

A background painting depicting several people wearing traditional conical hats, likely in a rural setting. The style is expressive and somewhat abstract, with visible brushstrokes and a rich color palette of greens, yellows, reds, and blues. The figures are rendered in a way that suggests movement and activity.

**LEGAL WORKSHOP FOR SHENZHEN BAR ASSOCIATION**

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**INVESTMENT AND FINANCING  
ENERGY/INFRASTRUCTURE PROJECTS IN  
VIETNAM**

**\*\*\***

**RUSSIN & VECCHI**

Ho Chi Minh City  
Vietcombank, 14/F  
5 Me Linh Square  
Tel: (+84-28) 3824-3026

Hanoi  
Hanoi Central Office Building, 11/F  
44B Ly Thuong Kiet St  
Tel: (+ 84-24) 3825-1700

[lawyers@russinvecchi.com.vn](mailto:lawyers@russinvecchi.com.vn)  
[www.russinvecchi.com.vn](http://www.russinvecchi.com.vn)

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# KEY LAWS AND REGULATIONS

- **GENERAL LAWS**
- **PARTICULAR LAWS AND REGULATIONS**

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## General Laws

### General Laws which apply:

- Investment Law no. 61/2020/QH14 adopted by the National Assembly on 17 June 2020;
- Enterprise Law no. 59/2020/QH14 adopted by the National Assembly on 17 June 2020;
- Law on Environmental Protection no. 72/2020/QH14 adopted by the National Assembly on 17 November 2020;
- Construction Law no. 50/2014/QH13 adopted by the National Assembly on 18 June 2014;
- Land Law no. 45/2013/QH13 adopted by the National Assembly on 29 November 2013;
- Law on Firefighting and Fire Prevention no. 27/2001/QH10 adopted by the National Assembly on 29 June 2001.

## Particular Laws and Regulations

### PPP Projects (Public-Private Partnership):

- Law on Public-Private Partnership (PPP) Investment no. 64/2020/QH14 adopted by the National Assembly on 18 June 2020;
- Decree 28/2021/ND-CP of the Government dated 26 March 2021;
- Decree 31/2021/ND-CP of the Government dated 29 March 2021.

### Energy Projects:

- Electricity Law no. 28/2004/QH11 adopted by the National Assembly on 3 December 2004 passed by (as amended by Law no. 24/2012/QH13 dated 20 November 2012, and Law no. 03/2022/QH15 dated 11 January 2022) (“**Electricity Law**”);
- Prime Minister’s Decisions, approving the National Master Plan and FiT for renewable energy projects;
- Resolution no. 55 of the Politburo dated 11 February 2020, approving the national orientation and policies for the development of the energy industry;
- MOIT (Ministry of Industry and Trade) regulations on solar, wind, wastes to energy projects, and MOIT regulations on thermo-BOT projects, prices of electricity, industry norms and standards.

# INVESTMENT FORMS FOR FOREIGN INVESTORS

- **SETTING UP OWN COMPANY**
- **ACQUIRING EXISTING PROJECTS**
- **PPP PROJECTS**

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# Option 1 - Setting up own company

VS

# Option 2 - Acquiring existing projects

## ❖ Option 1: Procedures and notable points

- 100% foreign owned company *vs* JV company
- Legal capital: no requirement (**except for certain sectors**), but initial equity capital must be contributed in full within 90 days from the date of incorporation
- Government fee: About US\$20
- Timing: About 2-3 months
- Procedures to set up a company: Check the national/local master plan for a specific industry; obtain Investment Registration Certificate; obtain Enterprise Registration Certificate; obtain other operating permits and licenses.

## ❖ Option 2: Procedures and notable points

- Factors affecting choice of acquisition (asset acquisition *vs* share acquisition)
- Tax implications (VAT and capital gains tax)
- Government fee: N/A
- Timing: About 4-6 months
- Procedures to acquire shares



