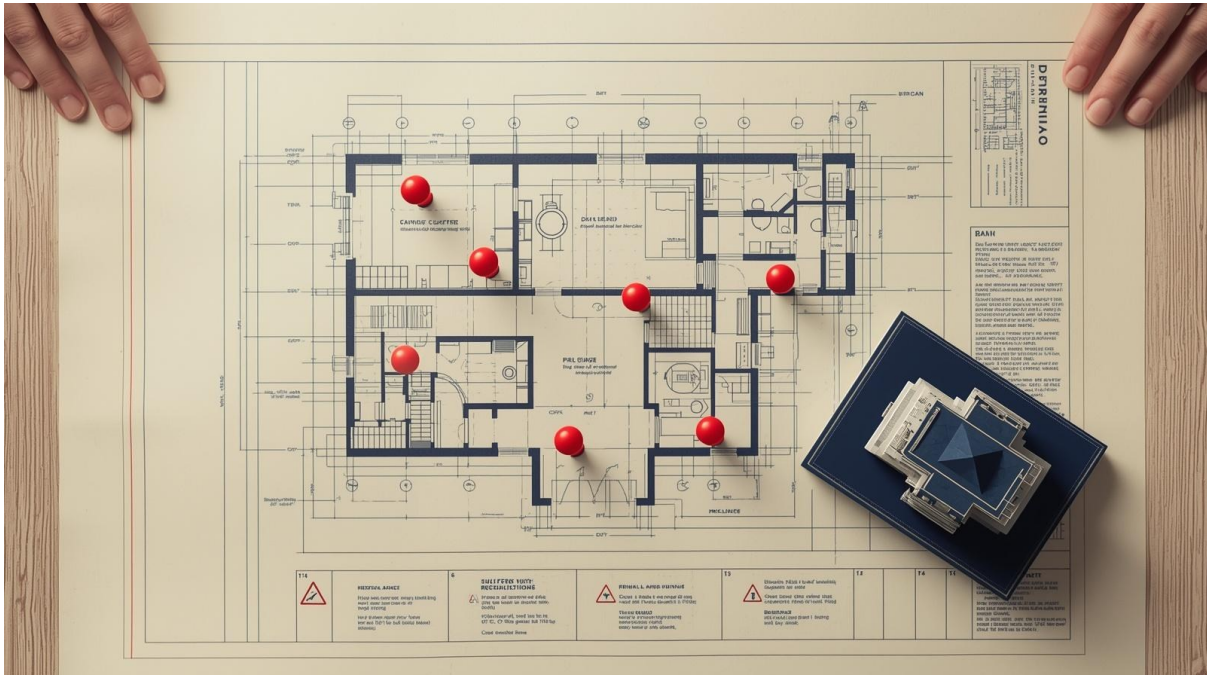


Legal Update

Thailand and Vietnam: The Common Mistakes Foreign Investors Make — and How to Avoid Them



This article is the fourth and final article in a four-part series comparing Thailand and Vietnam as investment destinations for foreign businesses. In the earlier articles, we looked at market entry, tax incentives and hidden costs, and the suitability of each jurisdiction for different operating models. In this final article, we focus on the mistakes foreign investors most commonly make when entering these markets and, more importantly, what those mistakes reveal about how market-entry planning should be approached.

When foreign investors expand into Thailand or Vietnam, the main risks do not usually arise because the laws are unknowable or the regulatory environment is inherently unworkable. More often, the problems begin much earlier. They arise when the structure chosen at the start does not reflect the realities of the intended business.

That is why many of the most common investor mistakes are not technical mistakes at all. They are planning mistakes. They involve misreading foreign ownership rules, choosing the wrong entity type, overlooking tax leakage, underestimating licensing timelines, or assuming that incentives will somehow work themselves out later.

In both Thailand and Vietnam, the pattern is similar: a business sees a strong commercial opportunity, moves quickly to establish a vehicle, and only then discovers that the regulatory, tax, or operational requirements are more specific than expected.

The better approach is not to treat legal and tax structuring as an implementation detail. It is to treat it as part of the investment strategy from the outset.

1. Thailand: the most common mistakes are usually early-stage structuring mistakes

Thailand offers a stable and business-friendly environment for foreign investment, but many problems arise because investors assume the market is more open than it is in practice.

A. Misunderstanding foreign ownership restrictions

One of the most common mistakes in Thailand is assuming that a foreign investor can freely own and operate any business through a standard Thai company. In reality, many service-related businesses remain restricted under the Foreign Business Act (FBA), particularly those falling within List 3.

This is often where investors run into difficulty. A company may be incorporated successfully, but the intended activity may still require a Foreign Business License or need to be structured through a recognised exemption, such as BOI promotion or treaty-based rights where available.

In practice, this mistake usually appears in one of two ways. Some investors fail to assess the restriction at all and only discover it when they are ready to begin operations. Others assume that using a Thai-incorporated company automatically solves the issue, even where the company is majority foreign-owned and still treated as a foreign business for FBA purposes.

The result is often delay, restructuring, or a licensing exercise that could have been anticipated much earlier.

