

VIETNAM

Third Edition



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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA





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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

PREPARED BY MERITAS LAWYERS IN ASIA

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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

This is the third revised edition of *Successful Strategies for Doing Business in Asia* which was first published in 2006. Prepared by lawyers from 12 leading Asian Meritas firms, this book offers practical insights and targets foreign investors and business people who want to pursue opportunities throughout Asia. Each chapter contains general information and guidelines, not legal advice. Do not rely on these materials without first consulting with legal advisors who are familiar with your particular areas of interest.

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The following currency notations are used throughout this book.

RMB	Chinese Renminbi	PHP	Philippine Peso
HKD	Hong Kong Dollar	SGD	Singapore Dollar
INR	Indian Rupee	TWD	New Taiwan Dollar
IDR	Indonesian Rupiah	THB	Thai Baht
JPY	Japanese Yen	USD	United States Dollar
KRW	Korean Won	VND	Vietnamese Dong
MYR	Malaysian Ringgit		

Please be aware that the information on legal, tax and other matters contained in this book is merely descriptive and therefore not exhaustive. As a result of frequent changes in legislation and regulations from country to country, the situations as described throughout this book do not remain the same. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.

Five years have passed since the worst financial crisis in 70 years erupted. Today many countries and economic regions are still suffering, but there is one bright spot – Asia. Home to 3.8 billion people, Asia continues to take a leading role in driving the world economy back to healthier times. China rebounded quickly to high single-figure annual growth following the 2008-09 downturn, and in 2013-14 is expected to have a rise of 8% in GDP. India too is exhibiting signs of long-term growth potential, as are Singapore, Malaysia and others in Asia.

For 30 years I have worked closely with multinational companies as they explore investment and business opportunities throughout Asia. I have discovered that countries in the Asian region can at the same time appear similar yet be remarkably different. While specific legal systems and local government regulations will vary, there are universal issues in every country that foreign investors will face. This book was designed to provide practical and useful insights into the 12 most common questions that potential investors in Asia need to address:

1. What role does the government play in approving and regulating foreign direct investment?
2. Can foreign investors conduct business in a particular country without a local partner? If so, what corporate structure is most commonly used by foreign investors?
3. How do governments regulate commercial joint ventures between foreign investors and local companies?
4. What laws influence the relationship between local agents and distributors and foreign companies?
5. How does the government regulate proposed merger and acquisition activities by foreign investors? Are there any prohibited areas for foreign investors in the economy (e.g., natural resources, telecommunications or energy)?
6. How do labor statutes regulate the treatment of local employees and expatriate workers?
7. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?
8. What types of taxes, duties and levies should a foreign investor expect to encounter?
9. How comprehensive are the country's intellectual property laws? Do local courts and tribunals enforce IP laws uniformly regardless of the nationality of the parties?

10. If a commercial dispute arises, do local courts or international arbitration offer a more beneficial forum for dispute resolution for foreign investors?
11. What advice can you offer for how best to negotiate and conduct business in your country?
12. What other practical lessons can you share with those who want to do business in your country?

Leading law firms within the Meritas alliance in Asia have contributed to this book. These firms are comprised of local lawyers who possess extensive experience in advising international clients on how best to conduct business in their respective countries. The law firms were presented with these “Twelve Questions” and invited to write a chapter providing an overview of the laws in their jurisdiction along with timely insights and advice. In a concise manner, the book hopes to provide readers with a clear understanding of the similarities and differences, strengths and weaknesses of countries in the Asian region.

One final thought: For those who are patiently waiting for Asia to become more predictable before pursuing business or investment opportunities, do not wait too long. Most non-Asian multinationals are already there. Those who delay will find themselves missing out on the greatest economic expansion in history. There are risks, certainly, but also great rewards for the savvy – and educated – investor.

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1. What role does the government of Vietnam play in approving and regulating foreign direct investment?

