



The Handbook

# FOREIGN INVESTMENT SCREENING INSTRUMENT

A Checklist for Appraisal of Foreign Investment Projects in Vietnam



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## ABBREVIATION AND ACRONYMS

CIEM	The Central Institute for Economic Management
CPC	Central Product Classification
FDI	Foreign Direct Investment
FISI	The Foreign Investment Screening Instrument
ILO	International Labour Organization
MPI	The Ministry of Planning and Investment
OECD	Organization for Economic Cooperation and Development
UN	The United Nations
UNDP	The United Nations Development Programme
UNGPs	The United Nations Guiding Principles on Business and Human Rights
VCCI	Vietnam Chamber of Commerce and Industry



# Introduction of the Foreign Investment Screening Instrument (FISI)

► Objectives

► Scope of the FISI

► Structure of the FISI



## Objectives of the instrument

### Why is it necessary to have a foreign investment screening instrument?

Foreign investment plays a key role in promoting the economic development in Vietnam. Foreign investment can provide capital and contribute significantly to growth and productivity. Over the last 34 years since Vietnam opened its market to foreign investors, foreign investment has assisted the country in diversifying domestic production, contributing to the creation of value-adding jobs, supplying technology, knowledge, and managerial skills, and fostering linkages with local firms that may connect them to global value chains. Foreign companies' presence in Vietnam has also made local businesses more competitive and improved the quality of the business environment.

While foreign investment projects benefit Vietnam in many ways, they also pose concerns among the public and government officials. According to a study of the Central Institute for Economic Management (CIEM) and the Ministry of Planning and Investment (MPI), after 30 years of attracting FDI to Vietnam, the level of technology transfer from the FDI sector to the domestic sector failed to meet expectations.<sup>1</sup> Large proportions of FDI in Vietnam are small-sized, low technology, labour intensive and resources intensive. The spillover effect of efficiency and technological sophistication from the FDI sector to other sectors remains limited, and the localization rate remains modest.<sup>2</sup>

Besides, some foreign investment projects can pose social risks. Cheating and overexploitation of workers are just two of the negative effects caused

by some foreign firms in Vietnam. According to the Ministry of Labor, Invalids, and Social Affairs, foreign-invested enterprises accounted for roughly 70% of labor disputes. These strikes were frequently sparked by disagreements about benefits and rights. This situation also reveals a universal aspect: human rights in foreign investment projects in Vietnam. While the topic of human rights in investment projects draws much attention in many countries, this aspect is not mentioned in an official manner in Vietnam. The human rights issue is sometimes downplayed as a matter of working conditions without a larger definition that encompasses other aspects such as non-discrimination, non-harassment, gender equality, and protection of vulnerable workers. While some foreign invested firms, especially large companies, have incorporated the United Nations Guiding Principles on Business and Human Rights (UNGPs) into their policies, the topic of human rights remains a relatively new idea for most businesses. To improve human rights practices in foreign invested firms in Vietnam, human rights criteria need to be added to the policy framework for attracting foreign investment in Vietnam.

In addition to social issues, some foreign investment projects broke Vietnam's regulations on environmental protection. The public outcry over a chemical spill by a Taiwanese company, Formosa, in 2016 that disrupted the livelihoods of hundreds of thousands of households and killed sea life in central Vietnam could be seen as a prominent example. According to the findings of a recent Vietnam Environment Administration examination in 28 northern provinces from 2017 to 2019, the percentage of FIEs breaking environmental standards has increased over the years. In 2017, 44.5 percent of FDI firms violated regulations. In 2018, 56 percent of businesses violated the law, while 68 percent of businesses did so in 2019.<sup>3</sup> Many businesses were unconcerned with corporate social responsibility for the environment or just viewed it as a kind of public relations.

Environmental concerns are also linked to the waste of land resources caused by registered FDI projects that do not operate or are delayed in implementation. At the end of May 2022, the Ministry of Planning and Investment sent Official Letter No. 3409/BKHDT-DTNN to all 63 provincial People's Committees, requesting that they evaluate the implementation of foreign direct investment projects with registered investment capital of at least 100 million USD or land area of at least 50 hectares. The two most significant aspects to be considered are compliance with land legislation and the investor's land use status. MPI expects to gain a better understanding of the recent non-implementation or slow execution of various FDI projects.

The above analysis elaborates on the core issues of foreign investment policy in Vietnam. The challenge now is not simply increasing foreign investment but also selecting high quality investments that contribute to sustainable development and ensure that adverse impacts on people and the planet are prevented and mitigated effectively - which this document refers to as foreign investment projects with "responsible business" characteristics.

"Responsible business" entails making investments in accordance with human rights, health and safety standards, social and environmental protection, and fundamental labor rights. Responsible investment principles and standards establish an expectation that all businesses - regardless of their legal status, size, ownership structure, or sector - seek to prevent and mitigate the negative impacts of their operations while also contributing to the sustainable development of the communities in which they operate.

Responsible business requires foreign investors to: a) avoid and address negative impacts through their own activities, as well as prevent or mitigate negative impacts directly related to their operations, products, or services through a business relationship; and b) positively contribute to economic, environmental, and social progress with the goal of achieving sustainable development

Numerous governments throughout the world are currently upgrading their countries' regulatory frameworks to enforce and promote responsible business practices. There is an urgent need to employ responsible business criteria when making large-scale or ecologically sensitive investments to safeguard the environment, benefit society, and ensure human rights. Ensuring the economic and social wellbeing of communities has become a common to evaluate investments in several industrialized countries. Numerous governments also encourage and provide incentives for investment projects that adhere to both national and international norms for responsible business and have the potential to significantly contribute to the achievement of the UN Sustainable Development Goals.

The global trend of responsible business and its international practices provide implications for Vietnam. Given the increasing integration of Vietnam into the world economy, including the ratification and implementation of the many international investment agreements and the challenges faced by society in terms of sustainable development, promoting responsible investment should become a priority of the Vietnamese government.

In terms of responsible business promotion, the Vietnamese government

has made some initial efforts to formulate a legal framework. In 2019, the Vietnamese Politburo issued Resolution No. 50-NQ/TW "Specifying directions to refine institutions, policies, and improve the quality and efficiency of foreign investment cooperation to 2030" with a particular emphasis on the environmental impact of foreign investment. In 2020, the Vietnamese government issued Resolution 58/NQ-CP to provide guidelines on Resolution 50 implementation.

However, the above documents are mainly intended to set the direction of policies to attract foreign investment in the period of 2021 - 2030. The direction here is to improve the quality of inward foreign investment and to attract investment projects without environmental and social trade-offs. Some aspects of "responsible business", such as environmental protection and social progress, have been mentioned, but the concept of "responsible business" with its full connotation has not been mentioned officially in the current Law on Investment, or other business-related laws and guidelines.