B. Choosing a structure that does not match the business model

A second common mistake is selecting an investment structure based on ease of setup rather than suitability for the intended activity.

For example, some investors establish a standard Thai company without considering whether the project may qualify for BOI promotion. That can mean missing valuable tax incentives, customs relief, and exemptions from certain foreign ownership restrictions. At the same time, the opposite mistake also occurs: investors structure a project around BOI promotion without ensuring that the operational model will actually comply with the approved project scope and ongoing conditions.

In other words, a structure can be too simple or too ambitious.

The better question is not whether a structure can be incorporated quickly, but whether it supports the commercial reality of the business over time.

C. Underestimating tax and compliance obligations

Another frequent mistake in Thailand is treating tax as a secondary issue rather than part of the structuring analysis.

Cross-border payments such as royalties, interest, and service fees may trigger withholding tax unless reduced by treaty. VAT recovery is also documentation-based, which means businesses must maintain proper tax invoices and accurate filings in order to claim input VAT

credits. Where documentation is weak or the structure of intercompany payments has not been thought through carefully, the tax cost of doing business can be higher than expected.

This is particularly relevant for multinational groups using regional service arrangements, licensing structures, or treasury flows. A structure that looks efficient from a group perspective can become less attractive once withholding tax and local compliance requirements are taken into account.

D. Inadequate capital and operational planning

A further issue in Thailand is underestimating the practical importance of capitalisation and operational planning at the point of setup.

Although Thai law does not impose a universal minimum capital requirement for every business, registered capital still matters. It can affect licensing approvals, work permit eligibility for foreign staff, and the perceived credibility of the business with regulators, counterparties, and financial institutions. A company that is under-capitalised relative to its planned activities may encounter unnecessary friction even if the underlying business model is sound.

This is often not viewed as a legal issue at the outset, but it becomes one very quickly once the business begins hiring, applying for approvals, or dealing with third parties.

2. Vietnam: the most common mistakes tend to involve underestimating process, documentation, and operating boundaries

Vietnam offers significant opportunities for foreign investors, but it is also a jurisdiction where regulatory detail matters greatly. Many of the most common mistakes arise not because market access is impossible, but because investors underestimate the level of precision required.

A. Misunderstanding foreign ownership rules and business lines

One of the most common errors in Vietnam is assuming that all sectors follow the same ownership rules.

They do not.

Some business lines are open to 100% foreign ownership. Others are conditional, meaning they may require additional approvals, ownership limitations, or local participation. Some are prohibited, while others sit in a more uncertain category because they are not clearly covered by Vietnam's WTO or bilateral commitments.

This means foreign investors need to assess the intended activity carefully, not only at a high level, but also through the correct business lines and licensing classifications. Incorrect or vague business registration can lead to delay, re-submission, or the wrong licensing outcome altogether.

This is one of the reasons Vietnam can feel more rules-based than discretionary. The analysis is often highly dependent on the precise activity being proposed.

B. Underestimating licensing timelines and documentary burden

Another frequent mistake is treating Vietnamese licensing as a straightforward incorporation exercise.

For foreign investors, the process typically involves obtaining an Investment Registration Certificate followed by an Enterprise Registration Certificate, together with any additional permits required for conditional sectors or specific regulated activities. Even in relatively straightforward cases, the timeline can be longer than investors initially expect. In more complex or conditional sectors, the process can extend materially, especially where ministry consultation or clarifications are required.

The documentation burden is also significant. Corporate documents from overseas often need to be notarised, legalised, and translated, and relatively minor deficiencies can delay the application.

In practice, investors who underestimate the process do not merely lose time. They often disrupt hiring plans, lease timing, project mobilisation, and commercial commitments because the operating timeline was built on unrealistic assumptions.

C. Overlooking foreign contractor tax and transfer pricing issues

Vietnam is also a jurisdiction where intercompany transactions require close attention from the outset.

A common mistake is failing to account properly for foreign contractor tax on payments to overseas group companies or service providers. Interest, royalties, service fees, and licensing arrangements may all carry tax implications, and treaty relief is not automatic. It generally depends on proper documentation and timely procedural compliance.

Related-party pricing is another area where investors can underestimate the level of scrutiny involved. Groups sometimes assume that charging management fees, technology fees, or financing costs into Vietnam will be straightforward so long as the arrangement is commercially sensible. In reality, these flows need to be defensible, documented, and aligned with local tax rules.

The lesson is simple: cross-border group arrangements should be modelled for Vietnam before the entity begins operating, not after the first invoices are issued.

D. Misjudging VAT recovery and working capital needs

Another recurring issue in Vietnam is treating VAT as merely a filing matter rather than a cash-flow issue.

Export-oriented businesses, especially manufacturers and software or IT service exporters, may generate substantial input VAT credits before revenue begins or before refunds are obtained. Although the system allows for VAT refunds where the relevant conditions are met, the timing of recovery can materially affect working capital.

For investors establishing operations quickly, this can become an unwelcome surprise. A project that appears tax-efficient on paper may still create meaningful cash-flow pressure during the setup phase if VAT recovery timing has not been built into the financial model.

E. Failing to contribute charter capital on time

Vietnam's charter capital rules are another area that investors sometimes underestimate.

