



Comparison: Investment inside vs. outside an industrial park/industrial cluster in Vietnam

As Vietnam is on its way to become a new global manufacturing hub, many investors now consider the country as a new destination for their manufacturing business. However, finding the right location to implement the proposed project may be a vexed question.

In general, the following options are available for the investor:

- (a) **Option 1:** Acquisition of land inside industrial manufacturing-oriented zones, which include industrial park (**IP**) and industrial cluster (**IC**); and
- (b) **Option 2:** Acquisition of land outside the industrial manufacturing-oriented zones.

In this article, we discuss and compare the available options based on specific criteria and from both legal and practical perspectives to assist investors in making their best decision.

With respect to the industrial manufacturing-oriented zones, the law distinguishes between IP and IC based on certain criteria. In addition, the legal frameworks applied to investment in the IP and IC may sometimes be different (please refer to [Table 1](#) for a brief comparison). Accordingly, doing investment inside the IP and IC will be discussed separately as two potential options, where applicable.

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1. Land acquisition procedures

Key takeaways

- *Acquiring land in IP/IC tends to be more straightforward and timesaving compared to acquiring land directly from the State.*

Land acquisition - Investment Outside IP/IC

1.1. In order to set up the premises for the proposed project, the investor must first obtain the land title via leasing land from the State. Depending on the current legal status of the land, the process of acquiring the land title in practice might be complicated and time-consuming. Acquisition of land from the State for the manufacturing project is usually via one of the following main options:

1.1.1. **Option 1 – Participating in land public auction:** Under this option, the investor will participate in a public auction held by the State, the winner will then sign a land lease contract with the State and be issued with a land use right certificate (**LURC**) (so-called “pink book”) which evidences the investor’s rights over the land. This option is only available when the land has been clear, and its use purpose has been determined in relevant planning approved by the government; or

1.1.2. **Option 2 – Proposing for land leased directly from the State:** Under this option, the investor will first propose its project to the State. Based on the investor’s project proposal, the State will decide to lease the land to the investor. However, before the land is

eligible for lease, the investor may be required to participate in various procedures. A typical set of procedures for this option will include the following, among others:

- (a) *Land clearance and compensation:* This procedure is compulsory when the target land is in occupation of other land users. Although the procedure is implemented directly by State, investors are often required to advance the compensation amount and coordinate with local authorities to complete the land clearance and compensation. An alternative option to complete this step is that the investor may directly negotiate and reach an agreement with the occupiers on the assignment of the land. However, this task may also take a substantial time if the relevant occupiers are not cooperative;
- (b) *Adjustment of land use purposes:* This procedure is required if the original use purpose of the target land is not suitable for the proposed project. In some cases where the original use purpose is for agriculture, the adjustment of land use purpose could incur additional cost to the investor;
- (c) *Determination of land rental payable to the State;* and
- (d) *Handover of the land and obtainment of land title documents:* The main land title documents will consist of (i) land lease decision issued by the State; (ii) land lease contract between the investor and the State; and (iii) LURC.

Land acquisition - Investment Inside IP/IC

1.2. The procedures for acquiring land in IP/IC are quite simple. An investor who looks for setting up its project in an IP should only need to take two steps:

1.2.1. **Step 1:** Signing land sublease contract with the developer of the IP/IC (**Developer**). In practice, before signing the land sublease contract, the investor may need to enter into a deposit or land reservation agreement to secure the land; and

1.2.2. **Step 2:** Obtaining LURC for the subleased land.

1.3. The process of obtaining land title in the IP/IC is usually straightforward and timesaving compared to acquiring land directly from the State because of the following reasons:

1.3.1. Most of complicated procedures for acquiring land from the State (as discussed above) are already completed by the Developer before the land is ready for sublease;

1.3.2. Vietnamese laws require the Developer to satisfy various requirements in order to sublease the land. For example, there must be no dispute involving the land, or the infrastructure attached to the land has been fully developed. Accordingly, an investor may expect that the land is already in good conditions to commence the project development; and

1.3.3. The laws introduce a special framework for an investor to use IP/IC land via a land sublease arrangement with the Developer. Accordingly, an investor may expect that it will have full

rights over the land when using land in the IP/IC (see further discussion below).

