4.1. Private sector dispute settlement

Besides the domestic court system, Vietnam does acknowledge the arbitration system and has laid out the rules in the Law on Arbitration (LoA 2010). As a subscriber to the New York Convention, it has committed to enforce arbitration awards granted overseas within Vietnam.

Private business partners are free to agree on clauses regarding their dispute resolution by means of arbitration pursuant to Article 9 of the LoA. The arbitration tribunal may then be requested to conduct conciliation and decide only on the cost division while leaving it to the parties to reach an agreement on dispute settlement.

Further, provisions relevant for private dispute resolution involving foreign investors are set forth in the LOI 2020. The Vietnam International Arbitration Center (**VIAC**) and the Vietnamese national court system can be equally addressed by foreign investors and foreign-invested vehicles as claimant pursuant to Article 14 LOI 2020, and may also sue public regulatory agencies in Vietnam.

Business partners may, under the provisions of the Law on Commerce No. 36/2005/QH11, agree to foreign jurisdiction as the governing law of their commercial relationship, however, such foreign statutes do not apply if contrary to the fundamental principles of the laws of Vietnam.

Whereas the general principles are straight-forward, the details or proceedings are subject to meticulous, often not transparent or inaccessible regulation, most significantly Article 9 of decree No. 31-2021-ND-CP contains preliminary steps to resolve disputes before they arise, including complaint, revision and escalation mechanisms within the administrative sector.

#### 4.2. Special public - private dispute settlement

A major driver in terms of accountability of state institutions' compliance were FTA's and, in particular, their sanctioning mechanism for a breach of agreed investment rules and freedoms. Any public institution regardless of rank violating such rules would be considered a breach by the State of Vietnam vis-à-vis its international partners which emphasises the need for effective top-down reforms and improvement of past practices.

With the framework and the incentives in place and a developing domestic understanding of the importance of transparent, efficient and reliable dispute resolution, Vietnam created most

favourable conditions to emerge from a high-risk to an advantageous destination for foreign investment.

As a baseline, foreign investors are protected under the various FTAs' provisions against discriminatory treatment, violation of guaranteed preferential investment conditions or other breaches of agreed legal principles and may sue the State as such for any action of any of its public facilities, departments, institutions or agents. The title in such case is enforceable against and within the State itself.

## V. Packing up – Risk Management for divestment from Vietnam

Part of your investment decision would naturally be concerned with the risk of having to close a business that does not meet the expectations or is merely subject to a change of strategy at a later stage. In other words: how hard (time- and cost-wise) will it be to withdraw from Vietnam, including any liability and assets?

### 1. Dissolution of an entity

#### 1.1. Procedure & timeline

An established entity will have to go through a formal dissolution procedure, beginning with the public announcement based on a formal decision of the entity's corporate bodies pursuant to its charter or an administrative order.

The notification of closure, the decision on dissolution of the entity, together with a plan on debt settlement will need to be sent out directly to any party with whom the entity upheld commercial or legal relations including creditors, suppliers, employees and all authorities concerned within seven days of issuance. The business registration authority shall publish such decision together with relevant documents on its website, and mark the status of the entity as "in dissolution process". The entity may then proceed to close all its accounts and to terminate recurring obligations like loans, office lease and labour contracts.

A crucial step is the completion of any outstanding tax payments, which will be deemed fulfilled only upon written confirmation by the tax authority. Similarly, the insurance department will have to confirm that all payments for social insurance contributions are settled. All of branches and representative offices of the company, if any, must be deregistered beforehand. The entity will also need to prepare one final audit of its closing accounts to be submitted to various authorities. Only



once all the documents have been assembled, will the DPI update the entity's legal status from "active" to "dissolving".

The dossier to the DPI comprises at least of a:

- dissolution notification
- asset liquidation report
- creditors' and credit clearance list
- confirmation by tax authority on settlement of all tax obligations
- confirmation of insurance department on settlement of all social insurance contributions
- confirmation of bank on settlement of all debt and payables and on closure of all accounts

The general meeting or members' council will need to resolve on the liquidation of the entity's assets and produce exact records of the assets.

