INVESTING IN VIETNAM

This session will provide an understanding of how to invest in Vietnam from a legal perspective. As this session is led by a lawyer, it will focus on the legal aspects and considerations that business professionals should be aware of, rather than general business strategies.

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1. Common Forms of Investing in Vietnam

The most common forms include establishing a new company, contributing capital or purchasing shares in an existing company, and entering into business cooperative contracts (BCCs).

Establishing a New Company

Common Entry Method

One of the most common methods for foreign investors to enter the Vietnamese market is by establishing a new company.

Flexibility and Control

Establishing a new company provides foreign investors with the flexibility to tailor the business to their specific needs and goals.

Contributing Capital or Purchasing Shares

Established Businesses

Investors can contribute capital or purchase shares in existing companies. This allows entry into established businesses with existing market presence and operational infrastructure.

Direct Negotiations

Investments can be made in non-listed companies, which often involve direct negotiations between the investor and the company.

Stock Exchanges

Investments can also be made in listed companies through stock exchanges, which offer liquidity and market-driven pricing.

Business Cooperative Contracts (BCC)

Contractual Partnerships

BCCs are contractual forms of investment that allow partners to pool resources and share profits and risks without creating a new legal entity. This makes them a popular choice in capital-intensive sectors like infrastructure, oil and gas, and telecommunications.

Pooling Expertise

By entering into a BCC, partners can combine their specialized knowledge and skills to tackle complex projects that require substantial capital and expertise. This collaborative approach allows them to leverage their collective strengths for mutual benefit.

Agreed Terms and Conditions

The terms and conditions of a BCC are negotiated and agreed upon by the partners, allowing them to customize the arrangement to suit their specific needs and objectives. This flexibility is a key advantage of the BCC model.

Purchasing Bonds or Other Securities

Corporate Bonds

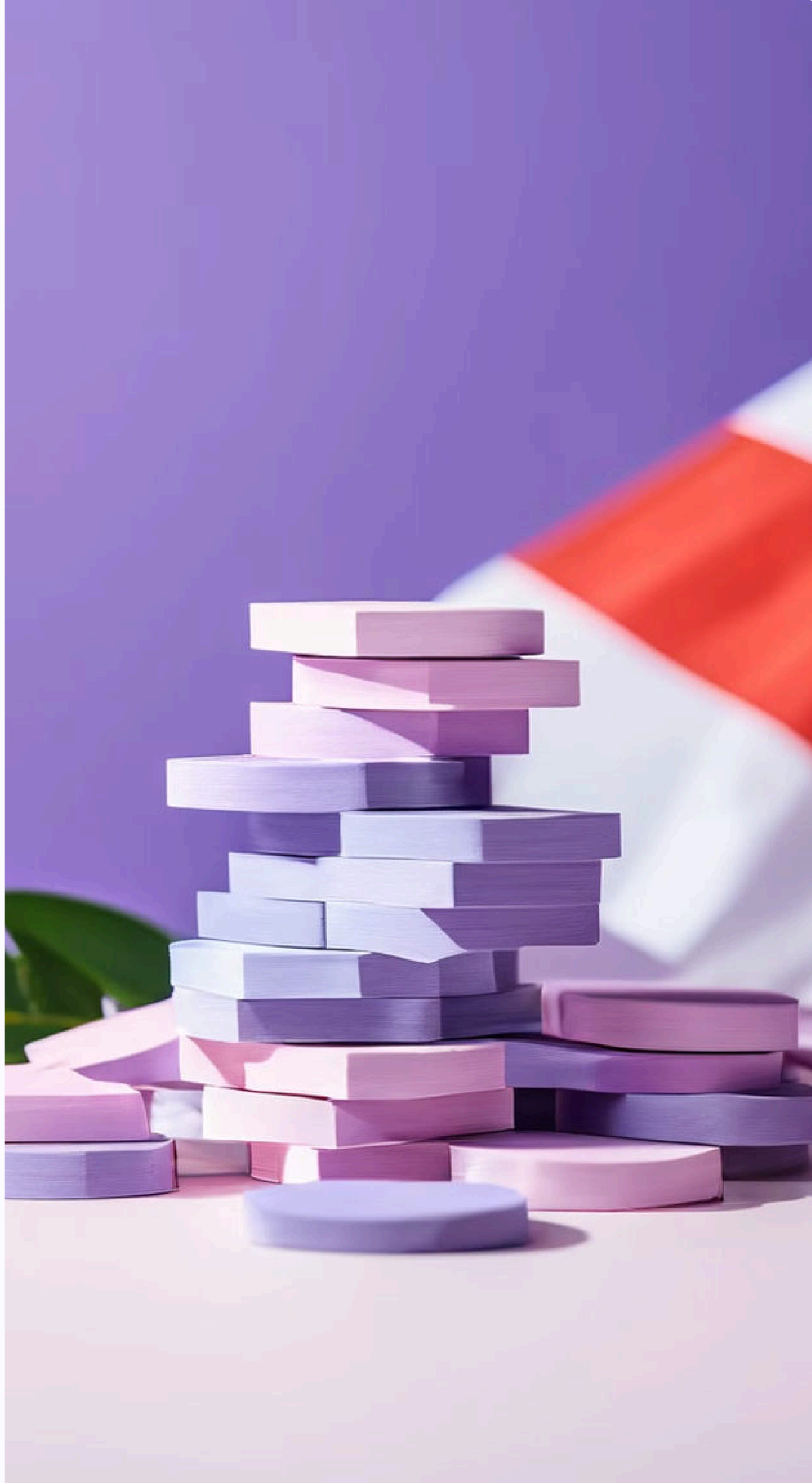
Investing in corporate bonds issued by Vietnamese entities can provide a stable income stream through regular interest payments.

