

Consulting
Services
Vietnam

Fidinam Vietnam

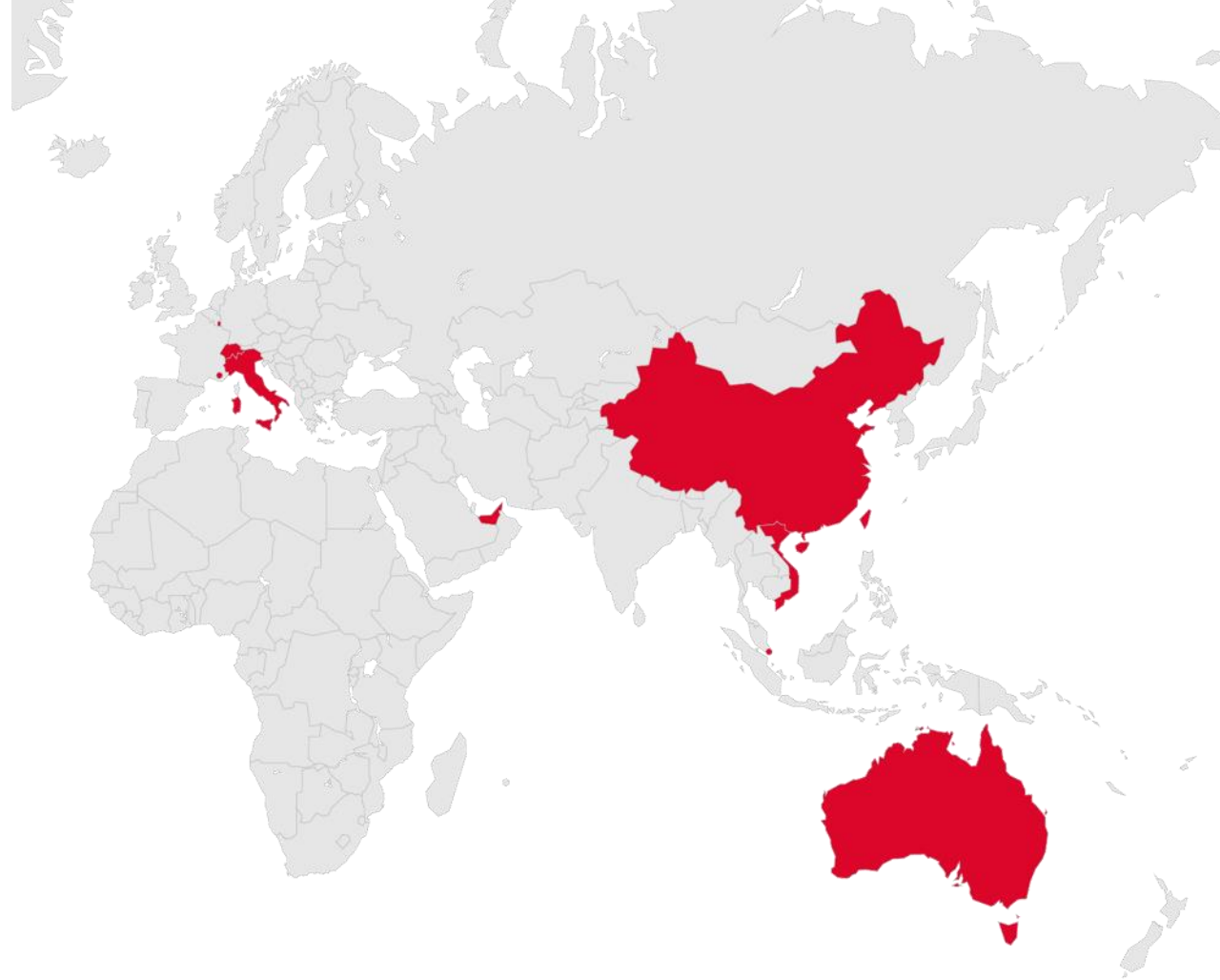
Brief introduction of our team and services

Agenda

- **Brief introduction of Fidynam team and services**
- **Procedure for setting up a foreign-invested company**
- **Notable changes of laws**
- **A practical case**

About Us – Fidinam Group

- **Fidinam Group** was founded in 1960 in **Switzerland** and operates in the field of professional consulting for companies, individuals and investors.
- The main areas of professional activity are **Tax advisory, corporate services, business consultancy and real estate consultancy.**
- With **more than 250 professionals**, Fidinam is present in **12 jurisdictions** and relies on a wide network of correspondents and strategic alliances.