## Option 3 – implementing a PPP project

### ❖ Option 3: Procedures and notable points

- Permitted sectors: (i) **transportation and transport** (*road, railway, inland waterway, maritime, air transport*); (ii) **power plants** (*renewable energy, LNG power plants; nuclear power plants*), **power grid** (*other than some activities which are subject to state monopoly pursuant to the Electricity Law*); (iii) **irrigation**; (iv) **supply of clean water and treatment of wastewater and wastes**; (v) **healthcare** (*medical examination and treatment facilities; preventive healthcare; testing*), **education, training** (*infrastructure, facilities, equipment serving education – training and vocational education*); and (vi) **IT and communications infrastructure** (*digital information and digital economy infrastructure; modernization of IT in Communist Party and State agencies; application and development of information technology, databases, data centers; common national platforms, applications, services; network security; system of applications and services serving the people and enterprises; information and communication technology (ITC) infrastructure for smart cities*)
- Minimum equity capital: 15% of the investment capital
- Minimum investment capital for each sector: (i) transportation and transport: VND1,500 billion (**about \$60 mill**); (ii) power plants and power grid: VND1,500 billion; (iii) renewable energy projects: VND500 billion; (iv) irrigation, supply of clean water and treatment of wastewater and wastes: VND200 billion; (v) healthcare, education and training: VND100 billion; (vi) IT and communication infrastructure: VND200 billion.

## Option 3 – implementing a PPP project

### ❖ Option 3: Procedures and notable points

- Bidding requirements to select a PPP investor
- State participation in risk mitigation (25% rule)
- Timeline restriction to financial closure: 12-18 months from the signing date of PPP contract
- Government's guarantee for availability of foreign currency
- Government's guarantee to secure EVN's payment obligations under Power Purchase Agreement
- Ability to transfer capital
- Termination and termination payments
- “Step in” rights of lenders
- Governing law of PPP contract



# LIMIT ON FOREIGN OWNERSHIP AND CONDITIONAL PROJECTS

- **LIMIT ON FOREIGN OWNERSHIP**
- **SECTORS AND AREAS THAT ARE CONDITIONAL FOR FOREIGN INVESTORS**

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## Limit on Foreign Ownership

### ❖ Under Vietnamese law

- Foreign investors are not allowed to invest in: (i) public postal services; (ii) maritime safety services in water zones, water areas and public navigable channels, electronic maritime information services; (iii) collection of domestic wastes; (iv) national electricity system regulation; and (v) large-scaled power plants that have important socio-economic, defense or security significance.

### ❖ Under International Agreements

- Vietnam's WTO Commitments
- ASEAN Framework Agreement on Services
- ASEAN-China Agreement on Trade and Services
- EU-Vietnam Free Trade Agreement
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership. (CPTPP includes 11 members: Australia, Brunei, Canada, Japan, Malaysia, Mexico, Chile, Peru, New Zealand, Singapore and Vietnam)

*See Appendix 1 that provides specific limit on foreign ownership in particular sectors/areas under each international agreement to which Vietnam is a signatory.*

**Sectors and areas  
that are conditional  
for foreign investors**

- Exploration, exploitation and production of natural resources, mining, oil and gas;
- Hydro-power, offshore wind projects, nuclear power plants;
- Postal and communications services;
- Education services;
- Cargo and passenger transportation;
- Air/river/sea ports;
- Healthcare and social services;
- Sport and entertainment services;
- Gaming and casinos;
- Manufacture of airplanes, locomotives and railway carriages;
- Building and repair of seagoing ships;
- Logistics services;
- Coastal transport services;
- Shipping agencies; towing services;
- Marine pilotage; and
- Other sectors set out in Decree 31/2021/ND-CP of the Government dated 26 March 2021.

# LAND AND THE ENVIRONMENT

- **LOCATION**
- **LEASING LAND**
- **READY-BUILT FACILITIES**
- **INCENTIVES**
- **ENVIRONMENTAL PROTECTION**

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## Location

Manufacturing facilities located either outside or inside an Industrial Park (IP)

- More complicated to locate outside an IP due to land clearance, zoning requirements, environmental conditions, construction, perhaps incentives, etc
- Industrial parks specifically zoned for all kinds of industrial activities, accessible to ready infrastructure (water, power, telecom supply, waste treatment system, etc.), environmental standards already in place

## Leasing Land

Leasing

- Outside industrial park: leasing from government or private entity
- Inside industrial park: leasing from park developer/operator
- Leasehold title

## Ready-Built Facilities

Vacant ready-built facilities available for rent or purchase in IPs

## Incentives

Notable location-specific incentives:

- Tax holidays (CIT exemption, reduction)
- Land rent holidays (exemption, reduction)

largely for businesses in remote areas or for investment in renewable energy or in sectors that are encouraged for investment.