At incorporation, investors commit to a stated level of charter capital and are generally required to contribute it within the prescribed period. Delays in capital contribution can create

compliance issues and, depending on the facts, may require corrective filings or create downstream licensing and accounting complications.

This is especially important because charter capital is not only a regulatory formality. It also helps signal the seriousness and viability of the project. Where the committed capital is too low for the intended operations, or where it is not contributed as planned, the business may face credibility and compliance issues at an early stage.

F. Using the wrong entity type or misusing a representative office

Vietnam offers several legal forms for foreign investors, and choosing the wrong one can create avoidable difficulty.

A representative office, for example, is often misunderstood. It is suitable for liaison, market research, and non-revenue-generating support, but it is not permitted to conduct profit-making activities, issue invoices, or enter into commercial operations in the same way as a fully licensed company. Yet some investors still attempt to use it as a low-commitment operating vehicle.

That is a mistake.

Where the business intends to sign contracts, provide services, hire staff for operational delivery, or generate revenue in Vietnam, a fully established legal entity is usually required. Similarly, selecting a more complex entity form than necessary can increase governance burden without delivering any commercial advantage.

The vehicle must match the function.

G. Overlooking work permit and labour compliance for foreign staff

A final area of recurring difficulty in Vietnam is labour and immigration compliance for expatriate personnel.

Foreign investors sometimes assume they can relocate managers, technical staff, or founding personnel into Vietnam quickly and regularise the paperwork later. In practice, work permit requirements, exemptions, and labour formalities need to be handled carefully and in advance. Delays in this process can affect project rollout, management oversight, and even regulatory standing.

This is particularly important because Vietnam's compliance environment is documentation-heavy, and labour non-compliance can have reputational as well as legal consequences.

3. A practical comparison of common investor mistakes

At a high level, the common mistakes in each jurisdiction can be compared as follows.

Issue	Thailand	Vietnam	Practical consequence
Foreign ownership analysis	Investors often underestimate FBA restrictions and assume incorporation solves market access	Investors often misread whether a sector is open, conditional, or uncommitted	The wrong ownership analysis can delay or derail the project before operations begin

Issue	Thailand	Vietnam	Practical consequence
Entity and structure choice	Standard company chosen without considering BOI, or BOI chosen without operational fit	Wrong entity type selected, or representative office misused for commercial activity	A poor structure creates long-term regulatory and tax inefficiency
Licensing process	Restrictions and licences identified too late	IRC/ERC timing and documentary burden underestimated	Timelines slip and mobilisation plans become unrealistic
Tax leakage	WHT and VAT documentation issues often overlooked	FCT, transfer pricing, and VAT recovery often underestimated	The real cost of doing business becomes higher than expected
Capital planning	Registered capital may be too low for licensing, work permits, or practical credibility	Charter capital timing and sufficiency may not be planned properly	Under-capitalisation can trigger compliance and operational problems
Foreign staff planning	Work permit implications may be considered too late	Work permits, exemptions, and labour compliance often require longer lead time than expected	Hiring and project rollout can be delayed

4. The broader lesson: most mistakes happen before the business starts operating

The most useful conclusion from both jurisdictions is that the biggest problems usually arise before commercial operations begin.

They arise when the chosen structure does not reflect the true nature of the intended business. A service business is treated like a simple incorporation exercise. An export manufacturer is set up without modelling VAT recovery or customs treatment. A regional support function is launched without considering withholding tax, FCT, or transfer pricing. A representative office is used as if it were a revenue-generating vehicle. A charter capital commitment is made without a realistic funding timeline.

In each case, the issue is not merely compliance. It is that the legal structure and the commercial plan were never fully aligned.

5. So, how should investors approach market entry differently?

The practical answer is to start with the operating model, not the entity.

Before incorporation, investors should define exactly what the local business is expected to do, how it will earn revenue, whether it will deal with third parties or group companies, whether it will export, whether it will employ foreign personnel, and whether incentives or treaty protections are central to the investment case.

Only then should the legal structure be selected.

In Thailand, that usually means testing the proposed activity against FBA restrictions, assessing BOI or treaty-based options where relevant, and ensuring that capital and tax planning are integrated from the outset.

In Vietnam, it means mapping the business line carefully, selecting the correct vehicle, preparing for licensing and capital contribution requirements, and modelling the compliance burden associated with tax, labour, and intercompany flows.

6. Practical takeaway for investors

Foreign investors do not usually get into trouble in Thailand or Vietnam because they chose the wrong country. More often, they get into trouble because they chose the right market with the wrong structure.

That is why the most effective investment planning is rarely about speed alone. It is about fit: fit between the activity and the licence, fit between the project and the incentives, fit between the payment flows and the tax framework, and fit between the vehicle and the business model.

When that fit is achieved early, both Thailand and Vietnam can be highly effective investment destinations. When it is ignored, even a promising project can become slower, more expensive, and more constrained than expected.

Across this four-part series, one conclusion stands out: Thailand and Vietnam are both compelling investment destinations, but they reward preparation differently. The most successful investors are usually not those who move fastest, but those who align legal structure, tax planning, and operating model from the outset.

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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