1.4. However, the process to obtain the land title inside the IP/IC sometimes has certain legal risks. In particular, although by law, the IP/IC Developer must be granted the land title to be able to sublease the land, in practice the land within the IP/IC is often put up for sublease even when the IP/IC is still under development. To reserve the right to sublease the land once the Developer satisfies the legal conditions for sublease, the investor is usually required to pay a deposit to the Developer. This arrangement carries the potential risk if the Developer fails to complete and put the IP/IC project into operation. To avoid unnecessary risk, the investor should conduct certain due diligence on the Developer and the target land before participating in a land sublease transaction. The due diligence could identify if there is any potential obstacle for the IP/IC Developer in obtaining the LURC for the land in the future.

2. Rights associated with the land

Key takeaways

- *Depending on the form of land rental payment made to the State by the Developer, the investors acquiring land in IP/IC can have the same rights as those leasing land directly from the State.*

Rights associated with the land - Investment Outside IP/IC

2.1. The investor's rights to the land usually depend on the form of land

rental payment. In this regard, investors subleasing the land with lump-sum rental payment will have more rights than those subleasing the land in form of annual land rental payment. For example, an investor using land with lump-sum payment may transfer, sublease, or mortgage its land use right.

2.2. The investor can exercise rights associated with the leased land upon obtaining LURC from the State. The laws also allow the investor to freely change the land use form from annual land rental payment to lump-sum payment.

2.3. The rights of the investor to the land are set out in laws and land title documents issued to the investor. The content of the land lease decision and land lease contract is usually general and mostly replicates the laws. In practice, there is not much room for negotiation of the land lease contract with the State.

Rights associated with the land - Investment Inside IP/IC

2.4. It should be noted that upon subleasing the land from the Developer, the investor will also be issued with a LURC which confers statutory rights and obligations to the land user.

2.5. Under the law, the rights of the investor to the land will depend on two elements:

2.5.1. First, the form of land rental payment made by the Developer to the State; and

2.5.2. Second, the form of land rental payment made by the investor to the Developer.

2.6. In this regard, if the Developer leases land from the State with a lump sum payment of the land rental for the

whole lease term, the investor can sublease the land from the Developer with the lump sum payment and have the same rights as in the case of subleasing land directly from the State with a lump-sum payment. In contrast, if (a) the Developer leases land from the State with the annual payment of land rental and subleases the land to the investor with the same form, or (b) the Developer leases land from the State with the lump-sum payment of land rental but the investor only subleases the land with the annual payment of land rental, then the investor's rights over the subleased land would be quite limited (i.e., same as the case where the investor leases land directly from the State with annual land rental payment).

2.7. Since the rights of the investor to the land will depend on the land rental payment made by the Developer to the State, the investor will have less flexibility in choosing a suitable set of land use rights. For example, if the Developer already pays annual land rental to the State, the investor may find it difficult to obtain the rights of a land user with a lump-sum payment.

2.8. In addition to the laws, the rights of the investor may also be detailed in the land sublease contract with the Developer. In practice, the content of the contract may flexibly be negotiated and agreed upon between the investor and the Developer.

3. Corporate income tax incentives

Key takeaways

- Projects inside the IP/IC may enjoy corporate income tax (CIT) incentives without being further subject to other conditions on preferential

CIT incentives - Investment Outside IP/IC

3.1. Depending on the location of the project, investors can benefit from different tax incentive policies. In particular:

3.1.1. projects which are located in preferential investment geographical areas (see the table below) will be entitled to the tax incentive treatment as follows:

Items	Areas having difficult conditions	Areas having especially difficult conditions
Tax rate	17% for 15 years starting from the first year in which the project generates revenue.	10% for 15 years starting from the first year in which the project generates revenue;
Tax exemption	No more than 2 years starting from: (i) the first year in which the project generates taxable income; or (ii) the fourth year after the first year the project generates revenue, if there is no taxable income	No more than 4 years starting from: (i) the first year in which the project generates taxable income; or (ii) the fourth year after the first year the project generates revenue, if there is no taxable income

	for the previous 3 years.	for the previous 3 years.
Tax reduction	50% of the CIT payable for no more than 4 subsequent years after the tax exemption period.	50% of the CIT payable for no more than 9 subsequent years after the tax exemption period.

3.1.2. projects which are located in remaining areas (i.e., those are not preferential investment geographical areas) will often be subject to the standard CIT rate of 20%. Having projects in this area, the investors may only be entitled to relevant tax incentives if their projects engage in preferential investment industries as prescribed by laws.