Government Bonds

Government bonds are another option, offering relatively low-risk investments backed by the Vietnamese government.

Municipal Bonds

Municipal bonds, issued by local authorities, are also available for investors seeking lower-risk opportunities.



Investing Through Securities Investment Fund Management Companies

Diversified Portfolio

Securities investment fund management companies pool funds from multiple investors to purchase a diversified portfolio of securities. This approach provides professional management and reduces individual investment risk.

Ideal for Investors

This method is ideal for investors looking to diversify their investments without actively managing a portfolio themselves. It allows them to benefit from professional fund management expertise.

2. Pre-Investment Considerations

Before investing in Vietnam, it's crucial to carefully evaluate various factors to ensure a successful venture. This includes understanding the target company's business lines, ownership restrictions, and the overall investment process.

Business Lines of the Target Company

Prohibited Business Lines

Vietnam prohibits foreign investment in certain business activities that are deemed sensitive or critical to national security and public interest. These prohibited business lines are strictly off-limits for foreign investors.

Conditional Business Lines

Some business activities in Vietnam are classified as "conditional," meaning that foreign investment is allowed but subject to specific conditions and regulatory approvals.

Permitted Business Lines

Some business activities in Vietnam are classified as "permitted," which means that foreign investment is generally allowed without significant restrictions.

Prohibited Business Lines

General Prohibitions for All Investors

Certain sectors are off-limits to investment due to their sensitive nature. These restrictions apply to both Vietnamese and foreign investors, ensuring that specific activities remain under stringent state control. Examples include trading in narcotics, firecrackers, and debt collection services, which are deemed too risky or detrimental to public order and safety to permit any form of private investment.

Prohibitions Specific to Foreign Investors

Foreign investors face additional restrictions in sectors such as public survey services and travel services (with exceptions for international services catering to inbound tourists). These sectors are often reserved for domestic companies to maintain national security and cultural integrity.

Conditional Business Lines

Advertising Business

Foreign investors are allowed to cooperate and invest with Vietnamese advertising service providers through joint ventures and Business Cooperation Contracts (BCC).

Casino Business

Entry into the casino business requires meeting stringent financial and operational criteria, including adhering to equity and debt regulations.