# Environmental Protection

**Group I** - Projects with high risk of an adverse environmental impact

**Group II** - Projects with any risk of an adverse impact on the environment

**Group III** – Projects with low risk of an adverse impact on the environment

- **Environmental Impact Assessment Report (EIAR)** required for all Group I projects and certain projects in Group II. EIAR to be approved before issuance of IRC.
- **Environmental Licence (EL)** required for projects belonging to Group I, Group II and Group III that generate wastewater, dust or gas as specified in regulations on waste management. EL must be obtained before its official operation.
- **Environmental Protection Registration (EPR)** required for projects that generate waste but do not require either EIAR/EL. EPR to be filed before operations begin.

# KEY LICENSE AND PERMITS FOR POWER PROJECTS

- **PRE-LICENSING STAGE**
- **LICENSING STAGE**
- **CONSTRUCTION STAGE**
- **OPERATING STAGE**

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## Pre-licensing stage

- Inclusion in the National/local master plan for power development
- Approval of project location
- Preliminary approval for investment project (*Decision on Investment Policy*)
- Approval of Environmental Impact Assessment Report (EIAR)



## Licensing stage

- Investment Registration Certificate (IRC) to register the power project
- Enterprise Registration Certificate to incorporate the project company
- Approval of Pre-Feasibility Study and Feasibility Study Report, and any other approvals and permits necessary to obtain approval of the Feasibility Study Report

## Construction stage

- Approval for technical design;
- Construction permit;
- Road connection approval (if any);
- Aviation height approval (power towers and high buildings);
- Marine traffic approval (in the case of offshore wind projects);
- Fire approval;
- Execution of project agreements (eg, Power Purchase Agreement, Grid Connection Agreement, Supervisory Control And Data Acquisition Agreement (SCADA Agreement), Protective Relay System Agreement and Metering Agreement);
- Approval from the Ministry of National Defense for the execution of Land/Water Surface Lease Agreement (in case of offshore wind projects or if projects are situated within island/coastal/boundary areas);
- Land use rights certificate.

## Operating stage

- Power generation license;
- License to explore underground water (if any);
- License to discharge wastes (if required);
- Commercial Operation Date (COD) certificate issued by EVN;
- Practicing certificates of technical personnel of the project company;
- Approval of disaster response plan for reservoirs; approval of reservoir operation procedure, approval for plan on protection of reservoir's dams, approval of plan on safety boundaries of reservoir's dams, license for exploitation and use of surface water (in case of hydropower projects);
- Registration of the generation of industrial gas emissions (if any).

# REMITTANCE OF DIVIDENDS TO HOME COUNTRY

- **CONDITIONS**
- **PAYMENT OF DIVIDENDS**
- **REQUIREMENT TO WITHHOLD INCOME TAX**

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## Conditions for remittance

- Financial statements (FS) must be audited **and there is no accumulated loss in the FS**
- Fulfilment of tax obligations
- Annual tax returns have been filed with local tax authorities
- Company remains able to pay other financial obligations after payment of dividends

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## Direct investment capital account (DICA)

Distribution of dividends to shareholders must be paid through DICA

## **Requirement to withhold income tax**

- Individual shareholders are required to pay income tax imposed on dividend payments, and the Company is responsible to withhold their income tax (5%) before paying dividends to them.
- Institutional shareholders are NOT required to pay any further corporate income tax once they remit dividends abroad since the Company has already paid corporate income tax.

# AVAILABLE SECURITY FOR FOREIGN LOANS

- **TYPICAL SECURITY**
- **RESTRICTIONS**
- **NOTARIZATION/CERTIFICATION/REGISTRATION  
REQUIREMENTS**

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## Typical security for foreign loans

- Machineries, equipment and movable assets of the project;
- Cash deposit in a bank account of the securing party (eg, the project operating account, savings account or term deposit account, etc.);
- Receivables of the securing party (insurance compensation under insurance policies);
- Shareholders' equity in in the project company incorporated in Vietnam;
- Shares in the parent company, which was incorporated abroad, and which holds shares in Vietnam-based company;
- Parent's guaranty;
- Government guarantee are unlikely.

*It is not mandatory to register security interests (mortgage, pledge) (with few exceptions). For the purpose of ranking priority with other creditors, it is advisable to register security interests with NRAFT (National Registrar for Secured Transactions)*

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## Restrictions

- Land use rights and assets attached to the land CANNOT be mortgaged/pledged in favor of offshore lenders.
- *Possible solutions:* Engagement of a local bank which is willing to provide a bank guarantee for the borrower, and which is allowed to receive land mortgage/pledge from the borrower.