If the entity's seal is registered with the Ministry of Public Security, they will have their company seal invalidated by the local authorities upon written request, ending the capacity of the entity to issue valid documents in Vietnam.

The entity's name will be deleted from the National Business Registration Portal (NBRP) upon submitting the dissolution notification dossier with all the previously prepared statements and certificates.

The process may take anything from six to 12 months from the date the owners issue the resolution on dissolving the entity. However, the process can be prolonged depending on recent business activities and other particularities.

## 1.2. Reasons to terminate operations

Naturally, the owner(s) of an entity may conclude on the termination of operations in Vietnam as it is at their sole discretion. They will then resolve in a formal general meeting (JSC) or by members' council's resolution (LLC) on the dissolution. Alternatively, the initial investment strategy may have a time-bar which is explicitly mentioned in the charter and the members/ shareholders decided not to extend this time limit.

However, there may be unpredicted reasons to terminate, too: the business registration certificate may have been granted with a time limit and could not be extended or the business registration has been revoked for other reasons and all intervention with the authorities remained without success. In a multi-member LLC, cause for termination may be that the number of members is below three for six consecutive months.

In the event of bankruptcy or insolvency, the case will be filed to and handled by the People's Court at the place of establishment. The court may decide to proceed or to reject the case within 30 days of receipt of the complete file. If insolvency procedure is opened the entity will need to prepare an inventory of assets, a list of creditors and a list of debtors to be published before commencement of a meeting of the entity's creditors and assets shall be liquidated in order to satisfy quotas as set forth in the procedural decisions.

## 1.3. Alternative: suspension of business operations

If the situation demands a break rather than a cut-off, business operations in Vietnam may be suspended for up to one year. When one year has lapsed, the company may continue suspending its business for an extended term on the condition that the total duration of continuous suspension must not exceed two years.

Within three days of notifying the entity's registering DPI by submission of a form, the formal decision of the corporate bodies and the reason for suspension, the authority may approve and confirm in writing – or reject and request additional documents which the entity shall submit.

Once approved, the entity remains responsible to observe basic requirements depending on the activity it conducts. Tax filings are due within the usual timelines if the suspension period is effectively shorter than the entity's business year.

## 2. Termination of operations of a branch or representative office

If no entity has been established, but the business is represented by a BO or RO, the procedure to terminate operations is less complex and time-consuming, ideally may be completed within 30 days of submitting the complete dossier. Terminating the BO or RO would not only occur when leaving Vietnam altogether, but also when the foreign investor decides to proceed with a corporate establishment registered in Vietnam to extend its business operations as BO/RO may not be transformed into a legal entity anymore.

Likewise, all tax obligations and – if any – payments to social security for employees must be settled by the principal through the BO or RO, and the registration certificate and stamp must be returned. Additionally, the RO must submit a report of its activities from its date of commencement to the filing date.

# Luther in Vietnam



Luther and its partners uphold a strong regional presence and have a substantial footprint in the ASEAN commercial life since 2008. As a full-service law firm of German origin, our offices in China, India, Indonesia, Malaysia, Myanmar, Singapore, Thailand and Vietnam facilitate stakeholders of all industries and stay ahead of the latest legal and commercial developments pacing business in Asia and Europe. Our Ho Chi Minh City office emerged from a long-standing successful collaboration with trusted local partners. With INC Legal Vietnam, we take on a pro-active role in the promising Vietnamese business and legal landscape.

At Luther, we commit to excellence and accessibility. In Vietnam, we aim to serve as reliable partners in one of south-east Asia's most promising markets. We are confident that we hold the expertise to add value to any legal or tax decision that may arise during your market debut and business life cycle in Vietnam. We serve not only as one-stop-shop law firm, but as comprehensive business enablers, offering seamless business process outsourcing and actionable advice tailored to your practical needs at competitive prices.

When working with INC Legal Vietnam within the Luther network, you benefit from dedicated foreign and domestic qualified legal and tax advisors, gain access to a reliable Vietnamese law firm and partner up with a network of renowned law offices across Europe and Asia that work hand-in-hand to deliver commercially practical solutions.