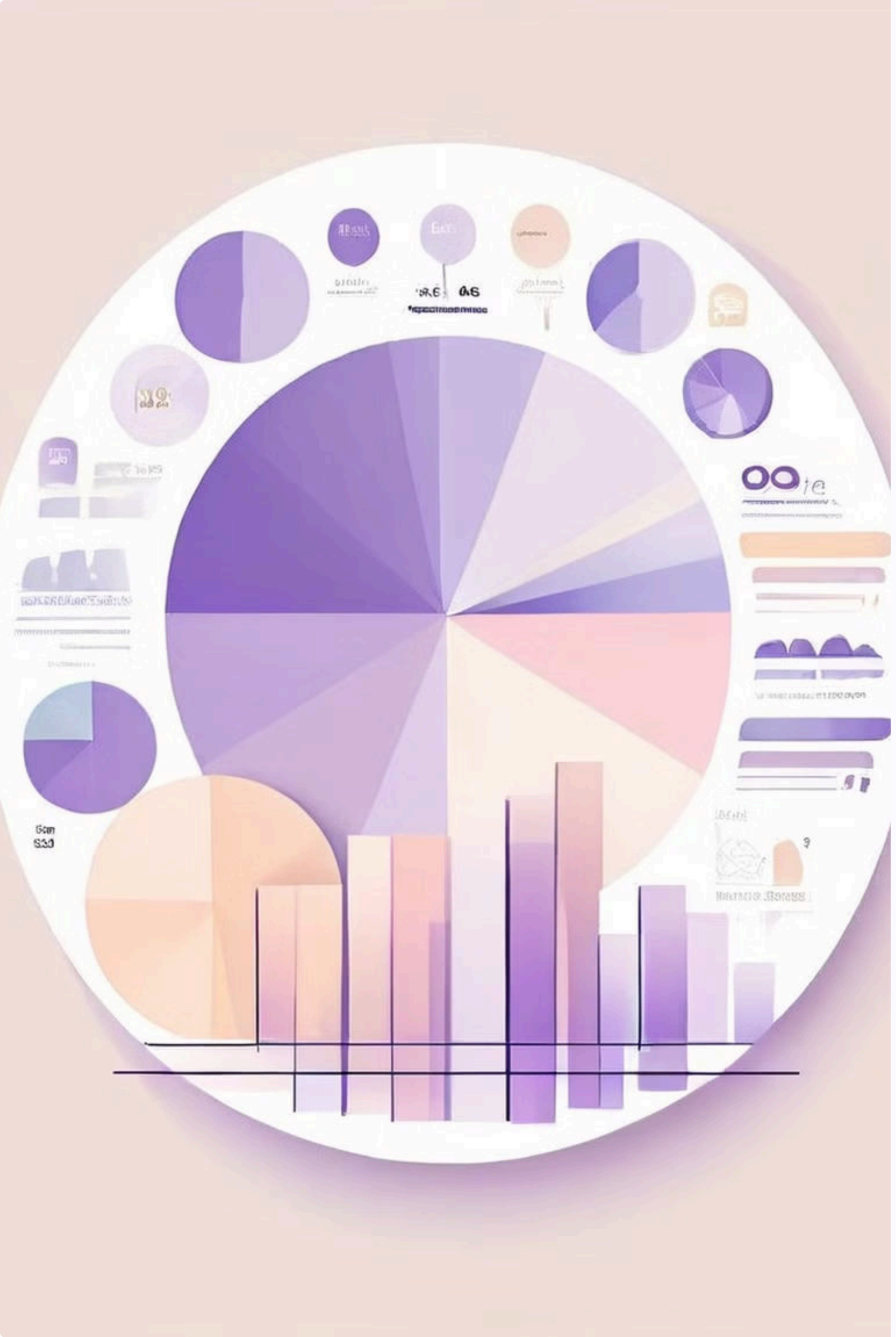
Permitted Business Lines

Management Consulting Activities

This sector is open to 100% foreign ownership with no special conditions beyond standard business regulations. Foreign investors have relatively unrestricted access to this permitted business line.

