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Vietnam market update

LEGAL SYSTEM

Vietnam is a civil law jurisdiction, with the primary source of law being written legislation, named as “Legal Documents” under the Laws on Promulgation of Legal Documents. The Law typically sets forth general regulations which would be then detailed by the Decrees and Circulars issued by the Government and relevant Ministries respectively. The power of interpretation of legislation is delegated to the Standing Committee of the National Assembly. The precedent published by the Supreme People’s Court from time to time would be adopted if lacking written legislation for resolving disputes at court. Vietnam is also a signatory of various investment international treaties, like WTO Commitments and Free Trade Agreements, which prevail in case of conflict with the local laws.

Below is the name of the various Legal Documents and issuing bodies:

Issue bodies	Legal Documents
National Assembly	The Constitution; Codes, Laws, Resolutions
Standing Committee of the National Assembly	Ordinances and Resolutions
The Government	Decrees
The Prime Minister	Decisions
Ministries	Circulars; Joint Circulars
Council of Judges of Supreme People’s Court	Resolutions

CURRENT IMPORTANT GENERAL LAWS AND REGULATIONS COVERING FOREIGN INVESTMENT

Foreign investment in Vietnam is covered by multiple laws and regulations. The Investment Law generally deals with market entry, including, among other things, ownership caps, types of foreign investment and procedure and incentives, while the post-entry operations of foreign invested

enterprises (FIE) are spread across various general laws. For instances, the Enterprise Law deals with enterprise incorporation and corporate governance, and the Ordinance of Foreign Exchange Control addresses foreign exchange control, while relevant land and environment protection matters are governed by the Land Law and Environment Protection Law respectively. Whereas investment in public companies via Vietnamese stock exchanges would be further controlled by the Securities Law, and the Competition Law would apply to merger and acquisition (M&A) transactions that raise concerns about their anticompetitive effect on the market.

OVERVIEW OF KEY REGULATIONS ON FOREIGN INVESTMENT IN VIETNAM

Generally, Vietnam allows for foreign investment in those sectors it commits for market entry, and subject to investment conditions on, among others, ownership cap, investment form, capital and investor nationality, in accordance with investment international treaties of Vietnam (primarily, Vietnam’s WTO Commitments) that are translated into Investment Law and those laws on specific sectors (like retail, banking and finance, securities, real estate and healthcare). The investment could be in the form of setting up a FIE, business cooperation, public private partnership or M&A. For setting up an FIE, a foreign investor shall be granted an investment registration certificate (IRC) approving its project prior to obtaining an enterprise registration certificate for FIE corporate information. In an M&A transaction, approval for a given deal shall be required instead of an IRC. Foreign investment into a public company via a stock exchange is more liberalised than for a non-public company in term of investment conditions, with the key restriction being a foreign ownership cap — typically 49% for those targets conducting conditional business or more as extended by Vietnam’s WTO Commitments or any specific law.



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Two common forms of FIE structure are limited liability company (one or multiple members) (LLC) or joint stock (JS) company. An LLC corporate structure shall comprise a members' council (including equity co-owners) and chief executive officer (CEO) who would be in charge of the daily business of a company. For a multi-member LLC with more than 11 members, a control board is further mandated. Whereas the JS structure could be in the form of a one-tier structure, which includes a shareholders' general meeting (GMS) and board of directors (BOD) (with at least 20% thereof being independent members), or a two-tier one that includes GMS, BOD and control board. The charter capital of a JS shall be divided by shares, while the shareholding of each owner in the charter capital of an LLC is presented by a specific percentage, called the "capital contribution".

As Vietnam follows a public ownership regime for the land, FIEs shall be disallowed to own land but may be granted a land use right (LUR) for project implementation. FIEs might acquire LUR through allocation or lease (with lump-sum or annual rental payment) by the State, sub-leased from developers or by transfer from LUR holders by way of capital contribution, depending on relevant land zoning and planning approvals by State bodies. LUR transfer is not be available for FIEs, but rather local companies only. The duration of LUR allocated by or leased from the State will be equal to the time of approved project, which shall be a maximum of 50 years — extending to 70 years in some cases.

Projects involving manufacturing and construction must comply with various environmental regulations, including, among others, an environmental impact assessment report or environmental projection commitment, management of waste and pollution generated by the project, usage of water resources and environmental charges/taxes. Failure thereof would be subject to severe penalties, ranging from administrative fines to business suspension or closure, or even

criminal charge, based on damage to the environment.