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Lugano
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Bern
Basel

Milan
Luxembourg
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Asia Pacific /
Middle East

Hong Kong
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Ho Chi Minh City
Sydney
Dubai

Fidinum Vietnam Services



MARKET-ENTRY SERVICES

Fidinum assists investors in evaluating and implementing investment opportunities in Vietnam by delivering market research and feasibility studies, preliminary tax opinions, identifying local partners and target companies.

INCORPORATION OF VIETNAM ENTITIES

Fidinum assists its clients to incorporate companies and other entities in Vietnam. We support our clients in every stage of the incorporation process, including obtaining relevant licenses as well as providing nominee services.

ACCOUNTING AND TAX SERVICES

Fidinum provides accounting and tax services for Vietnamese companies in accordance with Vietnamese accounting standards and local tax requirements, financial reports in compliance with IFRS as well as ad hoc reports for investors.

HR & EMPLOYMENT SERVICES

With a team of experienced professionals, Fidinum supports clients in their HR needs, including identifying local staff, obtaining working permits/VISA, managing monthly payrolls and contributions, as well as drafting Labor Contracts.

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INTERNATIONAL TAX ADVISORY

Fidnam assists corporates and individuals in cross-border tax matters by establishing efficient and sustainable structures.

DIGITAL CONSULTING

We partner with companies and entrepreneurs in the digital transformation of their businesses, offering them a wide range of solutions and technology consulting aimed at digitalization and optimization of business management.

WEALTH PLANNING

Our full range of services includes the creation and management of wealth and estate solutions, including family foundations and citizenship and residency planning. Fidnam offers targeted solutions to ensure stability and efficiency, tax optimized.



Fidinam team supporting clients



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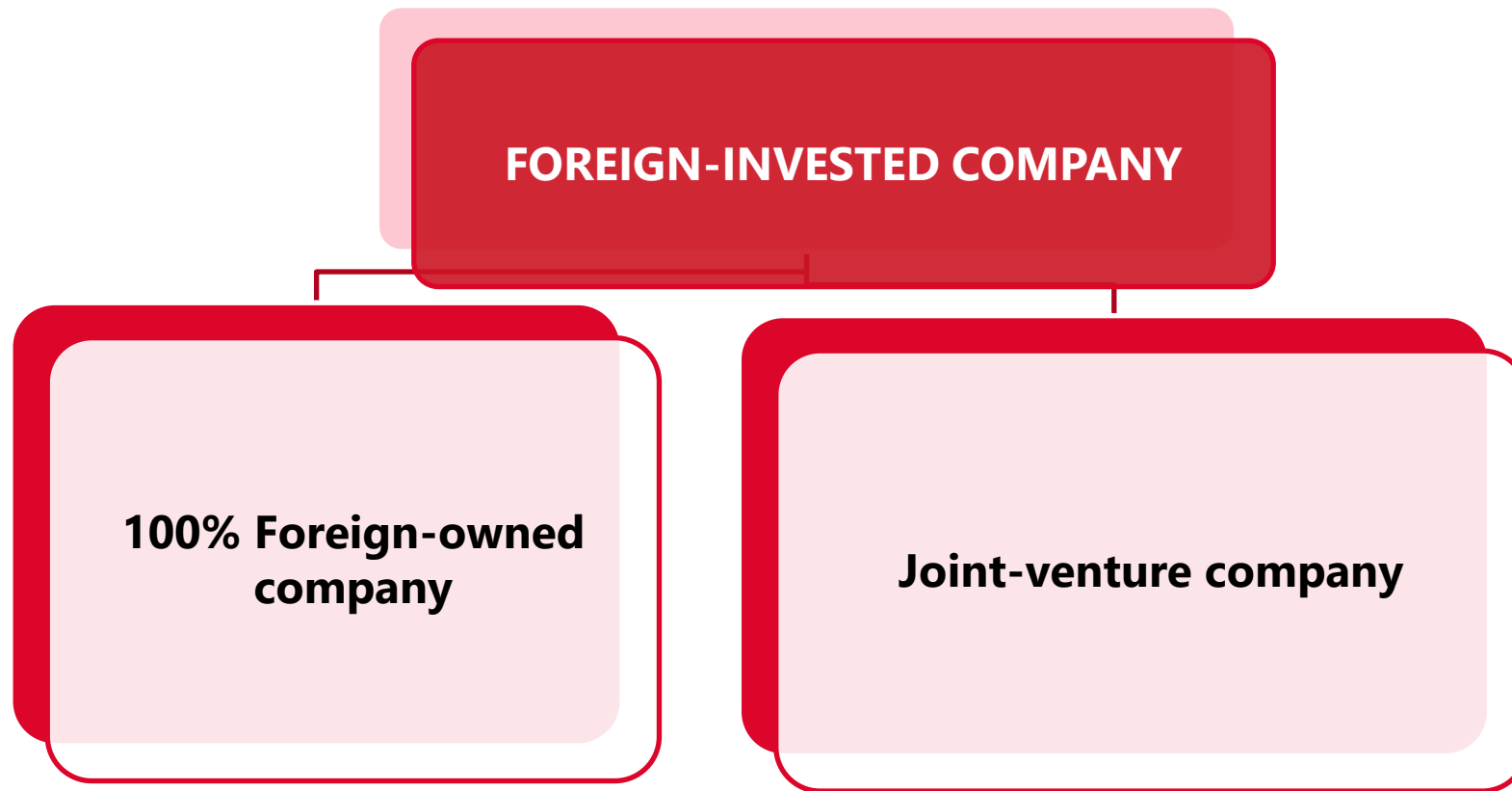
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HOW TO SET UP A FOREIGN-INVESTED COMPANY IN VIETNAM