The Ministry of Planning and Investment (MPI) is the central administrative body that oversees all investment activities, including foreign investment. The MPI is responsible for drafting legislation, developing policies, providing guidance and consultation, and coordinating with other authorities. The MPI is also the contact point for foreign invested enterprises (FIEs) should problems or questions arise.

However, it is important to understand that the provincial/city People's Committees directly administer foreign investment activities and issue investment certificates (ICs) for almost every type of foreign investment within their province/city. An IC is required for every investment project that involves foreign capital. Some projects, especially those that are termed "conditional" or projects that are very large, require approval by the Prime Minister.

The Department of Planning and Investment (DPI) under provincial/city People's Committees is the focal point in the licensing process. The DPI either "registers" or "evaluates" an investment. Registration is a simple process for a simple investment, while a more detailed evaluation is reserved for a project that is conditional or large.

The Prime Minister establishes management boards to administer FIEs that are located in an industrial zone, high-tech zone, economic zone, or export processing zone (generally IZ). An FIE in an IZ is subject to the IZ's rules on import/export, environment, labor, etc., in addition to the general rules of the government and the MPI. An IZ management board is authorized to issue an IC for a project within its administrative area.

Other more specialized ministries may also be involved in foreign investment. For example, for high-tech projects, the Ministry of Science and Technology has an administrative role. It develops the industry's specific policies for foreign investment, and assures that the application of foreign investment regulations is in harmony with the industry's own rules.

2. Can foreign investors conduct business in Vietnam without a local partner? If so, what corporate structure is most commonly used by foreign investors?

In general, foreign investors and domestic investors are treated equally in the choice of direct investment forms and in the percentage of ownership. Conditions on certain forms of investment apply to every investor. However, there are some conditions that are imposed only on foreign investors. For example, in certain fields and industries a cap is placed on the percentage of foreign shareholding. Investment conditions are relaxed or changed. Currently, the cap on foreign capital contribution is as follows:

- In a public company (including a listed company): 49%
- In commercial services, the cap is determined in accordance with Vietnam's international undertakings. For example, under Vietnam's WTO commitments:
 - ▶ In telecommunications services, the cap is 49% for facilities based, 50% for Internet access services, 70% for certain virtual private networks and value-added services, and 65% for other non-facilities-based telecommunications services
 - ▶ In container handling services (except services provided at airports) the cap is 50%.
 - ▶ In storage and warehouse services, and in freight transport agency services, the cap is currently 51% and this cap will be removed in 2014.
- The cap may be different in specialized regulations, such as the legislation on civil aviation, the legislation on publications and the press, etc.

In fields and industries that are not subject to any cap, foreign investors can generally conduct business without a local partner. The available corporate structures for a wholly foreign owned enterprise are as follows:

- For a single investor, sole proprietorship or a one-member limited liability company;
- For two or more investors, two to 50 member limited liability company, partnership, or joint stock company.

The limited liability company is the corporate structure most commonly used by foreign investors.

3. How does the Vietnamese government regulate commercial joint ventures between foreign investors and local companies?

Under the Investment Law, foreign investors are entitled to enter into joint venture contracts (JVC) with local firms. Parties to a JVC include:

- Foreign party: comprised of all foreign founding investors/shareholders.
- Vietnamese party: comprised of all Vietnamese founding investors/shareholders.

The JVC must address the corporate form, business lines, charter capital, schedule to implement the project, term of the project, investment location, rights and obligations of the parties, rules of financial management, etc.

A joint venture is licensed for a specific project and term. The maximum term of a project is generally 50 years. A joint venture enterprise may concurrently carry out a number of separate projects.

In a few fields and industries such as banking, securities, and tourism, the Vietnamese party to a joint venture must itself be licensed to engage in the proposed business. In some fields and industries (e.g., maritime transport services, logistics, etc.), both the foreign investors and local investors (to a joint venture) must be separately licensed to carry out the proposed business.

The Law on Enterprises provides detailed rules on the governance of each corporate form.

4. What laws influence the relationship between local agents and distributors and foreign companies?

All civil transactions, including trading and business activities, are generally governed by the Amended Civil Code (ACC). The relationship between a local agent and a foreign company is mainly governed by the Amended Commercial Law (ACL) and its implementing regulations.