At the national level, Vietnam currently lacks a clear national action plan on responsible business. The absence of the National Action Plan on responsible business will make it difficult to integrate the criteria for attracting high-quality foreign investment projects. At the provincial level, all provincial authorities conduct investment screening in accordance with the provisions of relevant laws, decrees, and circulars. However, responsible business practices are currently not integrated into these legal documents and the current FDI appraisal protocol. While local governments in Vietnam should be aware of the risks involved with foreign investment projects, they often fail to conduct due diligence examinations. One key reason is that they do not have a comprehensive instrument that can assist them in assessing potential foreign investment projects. The absence of this instrument could make local government officials focus more on the amount of foreign investment than pay attention to the quality of the investment, especially in responsible investment aspects.

The issue of building a national action plan on responsible business has seen positive changes in recent years. UNDP Vietnam is one of the organizations that has made efforts to promote the idea of building the first National Action Plan on Responsible Business in Vietnam. In 2020, UNDP Vietnam published the study "Preliminary Assessment of the Regulatory Framework on Responsible Business Practice in Vietnam", which identified the current situation of the legal framework regarding responsible business. The report also recommended Vietnam implement the National Action Plan on

Responsible Business to encourage responsible business practices in the country. This effort has contributed to a change in awareness at the national level when the Ministry of Justice recently officially started developing a Draft National Action Plan on improving the legal framework for responsible business practices. The Ministry of Justice is expected to submit this draft to the Prime Minister in 2023.

Meanwhile, at the provincial level, local authorities are still facing difficulties with the appraisal of foreign investment projects. One of the possible solutions is to build a comprehensive instrument to assist provincial officials in appraising foreign-invested projects.

The development of policy instruments to assist the appraisal process of foreign investment projects, especially the development of specific appraisal criteria, is in line with the orientation of Vietnamese policymakers stated in Resolution 50-NQ/TW and Resolution 58/NQ-CP.

**RESOLUTION 50-NQ/TW:** Develop investment criteria to select, prioritize and attract investment projects that align with the planning and development orientations of each economic sector, business field, and locality. Develop a security assessment mechanism and conduct a security check on foreign investment projects and activities that have affected or have the potential to affect national security; Promote and encourage the adoption of effective assignment, decentralization, authorization, and coordination mechanisms among state management agencies; apply one-stop-shop and inter-agency one-stop-shop mechanisms. Develop criteria to evaluate the efficiency of foreign investment with regard to economic performance, society, environment, national defense, and security... Complete legal regulations on the management and supervision of foreign investment; clearly stipulate the duties and responsibilities of ministries, relevant agencies, and local authorities in directing and coordinating the management and supervision of foreign investment activities.

**RESOLUTION 58/NQ-CP:** Ministry of Planning & Investment: Develop investment criteria (in terms of investment rate, use of labor, technology, environment, domestic added value, connectivity, spillover effect, participation in global value chains, etc.) to select, prioritize and attract investment in accordance with the strategy, planning and development orientation of each economic sector, business field, and locality. These criteria will be published alongside the guideline Decree for the Investment Law.

Given this background, UNDP Vietnam and VCCI have cooperated to concretize the above idea. The working group of UNDP Vietnam and VCCI have jointly developed an instrument aimed at assisting provincial governments in identifying actual and potential adverse impacts of potential foreign investment projects, and assessing whether the plans and processes of investors are adequate and effective in preventing and mitigating such impacts, at the appraisal stage. This instrument, incorporating responsible business practices, could serve as a “filter” that helps local authorities select high-quality foreign investment projects.

### The objective of the Foreign Investment Screening Instrument

Vietnam’s openness to foreign investment needs to be balanced by an appropriate screening instrument to promote sustainable development, in which the social and environmental impacts of investment projects are as important as economic impacts. Thus, the objective of the Foreign Investment Screening Instrument (FISI) is to support local governments in the stage of project appraisal to identify projects with “responsible business” characteristics or projects that meet the priorities of local governments in terms of potential economic, social, and environmental impacts.

The instrument includes a list of factors that local authorities should take into account when they review and assess foreign investment projects. These factors include effects on many aspects, such as employment creation, technology transfer, infrastructure development, linkage with local SMEs, working environment, human rights and environmental protection. Provincial governments should also take into account the history of the investor and other economic, social, and environmental risks of foreign investment projects. All the assessments using FISI are conducted on a case-by-case basis. The use of FISI is expected to mitigate the risk of approving projects that have unintended economic, social, environmental, or public security consequences. In other words, the use of FISI aims to increase the probability that foreign investment projects will benefit sustainable development and responsible business priorities in Vietnam. Meanwhile, foreign firms can also access the FISI if they want to learn about specific responsible investment criteria of the host country as well as other required standards that they must meet before applying for investment licenses. For those reasons, the use of FISI by both local governments and foreign investors could promote responsible investment practices that support the achievement of sustainable development goals in provinces and cities in Vietnam.



## The scope of the FISl

### Types of foreign investment covered by the FISl

Currently, the FISl will focus only on foreign direct investment (FDI). Portfolio investment projects are not part of the FISl's scope. Foreign direct investment can take two forms: greenfield investment and mergers and acquisitions (M&As). International greenfield investments typically involve the creation of a new company or establishment of facilities abroad, while an international merger or acquisition amounts to transferring the ownership of existing assets relating to an economic activity to an owner abroad. Among these two forms of foreign direct investment, the FISl will conduct assessments on greenfield investment projects rather than M&A projects. Also, at the moment, the FISl is only applicable to projects that require local government permission. Other projects not mandated by local governments (for example, investment projects subject to central government approval for investment policy purposes) are not covered by the FISl.

### Which government agency should use the FISl?

The FISl should be used by an agency within local governments (e.g., the Investment Promotion Agency, departments of planning and investment, management boards of industrial zones and economic zones) to determine the eligibility and potential impacts of investment projects. Meanwhile, foreign investors can use the FISl as a checklist to determine Vietnam's legal requirements and responsible investment practices. The investment

screening and licensing process for foreign direct investment projects currently being implemented by local governments is summarized in Figure 1. These procedures are consistent with the provisions of Law No. 61/2020/QH14 (2020 Investment Law), which was passed by the National Assembly on June 17, 2020, and Decree 31/2021/ND-CP, which was also passed by the Government on March 26, 2021, specifically guiding the implementation of a number of articles of the Investment Law. According to Article 39 of the Investment Law, the state agency responsible for issuing, adjusting, and withdrawing an investment registration certificate (referred to as the investment registration agency) can be the Department of Planning and Investment or the provincial management board of industrial parks, export-processing zones, high-tech zones, and economic zones (hereinafter referred to as the provincial Management Board of Industrial Zones). The provincial Management Board of Industrial Zones is often the investment registration agency for projects with executive offices in industrial parks, export processing zones, high-tech zones, and economic zones. The Department of Planning and Investment is the investment registration agency for projects outside industrial parks, export processing zones, high-tech zones, and economic zones. The investment registration agency issues, adjusts, and withdraws the investment registration certificate on behalf of the provincial People's Committee.