Legal Procedure and timeline

In order to set up a foreign-owned company, the foreign investor will go through the following steps:



The overall timeline for the incorporation will be **around 3 months** (including the preparations of documents and information by the client).

Special cases

I. INVESTMENT PROJECTS SUBJECT TO INVESTMENT POLICY APPROVAL

If the foreign investment project involves in business having conditions or investing gigantic capital, the investors are required to carry out the procedure to apply for an Investment Policy Decision which is issued either by the National Assembly, or the Prime Minister or the Provincial People Committee before being granted with the IRC.

Legal procedures :



II. INVESTMENT PROJECTS FOR INNOVATIVE START-UPS

Foreign investors who set up medium- and small-sized innovative start-ups are not required to obtain an IRC.

COMPANY TYPES IN VIETNAM

**Private
enterprises**

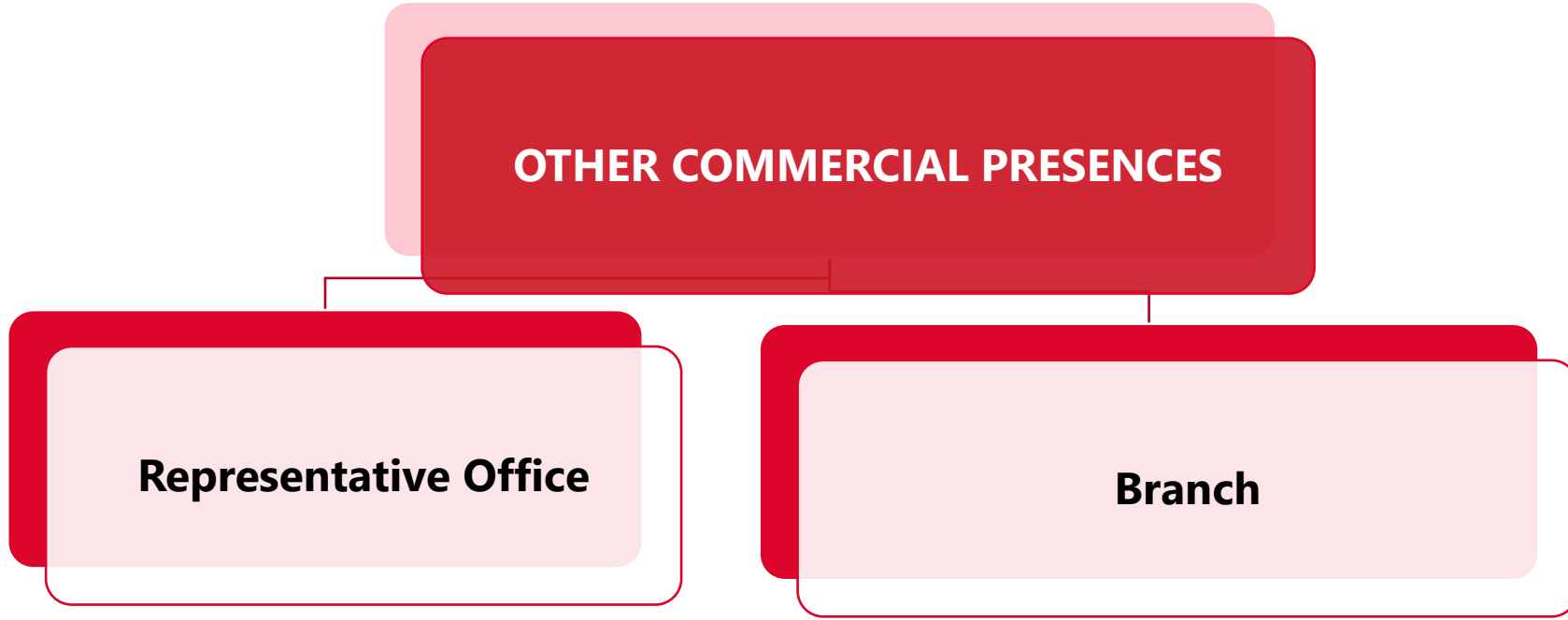
Partnerships

**Limited Liability
Company**

**Joint Stock
Company**

Company types in Vietnam

Joint-stock company	Limited Liability Company	
	Single-member LLC	Multi-member LLC
Minimum number of shareholders is 3. No restrictions regarding the maximum number of shareholders	Owned by 1 individual or organization	2 – 50 members, individuals or organizations
Shareholders have limited responsibilities towards debts and other liabilities of the company to the extent of the capital contributed	The company owner has limited responsibility towards debts and other liabilities of the company to the extent of the capital contributed	All members are responsible for debts and other liabilities of the company to the extent of the capital contributed
		Purchase and transfer of capital between members are strictly regulated by law



NOTABLE CHANGES OF LAWS

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LAW ON ENTERPRISES 2020

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Capital contribution

The time limit for capital contributions has not been changed (within 90 days as from the date of the ERC). Nevertheless, the new law excludes the time of transporting and importing assets contributed as capital and performing administrative procedures to transfer the ownership of assets

Adjustment of capital in case any capital contributors fail to contribute or insufficiently contribute capital as committed: the company has 30 days from the last date the charter capital was due to be contributed in full to adjust its charter capital (and capital contribution ratios of the members) according to the paid-in capital amount.

Legal Representatives

- Similar to the former regulation, the company may have one and may have more Legal Representative(s) (Rep.), one of them must be a resident of Vietnam and rights and obligations of each Legal Rep. must be specified in the Company's Charter.
- The LOE 2020 explicitly states that in the absence of provision regulating the rights and obligations of each Legal Rep. in the charter, each Legal Rep. will have **full authority before any third party**, and **all of the legal representatives will take joint responsibility for any damage** caused to the company according to the laws.



Company seal

It is no longer required for an enterprise to notify its seal to the licensing authorities before putting the seal in use.