# PAYMENT AND REPAYMENT OF FOREIGN LOANS

- **Mandatory registration of foreign loans**
- **Notable points**

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## Mandatory registration of foreign loans

- Medium and long-term loans must be registered with the State Bank of Vietnam (SBV) before such foreign loans can be drawdown;
- Payment of interest and repayment of principal must be made in accordance with the registered schedule, and all payments and repayments must be conducted through DICA;
- Any change in SBV registration must be re-registered with the SBV (change of repayment schedule, change in interest rates, change of offshore lenders, etc.);
- Consequences of failure to register a foreign loan: (i) failure will be subject administrative fines; (ii) foreign loans cannot be repaid to the offshore lenders.

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## Notable points

- A short-term loan (foreign loan) that is extended, and that becomes a medium/long term loan must be registered with the SBV;
- Foreign loans plus other domestic medium/long term loans must not exceed the permitted loan capital pursuant to the Investment Registration Certificate.
- For tax purposes, certain costs associated with foreign loans cannot be deducted: (i) interest expenses where the applicable rate exceeds 150% of basic interest rate announced by the SBV; (ii) interest expenses which are capitalized and recorded as part of the value of the project company's assets; (iii) interest expenses in relation to foreign loans to finance the shortage of the equity capital as registered and recorded in the IRC.

# APPENDIX 1

## LIMIT ON FOREIGN OWNERSHIP

No.	Business	Maximum foreign ownership ratio					
		Vietnamese law	WTO Commitments	AFAS Commitments	EVFTA Commitments	CPTPP Commitments	ASEAN-China Commitments
1.	Port (including provision of container handling services which classified as auxiliary services for sea transport)	50%	No commitment	No commitment	No commitment	No commitment	No commitment
2.	Logistics services						
2.1	Container handling services, except for services provided at airports	50%	50%	50%	50%	50%	50%
2.2	Container warehousing services classified as auxiliary services for sea transport	N/a	100%	100%	100%	100%	100%
2.3	Warehousing services classified as all auxiliary services for multimodal transport	N/a	100%	100%	100%	100%	100%
2.4	Delivery services	N/a	100%	100%	100%	100%	100%
2.5	Freight transport agency services	N/a	100%	100% (except road freight transport agency)	100%	100%	100%
2.6	Customs brokerage services (including customs clearance services)	N/a	Joint venture without foreign ratio limitation	Joint venture without foreign ratio limitation	Joint venture without foreign ratio limitation	Joint venture without foreign ratio limitation	Joint venture without foreign ratio limitation
2.7	Other services including bill of lading inspection, cargo brokerage services, cargo inspection, sampling and weighing services; goods receipt and acceptance services; and preparation of transport documents	100%	Joint venture without foreign ratio limitation	100%	Joint venture without foreign ratio limitation	Joint venture without foreign ratio limitation	100%
2.8	Cargo transport services classified as sea transport services	49% in respect of international cargo; joint venture without foreign ratio limitation for others	49%	70%	70%	49%	49%
2.9	Cargo transport services classified as inland waterway transport services	49%	49%	51%	51%	49%	49%
2.10	Cargo transport services classified as rail transport services	49%	49%	51%	49%	49%	49%
2.11	Cargo transport services classified as road transport services	51%	51%	70%	51%	51%	51%
2.12	Air carriage services	30%	No commitment	No commitment	No commitment	30%	No commitment
2.13	Multimodal transport services	N/a	No commitment	No commitment	No commitment	No commitment	No commitment
3.	Real estate business	100%*	No commitment	No commitment	No commitment	100%*	No commitment
4.	Collection of domestic wastes	Not allowed	Not allowed	Not allowed	Not allowed	[100%]	Not allowed
5.	Public postal services	Not allowed	100%	100%	Not allowed	100%	No commitment

## R&V Team:

Nguyen Huu Hoai (Mr Hoai)

<[nhhoai@russinvecchi.com.vn](mailto:nhhoai@russinvecchi.com.vn)>

Nguyen Huu Minh Nhut (Mr Nhut)

<[nhmnhut@russinvecchi.com.vn](mailto:nhmnhut@russinvecchi.com.vn)>

Chu Bao Khanh (Mr Khanh)

<[cbkhanh@russinvecchi.com.vn](mailto:cbkhanh@russinvecchi.com.vn)>

Hsiehzen H'ng (Zhen)

<[hsiehzen@russinvecchi.com.vn](mailto:hsiehzen@russinvecchi.com.vn)>

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<https://www.russinvecchi.com.vn/>