### When to use FISl?

The local government should use the FISl during the project appraisal stage, especially conducting the Eligibility Assessment and the Risk Assessment.

### Other notes about FISl

- The FISl does not target projects from any specific country. Concerns relating to economic, social, and environmental risks can potentially arise from any project from any country. Non-discrimination among foreign investors is a key principle of the FISl. The sole grounds for screening a foreign investment are risks assessed on a case-by-case basis to ensure long-term development and to ensure foreign investors use responsible business practices when doing business in Vietnam.

- The FISI is about identifying and addressing actual and potential negative effects that may be caused by certain foreign investment projects without reducing Vietnam’s openness to foreign investment or restricting the activities of foreign investors in Vietnam.
- It is for provincial governments to assess, on a case-by-case basis, whether a foreign investment project threatens the sustainable development of local communities, breaks regulations on human rights, or poses risks to public security. If so, local authorities have to suggest appropriate measures to mitigate those risks. The prohibition of rejecting a project should be considered only in cases where the prevention and mitigation of risks does not seem possible.



## Structure of the FISI

**Criteria used to evaluate foreign investment projects are divided into three components:**

### Component 1: ELIGIBILITY ASSESSMENT

The first component of the FISI sets fundamental criteria that any investor considering doing business in Vietnam have to comply with and provide evidence at the project appraisal process. The criteria were designed in accordance with Vietnam’s investment law. When employing the FISI, the eligibility assessment is a required step.

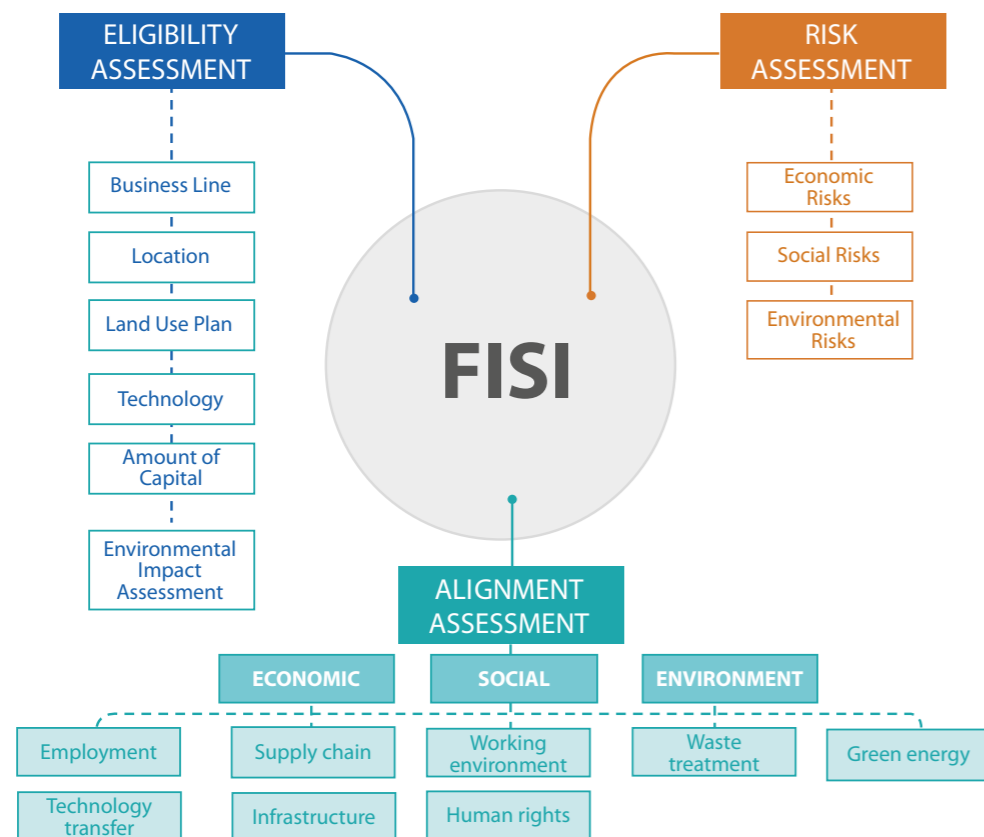
### Component 2: RISK ASSESSMENT

The second component identifies risks of the investment project and ascertains the appropriateness of mitigation strategies. The risk assessment of investment project is mandatory to help local authorities obtain a comprehensive understanding about the investor and the project. When employing the FISI, the risk assessment is a required step.

### Component 3: COMPLIANCE ASSESSMENT

The third component examines if the project is aligned with the local governments’ investment attraction priorities and with international recommendations or standards for responsible investment. These criteria are NOT mandatory for investors. However, investors are encouraged to meet these criteria whenever possible.





The full version of the FISI can be downloaded here: <https://bit.ly/FISI-2022>

## Eligibility Assessment

The first component of the FISI sets basic criteria that ought to be met by any investor planning to do business in Vietnam. This is a mandatory assessment when using the FISI.

### Basic information

INFO. ID	INFORMATION/GUIDING QUESTION	NOTES BY EVALUATOR
A1	Province/city	
A2	Date of assessment (DD/MM/YYYY)	
A3	Name of evaluator	

A4	Position and department/unit	
A5	Name of the FDI project	
A6	Name of the investor	
A7	Country origin of the investor	
A8	Investor's website	
A9	Contact person	
A10	Email of contact person	
A11	Phone of contact person	
A12	Form of investment (according to Article 21, Law on Investment 2020)	
A13	The type of business entity if the project plans to establish a business entity	<ol style="list-style-type: none"> <li>1. Representative Office</li> <li>2. Branch office</li> <li>3. Joint stock company</li> <li>4. Limited Liability company</li> <li>5. Joint Venture</li> <li>6. Public Private Partnership</li> </ol>
A14	Proposed location of factory/office	
A15	Total land area of the project (m2)	
A16	Value of the proposed investment (USD)	
A17	Value of the proposed investment (VND)	
A18	Main product(s) or service(s) of the project	