Foreign investors are required to remit their investment capital into Vietnam through a special purpose account called a Direct Investment Capital Account (DICA) opened by a foreign-invested company in Vietnam in the case of (a) a company established by a foreign investor and such foreign investor is required to apply for an Investment Registration Certificate; (b) a company in which a foreign investor holds at least 51% of the charter capital as a result of share acquisition or being established upon split, de-merger, merger or consolidation, or being newly established in accordance with specialised laws; or (c) a Project Company established by a foreign investor to implement a PPP project. A capital contribution by a foreign investor and a capital transfer transaction between a non-resident and a resident in the above-mentioned cases must be made through DICA. For foreign investors not falling within the above-mentioned cases, investments in listed companies or the Vietnamese securities market are subject to Indirect Investment Capital Account (IIDA) regulations.

LABOUR CODE

Labour relations between employers and employees is currently governed by the 2012 Labour Code, which will be replaced by the new 2019 Labour Code as of January 1, 2021. In addition to the prevailing Labour Code, some other Laws and Decrees also govern the labour relations, such as Employment Law, Social Insurance Law, Health Insurance Law, Decree No. 05/2015/ND-CP and Decree No. 148/2018/ND-CP guiding the implementation of some provisions of the Labour Code.

Under the prevailing Labour Code, foreign investors should be aware of the following:

- There are three types of labour contract: (a) indefinite-term contract, (b) definite-term contract from 12 months

to 36 months, and (c) seasonal or work-specific labour contract with a duration of under 12 months. It should be noted that in cases where the employee keeps working when the contract of type (b) and type (c) expires, both parties must conclude the new contract within 30 days from its expiry. If no new contract is signed, the signed one of type (b) shall become indefinite-term contract, and the signed contract of type (c) shall become definite-term contract of 24 months. The signed contract of type (b) is only renewed for one time, then becomes indefinite term if continuously implemented.

- An employer with 10 or more employees is required to make and register its internal labour regulations with the local labour authorities.
- Foreigners working in Vietnam are subject to a work permit or work permit exemption certificate (in case of being exempted).
- Social insurance, health insurance and unemployment insurance are jointly contributed by both employee and employer.

The new Labour Code 2019 has some remarkable amendments, such as newly providing regulations on the establishment of employee organisations which are not under Vietnam's trade union system, increasing the retirement age, raising the overtime cap from 30 hours per month to 40 hours per month, etc.

COMPETITION LAW

Acts in restraint of competition, economic concentrations which have or may have a competition-restraining impact on Vietnam's market, unfair competitive acts, competition legal proceedings, dealing with breaches of the law on competition and State administration of competition are currently governed by the 2019 Competition Law. The Law applies to the following entities: organisations and individuals con-

ducting business in Vietnam; industry and professional associations operating in Vietnam; and related domestic and foreign agencies, organisations and individuals.

Administrative violations against regulations on competition are subject to various penalties stipulated in Government Decree 75/2019/ND-CP.

FOREIGN EXCHANGE CONTROLS

Foreign exchange transaction is strictly controlled in Vietnam by the Ordinance on Foreign Exchange, Law on Credit Institutions and their guiding documents. Within Vietnam's territory, except specific cases allowed to transact foreign currencies, all transactions, payments, listings, advertisements, quotations, pricing, prices in contracts, agreements of other similar forms (including conversion or adjustment of prices of goods and services, the value of contracts and agreements) in foreign currencies between residents and non-residents are not allowed. Cases allowed to transact in foreign exchange include residents who are allowed to contribute capital in foreign currencies by transfer for performing projects in Vietnam; who perform import/export entrustment contracts; etc.

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In Brief

Established in 2002, Bizconsult Law Firm is a dynamic and progressive commercial law firm with 30 professionals working in two offices in Hanoi and Ho Chi Minh City. Ranked and widely recognized as one of the most prestigious law firms in Vietnam with its client-focused value, the Firm provides a wide range of professional legal services especially in Corporate, M&A, Banking & Finance, Real Estate and Dispute Resolution to its diverse corporate clients from international organizations, banks and financial institutions, multinational corporations, foreign funds and asset investment companies to State corporations and private SMEs. The Firm and its core lawyers have been granted merits and acknowledged by the World Bank, Hanoi Justice Department, Hanoi Bar Association and various regional and international organizations like Legal 500, ASIAN-MENA COUNSEL, ASIAN LEGAL BUSINESS, Mackrell International, Global Legal Expert, etc. bizconsult Law LLC is working closely with international and regional law firms to offer viable and comprehensive solutions to its clients, especially with regard to cross-border complex transactions and outbound investment projects.