Compliance with Regulations

While the permitted business lines are not subject to the same restrictions as prohibited or conditional sectors, foreign investors must still comply with general business regulations in Vietnam.



Foreign Ownership Thresholds

Foreign ownership limits in Vietnamese companies vary based on the business lines and are influenced by Vietnam's commitments under the World Trade Organization (WTO), international treaties, and domestic laws.

These thresholds determine the extent to which foreign investors can control or participate in a Vietnamese company.

100% Ownership

1 **Unrestricted Ownership**

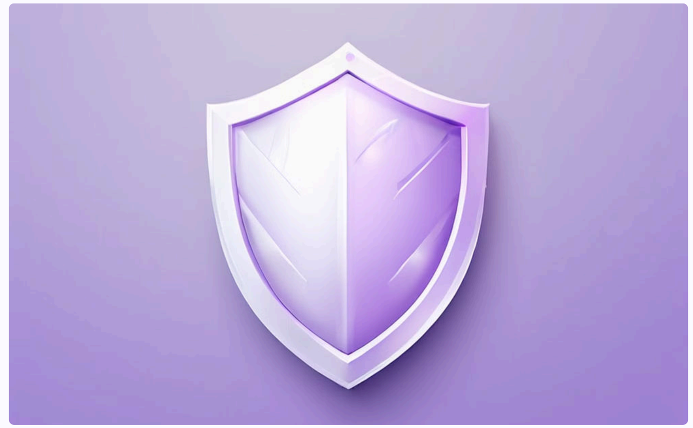
Sectors such as management consulting activities and casino businesses allow for full foreign ownership, enabling investors to operate independently without local partners.

51% Ownership

Film Production Services

In film production services, foreign investors can hold a majority stake, allowing significant control while still partnering with local entities.

49% Ownership



Restricted Foreign Ownership

The electronic game business restricts foreign ownership to a minority stake.

Domestic Control Maintained

By limiting foreign ownership to 49%, the electronic game industry in Vietnam ensures that domestic companies and stakeholders maintain a majority stake and control over the business.

Balancing Interests

The 49% foreign ownership restriction in the electronic game sector represents a careful balance between welcoming international investment and preserving domestic control. This approach allows Vietnam to benefit from global expertise and capital while safeguarding its national priorities.

3. Investment Process for Foreign Investors in Vietnam

This section outlines the key steps and considerations involved in establishing a new company or acquiring shares in an existing Vietnamese business.

a) Establishing a New Company

1. **Obtain IRC**

   Investment Registration Certificate

2. **Obtain ERC**

   Enterprise Registration Certificate

3. **Comply with Requirements**

   Adhere to legal and regulatory guidelines

1

Obtaining IRC

The IRC is a crucial document that outlines the investment project's scope, investor's rights, and obligations, and other necessary details pertinent to the proposed investment. The IRC process involves submitting a proposal that includes the investment project's objectives, scale, and capital investment, among other critical economic and technical indices.

2

Essential for Legal Operation

The ERC formalizes the business entity's establishment under Vietnamese law, detailing the business's legal status, form, and scope of activities. It's essential for the legal operation of the company within Vietnam.

b) Acquiring Shares/Equity in an Existing Private Company

1

Governmental Approval(s)

in order to effect the acquisition

2

Updating the Shareholder Register

in order to reflect the buyer's name as the company's shareholder

3

Notification(s) to the authorities

in order to ensure full compliance

Foreign investors planning to acquire shares or equity in an existing Vietnamese company may need to obtain certain governmental approvals. This step is essential to ensure compliance with Vietnamese investment regulations, especially when the targeted company operates in a conditional or restricted sector. The governmental approvals process helps verify that the proposed transaction aligns with applicable laws and regulations.

4. BCC vs. Equity Stakeholding

a) Business Cooperation Contracts (BCC)

What is a BCC?

A Business Cooperation Contract (BCC) is an agreement between foreign investors and Vietnamese partners to conduct specific business activities without forming a new legal entity.