### Eligibility Checklist

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
B1	Business Line Classification of the Project (>> End the appraisal if the project invests in prohibited sectors.)	<ol style="list-style-type: none"> <li>1. Unconditional business line</li> <li>2. Business line in market entry list (foreign investors must satisfy certain market entry conditions)</li> <li>3. Business line in prohibited list (foreign investors are not allowed to do business)</li> </ol>

B2	If the business line of the investment project belongs to the market entry list, please specify name of that business line.	[CHOOSE A NAME OF BUSINESS LINE FROM A PRE-DEFINED LIST]*
B3	Industry Classification according to Vietnam Industry Codes	[CHOOSE A NAME OF INDUSTRY FROM A PRE-DEFINED LIST]**
B4	Central Product Classification (CPC) code	[CHOOSE THE CPC CODE FROM A PRE-DEFINED LIST]***
B5	Capital Requirements for this business line (in USD, if any)	[ENTER VALUE and cite the legal basis for the capital requirement, if any]
B6	Does the value of the proposed investment meet the sector-specific minimum capital requirement? (>> End the appraisal if the project does not meet the sector-specific capital requirement.)	0. No 1. Yes 2. Not applicable

(\*) Names of business lines used for B2 are stipulated in Appendix I.B of the Decree 31/2021/NĐ-CP “Elaboration of some articles of the Law on Investment” issued by the Vietnamese Government on March 26, 2021. The Decree 31/2021/NĐ-CP can be accessed online via this link: <https://vbpl.vn/bokehoachvadautu/Pages/vbpq-van-ban-goc.aspx?ItemID=147720&dvid=312>

(\*\*) Names of industry used for B3 are stipulated in the Vietnam Standard Industrial Classification (VSIC) issued on July 06, 2018 by Vietnam’s Minister. The FISl only asks for the name of industry at the 1st level of the VSIC. The VSIC can be accessed online via this link: <https://dangkykinhdoanh.gov.vn/vn/Pages/NganhNghe.aspx>

(\*\*\*) The document of Central Product Classification Code can be accessed online via this link: <https://unstats.un.org/unsd/classifications/unsdclassifications/cpcv21.pdf>

### Other Mandatory Requirements

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
B7	Is the investor independent from a foreign government (not a government-owned or government-controlled entity)?	0. No 1. Yes 2. Do not know
B8	Is the proposed investment project appropriate with land use plans already approved by the local government?	0. Not Aligned 1. Partially Aligned 2. Fully Aligned 3. Not available information during project appraisal process

B9	Is the plan for site clearance and resettlement appropriate with the laws, regulations and local land use planning?	0. Not Aligned 1. Partially Aligned 2. Fully Aligned 3. Not available information during project appraisal process
B10	Is the technology used in the project (if any) not in the list of technologies banned from transfer (according to Vietnam's Law on technology transfer)?	0. Not Aligned 1. Partially Aligned 2. Fully Aligned 3. Not available information during project appraisal process
B11	Has the environmental impact assessment been made?	0. Not Aligned 1. Partially Aligned 2. Fully Aligned 3. Not available information during project appraisal process

### >> Note:

- If the project does not meet one of the mandatory requirements (or one of the answers is “Not Aligned” or “Partly Aligned”), the investor has to make changes to project’s conditions as soon as possible in order to align with Vietnam’s laws and regulations.
- If no change is made, then local authorities should reject this project.

### Risk Assessment

The “Risk Assessment” component contains criteria to assist local governments in assessing potential risks related to the operation of the investment project.

### Economic Risks

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
C1	Does the history or current portfolio of the investor demonstrate that this investor has experience in the proposed business activity or project?	0. No 1. Yes
C2	Does the investor have prior experience with investments of a similar nature and scope to that proposed?	0. No 1. Yes
C3	Does the investor have experience in business activities or projects in Vietnam?	0. No 1. Yes
C4	Does the investor have a long-term vision and a long-term plan for doing business in Vietnam (e.g. at least a [NUMBER]-year plan)?	0. No 1. Yes
C5	Is the investor able to show proof of healthy business financial capacity?	0. No 1. Yes

C6	Has the investor ever been reported for non-compliance with tax regulations (e.g. transfer pricing), either in Viet Nam or abroad? If the investor has been convicted of such conduct, does the investor have a plan or solution to convince the local authorities that this will not happen during its investment in Viet Nam?	0. Yes 1. No
C7	Has the investor ever had any economic disputes regarding investment projects in other host countries in the past, either in Viet Nam or abroad? If the investor has been convicted of such conduct, does the investor have a plan or solution to convince the local authorities that this will not happen during its investment in Viet Nam?	0. Yes 1. No
C8	Has the investor ever been convicted of violating antitrust or anti-competition laws, either in Viet Nam or abroad? If the investor has been convicted of such conduct, can the investor convince the local authorities that this will not happen during its investment in Viet Nam?	0. Yes 1. No
C9	Has the investor ever been convicted of violating anti-corruption or anti-bribery laws, either in Viet Nam or abroad? If the investor has been convicted of such conduct, can the investor convince the local authorities that this will not happen during its investment in Viet Nam?	0. Yes 1. No
C10	Does the investor have measures in place to prevent its direct employees or business relationships from engaging in corruption or bribery?	0. Yes 1. No

## Social Risks

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
D1	Has the investor ever been reported for non-compliance with labor regulations, health and safety regulations, land and property regulations, consumer regulations, privacy regulations, anti-corruption and anti-bribery regulations or any other laws that regulate social impacts in Vietnam or other countries?	0. Yes 1. No
D2	Is there history of the investor having caused or contributed to social conflicts that resulted in strikes or protests during previous FDI projects?	0. Yes 1. No
D3	Does the investor have a policy on how it deals with social issues (including labour rights and human rights issues)?	0. No 1. Yes

D4	Does the investor have a due diligence process in place to identify, prevent and mitigate actual and potential adverse social impacts on individuals and communities?	0. No 1. Yes
D5	Has the investor developed and submitted an overview of how it plans to engage with individuals and communities about the (potential) impacts that the proposed business activities or project might cause or contribute to?	0. No 1. Yes
D6	Does the investor have a grievance mechanism to remediate social impacts?	0. No 1. Yes

## Environmental Risks

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
E1	Is this project classified as a group I or II project under Article 28 of the Law on Environment Protection 2020?	0. Yes 1. No
E2	Has the investor ever been reported for non-compliance with environmental regulations?	0. Yes 1. No
E3	Has the investor developed and submitted an overview of (potential) environmental impacts that the business activity or project (might) cause or contribute to (i.e. an environmental impact assessment)?	0. No 1. Yes
E4	Does the investor have an environmental management system or due diligence process in place to identify, prevent and mitigate actual and potential adverse environmental impacts?	0. No 1. Yes
E5	Does the investor have a grievance mechanism to remediate environmental impacts?	0. No 1. Yes

## Alignment Assessment

These are NOT mandatory requirements for investors for the purpose of investment screening. However, it is important that investors meet these criteria to ensure that the investment in Viet Nam contributes to Sustainable Development and prevents or mitigates adverse impacts on people and the environment. Meeting these requirements indicates that the investor is making a responsible investment. As a result, the project may qualify for local government incentives and support for FDI projects that have a strong potential to contribute to local sustainable development.