There are no specific regulations that govern the relationship between a local distributor and a foreign company.

Generally, “distribution” and “trading” by an FIE are permitted, except for a list of specific products which are restricted to foreign investors (e.g., tobacco, pharmaceutical products, books, rice, etc.). A number of FIEs

have successfully obtained distribution licenses to date. However, the process to obtain a distribution license does not always go smoothly, because the government's concern is that foreign companies will only set up their distribution companies in Vietnam rather than develop or invest in manufacturing activities which bring more economic and social benefit to the country.

5. How does the Vietnamese government regulate proposed merger and acquisition activities by foreign investors? Are there any prohibited areas for foreign investors in the economy (e.g., natural resources, telecommunications or energy)?

Foreign investors' acquisition of shares in a domestic company is regulated by Decision 88/2009/QD-TTg of the Prime Minister, dated 18 June 2009.

Generally, except for industries that are subject to foreign ownership caps as noted in Question 2, and for those state-owned enterprises in which the government wants control, as mentioned below, a foreign investor may acquire up to 100% of a domestic company.

Decision 14/2011/QD-TTg of the Prime Minister, dated 4 March 2011, identifies certain state-owned enterprises (SOE) in which the state will retain a majority interest. These include existing SOEs in the following sectors:

- Production, supply of explosives
- National electricity transmission network
- Management, exploitation, operation of the national/urban railway system; large air/sea ports
- Flight operation
- Radio/television broadcasting
- Lottery business
- Public postal services
- Publication, press
- Production of cigarettes
- Planting and protection of important forests
- Printing currency

Generally, an SOE is equitized by way of a fairly regulated and structured auction process. The concept of a "strategic" foreign investor plays a role

in an SOE. Selection of a foreign “strategic investor” is generally done on a competitive basis.

An acquisition involving a foreign buyer must be registered and approved by the licensing authorities. First, the target company needs to apply and amend its corporate registration certificate to reflect the new shareholding structure. After that, the foreign investor may apply for an IC. If the business scope of the target company is conditional/restricted as to foreign investors, the licensing procedure is another barrier for the foreign investor to overcome before an IC can be issued. In practice, the local licensing authorities may consult with several relevant ministries and/or authorities.

The acquisition of shares in banking and insurance sectors is subject to the approval of the State Bank of Vietnam (SBV) and the Ministry of Finance. There are certain conditions that a foreign investor must meet in order to obtain the SBV’s approval.

- **Credit Institutions** (including banks and finance companies).

The following transactions must be approved by the SBV:

- ▶ A foreign investor’s acquisition of shares issued by a domestic bank
- ▶ Transfer of at least 5% of the voting shares of a domestic bank (essential holding)
- ▶ Transfer of shares of a domestic bank that results in a shareholder losing an essential holding or in a shareholder acquiring an essential holding
- ▶ Acquisition or transfer of at least 5% of voting shares of a financial company

- **Insurance Companies**

An acquisition or transfer of 10% or more of the charter capital of an insurance company must be approved by the Ministry of Finance.

6. How do labor statutes regulate the treatment of local employees and expatriate workers?

The Labor Code sets forth rules for the employment of both Vietnamese and expatriate employees who are working in Vietnam. In general, working conditions under the law and rights and obligations under a labor contract are the same for both Vietnamese and expatriate employees. There is an unresolved issue concerning whether Vietnamese labor rules apply to an expatriate who is working in Vietnam but is employed by a foreign company located offshore.

There are several distinctions between the employment of an expatriate and the employment of a Vietnamese citizen.

EMPLOYMENT OF AN EXPATRIATE

The employment of an expatriate is generally limited to a managerial position or to a position requiring a high level of expertise for which a Vietnamese individual is not qualified. It is generally required that an enterprise has a plan in place for Vietnamese staff to eventually replace an expatriate; however, an FIE is permitted to extend the period for the employment of an expatriate if it does not yet have a qualified Vietnamese replacement.