We have done our job well, if you can focus on growing your business, assured that your legal, compliance and administrative tasks are taken care of.

We look forward to meeting and working with you. Yours faithfully,



Thi Thuy Trang Phan, LL.M



Dr. Martin Seybold, LL.M. Eur.



Johannes Klausch, LL.M. (London)

## **Our practice – your added value**

Our local and international consultants provide you with legal and tax expertise across various disciplines (public/regulatory, commercial/distribution, market entry, international trade, M&A, construction, transportation, IP, IT, data protection) and extensive knowledge of the particularities of the economic environment and the Vietnamese legal system.

We continue our bonds with fully qualified Vietnamese lawyers who can defend and assert your rights before Vietnamese courts and in arbitration proceedings. Our tax advisors and accountants work hard to integrate local requirements seamlessly to your business routines. As we recruit from and maintain tight bonds to expert lawyers in the Luther network, their expertise is readily available wherever your next business venture may take you.

As a result, we are able to provide comprehensive advice on all legal, regulatory, compliance and tax aspects throughout the entire business life cycle, and whether your business qualifies as investment vehicle, NGO or part of the public sector.

## **Our expertise – your actionable advice**

We believe that in-depth knowledge of the market in which our clients operate is quintessential to providing successful advice. As consultants, we aim to serve as reliable partners for corporate transactions and business endeavors in SEA.

Consequently, our lawyers and tax advisors focus on particular industries or the public sector, and maintain professional specialisation in their respective legal or tax disciplines. Each consultant brings his or her own professional profile to the

table and adds to the teams' performance. Whichever special requirements your next project may have – we can easily adapt and you can rely on readily available knowledge.

In all areas of legal services rendered by us, we also conduct inhouse and remote trainings for owner, management and staff level. Training goals and concepts will be tailored to your needs and may be recorded for your internal documentation. Where applicable, we certify the scope and volume of trainings to participants and provide self-learning material.

## **Our services – your competitive advantage**

We render our services in teams comprising years of field experience and state-of-the-art expertise, making us potent and competent partners in complex projects and allowing for creative and agile solutions. Your project team will be assembled based on your specific needs.

During the project, your trusted point of contact will generally be one or two senior consultant(s) responsible for the entire process. Depending on required experience and expertise, they will assemble a team of specialists committed to efficiency and excellence.

Given this approach, our hourly rates are competitive and we are open to alternative fee structures while we maintain the flexibility to amend the team and scope of work as you wish.

# Our Legal & tax advisory services

## For better investment decisions

Our international and Vietnamese lawyers provide comprehensive legal advice in all areas of corporate and commercial law equipping you with the relevant background to make profound, risk-controlled decisions:

### Foreign direct investment and market entry

- assessment of investment locations
- advise on market entry regulation & restrictions
- correspondence & representation vis-à-vis authorities
- drafting & submission of application dossiers

### Establishment of a business presence in Vietnam

- choice of type of investment vehicles
- corporate & tax structuring
- registration of branch or representative offices
- establishment of Vietnamese-foreign joint ventures and PPP projects

### Corporate house-keeping

- capital measures (increase and reduction in charter or share capital), filing of relevant amendments to the charter
- changes of company name, charter, capital (transfer of shares, issuance of shares), shareholders/members, directors, representatives, auditors, office address
- shareholders' or members' agreements
- charter, rules of procedure
- out-of-court dispute resolution measures
- corporate documents (minutes, resolutions, notices)
- submissions to and correspondence with authorities
- authentication and legalisation of foreign documents

### Termination & suspension of business operations

- liquidation of entities
- support in bankruptcy proceedings
- de-registration of branch or representative offices

### Mergers & acquisitions

- M&A transactions
- domestic and cross-border asset or share deals
- full-scope legal and tax due diligence
- corporate restructuring measures
- post-merger / closing integration

### Finance advisory

- banking, finance and insurance law
- corporate finance
- loan and security agreements
- local business bank accounts
- legal opinions for envisaged transactions

### Real estate

- sale and purchase of land use rights
- commercial lease agreements
- construction contracts and
- financing structures