If the alignment assessment cannot be conducted during the project appraisal

stage, the local government may consider conducting it after the investment project is operational. If this is the case, alignment assessment could serve as a tool for evaluating the quality and impact of foreign direct investment projects.

### Economic Dimension

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
F1	Employment Creation	
F1.1	Is there a specific plan in place for the project to prioritize recruiting residents from the commune/ward in which it is located?	0. No 1. Yes 2. Not applicable
F1.2	Does the project plan to recruit at least [NUMBER] workers/employees in the first year of its operations?	0. No 1. Yes 2. Not applicable
F1.3	Will the median monthly salary of employees/workers be higher than current median income of employees/workers in the province/city?	0. No 1. Yes 2. Not applicable
F1.4	Is a detailed plan for training workers developed?	0. No 1. Yes 2. Not applicable
F1.5	Does the project plan to recruit at least [SHARE %] of its workforce as skilled workers/employees (having at least Bachelor Degree of equivalent degrees)?	0. No 1. Yes 2. Not applicable
F2	Local Linkage and Value Chain Development	
F2.1	Does the project have any plan to integrate local private enterprises, into its value chain?	0. No 1. Yes 2. Not applicable
F2.2	Does the project plan to export its products to more than 3 countries in global market?	0. No 1. Yes 2. Not applicable
F2.3	Does the project plan to build facilities in disadvantaged areas?	0. No 1. Yes 2. Not applicable
F3	Technology Transfer	
F3.1	Are the products or services generated by the project's production activities aligned with the types of products and services prioritized by the province/city for FDI attraction?	0. No 1. Yes 2. Not applicable

F3.2	Will any technology in a form of sharing production specifications and quality control methodology be transferred to local suppliers?	0. No 1. Yes 2. Not applicable
F3.3	Will any technology in a form of licensing products or processes be transferred to local suppliers?	0. No 1. Yes 2. Not applicable
F3.4	Is technology used in the investment project the one that the local government encourage investors to deploy?	0. No 1. Yes 2. Not applicable
F3.5	Is the technology to be used in the project widely acknowledged in the G7 developed countries?	0. No 1. Yes 2. Not applicable
F3.6	Does the project establish a research and development (R&D) unit?	0. No 1. Yes 2. Not applicable
F3.7	Does the project have a plan to recruit at least [SHARE %] of its senior staff being Vietnamese nationals?	0. No 1. Yes 2. Not applicable
F4	Infrastructure and Land	
F4.1	Does the project plan to develop public infrastructure (such as roads, power, or water access)?	0. No 1. Yes 2. Not applicable
F4.2	Is at least [SHARE %] of the investment capital for the project allocated to the construction of basic infrastructure on the project site?	0. No 1. Yes 2. Not applicable

### Social Dimension

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
G1	Impacts on workers	
G1.1	Does the investor have a plan to pay workers high wage in labor market?	0. No 1. Yes 2. Not applicable
G1.2	Does the investor have a plan to refrain from discriminating against workers on the basis of race, social or ethnic origin, nationality, gender and sexual orientation, health conditions, disability, age, marital and family status, maternity or paternity, cultural practices, opinions or political preferences, membership of an organization or association?	0. No 1. Yes 2. Not applicable

G1.3	Will the investor respect international labour standards on working hours, rest times, sick leave and paid leave?	0. No 1. Yes 2. Not applicable
G1.4	Will the investor ensure operational health and safety in all business activities?	0. No 1. Yes 2. Not applicable
G1.5	Will the investor provide a free, annual health check for all its workers?	0. No 1. Yes 2. Not applicable
G1.6	Will the investor provide dormitory or any equivalent accommodation support to workers?	0. No 1. Yes 2. Not applicable
G1.7	Will the investor respect the rights of freedom of association and collective bargaining of workers?	0. No 1. Yes 2. Not applicable
G1.8	Will the investor implement measures to prevent forced and bonded labour?	0. No 1. Yes 2. Not applicable
G1.9	Will the investor implement measures to ensure responsible recruitment and respect the rights of migrant workers?	0. No 1. Yes 2. Not applicable
G1.10	Will the investor implement measures to address child labour and ensure young workers do not engage in work which is harmful to their health or wellbeing?	0. No 1. Yes 2. Not applicable
G1.11	Will the investor ensure gender equality in the workplace, including through affirmative action?	0. No 1. Yes
G1.12	Will the investor respect the civic rights of employees, including but not limited to their rights to freedom of speech and privacy?	0. No 1. Yes 2. Not applicable
G1.13	Will the investor ensure that it does not retaliate against workers who raise concerns about their working conditions or other issues?	0. No 1. Yes 2. Not applicable
G1.14	Will the investor require its business relationships (e.g. suppliers in the supply chain) to respect labour rights (including those mentioned in G1.1-G1.13) throughout their activities?	0. No 1. Yes 2. Not applicable
G1.15	Does the investor have a plan to annually train at least [SHARE %] of local workers?	0. No 1. Yes 2. Not applicable

<b>G2 Impacts on communities</b>		
G2.1	Does the investor build procedures to effectively prevent and manage industrial accidents, especially those with severe impacts on local communities?	0. No 1. Yes 2. Not applicable
G2.2	Will the investor have procedures to effectively prevent and manage the adverse social impacts (e.g. health impacts) of environmental pollution on local communities?	0. No 1. Yes 2. Not applicable
G2.3	Will the investor have procedures to respect all applicable land rights and the rights of indigenous peoples, including the right to Free, Prior and Informed Consent?	0. No 1. Yes 2. Not applicable
G2.4	Will the investor respect other rights prescribed in the Constitution of the communities where the investor operates?	0. No 1. Yes 2. Not applicable
G2.5	Will the company refrain from threatening individuals and communities in any way, including when they bring attention to the impact of business activities on economic, social or environmental issues?	0. No 1. Yes 2. Not applicable
<b>G3 Impacts on consumers and society</b>		
G3.1	Will the investor ensure that its products and/or services comply with the highest health and safety standards?	0. No 1. Yes 2. Not applicable
G3.2	If the investor sells dangerous, life-threatening or deadly products (e.g. tobacco products, wines, or hazardous products), will it take measures to prevent harm in the use of these products to the greatest extent possible?	0. No 1. Yes 2. Not applicable
G3.3	Will the investor engage with public concerns regarding its economic, social and environmental impacts and refrain from threatening critics in any way, including when they bring attention to the impact of business activities on economic, social or environmental issues?	0. No 1. Yes 2. Not applicable
G3.4	Will the investor not promote or perpetuate any discriminatory stereotypes or stigmas, including on the basis of race, social or ethnic origin, nationality, gender and sexual orientation, health conditions, disability, age, marital and family status, maternity or paternity, cultural practices, opinions or political preferences, membership of an organization or association?	0. No 1. Yes 2. Not applicable
G3.5	Will the investor respect the right to privacy of consumers and the general public?	0. No 1. Yes 2. Not applicable