Areas of Practice

- Corporate & Commercial
- Banking & Finance
- Real Estate & Construction
- Employment
- Mergers & Acquisitions
- Investment Projects
- IP & Franchise
- Antitrust & Competition
- Cosmetics, Foodstuff & Drinks
- Capital Markets
- Tax & Trust
- Corporate Insolvency
- Due Diligence
- Private Equity
- Dispute Resolutions

Recognition/Awards or Key Deals

- "Certificate of Merit in recognition of bizconsult law LLC's active contributions in execution of Directive 03/2009/CT-UBND of Hanoi People Committee" by Hanoi Justice Department
- "Certificate of Merit in recognition of bizconsult law LLC's active contributions to the professional practice for the year 2012" by Hanoi Bar Association.
- "Certificate of Merit in recognition of bizconsult law LLC's active contributions to the professional practice for the year 2011" by Vietnam Bar Federation.
- "Corporate Law Firm of the Year 2011 in Vietnam" by the Global Legal Expert.
- "Leading Lawyer in Intellectual Property in Vietnam 2011" by Asialaw Magazine.
- "Corporate Law Firm of the Year 2010 in Vietnam" by Corporate International Magazine of United Kingdom.
- "Very good law firm in Vietnam" 2009/2010 by Legal500 Asia Law Firms.
- "Corporate Advisory Law Firm of the Year" 2009 by Corporate International Magazine of United Kingdom.
- "Law Firm at Tier 3 on Mergers & Acquisitions, Tier 4 on Banking & Finance and Litigation in Vietnam", by Legal500 Asia Law Firms 2009.
- "Law Firm providing three largest areas of practice: Investment, Corporate and Mergers & Acquisitions 2009/2010", by Asian Legal Business Magazine, Singapore.
- "The 2009 Landmark Case of Cancellation of Mark ICAZ", by ASIAN IP – Hong Kong.
- "Deal of Mergers & Acquisitions of the Year 2006 – Daewoo International Corporation", by Asian Counsel Magazine, Hong Kong.



Corporate & Commercial

Franchise

Mergers & Acquisitions

Real Estate & Construction/EPCs

Due Diligence

Employment & Labor Matters

Investment Projects

Cosmetics

Banking & Finance

Foods and Drinks

Intellectual Property

Dispute Resolutions

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Ms. Veeranuch Thammavaranucept leads the capital markets and corporate governance practice groups at Weerawong C&P. She has considerable experience in capital markets and mergers and acquisitions, particularly innovative transaction structures and telecommunications in both domestic and cross-border transactions.

Prior to joining the Firm, she was General Counsel at a major telecommunications and internet services company in Thailand. Veeranuch has an LL.B (Honors) from Chulalongkorn University and an LL.M. from the University of Bristol, UK.

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Nguyen Anh Tuan, Partner and Chairman of Bizconsult Law Firm, is a well-recognized lawyer for Corporate and M&A work, recommended by Global Legal Experts for five consecutive years. Tuan has more than twenty-four years of experience in all areas of corporate and business law including, but not limited to, financing and real estate transactions, intellectual property and franchise. Tuan's clients include top Vietnamese and foreign banks and corporations, finance companies and international investment funds. Since 2011, Tuan has ranked as a leading lawyer for intellectual property in Vietnam by AsiaLaw Magazine. In 2010, he acted as counsel for a pharmaceutical manufacturer on a cancellation of Prizer's pharmaceutical mark on the 5-year non-use ground, and his case was awarded the Landmark Case of Mark Cancellation by Asia IP.

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Mark Fraser has been advising clients on transactions in Vietnam since 1994. In 2004, Mark founded Frasers Law Company, which was the first foreign law firm to obtain a foreign law company licence in Vietnam. Prior to practising law in Vietnam, Mark was a senior associate in a large Magic Circle law firm, joining them in London in 1991. Mark was also based in their offices in Ho Chi Minh City, Singapore, Bangkok and Hong Kong at various times. Since being based in Vietnam, Mark's practice has focused on infrastructure projects, banking, project finance and corporate matters. Mark is recognised as one of Vietnam's top leading lawyers by The Legal 500 Asia Pacific, and Chambers Asia Pacific and Chambers Global and Asialaw Profiles.

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