

Legal Update

Thailand and Vietnam: Where Should Foreign Investors Set Up in 2026?

This article is the first in a four-part series comparing Thailand and Vietnam as investment destinations for foreign businesses. Across the series, we examine market entry, tax incentives and hidden costs, the suitability of each jurisdiction for different operating models, and the common mistakes foreign investors make when entering these markets. In this first article, we focus on the threshold question: where should a foreign investor set up, and what should be considered before choosing one jurisdiction over the other?

Thailand and Vietnam continue to stand out as two of Southeast Asia's most attractive destinations for foreign investment. Both offer strategic location, strong growth potential, and meaningful opportunities across manufacturing, technology, services, and regional operations. Yet for foreign investors assessing where to establish a presence, the right answer is rarely determined by headline impressions alone.

In practice, the real question is not which country is "better," but which jurisdiction is better aligned with the investor's intended business activity, ownership structure, and broader commercial objectives.

That distinction matters because incorporation is only part of the story. In Thailand, company registration can be relatively straightforward, but market access is shaped heavily by the Foreign Business Act, B.E. 2542 (1999) ("**FBA**"), which restricts foreign participation in a number of sectors unless a licence or exemption is available. In Vietnam, the establishment process is generally more document-heavy, but the market-access framework is often more structured, with foreign investment assessed by reference to whether the proposed business line is open, conditional, prohibited, or effectively discretionary in practice.

For investors, the implication is clear: the more useful comparison is not speed of incorporation alone, but whether the intended activity can be carried out cleanly, with the desired ownership structure, and without avoidable regulatory friction from day one.

1. Thailand: straightforward incorporation, but activity-based restrictions matter

Thailand remains one of the region’s most established jurisdictions for foreign investment, supported by strong infrastructure, a mature corporate environment, and a familiar legal framework for many international businesses. From a company law perspective, establishing a Thai private limited company is generally a manageable process. However, foreign investors should not assume that incorporation automatically means unrestricted business operations.

The key issue is market access.

Under the FBA, a company is generally treated as a foreign business if 50 percent or more of its shares are held by foreign individuals or foreign entities. Foreign businesses are restricted from engaging in certain categories of activity unless approval is obtained or a statutory exemption applies.

The FBA divides restricted businesses into three lists.

| | |
|----------------------|---|
| <p>List 1</p> | <p>covers businesses that are strictly prohibited to foreigners. These activities are regarded as particularly sensitive and are generally reserved for Thai nationals because they relate to national security, cultural heritage, agriculture, or natural resources. Examples include newspaper publishing, rice farming, forestry, land trading, and certain activities connected with Thai arts and culture.</p> |
| <p>List 2</p> | <p>covers businesses linked to national security, arts and culture, natural resources, or the environment. Foreign participation in these sectors may be possible, but only with Cabinet approval and, in most cases, a minimum proportion of Thai shareholding. Activities within this category include, for example, domestic transportation, the manufacture of firearms, and certain businesses involving natural resources.</p> |
| <p>List 3</p> | <p>covers businesses in which Thai enterprises are considered not yet ready to compete with foreign operators. This category captures a broad range of service sectors and is often the most commercially relevant for foreign investors. A foreign-owned company may carry on a List 3 business only if it obtains a Foreign Business Licence (FBL) from the Director-General of the Department of Business Development, with the approval of the Foreign Business Committee. Examples include accounting, legal, engineering, and architectural services, as well as other professional and service-based activities.</p> |

In practice, this means Thailand may appear relatively simple at the entity-formation stage, while becoming more nuanced once the actual operating model is examined. For service-oriented or regulated businesses in particular, the critical question is not simply whether a

company can be incorporated, but whether the proposed activity falls within a restricted category and whether a workable licensing or exemption route is available.

This is often where strategic structuring becomes essential. Many foreign investors in Thailand do not rely solely on a basic incorporation model. Instead, they assess whether a specific regulatory pathway, sector-specific approval, or investment promotion framework can support their intended activities more effectively.

2. Vietnam: more process-driven, but often clearer for foreign ownership

Vietnam presents a different profile. The setup process is typically more formal and documentation-heavy than in Thailand, but for many investors it can offer a clearer route to 100 percent foreign ownership, particularly where the intended activity falls within sectors that are open to foreign investment without special conditions.

The standard pathway usually involves two main steps: first, obtaining an Investment Registration Certificate (IRC) for the investment project, and second, obtaining an Enterprise Registration Certificate (ERC) to establish the legal entity. While straightforward cases may move efficiently, the overall process often takes longer in practice and depends on the industry, province, and whether additional consultations are required.

What makes Vietnam particularly distinctive is its classification-based market-access framework. Business sectors are generally assessed based on their openness to foreign participation.

Some sectors are unconditionally open, allowing 100 percent foreign ownership without material restrictions. These often include activities such as software development, IT services, and certain F&B-related operations.

Other sectors are conditional, meaning foreign investment may still be permitted but subject to ownership caps, joint venture requirements, or additional sector-specific licences.

At the more restrictive end are sectors that are prohibited to foreign investment.

Vietnam also recognises a category of uncommitted sectors, meaning business lines that are not clearly covered by Vietnam's World Trade Organization (WTO) or bilateral commitments. These are often reviewed case by case, which can create uncertainty even where the activity is not expressly prohibited.