## Environmental Dimension

INFO. ID	INFORMATION/GUIDING QUESTION	ASSESSMENT
H1.1	Have the findings of the environmental impact assessment (which should be conducted as part of the "risk assessment") been translated into an integrated environmental management plan?	0. No 1. Yes 2. Not applicable
H1.2	Will the investor have processes to effectively monitor, prevent, mitigate and remediate air, water, land and soil pollution?	0. No 1. Yes 2. Not applicable
H1.3	Will the investor take measures to effectively reduce waste from products, and facilitate reuse, recycling and recovery of the products it sells, taking into account the "extended producer responsibility" principle?	0. No 1. Yes 2. Not applicable
H1.4	Has the investor established a science-based greenhouse gas reduction strategy for all its activities in Viet Nam?	0. No 1. Yes 2. Not applicable
H1.5	Will the investor monitor and address all of its Scope I, II and III emissions?	0. No 1. Yes 2. Not applicable
H1.6	Will the investor have processes in place to monitor and manage its energy consumption based on aggregated and disaggregated indicators (for example, by product or service line, by clusters of suppliers, by type of operation or asset, etc.)	0. No 1. Yes 2. Not applicable
H1.7	Does the investor have a plan to increase its share of renewable energy in the investor's total energy consumption?	0. No 1. Yes 2. Not applicable
H1.8	Will the investor implement a water stewardship policy to ensure that the investor uses water in a way that is socially equitable, environmentally sustainable, and economically beneficial?	0. No 1. Yes 2. Not applicable
H1.9	Will the investor consult local communities as part of its environmental impact assessment processes?	0. No 1. Yes 2. Not applicable
H1.10	Does the project have a plan to allocate at least [SHARE %] of its total costs to environmental protection?	0. No 1. Yes 2. Not applicable



## How to use the Foreign Investment Screening Instrument

► Assessment Principles ► Organize the Project Appraisal Team



## Assessment Principles

### Encourage foreign investors to adhere to responsible business practices

The FISl is constructed as a checklist of information that local authorities need to pay attention to when appraising projects. Among the three components of FISl, "Eligibility Assessment" contains items directly related to Vietnam's current legal regulations on investment. As long as investors wish to apply for investment approval in Vietnam, regardless of the location of the project, they are required to comply with the criteria outlined in the Eligibility Assessment component. Meanwhile, "Risk Assessment" and "Alignment Assessment" are two components that encompass the criteria proposed by VCCI to be added to the existing project appraisal process. The implementation of the "Risk Assessment" and "Alignment Assessment" components will only take place once the project passes the "Eligibility Assessment" phase. With regard to the "Risk Assessment" component, the FISl research team believes that the inclusion of economic, social, and environmental risk assessments in a project's appraisal should be considered a mandatory step that local authorities need to carry out when conducting project appraisal. It is vital to investigate an investor's past performance with similar projects in order to ascertain whether this



***The FISl is open for local authorities to tailor its criteria to suit local context and priorities. It also encourages foreign investors to align their business activities with responsible business practices.***

investor's prospective projects embed inherent risks. If the investor's profile includes negative incidents, such as those related to strikes, labor abuse, or violations of environmental protection regulations, local authorities who are in charge of appraising the project should carefully review the entire investment project proposal and put forward pertinent questions to check the investor's preparedness and response capacity so as to prevent the occurrence of similar incidents. Meanwhile, the "Alignment Assessment" component examines whether the investment project possesses certain characteristics resembling a responsible business project, such as the UN Guiding Principles on Business and Human Rights (UN, 2011), the International Labor Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO, 2017), and the OECD Guidelines for Multinational Enterprises (OECD, 2011). Although the current investment project appraisal process in Vietnamese localities has not yet carefully considered aspects of responsible business practices, and the implementation of the "Alignment Assessment" component is not mandatory when using FISl, the FISl research team encourages localities to disclose these criteria to potential investors and encourages investors to prepare to meet these criteria voluntarily. If investors can show evidence that proves their projects will follow responsible business practices, the local project appraisal process can proceed more quickly. Local governments should also look into the best ways to provide incentives and support for investment projects whose portfolios are shown to be in line with local governments' plans to attract foreign investment and show certain traits of a good business project.

### Encourage local authorities to tailor FISl to their local context and priorities

Except for "Eligibility Assessment", the "Risks Assessment" and "Alignment Assessment" components can be adjusted by competent authorities in provinces and cities to be in line with their local contexts and policy systems on foreign investment attraction. Adjustments in this regard include either the addition of new criteria or guiding questions or their deletion, as well as modifications to the contents of already established criteria and guiding questions.

This stems from the fact that different local governments may have different priorities when attracting foreign investment. Localities that have attracted a large amount of foreign direct investment in recent years, such as Ho Chi Minh City, Ha Noi, Bac Ninh, Binh Duong, Dong Nai, Thai Nguyen, Vinh Phuc, and Bac Giang, may adopt a strategy to attract foreign investment projects in the new period that focuses more on high-tech projects capable of generating large budget revenues and employing highly skilled labor. For example, Bac Ninh's provincial authorities have recently set out the strategy

“two less, three high, four ready” (in Vietnamese: Hai ít, ba cao, bốn sẵn sàng) for attracting investment. First, “two less” refers to less land and less labor. Due to the geographical disadvantage of having the smallest natural land area among all provinces, the province has focused on encouraging high-tech projects that conserve land and require less labor. Second, “three highs” means high FDI investment rates, high technology, and high efficiency. The objective is to reduce the project’s spillover effects, reduce environmental pollution and damage, and contribute to economic growth. Lastly, the “four ready” includes (i) ready premises, (ii) ready high-quality human resources, (iii) ready mechanisms, reformed procedures, and preferential policies that allow investors to take advantage of legal preferential policies, and (iv) ready resources to support investors when they need help and solve their problems.

