

Vietnam – British Virgin Islands, Hong Kong & Singapore

Vietnam and Foreign Investment Structures

The use of British Virgin Islands, Hong Kong and Singapore

The British Virgin Islands, Hong Kong and Singapore provide attractive product offerings broadly characterised by cost effective incorporation and ongoing maintenance fees, a tax neutral investment platform, corporate flexibility, an English common law system that underpins the rule of law and contractual certainty, and enforcement provided by a modern and effective commercial court.

Explosive growth

In the decade since Vietnam's accession to the World Trade Organization (WTO), foreign direct investment (FDI) inflows have increased in step with economic and political reforms that have made Vietnam an attractive destination for foreign investors. Building on a 236% increase in average annual inflows in the seven years immediately following their induction into the WTO, Vietnam experienced record breaking FDI levels in 2016 attracting USD15.8 billion.

That record is set to be broken in 2017 as the Ministry of Planning and Investment has reported USD23.36 billion in new FDI through the first eight months. Further evidence of a healthy market can be found in the General Statistics Office 3Q reports indicating 7.46% GDP growth, favourable demographics (55% of the country are under 34), and the fifth highest consumer confidence rating in the world.

Complexities and challenges in emerging markets

Vietnam's new Enterprise and Investment Laws, in force since July 2015, have improved the country's investment landscape. Foreign investors however still face challenges and restrictions on doing business in Vietnam and, although opportunities abound, the system is still evolving. Concerns over putting money into a country with a developing legal framework are understandable.

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Many investors choose to protect themselves by using stable gateway jurisdictions to access Vietnam so that as many protections as possible can be built into the structures. Hong Kong, Singapore and the British Virgin Islands provide solid corporate bases.

Sources of foreign investment

So far the vast majority of foreign investment has come from within Asia, with South Korea, Japan, Hong Kong, Singapore, Taiwan and China leading the way. Interestingly, with over USD 19.3 billion in FDI projects, the British Virgin Islands stands out as a top five source of foreign investments into Vietnam.

Hong Kong and Singapore as investment bases

Hong Kong is a well-known and reputable base for investors, having been the gateway to China and Asia for decades. Singapore, another of the original tiger economies, is now also a major international financial and trading centre. While Hong Kong and Singapore have sophisticated regulatory infrastructures, they are not overly bureaucratic and it is easy to do business in both locations.

Hong Kong and Singapore both have an English-based legal system whereby their corporate laws are open to common law interpretation. Their respective governments are members of the inter-governmental Financial Action Task Force (FATF) and are signatories to a number of double tax and investment protection treaties, which provide some tax planning and security advantages. Hong Kong and Singapore provide stable and reputable corporate platforms, with public filings of members and directors for investor comfort.

The most common type of business entity for each jurisdiction is a private company with limited liability. Companies with limited liability have a separate legal personality, limited liability for the owners, strong public perception and an enduring structure. With Hong Kong's source-based tax system, profits tax is not levied on profits earned outside Hong Kong. A Singapore company with external investments that are correctly structured and administered may not be liable for tax on profits generated from activities conducted outside Singapore.

A few reasons for using BVI Companies and Partnerships

Legislation – the BVI Business Companies Act, 2004 (the **Act**) has been designed and revised to ensure ease of incorporation and administration of the BVI company. The Act provides flexibility in terms of, amongst others, payment of dividends, purchase of own shares, members remedies and no restrictions on financial assistance.

English common law – the BVI follows closely the English legal system in terms of its application as it is a British Overseas Territory.

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BVI Courts – the BVI has a highly independent and efficient commercial court to settle disputes and provide contractual certainty.

Cost – the BVI is generally acknowledged as a cost effective option both for set up and also ongoing administration costs, with manageable administration and regulatory obligations.

Investment regulation – Licensing under the Securities and Investment Business Act, 2010 (**SIBA**) as an investment fund can provide regulation for the purposes of establishing relationships with brokers and custodians as well as providing comfort to investors as to the corporate governance of the investment vehicle. Generally, however, corporate and closed ended investments fall outside of the scope of SIBA.

Tax neutrality – The BVI is a tax neutral jurisdiction. BVI Companies and Partnerships are not subject to corporate or partnership taxation on income, capital gains or share transfers. There are no foreign exchange controls or regulations in the BVI. Accordingly, BVI structures can be used for FDI into Vietnam, without adding an extra layer of tax in the structure. Members and LPs can accordingly structure their own tax affairs in order to mitigate the risk of double taxation.

Confidentiality – Sensitive investment and corporate information is not in the public domain.

Professionals with experience in Asian jurisdictions as well as a host of offshore jurisdictions, Marbury is fully equipped to answer any and all questions relating to incorporation in the BVI, Hong Kong and Singapore, and the advantages of doing so for your particular investment needs. For more information, please contact your usual Marbury representative or info@marburys.com.

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