CIT incentives - Investment Inside IP/IC

3.2. Under Vietnamese law, except for the IPs which are located in areas with favorable socio-economic conditions (i.e., those are central districts of certain major cities of Vietnam), investors doing investment in the IP/IC, by default, will be entitled to CIT incentives as follows:

3.2.1. Same CIT incentives applied to projects in areas with especially difficult economic conditions if the project is located in an IP/IC which (a) belongs to an economic zone, or (b) located in an area with especially difficult socio-economic conditions; and

3.2.2. Same CIT incentives applied to projects in areas with difficult economic conditions if the project is located in other IPs/ICs, even if:

- (a) the objectives of the project do not fall within the preferential

investment industries prescribed by laws; and

- (b) the IP/IC where the project is located is not within areas having difficult economic conditions.

4. Land rental payable to the State

Key takeaways

- *Projects both outside and inside the IP/IC can be exempted from land rental payable to the State. However, those implemented in IP/IC may enjoy the rental exemption without being attached to other conditions on preferential investment industries prescribed by laws.*

State land rental - Investment Outside IP/IC

4.1. Depending on the location of the project, the investor may be entitled to land rental exemption as follows:

Areas having difficult conditions	Areas having especially difficult conditions	Remaining Areas
- <i>Essential construction phase: no more than 3 years from the effective date of the land lease decision;</i> - <i>Period after the essential construction phase: a standard exemption period is 7 subsequent years.</i>	- <i>Essential construction phase: no more than 3 years from the effective date of the land lease decision;</i> - <i>Period after the essential construction phase: a standard exemption period is 11 subsequent years.</i>	- <i>Essential construction phase: no more than 3 years from the effective date of the land lease decision;</i> - <i>Period after the essential construction phase: No further land rental exemption is applicable unless the</i>

Depending on the objectives of the project, the investor may be entitled to up to 15 subsequent years.	Depending on the objectives of the project, the investor may be entitled to up to 15 subsequent years.	objectives of the project fall within the preferential investment industries (if applicable, up to 11 years).
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4.2. In case the investor subleases land with an annual land rental payment, the land rental rate may be adjusted by the State every 5 years.

State land rental - Investment Inside IP

4.3. Under laws, the Developer is responsible for land rental payable to the State. Accordingly, the land rental exemption is applied to the Developer only. The laws do not provide a mechanism where an investor could be entitled to the same land rental exemption as that applied to the Developer. That said, in practice, to attract new tenants, the Developer usually offers a back-to-back arrangement where the investor can enjoy a rental reduction equal to the State land rental that the Developer will be exempted.

4.4. Under laws, the Developer is exempted from the land rental as follows:

4.4.1. 11 years subsequent to the fundamental construction period if the IP is located in an area which is not preferential investment geographical area. This would make the investment inside IP become more attractive since the investor can be entitled to a rental reduction regardless of whether its project engages in preferential investment industries or not;

4.4.2. 15 years subsequent to the fundamental construction period if the IP is located in an area having difficult conditions; and

4.4.3. entire lease term if the IP is located in an area having especially difficult conditions.

4.5. However, since the IP Developer is not obliged to grant the same land rental exemption to the investor, whether the investor is entitled to the rental reduction or not will be subject to negotiations between the parties.

4.6. Similar to the land outside IP, the rental rate applied to the IP land may also be adjusted by the State from time to time if the Developer lease IP land from the State with an annual land rental payment. In practice, the Developer normally collects from the investor a premium which is charged over State land rental on a one-off payment basis. The Developer afterward will pass through the annual State land rental (and increase in the land rental rate, if any) to the investor.

State land rental - Inside IC

4.7. Projects inside the IC, by default, are exempted from the land rental for 7 years, regardless of the objectives of the project and land rental treatment applied to the Developer. In addition, the investor may also obtain an agreement with the Developer on a longer State land rental exemption period if the Developer is entitled to the exemption same as the case of IP above.

5. Planning

Key takeaways

- *The use of land for manufacturing projects outside IP/IC must be in line with certain planning requirements. Many lands do not have original planning for industrial manufacturing.*
- *IP/IC has land with clear planning for industrial manufacturing projects. When deciding to invest in an IP/IC, the investor should pay attention to the approved planning of the IP/IC and the specific use function of the land.*

Planning – Investment Outside IP/IC

5.1. Under laws, the utilization of land for the development of manufacturing projects must comply with certain land use master plans and development planning approved by the government. If the existing planning of the target land is not consistent for the manufacturing projects, the investor may need to apply for revising the existing planning of the land. The involved procedures in practice may be complicated and time-consuming since the authority must diligently assess the impact of the proposed project before making the decision on planning adjustment.