On the contrary, not every locality has the same advantageous geographical location, developed infrastructure system, and high standard of life as Bac Ninh to be able to select foreign investment projects based on the “two less, three high, four ready” criteria. Provinces located far from major economic centers, with typical challenges like underdeveloped infrastructure or lacking high-quality human resources, can set out different but more suitable priorities, such as attracting projects with the potential to create a large number of jobs for unskilled workers (such as textiles) or agricultural product processing projects that can take advantage of local natural advantages.

This demonstrates that building a tool fit for the investment attraction policies of all 63 provinces and cities is an arduous endeavor. Therefore, VCCI and UNDP strive to build a framework of some essential factors that the investment project appraisal agency needs to consider. Some factors may be identified as being material issues in one locality but not in another. The criteria in the “Risk Assessment” and “Alignment Assessment” components often have a “Not applicable” option to reflect the case when each local government has other specific issues (or other criteria) to prioritize over the issue (or criterion) being under consideration. Agencies responsible for foreign investment project appraisal in provinces and cities can also actively introduce new evaluation criteria or guiding questions that reflect their concerns for foreign investors. The foreign investment project appraisal agency can also modify the details of some quantitative criteria, such as criteria C4, F12, F37, F42, H5, and H6 to replace the blank values needed to be compared (i.e., enter the value for [NUMBER] or [SHARE]).

Thus, FISI is a framework in the form of a generalized checklist. FISI can be changed by each local government to fit the policies it already has in place to attract foreign investment.



## Organize the Project Appraisal Team

### Preparation

**Establishing a project evaluation team:** Members of the project evaluation team should be local authorities responsible for attracting and evaluating foreign direct investment projects. Depending on the size of the investment project, the evaluation team may consider engaging the assistance of additional experts in economic, social, and environmental disciplines. Additionally, the team can comprise other members who assist in the collection of investor data. It is worth noting that evaluators or subgroups within the evaluation team should undertake independent assessments and then compare their findings.

**Assign tasks to evaluation team members:** The project evaluation team will consist of individuals responsible for data collection and members who will conduct the assessment independently. When the number of team members is limited, the person conducting the evaluation can collect data concurrently.

**Organize a group meeting to agree on assessment criteria:** Hold a meeting of team members to review each evaluation criterion. The review will help the team finalize the instrument before starting to assess specific projects.

**Check the validity and sufficiency of papers and documents submitted by the investor:** The team needs to make a list of mandatory documents and recommended documents that are useful for the assessment. These mandatory documents should not require more than what the law already requires/stipulates.

**Notify investors of additional information/documents to be submitted to complete the dossier, if needed:** In case it is not possible to actively



collect a particular type of information, the evaluation team can directly request investors to provide information. The evaluation team need to ensure that any request and communication with investor should only come from just one contact point.

**Gather information from different sources about investors:** Gather reliable information sources from different sources such as websites of chambers of commerce, websites of investors, and credible press agencies.

**Interview investors to supplement the information needed for the assessment:** If it is not possible to collect certain types of information, the project evaluation team may request documentation from the investor, such as an investor's capacity report, as required by law.

### Appraisal of foreign investment project

**Assess the eligibility of the project:** The project must satisfy all requirements in the component "ELIGIBILITY ASSESSMENT" before it can be considered further. Otherwise, the review will stop.

**Assess project risks and risk mitigation plans:** See Component "RISK ASSESSMENT" which includes criteria that assist local governments in assessing potential risks related to the operation of the investment project.

**Assess the project's level of alignment with international and national standards and recommended best practices:** See Component "ALIGNMENT ASSESSMENT" which includes criteria that local governments that encourage foreign direct investment projects should have. If more criteria are met, the score of the foreign investment project will be higher.

### Final decision of project appraisal

**Gather project evaluation scores from evaluators:** Organize a team meeting and gather the final assessment results of each evaluator.

**Check for differences between evaluators:** Review and adjust for differences in evaluations of evaluators to harmonize results.

**Make the evaluation team's final decision:** Provide the overall assessment results of the whole team taking into account other important factors that are important for making the appraisal decision.

"The Government of Viet Nam will continue to provide every favorable condition for your investment in prioritized sectors with preferential benefits in Viet Nam, such as advanced technology, information technology, supporting industries, smart agriculture, environmental protection, renewable energy, and infrastructure projects in service of social security. We look forward to the assistance of FDI businesses in training a high-quality workforce, utilizing scientific advancements for progressive and effective governance, stepping up research and development, promoting innovation, and helping Viet Nam become a hub in regional and global value chains."

*Quote from Vietnam's Prime Minister Pham Minh Chinh at "The Country Strategy Dialogue on Vietnam 2021," World Economic Forum, 20 October 2021*