Key Features

In a BCC, the foreign investor and Vietnamese partner collaborate on a project or business activity, sharing profits and risks without establishing a separate company.

Key Features of BCC

No New Legal Entity

BCC does not create a new legal entity. The partners collaborate on a project basis, sharing profits, products, and liabilities.

Flexibility

BCCs offer flexibility in terms of contribution and profit-sharing arrangements, allowing parties to structure their cooperation according to their strengths and needs.

Regulatory Requirements

Parties to a BCC must obtain an Investment Registration Certificate (IRC) and may need to set up an operating office in Vietnam to manage the contract.

Operational Mechanism

The contract must outline the objectives, scope of business, contributions, profit distribution, duration, rights and obligations, amendments, and dispute resolution mechanisms.

Advantages of BCC

Speed and Cost-Efficiency

Since BCCs do not require the establishment of a new entity, the process is quicker and less costly compared to setting up a company. This makes BCCs an attractive option for investors looking to quickly capitalize on opportunities.

Resource Utilization

Investors can leverage the local knowledge, networks, and resources of their Vietnamese partners through a BCC. This allows them to tap into valuable in-market expertise and assets to support their business goals.

Flexibility in Agreements

The contract terms of a BCC can be tailored to specific project needs, offering considerable flexibility. This allows investors and their Vietnamese partners to structure the agreement in a way that best suits their unique requirements.

Challenges of BCC

Unlimited Liability

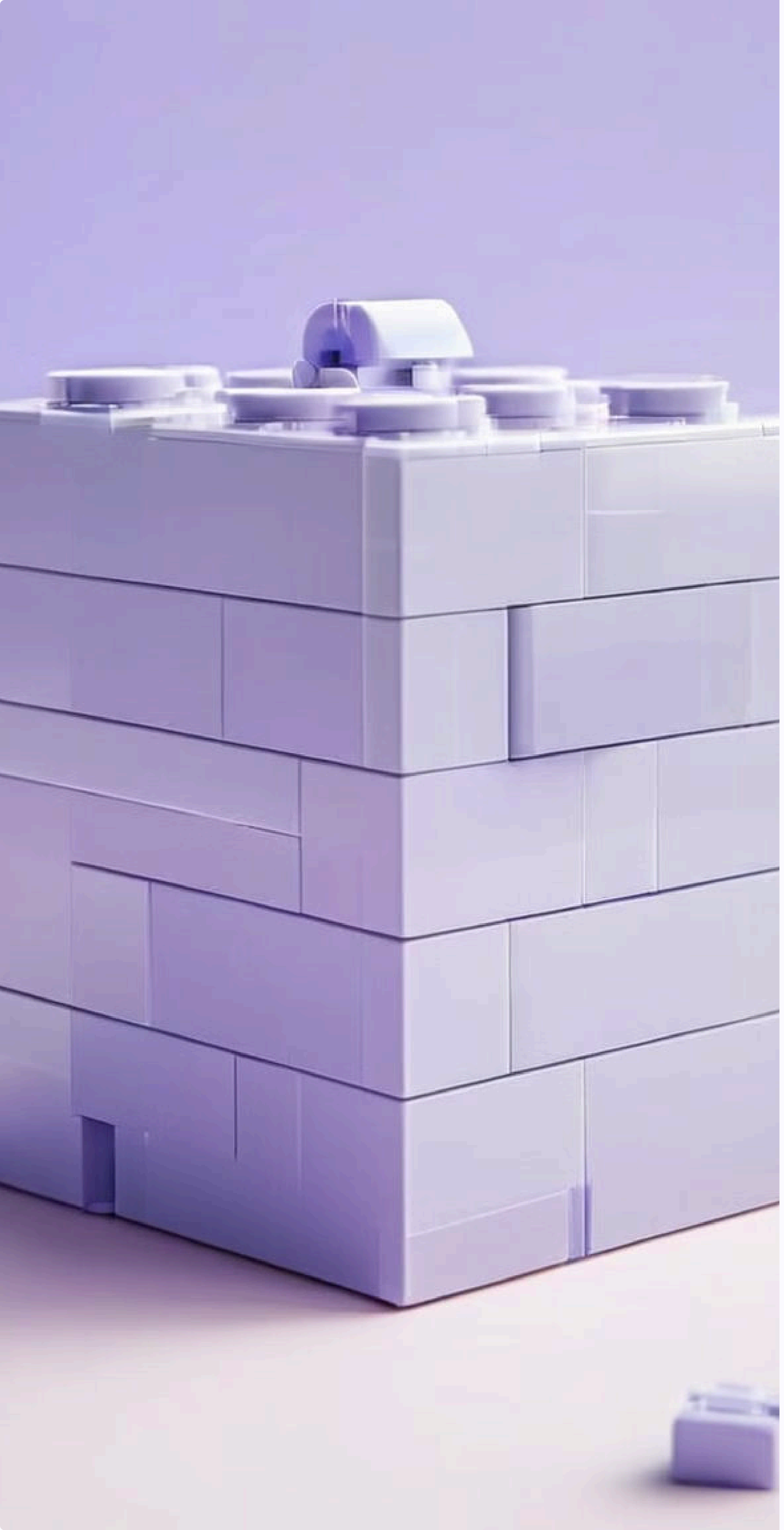
Parties in a BCC share unlimited liability, which can pose significant risks. This means that each party is responsible for the full extent of any debts or obligations incurred by the partnership, even if they exceed their initial investment.