### Compliance

- anti-corruption & anti-money-laundering compliance
- corporate governance and corporate compliance measures; advise on best practice corporate governance
- regulatory compliance
- tax compliance

### Employment and labour law

- employment contracts
- secondments
- internal labour regulations and employment policies
- dispute resolution
- correspondence with labour authorities

### Immigration law

- business visa, temporary residence cards
- work permits and work permit exemptions

### Contract law and contract administration

- drafting and structuring of all types of domestic and cross-border commercial contracts



- INCOTERMS and int. contract framework
- FTA advisory services
- customs regulations, import and export restrictions
- structuring of e-commerce business models
- review of general terms and conditions

#### **Intellectual property, business secrets & privacy law**

- development and implementation of IP protection strategies
- registration of trademarks, designs and patents
- licence agreements, research and development agreements
- cross-border data transfer risk assessment (TRA)
- data protection requirements under GDPR for global services

#### **Tax advice and tax structuring**

- cross-border tax advisory services
- direct and indirect taxes
- tax structuring of M&A transactions
- transfer pricing
- e-commerce tax collection

#### **Tax compliance**

- commercial tax and special goods tax
- corporate income tax and withholding tax
- applications for relief under Double Taxation Agreements
- liaison with the relevant authorities and internal accounting departments
- digital economy taxation
- stamp duty and other local special taxes

#### **Environmental Protection Law**

- assessment of investment locations under environmental regulation aspects
- advise on applicable EIA regulation & restrictions
- correspondence & representation vis-a-vis authorities
- drafting & submission of application dossiers for:
  - Feasibility plan
  - Preliminary EIA and complete EIA
  - Environmental Permit
- renewal of permits.

# Luther in Asia

## Expertise

Legal advice – especially in Asia – is more than explaining the legal system to you. We are here to do more. We make a true effort to understand your business. We devise and help you implement legal and tax structures that work and let you focus on being successful in the world's most dynamic economic region.

Our Vietnam office works closely together with the other Luther offices in Asia and Europe. We take a holistic approach, dealing with Asia-wide compliance issues, assisting with the creation of international holding structures and ensuring tax-efficient repatriation of profits.

We provide the complete range of legal and tax advice to clients doing business in and from Asia. To offer a seamless service, we have teams in Europe as well as in Asia, led by partners with many years of experience on both continents. That way, we can immediately answer questions concerning investment decisions and provide our clients with an accurate assessment of the particularities of their projects, no matter where they are located.

Our lawyers unite substantial practical knowledge in important legal areas and cover the entire spectrum of law in Asia and beyond. We support foreign investors in the assessment of location and investment criteria, the structuring of investment projects, acquisitions and joint ventures. Finding and implementing solutions for sensitive areas like technology transfer and know-how protection also form part of our work. Alongside our clients we negotiate with future partners and local authorities and ensure the enforcement of their rights, in and out of court as well as in arbitration proceedings.

The services of our lawyers are complemented by our accountants, HR professionals and tax consultants offering all the services one would necessarily associate with a "one-stop shop" concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in Asian "common law" countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to comprehensively assist comprehensively on all business matters in Asia. Our tax experts advise on individual and corporate tax compliance as well as on withholding tax issues, on Double Taxation Agreements and on complex international tax struc-

tures. Our accountants and professionals carry out the time-consuming administrative tasks of accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

## Singapore

Singapore is a leading international trade and financial hub. As such, it serves as Asian headquarters for many international companies operating within the Asia-Pacific region.

With a staff strength of more than 90, Luther is by far the largest continental European law firm in Singapore. More than 26 lawyers from Singapore, Germany, France and other jurisdictions cover the full range of corporate and commercial legal work as well as the structuring of investments within South and South East Asia.

Our team is supported by excellent local Singaporean lawyers, notary publics, tax advisors, accountants, corporate secretaries and other professionals.

## Shanghai

Shanghai is the main hub for doing business in China, and with a team of more than 20 international lawyers, Luther is the largest German-speaking law firm in the city. Our China team consists of German and Chinese legal experts most of whom have over a decade of experience in developing and entering the Chinese market.