## The process of foreign investment project appraisal of local governments in Vietnam

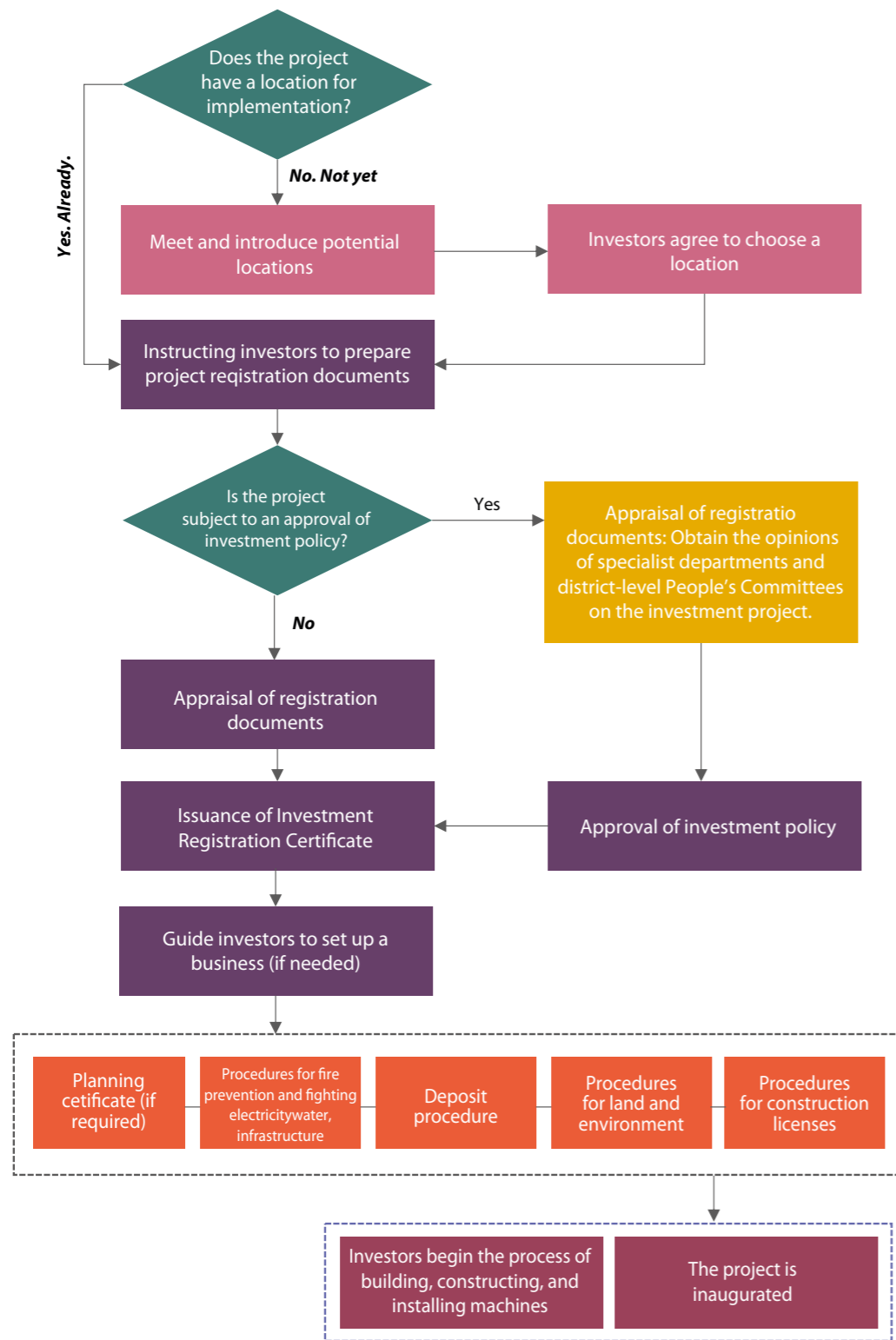
The investment screening and licensing process for foreign direct investment projects currently being implemented by local governments is summarized in Figure 1. These procedures are consistent with the provisions of Law No. 61/2020/QH14 (2020 Investment Law), which was passed by the National Assembly on June 17, 2020, and Decree 31/2021/ND-CP, which was also passed by the Government on March 26, 2021 specifically guiding the implementation of a number of articles of the Investment Law.

According to Article 39 of the Investment Law, the state agency responsible for issuing, adjusting, and withdrawing Investment Registration Certificate (referred to as the investment registration agency) can be the Department of Planning and Investment or the provincial Management Board of industrial parks, export-processing zones, high-tech zones, and economic zones (hereinafter referred to as the provincial Management Board of Industrial Zones). The provincial Management Board of Industrial Zones is often the investment registration agency for projects with executive offices in industrial parks, export processing zones, high-tech zones, and economic zones. The Department of Planning and Investment is the investment registration agency for projects outside industrial parks, export processing zones, high-tech zones, and economic zones. The investment registration agency issues, adjusts, and withdraw the Investment Registration Certificate on behalf of the provincial People's Committee.

Investors will need to prepare investment project registration documents to submit to the investment registration agency. Investors must consider the provisions of Articles 30, 31 and 32 of the Law to determine whether an investment project requires approval by the National Assembly, the Prime Minister, or the provincial People's Committee. If this is the case, the investor must follow the appropriate processes for requesting an investment policy decision prior to being considered for an Investment Registration Certificate.

According to Article 33 of the Investment Law, the investment registration agency will evaluate an investment project registration dossier by the following conditions:

- The relevance of the investment project with national planning, regional planning, provincial planning, urban planning and special economic - administrative unit planning (if any);
- Assessment of the demand for land use;



- Preliminary assessment of the socio-economic effects of the project; and preliminary assessment of environmental impact (if any) in accordance with the law on environment protection;
- Assessment of investment incentives and conditions for eligibility to investment incentives (if any);
- Assessment of the technology to be used in the investment project if the project requires appraisal and collection of opinions on the technology in accordance with the Law on Technology Transfer

The relevance of the investment project with the objectives and orientation for urban development, and residential housing development programs and plans; preliminary plan for phasing of investment with a view to ensure consistency; preliminary structure of residential housing products and provision of land for social residential housing development; preliminary plan for investment in construction and management of urban infrastructure inside and outside the project in the case of a project on construction of residential houses and urban areas.

In general, the investment registration agency will evaluate investment registration documents based on the following factors to determine if the application is valid or not:

- The project's business lines are not prohibited from investment and business under the provisions of Article 6 of the Investment Law and international investment treaties;
- The project having the implementation location determined by the presentation of a valid copy of the land use right document or a valid copy of a location lease agreement or other documentations determining the right to use such location as the investment project location;
- Investment projects that is relevant to local planning;
- Investment projects that meet the conditions for investment rate on an area of land prescribed by the Provincial People's Committee based on the actual conditions in the locality and approved by the Provincial People's Council's Standing Committee (if any); and number of employees employed (if any);
- Investment projects that meet market access conditions for foreign investors.

For projects not subject to investment policy approval, the investment registration agency has a maximum of 15 days to review the investor's dossier. Meanwhile, for projects that require Provincial People's Committee approval of investment policies, the investment registration agency must notify investors of the result within 35 days of receiving the dossier. If the application for registration is approved, the investment registration authority will provide an investment registration certificate to the investor within five days from the date the dossier appraisal and investment policy approval is completed.

## ENDNOTES

<sup>1</sup> Nhan Dan Online (2018). FDI-based technological transfer target fails to meet expectations: <https://en.nhandan.vn/fdi-based-technological-transfer-target-fails-to-meet-expectations-post62393.html>

<sup>2</sup> VCCI-USAID (2020). 2019 PCI Report: <https://www.pcivietnam.vn/en/publications/2019-pci-full-report-ct174>

<sup>3</sup> The Natural Resources and Environmental Online News: <https://baotainguyenmoitruong.vn/doanh-nghiep-fdi-xuat-lo-nhung-mang-toi-ve-moi-truong-309691.html>



**VIETNAM CHAMBER OF COMMERCE AND INDUSTRY**

Legal Department

No. 09 Dao Duy Anh Street, Dong Da District, Ha Noi

*Email: [banphapche@vcci.com.vn](mailto:banphapche@vcci.com.vn)*

*<http://vibonline.com.vn>; [pcivietnam.vn](http://pcivietnam.vn)*

**UNITED NATIONS DEVELOPMENT PROGRAMME IN VIET NAM**

No. 304 Kim Ma, Ba Dinh, Ha Noi