The enterprise is at its discretion to determine the type, number, form and content of its seal.

The LOE 2020 also recognizes two types of seal being (i) **the physical seal** and (ii) **the digital signature** in accordance with the laws on electronic transactions. It will be further guided by the authorities

Abolishment of control board/controller requirement

Multi-member LLCs are no longer required to establish a control board, unless such company is held by the State.

Single-member LLCs are no longer required to nominate a controller

Payment for capital transfer transaction

The LOE 2014 requires all payments for the capital/share transfer of foreign investors in a foreign-invested company to be made via the company's onshore capital account which is not consistent with the regulation of Circular No. 06/2019/TT-NHNN on forex control over direct investment in Vietnam.

The LOE 2020 ends this inconsistency by providing that payments for the capital/share transfer transaction to be made in accordance with the forex control regulations.

- ❖ The transaction between the two investors both being non-residents or between the investors both being residents is not required to be made via the Direct Investment Capital Account of the Vietnamese company;
- ❖ The transaction between an investor being a non-resident and an investor being a resident is required to be made via a Direct Investment Capital Account of the Vietnamese company.



Shortening time limit for prior notice of temporary business suspension

LOE 2014: The company must inform the authority in writing at least 15 days before their business suspension or resumption.

LOE 2020: upon its entry into force, the time limit for prior notice of temporary business suspension will be reduced to 3 working days.

Minority shareholder protection

Instead of holding **10 or more percent** of the total ordinary shares for **a consecutive period of 6 months** or more (unless otherwise stipulated in the charter), a shareholder or group of shareholder holding at least **5 percent** of the total ordinary shares (or a lower percentage stipulated in the charter) **without a minimum holding period** shall have certain rights as prescribed under the laws such as:

- accessing information regarding the operation of the enterprise
- request the convening of a General Meeting of Shareholders in specific circumstances



LAW ON INVESTMENT 2020

—

List of restricted and conditional sectors/business lines

For the first time, the list of restricted sectors and list of sector having conditional market access conditions applicable for the foreign investors and foreign-invested companies(*) was officially announced in the Decree 31/2021/ND-CP. In which:

- ❖ Foreign investors are not allowed to invest in 25 business lines as prescribed in Section A, Appendix 1 of this Decree, such as press activities and gathering in any form, Temporary import for re-export of goods, Public postal services, Public survey services, etc.
- ❖ The list of business lines with conditional market access includes 59 sectors. Investment conditions might include foreign ownership limitations, investment form, investor capacity, scope of investment implementation to be checked in the local regulations or applicable international treaties.