No Unified Management

The lack of a centralized management structure in a BCC can lead to coordination challenges. Decisions must be made collectively, which can slow down the decision-making process and increase the potential for disputes.

Limited Long-term Suitability

BCCs are generally more suited for short-term projects due to the complexity and potential for disputes in long-term engagements. The open-ended nature of a BCC can make it difficult to manage over an extended period of time.



b) Equity Stakeholding

Acquiring Shares

Equity stakeholding involves acquiring shares in a Vietnamese company, thereby becoming a part-owner. This method is regulated under the Law on Enterprises and the Law on Investment.

Ownership Structure

Through equity stakeholding, foreign investors can obtain partial or full ownership in a Vietnamese company, depending on the specific business lines and foreign ownership limits.

Advantages

Equity stakeholding offers foreign investors the opportunity to actively participate in the management and decision-making processes of the Vietnamese company, potentially leading to long-term growth and success.

Key Features of Equity Stakeholding

Ownership and Control

Investors gain ownership stakes and, depending on the percentage of shares owned, can influence company decisions.

Formation of Legal Entity

This approach necessitates the creation or acquisition of a legal entity in Vietnam, subject to local incorporation regulations.

Compliance and Reporting

Companies with foreign ownership must comply with various statutory requirements, including regular reporting and adherence to corporate governance standards.

Advantages of Equity Stakeholding

Control and Influence

Investors can have a say in the company's management and strategic direction by holding an equity stake.

Long-term Investment

Equity investments are generally more suitable for long-term engagements, providing potential for substantial returns and growth.

Limited Liability

Shareholders typically have limited liability, confined to their share capital contribution.

Challenges of Equity Stakeholding

Complexity and Cost

Establishing or acquiring a company involves significant legal and administrative procedures, which can be time-consuming and costly.

Regulatory Compliance

Maintaining compliance with local laws and regulations in the host country requires ongoing effort and resources.

Market Risks

The investment is subject to market risks, including economic fluctuations and changes in regulatory policies.

c) Practical Considerations

Nature of the Project

When choosing between a BCC and equity stakeholding, the nature of the investment project is an important factor. BCCs may be advantageous for projects requiring quick market entry and flexible collaboration.

Investment Horizon

The investment horizon is also a key consideration. Equity stakeholding is better suited for investors looking for long-term control and potential high returns, while BCCs offer more flexibility.

Risk Tolerance

An investor's risk tolerance should be evaluated. BCCs may be preferred by those with a lower risk appetite, while equity stakeholding appeals to those willing to take on more risk for potentially higher rewards.