For foreign investors, this framework can make Vietnam feel more predictable where the relevant activity falls clearly within an open or committed sector. At the same time, investors should not underestimate the administrative burden. Vietnam remains a documentation-intensive jurisdiction, and projects in conditional or uncommitted sectors can involve extended review timelines and additional regulatory engagement.

Investor nationality can be more important in Vietnam than expected

One of the more commercially significant aspects of Vietnam's investment framework is that investor nationality can play a more visible role in determining market access than many businesses initially anticipate.

Vietnam's commitments under the WTO, together with its bilateral and regional trade agreements, can influence the level of access available in particular sectors. In committed sectors, investors from WTO member countries may benefit from national treatment and most-favoured-nation treatment, although this does not eliminate all regulatory requirements. Certain sub-sectors may still require additional approvals or remain subject to sector-specific conditions.

This means that, in Vietnam, the legal analysis is not always limited to whether a foreign investor can undertake a particular activity. It may also require asking whether *this* investor, from *this* jurisdiction, can undertake *this* activity under *this* treaty framework and subject to *which* conditions.

That treaty-based lens can be a real strategic advantage where it is considered early. For investors entering treaty-sensitive sectors, nationality and structuring can directly affect licensing strategy, market access, and the likelihood of a smoother approval process.

Vietnam's FTA network is a strategic differentiator

Vietnam also stands out because of the breadth of its free trade agreement network. Beyond tariff benefits, this network supports market access, investment protection, and supply chain planning in ways that are increasingly relevant for international businesses.

Vietnam is party to a wide range of major trade agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the EU–Vietnam Free Trade Agreement, and multiple ASEAN+ agreements with major trading partners. For investors, this enhances Vietnam's position not only as a domestic growth market, but also as an export platform and a gateway into broader Asia-Pacific and European markets.

This is one of the most important strategic distinctions between Thailand and Vietnam. Thailand offers a mature operating base with strong infrastructure and a well-developed business ecosystem. Vietnam, by contrast, often appeals more strongly to investors whose market-entry decisions are linked closely to trade access, treaty-backed market openings, or international supply chain optimisation.

For export-driven or treaty-sensitive business models, Vietnam's FTA network can therefore be a decisive factor, even where the licensing process is more paperwork-intensive at the outset.

3. A practical comparison of the two market-entry frameworks

At a high level, the distinction between the two jurisdictions can be summarised as follows:

| Topic | Thailand | Vietnam | Practical takeaway |
|-------------------------------|--|---|--|
| Incorporation process | Corporate registration is generally straightforward | Setup usually requires an IRC followed by an ERC | Thailand may feel faster at the entity-formation stage, while Vietnam is more process-driven |
| Main foreign investor hurdle | FBA restrictions and possible FBL requirements | Activity classification, licensing process, and sector conditions | The real issue in both jurisdictions is market access, not incorporation alone |
| 100 percent foreign ownership | Possible in many sectors, but restricted businesses may require licence or exemption | Often available in unconditionally open sectors | Vietnam can feel more straightforward for many open-sector businesses |
| Restricted sectors | List 1, List 2, and List 3 under the FBA | Open, conditional, prohibited, and uncommitted sectors | Thailand uses a restrictions-based model; Vietnam uses a classification-based model |
| Role of investor nationality | Generally less central at the initial setup stage, although investors from certain treaty jurisdictions may in some cases benefit from reduced foreign business restrictions | Can be highly relevant because of WTO and FTA commitments | Vietnam more often requires a treaty-aware market-entry analysis, but nationality can also matter in Thailand where treaty protections apply |
| Strategic trade angle | Strong commercial and operational base | Stronger export and treaty platform | Vietnam may be more attractive for trade-led expansion strategies |

4. So, which jurisdiction should foreign investors choose?

For businesses that prioritise operational stability, familiarity, and a mature legal and commercial environment, Thailand often remains highly attractive. It can be particularly compelling where the business model falls outside the more problematic FBA restrictions or where an available exemption or investment promotion route can be used to support the structure.

For investors focused on export-oriented growth, treaty access, open service sectors, or broader regional supply chain positioning, Vietnam may offer the stronger strategic platform.

This is especially true where 100 percent foreign ownership is available and the investor is prepared to manage the licensing process carefully from the outset.

That said, the most useful conclusion is not that one jurisdiction is universally preferable to the other. Rather, each serves different commercial purposes.

Thailand often appeals as a mature operating and coordination base. Vietnam often appeals as a high-growth, trade-connected investment platform. The better choice depends on the nature of the activity, the desired ownership structure, and how the business intends to use the jurisdiction within its wider regional strategy.

5. Practical takeaway for investors

Before choosing between Thailand and Vietnam, foreign investors should define their intended business activities with precision, map those activities against foreign ownership and licensing rules, and assess early whether incentives, treaty access, or sector-specific approvals need to be built into the structure from the outset.

In practice, many market-entry problems do not arise because the law is unusually complex. They arise because the legal structure does not accurately reflect the commercial reality of the business.

That is why a sound entry strategy begins not with incorporation mechanics, but with legal fit.

The next article in this series will compare Thailand and Vietnam from a tax and incentives perspective, focusing on where investors actually save, where hidden costs arise, and why headline tax rates rarely tell the full story.

Further information

Should you have any questions on investing in Thailand or Vietnam, please get in touch with the team at PDLegal.

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