Luther Shanghai is fully authorised to offer legal services including litigation and provides advice on all questions of Chinese law. Our legal team is supported by Chinese tax advisors, accountants, corporate secretaries and other professionals.

## Region

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Bangkok (Thailand), Delhi-Gurugram (India), Ho Chi Minh City (Vietnam), Kuala Lumpur (Malaysia) and Jakarta (Indonesia).

This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners in Australia, Hong Kong, Japan, New Zealand, the Philippines and South Korea.

# Hits the mark. Luther.

Luther Rechtsanwaltsgesellschaft mbH is one of the leading corporate law firms in Germany. With some 420 lawyers and tax advisors, we can advise you in all fields of German and international corporate law. In addition to having offices in every economic centre throughout Germany, we are also present in 11 locations abroad: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Ho Chi Minh City, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advisory services are tailored to our clients' corporate goals. We take a creative, dedicated approach to achieving the best possible economic outcome for each of our clients. The name "Luther" stands for expertise and commitment. With a passion for our profession, we dedicate all our efforts to solving your issues, always providing the best possible solution for our clients. Not too much and not too little – we always hit the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always have an eye on the economic impact of our advice. This is true in the case of strategic consulting as well as in legal disputes. We have complex projects on our agenda every day. At Luther, experienced and highly specialised advisors cooperate closely in order to offer our clients the best possible service. Thanks to our fast and efficient communication, permanent availability and flexibility, we are there for you whenever you need us.

Luther has been named "Law Firm of the Year: Germany 2021" and also "European Law Firm of the Year 2021" by The Lawyer, one of the most well-known legal magazines worldwide.



## About unyer

unyer, founded by Luther and Fidal in 2021, is a global organisation of leading international professional services firms. Besides law firms, unyer is also open to other related professional services, especially from the legal tech sector. unyer is based in Zurich as a Swiss Verein. unyer is globally connected but has strong local roots in their respective markets.

unyer has an exclusive approach and only accepts one member firm from each market. unyer members offer its clients full services across all jurisdictions with a compelling industry focus. The organisation has an annual turnover of more than EUR 650 million and includes over 2,550 lawyers and advisors in more than 10 countries in Europe and Asia. In September 2021, Pirola Pennuto Zei & Associati joined the international organisation. In the spring of 2023, the Austrian law firm KWR joined the group. [www.unyer.com](http://www.unyer.com)



2



# Our awards



## JUVE

In the 2022/2023 JUVE Guide to Commercial Law Firms, 52 lawyers from Luther were recommended, and 10 of these were also listed as “leading advisors”. The legal publisher JUVE ranked Luther in 31 areas of law. In 2022, Luther was nominated for the JUVE award “Employment Law” as well as “Real Estate” and was named “Law Firm of the Year” by JUVE in 2019. In the past, Luther already won the JUVE award “Law Firm of the Year 2017 for Environmental and Regulatory Law”.



## The Legal 500

The Legal 500 Germany 2023 recommends Luther in 30 areas of law, with “Top Tier” rankings in two of these areas. 72 lawyers are being recommended, 12 of whom have been specially recognised as “Leading Individual” or “Next Generation Partner”. Luther has also been included for Germany in the first edition of **The Legal 500 Green Guide EMEA 2022**. This guide provides an overview of law firms’ engagement with sustainability, including both work for clients as well as firms’ own best practices and initiatives.



## Chambers

In 2023, Luther was recognised by Chambers Europe for 13 practice areas in Germany as well as in two practice areas in Luxembourg. Moreover, 15 partners were included in the Individual Ranking. Additionally, in 2023, Luther was recognised by Chambers Global in three advisory areas in Germany and Myanmar, while five partners were also included in the Individual Ranking.



## The Lawyer European Awards

Luther has been named “Law Firm of the Year: Germany 2021” and also “European Law Firm of the Year 2021” by The Lawyer, one of the most well-known legal magazines worldwide.



## Kanzleimonitor

Kanzleimonitor 2022/2023 recommends Luther in 25 areas of law and has also included 16 Luther lawyers among the recommended lawyers mentioned by name.