Employment of expatriates has not been difficult despite the existence of various controls. Following its accession to the World Trade Organization (WTO), Vietnam abolished the regulation that the number of expatriates cannot exceed 3% of the total number of employees of the enterprise and cannot be in excess of 50 persons. However, current regulations require that at least 20% of the total number of the managers, executive directors, and experts of each enterprise with a commercial presence in Vietnam must be Vietnamese citizens.

WORK PERMITS FOR EXPATRIATE EMPLOYEES

With limited exceptions, most expatriates who work in Vietnam are required to have a work permit. An expatriate is exempt from the work permit requirement in the following circumstances:

- S/he is a member or owner of a limited liability company in Vietnam
- S/he is a member of a board of directors of a joint stock company in Vietnam
- S/he is a head of a representative office or a project office of an international organization or nongovernmental organization in Vietnam
- S/he enters into Vietnam for a period less than three months in order to offer services
- S/he works for less than three months, or handles an emergency situation or a situation with complicated technological issues that affect production/business activities and those issues cannot be addressed by someone within Vietnam
- S/he is a foreign lawyer having a certificate to practice law in Vietnam

- S/he is a student or involved in educational training in Vietnam, (the employer must give seven days advance notice to the local labor authorities in such situations)
- S/he is exempt from obtaining a work permit pursuant to international agreements to which Vietnam is a signatory

The maximum duration of a work permit is two years. To receive a work permit, an expatriate employee is required to present a health certificate, police record, certificates of professional expertise, and education certificate, among other documents.

COMPULSORY SOCIAL AND UNEMPLOYMENT INSURANCE FOR VIETNAMESE EMPLOYEES

Social insurance is compulsory for any Vietnamese employee who works pursuant to a labor contract of indefinite term or a term of three months or more. Both the employer and the employee are required to contribute to the state social security fund. Contributions are based on the employee's gross monthly salary, which is capped at 20 times the country-wide minimum salary. Currently, the employer contributes 17% and the employee contributes 7% of the employee's salary.

Unemployment insurance applies to a Vietnamese employee who has a labor contract either of indefinite term or a term of 12 months or more, and who works for an employer with 10 or more employees. The employer and the employees each contribute 1% of the employee's gross monthly salary, calculated up to the salary cap mentioned above.

Expatriate employees are not subject to compulsory social and unemployment insurance. However, both expatriate and Vietnamese employees are subject to mandatory health insurance coverage if they work under a labor contract of indefinite term or a term of three months or more. Contributions are based on the employee's gross monthly salary and are also capped at 20 times the national minimum salary. The employee contributes 1.5% while the employer contributes 3% of the employee's salary.

7. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Generally, all payments and money remittances in connection with

- imported or exported goods/services;
- commercial credits and short-term bank loans;
- income from direct and indirect investments;
- reduction of capital in direct investments;
- repayment of principal and payment of interest on offshore loans;
- consumption purposes; and
- other similar transactions

between a resident and a nonresident can be freely conducted. Of course, commercial banks will examine relevant papers and documents in accordance with regulations of the SBV before they wire funds.

Foreign investors and individuals can transfer capital or foreign currencies into Vietnam via foreign currency accounts opened at licensed credit institutions. In cases of direct investment (i.e., forming a company in Vietnam), foreign investors are free to retain their capital in a foreign currency in their foreign currency capital accounts. In cases of indirect investment (i.e., purchase of shares in a Vietnamese company), all amounts in a foreign currency must be converted into Vietnamese dong.

Foreign investors cannot remit dividends (at the end of each fiscal year) or liquidation capital (upon termination) until after they have filed audited financial statements and requisite tax returns, and after they have paid tax due. If accumulated losses appear and remain in the audited financial statements of an FIE in a fiscal year, foreign investors of such FIE may not remit their dividends in such fiscal year.

The repayment of principal and interest on a foreign loan with a medium/long term can be made if the loan has been registered with the SBV.

