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Company Establishment Vietnam – 7 Typical Mistakes:

1. **Using a Vietnamese nominee to establish a company:**

   In order to avoid the delays and complications in getting a company established (specifically to circumvent the Investment Law procedures), a Vietnamese individual is asked to establish the company as the sole owner (on behalf of the foreigner/foreign entity, and using the foreign money), with the intention that the ownership of the Vietnamese company will subsequently be transferred to the foreigner/foreign entity. This is problematic, because "nominee-agreements" are invalid and thus unenforceable in Vietnam.

2. **Missing the 90-day timeline to pay up the committed Charter Capital:**

   In Vietnam, the Charter Capital of the Foreign Invested Enterprise (FIE) must be transferred to the FIE's DIA within 90 days after the ERC has been issued. The foreign currency amount transferred must match exactly the agreed Charter Capital in VND as mentioned in the company's ERC. Failure to transfer within 90 days can have significant consequences for the company, including revocation of the ERC.

3. **Personal loans to the FIE:**

   If loans to the FIE are proceeded through private bank accounts rather than the Direct Investment Account (DIA), the loan will not be able to be deposited back into the Foreign Investor's personal bank account. The Foreign Investor is then stuck with VND cash if the FIE repays. Therefore, investors should always loan funds to the FIE from abroad from their bank account into the FIE's DIA.

4. **Residency requirement for Legal Representative:**

   Each company in Vietnam requires at least one Legal Representative ("LR"), and at least one LR must reside in Vietnam. This means: If one LR is not permanently residing in Vietnam, a second LR needs to be appointed.

5. **Not registering promptly for tax:**

   Tax registration is important, and it is time sensitive to avoid penalties. Also, if you don't undertake your tax registration and VAT election promptly, you may not be able to enter the VAT credit system for the first year, denying you the ability to receive refunds or VAT credits to carry forward. For start-up companies, the refunds or credits can be substantial.

6. **Undocumented or unregistered loans:**

   Loans from abroad must go through the DIA which will ensure loans can be repaid back to where they came. Loans from domestic sources can be made into the company's current bank account. However, loans that are not documented with proper loan agreements are often regarded as revenue by the tax authorities and taxed accordingly. Foreign currency loans with a term of at least 12 months loans that are not registered with the State Bank of

Vietnam can potentially result in the loss of the ability to repatriate the loans and the loans becoming taxable revenue to the company.

7. **Not appointing a chief accountant:**

Except for some cases, every company must have a Chief Accountant. Vietnamese Law treats the Chief Accountant position in high regard – they are required for opening bank accounts, signing bank withdrawal documents, registering and lodging taxes, and complying with many compliance requirements with authorities.

About the Author:

Dr. Matthias Dühn, LL.M. (Georgetown) was admitted as a lawyer to the German Bar Association in 2001 and has been registered as a "Foreign Registered Lawyer" in Vietnam since 2007. He has been focusing his law firm Viet Diligence Legal law firm, founded in 2014, on market entry of foreign investors and entrepreneurs in Vietnam, and is therefore familiar with all legal questions relating to Vietnamese investment-, corporate-, commercial- and tax laws. He also advises on all matters questions relating to international contract drafting and complex contract negotiations, particularly in the area of commercial contracts, mergers and acquisitions (M&A) and joint ventures. Dr. Dühn is also experienced in all Vietnamese labor law issues, such as drafting employment contracts, termination of employees and complex settlement negotiations.

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