Application of restricted and conditional sectors/business lines

(1) Foreign investors

(2) Foreign-invested companies, including:

(a) More than 50% of its charter capital is held by a foreign investor(s)

(b) More than 50% of its charter capital is held by an economic organization(s) stipulated in point (a)

More than 50% of its charter capital is held by a foreign investor(s) and an economic organization(s) stipulated in point (a)



Investment incentives

❖ **The new law supplements objects entitled to investment incentives:**

In an effort to support start-ups, SMEs in Vietnam as well as the enterprises in environmental protection industry, the government has already put in place incentives for them in a hope of providing better conditions for a strong and sustainable development in the near future.

❖ **The new law added new form of investment incentives:**

Accelerated depreciation, increasing the deductible expenses upon calculation of taxable income

Changes in requirements for M&A approvals



Under the new Law, a foreign investor is required to implement for obtaining the approval for M&A transaction if the acquisition leads to:

- an increase in foreign ownership in a company engaging in business lines with market access conditions
- an increase in foreign ownership in a company from 50% or less to more than 50% of charter capital
- a further increase in foreign ownership if it has been more than 50%
(Instead of 51% as prescribed in the former law)
- **OR:**
When the foreign investor conduct the acquisition of a company which has a land use right certificate on an island, a coastal or border commune, ward or town or in another area which affects national defence and security (**New**)

Forced termination of projects due to sham transaction

The new regulation allows the investment registration authority to **terminate an investment project** if the investor conducted the investment activities on the basis of a **sham civil transaction** in accordance with the civil law.

Under the Civil Law 2015, a sham civil transaction is understood as:

A transaction established by the parties to conceal another underlying transaction.

For example, an arrangement, where the nominee conducts investment activities for the benefits of another person could be regarded as a sham transaction.

The Civil Code 2015 provides that **the court has the jurisdiction to declare** whether a transaction is a sham transaction and invalidate such transaction.

However, the new law has not clarified the following points:

- Criteria for identifying a sham transaction?
- Competence for determining a sham civil transaction? By a decision of the investment registration authority or by the valid judgement of the competence court?

A practical case

A foreign investor being an Italian group is exploring the **possibility to reinforce its presence in Vietnam** by adding **a production/transformation centre** to be based in the proximity of existing clients, allowing the investor to stay closer to the reference market in S.E. Asia as well as exporting products to the USA avoiding the potential threat of a US-China trade war.

The Client engages Fidynam for a **review of the feasibility** of the temporary import and transformation of the product as well as the custom duties applicable when exporting the transformed products to the EU, ASEAN, CHINA and US considering the applicable FTAs.

Following the feasibility review, Fidynam assists the Client in **identifying the location** to situate the factory based on the Client's needs. Afterwards, we **perform the licensing procedures** to have the factory established together with the **environmental protection formality, decoration/construction assistance** in accordance with the laws.

In addition to the above, the Client engages us for the **day-to-day business management services** and **HR matters**.

How Fidynam helps

Fidynam will **provide a Memorandum** analysing the Custom duties & VAT impact on import/export activities to and from the production site under the local regulation and the applicable Free Trade Agreements, including the EVFTA.

Factory incorporation: We will provide client with an advice on the **licensing procedure, capital structure, environmental protection formality, noticeable notes on the construction/decoration of the factory** under the new regulations,

Fidynam team will work with the representative of the Industrial Park on the **review factory leased agreement and the legal documentation** of the production site including the Certificate of Land Use Right, Certificate of Factory Ownership and Construction permits, Firefighting and prevention license, environment protection-related materials, other Factory-related documents, etc.

Fidynam team will **apply and obtain the required licenses** while dealing with competent local authorities.

Fidynam will provide a professional to **support the day-to-day operation** of the factory under the Power of Attorney and instructions given by the Client and assist in apply for the **VISA and Work Permit** to allow the foreign expert enter to Vietnam for working purpose.

Thank you

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Disclaimer: All information provided is of a general nature and is not intended to be a full analysis of the points discussed. This presentation is also not intended to constitute, and should not be taken as, legal, tax or financial advice by Fidinam. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the specific situation.