## Best Lawyers

### „Best Lawyers in Germany 2024“

For the year 2024, 99 lawyers have been recommended by Luther as “Best Lawyers in Germany 2024”, an award presented by the US publisher “Best Lawyers” in cooperation with the German Handelsblatt, including one partner as “Lawyer of the Year” for his area of law, and 19 colleagues who have received the recommendation “Best Lawyers - Ones to Watch”.



## WHO'S WHO LEGAL

WHO'S WHO LEGAL listed 21 lawyers in December 2022, four of whom were recognised as Thought Leaders, which is the highest award, and three of whom were named Future Leaders.

# Our practice areas

Antitrust Law

Capital Markets &  
Banking

Commercial &  
Distribution Law,  
Product Liability/  
Product Compliance

Complex Disputes

Compliance &  
Internal Investigations

Corporate/M&A

Data Protection Law

Employment Law

Energy Law

Environment &  
Planning Law  
Regulatory

Financial Services  
Investment Funds &  
Alternative Investments

Insurance Law

International  
Trade Law

IP & Copyright Law

IT Law

Media & Entertainment

Notarial Services

Public Procurement  
Law

Public Subsidies/  
State Aid Law

Real Estate

Restructuring &  
Insolvency

Start-ups & Venture  
Capital

State, Administration,  
Public Undertakings

Tax Law

Telecommunications  
Law

White-Collar Crime &  
Tax Offences

# Contact

## Our office in Ho Chi Minh City

**INC Legal Vietnam Law Co. Ltd.**

**A Partner Firm of *Luther*.**

25th Floor Deutsches Haus

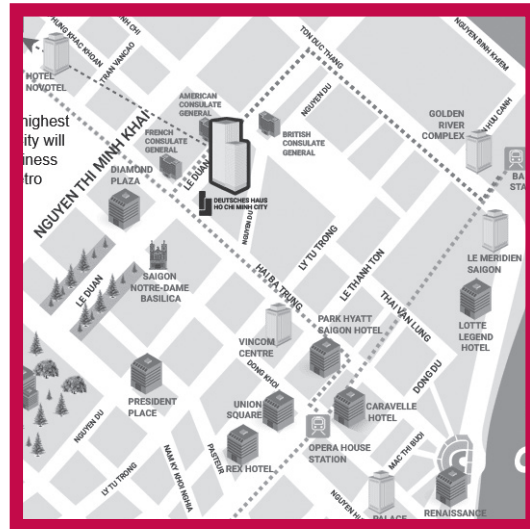
33 Le Duan Boulevard

Ben Nghe Ward, District 1

Ho Chi Minh City, Vietnam

Phone +84 287 300 1073

Vietnam@luther-lawfirm.com



## Your contacts



**Thi Thuy Trang Phan, LL.M**

Attorney-at-law (Germany)

Registered Foreign Lawyer

(Singapore, Vietnam)

T +65 6408 8021

trang.phan@

luther-lawfirm.com



**Dr Martin Seybold,**

**LL.M. (Eur)**

Attorney-at-law (Germany)

Registered Foreign Lawyer

(Vietnam)

+84 28 6287 6102

martin.seybold@

luther-lawfirm.com



**Johannes Klausch,**

**LL.M. (LSE)**

Attorney-at-law (Germany)

Registered Foreign Lawyer

(Singapore, Vietnam)

+49 (0)152 0162 1165

+84 (0)777 813 604

johannes.klausch@

luther-lawfirm.com



**Susanne Abraham**

Attorney-at-law (Germany)

Registered Foreign Lawyer

(Singapore, Vietnam)

+84 (0)3490 44 854

susanne.abraham@

luther-lawfirm.com

# Luther.

**Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen,  
Frankfurt a.M., Hamburg, Hanover, Ho Chi Minh City, Jakarta, Kuala Lumpur,  
Leipzig, London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon**

You can find further information at:

[www.luther-lawfirm.com](http://www.luther-lawfirm.com)

[www.luther-services.com](http://www.luther-services.com)