Planning – Investment Inside IP/IC

5.2. The planning of lands reserved for IP/IC is clearly defined at the time the relevant IP/IC is approved for development. Under the law, an IP/IC will often have its own master plan

under which the land within the IP/IC is divided into separate land parcels with each having a specific use function or, even specific permitted industries. Some IPs in Vietnam are uniquely zoned to attract certain types of industries only. In this regard, when deciding to set up the project in an IP/IC, the investor should pay attention to the approved planning of the IP/IC and target land to find the one which is best suitable for its proposed project.

5.3. In case the existing planning of the land is not fit for the proposed project, the investor may procure the Developer to revise the existing planning of the land. Since the IP/IC lands are already reserved for industrial manufacturing, the planning adjustment procedures implemented by the Developer are often more straightforward.

6. Licensing procedures

Key takeaways

- *Setting up and operating a project usually requires the obtainment of certain key permits in various areas. In this regard, implementing the project in most IPs and ICs appears to facilitate the licensing procedures in a more straightforward way.*
- *However, certain licensing procedures applied to investment inside the IP/IC sometimes might be less straightforward if the IP/IC licensing authority does not have capacity to process the relevant permits.*

Licensing procedures – Investment Outside IP/IC

6.1. The investor must work with separate licensing authorities to obtain relevant licenses. For example, in order to obtain an investment registration certificate (**IRC**), the investor must submit the application to the Department of Plan and Investment (**DPI**) – a provincial government authority. Whereas, the procedures for environmental impact assessment of the same project may be handled by the Ministry of Natural Resources and Environment – an authority at a higher level.

6.2. In practice, the relevant licensing authorities may have different views on the same matter related to the proposed project. Accordingly, the investor sometimes may find it difficult to coordinate the licensing authority and satisfy all different requirements at the same time.

Licensing procedures - Investment Inside IP

6.3. Most IPs are directly managed by one single authority, which is the so-called “Management Board”. Under the law, the Management Board is designed to operate as a “one-stop shop” for the issuance of most licenses crucial for set-up and operation of an investment project. For example,

6.3.1. with respect to licensing procedures for initial stage of the project, the Management Board will handle the issuance of the IRC, environment permit, approval for planning, and construction permit; and

6.3.2. with respect to licensing procedures for operation stage of the project, the Management Board will

handle those relating to employment (e.g., to issue work permits to foreign workers), trade and business (e.g., to issue certificates of origin for goods).

6.4. Since the Management Board is the sole authority responsible for the licensing procedure, it is reasonable to expect that the Management Board will take a consistent approach when handling the applications for relevant licenses.

6.5. In addition, at the very first stage of setting up the project, the investor may also have the IP Developer's support in obtaining IRC and other key permits. In practice, the IP Developer usually has a good working relationship with the Management Board. Accordingly, the licensing work is expected to be less burdensome.

6.6. However, the competence to issue licenses of the Management Board in each IP may be limited, depending on the authorization of the higher-level authorities. As such, in case the Management Board is not authorized to handle certain licensing procedures, the investor may still need to apply for relevant licenses from the authorities directly in charge.

Licensing procedures - Investment Inside IC

6.7. Under the law, licensing procedures within the IC are handled via a "one-stop shop" or "middleman" mechanism by the Department of Trade and Industry and the district-level People's Committee (the **IC Licensing Authorities**). As such, depending on the provision of laws and authorization of the provincial People's Committee, the IC Licensing Authorities has the competence to:

6.7.1. receive and handle the investor's application to issue relevant licenses such as the IRC, construction permit, detailed planning approval, approval for environmental impact assessment report, fire prevention and fighting plan approval (one-stop shop mechanism); or

6.7.2. receive and coordinate the relevant authorities to handle the same (middleman mechanism).

6.8. In the case of the one-stop shop mechanism, the relevant licensing procedures appear to be quite straightforward. However, if all applications must go through the IC licensing Authorities as middle levels, then the licensing procedures in practice might become very complicated.

7. Supporting infrastructure

Key takeaways

- *The IP and IC usually offer the investor with ready-developed infrastructure which is sufficient for its need for developing and operating the project.*

Supporting infrastructure - Investment Outside IP/IC

7.1. To take full advantage of public infrastructure when developing and operating the project, the investor must find the premises with favorable location.