Generally, access to foreign exchange is not difficult. Foreign investors have the right to purchase foreign currency. Foreign employees who have foreign currencies may transfer or carry foreign currencies abroad. If foreign employees have lawful income in Vietnamese dong, they are entitled to convert it in order to transfer or carry it abroad. Proof of tax payment may be required.

In the case of an indirect investment offshore, such as a purchase of foreign shares, both Vietnamese and foreign investors have to meet conditions. The SBV approves indirect investment on a case-by-case basis.

8. What types of taxes, duties, and levies should a foreign investor in Vietnam expect to encounter?

The main taxes that affect a foreign-invested enterprise are:

- Corporate income tax (CIT)
- Value added tax (VAT)
- Personal income tax (PIT)
- Import/export duties
- Foreign contractor tax (FCT)
- Special consumption tax (SCT)

We do not discuss taxes in detail in this chapter. It should be noted, however, that Vietnam will gradually reduce import duties according to its international commitments and agreements. Vietnam applies the same VAT and CIT rates to both local and foreign entities.

CIT

The common CIT rate for foreign invested enterprises and local enterprises is 25%. However, if a project meets specific conditions and criteria as set out in the Law on CIT and in the Investment Law, an investor may enjoy a lower tax rate (10% or 20%). The maximum period to enjoy the preferential CIT rate is 15 years, commencing from the first year the project generates revenues.

Tax Holidays. Subject to its nature and location, a project may qualify for a full tax holiday commencing from the first year it generates revenues and lasting from two to four years.

Tax Reduction. A further 50% tax reduction is applied to certain projects. The period of reduction can be from two years to nine years, commencing from the year in which the full tax holiday ceases.

VAT

There are three rates: 0%, 5% and 10%. In most cases, the rate is 10%. The 0% rate applies to exported products and services.

PIT

For tax purposes, a Vietnamese tax resident is any person who:

- Stays in Vietnam for 183 days or more in a calendar year or within any period of 12 consecutive months;
- Has a lease contract with a term of 90 days or more within a tax assessable year; or
- Has registered his/her residential address in Vietnam.

A Vietnamese tax resident must pay income tax on his/her worldwide income. The tax brackets are progressive and the top bracket, which applies to monthly income over VND80 million (USD1.00=VND21,000), is 35%.

If a person is not a Vietnamese tax resident as defined above, his/her income is taxable on the basis of gross income at the following flat rates:

RATE	INCOME FROM
1%	Trading in goods
5%	Services
2%	Manufacturing, construction, transportation, and other businesses
5%	Royalty, franchising fees (except contractual income less than VND10 million)
20%	Salaries or remuneration generated from activities in Vietnam (regardless of place of payment/receipt)
5%	Capital investments (dividends/interest)
10%	Inheritance, gifts, winnings
0.1%	Sale of securities/transfer of interest in an entity
20%	Capital gains
2%	Proceeds received from the sale of real estate
25%	Gains derived from the sale of real estate

IMPORT/EXPORT TARIFF

Vietnam applies both an *ad valorem* and a specific rate system. Depending on each kind of good as identified in the HS code, the preferred tariff rate and the specific tax amount may vary. Import duties are subject to frequent change. In addition to the preferred tariff, Vietnam also assigns a lower tariff to certain goods that originate from a country that has a trade agreement with Vietnam (e.g., ASEAN Free Trade Agreement, China-ASEAN Agreement, Bilateral Trade Agreement with the U.S., etc.).

Upon ascension to the WTO, Vietnam committed to revise its duty rates. Generally speaking, Vietnam has committed to reduce import duties within a phase-out period.

Export duties are charged on only a few items—basically natural resources such as minerals, forest products, and scrap metal. Rates range from 0% to 45%. The price used for computation of export duties is the FOB price, i.e., the contract selling price of goods at the port of departure excluding freight and insurance costs.

FCT

The FCT applies to a foreign contractor with no presence in Vietnam, and it consists of a VAT and a CIT component. It is a form of withholding tax.

If the foreign contractor does not apply the Vietnamese Accounting System (VAS) and if it does not have a permanent establishment in Vietnam, the Vietnamese party is required to withhold the FCT before paying the foreign contractor. Depending on the nature of the transaction and services, both components of the FCT—VAT and CIT—may vary. Generally, the combined rate is about 10%.

SCT

There are 11 goods (e.g., cigarettes, beer, alcohol, automobiles, yachts, etc.) and six services (karaoke bars, dance halls, massage parlors, casinos, lottery businesses, and golf businesses) that are subject to SCT. The SCT rates range from 10% to 70%.

9. How comprehensive are the intellectual property laws of Vietnam? Do local courts and tribunals enforce IP laws uniformly regardless of the nationality of the parties?

Vietnam has made a late start in protecting intellectual property rights (IPRs) holders. However, Vietnamese law on the registration of IPRs conforms to international norms.

The IPRs recognized in Vietnam are as follows:

- Copyright of literary, artistic, and scientific works; copyright-related rights of performances, audio and visual fixation, broadcasts and encrypted program-carrying satellite signals;

- Industrial property rights comprised of inventions, industrial designs, layout designs of integrated circuits, trade secrets, trademarks, trade names, and geographical indications;
- Plant varieties and plant reproductive materials.

DOMESTIC LAWS AND INTERNATIONAL AGREEMENTS

Vietnam has a number of comprehensive and modern laws on the administration and regulation of IPRs. Vietnam is a member of most international conventions and treaties, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

ENFORCEMENT OF IPRs IN VIETNAM

When the intellectual property rights of an entity are infringed, the entity can follow either administrative or judicial procedures in enforcing its rights. However, Vietnam's protection of IPRs may not satisfy the expectations of manufacturers and IPR holders. Enforcement often needs to be conducted promptly; however, delays frequently occur due to time-consuming procedures and the lack of human resources of enforcement bodies. Those factors make the effort to stop counterfeiting, especially against small counterfeiters, ineffective.

One matter that remains unresolved is the lack of a mechanism to recognize well-known (or famous) marks in Vietnam. When an application for registration of a mark by the owner of a well-known trademark is rejected because it has already been applied for or registered, the owner may attempt to have its trademark recognized by filing a complaint with the National Office of Industrial Property (NOIP). The complaint must be accompanied by required documents and other evidence. If the complaint is successful, the owner's mark will be recognized as well known. In such cases, the prior application or registration will be rejected or cancelled. However, there is no certificate granted to the owner to certify that its mark is a well-known mark, which leaves the mark open to future challenge.

While there is no legal difference in enforcement of IPRs on behalf of foreign or domestic holders, far more foreign than domestic IPR holders seek enforcement. Regardless of the IPR holder's nationality, enforcement is weak. However, as more domestic IPR holders seek to enforce their rights, the enforcement apparatus will become more aggressive.

10. If a commercial dispute arises, do local courts or international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

A dispute involving a foreign investor or an FIE can be settled by any one of the following methods:

- Vietnamese courts
- Vietnamese arbitration
- Foreign arbitration
- International arbitration
- An arbitration panel selected by the parties

Of note, only a Vietnamese court can settle a dispute involving real estate.

It is difficult to recommend a specific forum to resolve disputes for all types of commercial transactions. No forum is particularly or obviously superior to another. The advantages and disadvantages of a particular dispute resolution forum will vary depending on the nature of the transaction and the parties. The following matters relating to Vietnamese commercial arbitration are subject to the court's jurisdiction:

- Appointment or change of arbitrators
- Application, change, or cancellation of injunctive relief
- Cancellation of an arbitral award
- A claim against an arbitral award based on the validity or enforceability of the arbitration agreement, or the authority of the arbitration tribunal
- Admissibility of evidence
- Invitation of witnesses
- Registration of an arbitral award
- Other civil matters as stipulated by laws

There are grounds to believe that arbitration offers foreign investors a better forum for dispute resolution. Arbitration can take place in Vietnam or abroad. Arbitration procedures are more simple and straightforward than litigation. The parties have a hand in selecting the arbitrators. The arbitral award is final and binding. The parties are entitled to select the applicable law, settlement procedures, language of arbitration, place of arbitration, etc. In addition, after a recognition process by a competent court, the arbitral award can be enforced. This means that an arbitral award can be enforced in the same way as a judgment of a court.