7.2. In addition, when developing the factory and workshop, the investor will need, at the same time, to develop all private infrastructure from the ground

up to facilitate its use of the main facilities. Those private infrastructure usually includes, among others, connection roads, lighting systems, drainage systems, and wastewater treatment plants. Development of the private infrastructure must also be in line with regulatory standards and requires certain permits from relevant authorities.

Supporting infrastructure - Investment Inside IP/IC

7.3. The development of most IP/IC projects usually comes concurrently with development of public supporting infrastructure. IPs/ICs are usually located nearby the transportation hubs such as airport, or seaport.

7.4. Furthermore, when subleasing the land, the Developer will also offer the investor with ready-built infrastructure attached to the land satisfying its need to develop the project. In addition, the investor may also be entitled to enjoy the fully-developed common infrastructure of the IP/IC, such as connection roads, wastewater treatment plants, and drainage systems. This would accelerate the investment process and help the investor to save initial investment cost.

8. Utilities and Services

Key takeaways

- *Utilities and services required for manufacturing activities of investors usually include, among others, clean water, electricity, wastewater treatment, and cleaning.*
- *While investment outside IP/IC gives the investor certain flexibility to select the service providers, the IP/IC can offer the investor utilities and services with high standards.*

Utilities and Services - Investment Outside IP/IC

8.1. When developing project outside IP/IC, the investor will need to select and engage the utilities and service providers by itself. However, this may be an advantage of investment outside IP/IC since the investor will have its sole discretion to select and replace the utilities and service providers that satisfy the investor's needs.

Utilities and Services - Investment Inside IP/IC

8.2. The provision of utilities and services in IP/IC is usually associated with the existing infrastructure of the IP/IC. Accordingly, there are not many options when the investor considers using utilities and services in the IP/IC. Most of the utilities and services are exclusively provided by the Developer or suppliers appointed by the Developer. However, since the Developer and its suppliers are qualified for the provision of utilities and services under laws, the investor can expect that it will receive

the utilities and services with high standards.

9. Amenities for workers

Key takeaways

- *The IP/IC usually offers neighbor accommodation facilities that facilitate the investors to attract the high-level workers and experts.*

Amenities for workers - Investment Outside IP/IC

9.1. When manufacturing outside the IP, investors must build the amenities for workers on their own (e.g., dormitories, canteens). Otherwise, workers have to rent houses in nearby

residential areas, which is less attractive to the factory laborers and professionals and more burdensome for the investors to find sufficient and qualified workers.

Amenities for workers - Investment Inside IP/IC

9.2. Under the law, accommodations and other amenities for workers and experts are essential matters in planning for development of the IP/IC. In practice, some modern IPs are even developed in parallel with the urban areas providing residential houses, educational and medical services, etc. The well-developed accommodation facilities could be a key to attract high-level workers, enhance working time, and raise the workers' productivity.

Table 1. Key differences between IP and IC

Key criteria	IC	IP
Area requirement	An IC is subject to requirement on area as follows: <ul style="list-style-type: none"> - Minimum area: 5 ha for IC in mountainous districts and 10 ha for other ICs. - Maximum area: 75 ha. 	There is no requirement on minimum and maximum area applied to the IPs. An IP may be expanded subject to certain conditions. Many IPs have large areas up to hundreds of hectares.
Appropriate types of investors	<ul style="list-style-type: none"> - Small and medium-sized enterprises that demand for a small land lot at an affordable price for operation; - Cooperatives (<i>Hợp tác xã</i>) and cooperative associations (<i>Tổ hợp tác</i>). 	Large enterprises that demand for a larger land lot for operation.
Attracted industries	Production and provision of services for the industrial production and cottage industry (<i>tiểu thủ công nghiệp</i>).	Production of industrial goods and provision of services for the industrial production.
Land rental payable to the State (see more at 4.3 - 4.7)	Investors, by default, are exempted from the land rental for 7 years, regardless of the objectives of the project and land rental treatment applied to the IC Developer.	Investors can be granted the rental reduction by the IP Developer subject to negotiations between the parties.
Licensing procedures (see more at 6.3 - 6.8)	Most licensing procedures will be handled by Management Board who acts as a “one-stop shop” for the issuance of permits crucial for set-up and operation of an investment project.	The Department of Trade and Industry and the district-level People’s Committee will receive the license applications and coordinate other relevant authorities to issue key licenses.