Judicial dispute resolution is more conventional, but it is not without problems. A judgment issued by a foreign court—except for courts in a few former Soviet-bloc countries—cannot easily be enforced. If the court is domestic, it may not be impartial, especially if one party is state-owned.

Whether an arbitral award or a court judgment, there is a low rate of enforcement in Vietnam. Enforcement is a large hurdle to overcome.

11. What advice can you offer on how best to negotiate and conduct business in Vietnam?

It is difficult to provide general “one-size-fits-all” advice, as each business’s situation is unique. However, the following suggestions may be helpful.

Research and learn the local market, its legal framework, tax system, and local partners. These are preliminary and necessary steps in developing a good and feasible business plan.

Cooperation with a local partner is an option for foreign investors to gain access to the market, especially where the proposed business is conditional or is restricted to 100% foreign ownership.

Participating in social events helps develop social connections. In Vietnam, commercial deals can be done outside of the office.

Being patient is a factor in successful negotiations. The negotiation will be long and take numerous turns if it involves a state-owned enterprise. A “win-win” approach is best. To effectively implement this strategy, alternative proposals, based on realistic and mutually beneficial solutions, should be expended.

12. What other practical lessons can you share with those who want to do business in Vietnam?

Impatience is a factor in many unsuccessful deals. Foreign investors should take the time to find a compatible partner and to understand the market and environment. This process can be time-consuming, but it is worth it in the long run. It may be desirable to set up a representative office in the country for purposes of facilitating initiatives, arranging logistics, promoting relationships with local partners and potential customers, and establishing connections with relevant governmental authorities.

The selection of a consultant or consulting firm is also very important. For matters involving governmental agencies, it may be desirable to hire a consulting firm that has experience with those particular ministries. For technical matters, there are several international firms that provide technical assistance concerning the licensing process and other matters. Engaging a firm that has commercial expertise, experience in dealing with government agencies, technical knowledge, and deep insight into the industry should help investors in the longer term.

RUSSIN & VECCHI

Russin & Vecchi has a long history in Vietnam. From 1967 to 1975, it was the only foreign law firm in Vietnam. At that time, the firm represented multinational banks, petroleum, construction, and manufacturing companies. Today, many of those companies have returned to Vietnam, and are again represented by the firm.

The firm reopened its office in Ho Chi Minh City in January 1993 to provide legal advice on foreign investment and commercial matters. The Hanoi office was opened in April 1994 to provide similar services, and to meet the particular needs of clients whose activities are regulated by the Vietnamese government.

Russin & Vecchi brings a tested awareness of Vietnamese law, practice and culture. Russin & Vecchi's objective is to provide its clients with practical advice and solutions.

Legal Services: Much of the firm's work is performed for foreign companies as they begin or expand their operations in Vietnam. These areas include merger and acquisition, foreign direct investment in manufacturing, power and other sectors; business operations; banking; agency and distribution; representative offices and branches; intellectual property; franchising; tax planning; hotels, resorts and property development.

Attorneys: The firm's offices are staffed by Vietnamese law graduates trained in local law, and by expatriate attorneys familiar with international legal standards and practice. The staff is multilingual and able to communicate in English and Vietnamese.

Integration with other Russin & Vecchi offices: The Vietnam offices work closely with other Russin & Vecchi offices in Asia, Washington, D.C., New York and elsewhere. Each office is a separate professional entity, and attorneys in other offices provide legal services upon specific arrangements, and in order to meet a client's needs. In such cases, the firm is able to utilize the expertise available in other offices in order to address each client's needs. This results in efficient utilization of the firm's lawyers, and keeps rates competitive, thus reducing costs.

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