

Zen & The Art of Legal Networking

INSIGHTS & COMMENTARY ON RELATIONSHIP BUILDING WITHIN THE INTERNATIONAL LAWYERS NETWORK

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Legal Framework for Foreign Investment & Establishment of Business Entities in Vietnam with Alex Larkin

Following [Mr. Thao's presentation](#) on the Vietnamese Lawyers Federation and the history of the legal industry in Vietnam, the delegates turned their attention to Alex Larkin, who talked about the legal framework for foreign investment and the establishment of business entities in Vietnam.

Alex is a transplant from Washington State, so he had a unique perspective on the opportunities available to foreign investors.



Part 2 of this post will address Alex's comments on the energy-producing sector as a potential for foreign investment.

Alex began by saying that the government is taking action that attracts and encourages foreign direct investment (FDI). They want to encourage the export of goods and reform the administration procedures in order to reduce bureaucratic inefficiencies.

Vietnam, because of its history, is a very bureaucratic place governmentally. It's very slow - while you can get anything done, it will always take a long time. So there has been a lot of effort recently to reform these procedures to make things more attractive for investors.

One such effort is "e-government" which will allow people to do things online more efficiently.

The government has also said that it wants to discourage corruption and create an equal

business environment, which means that foreign and local companies would be treated equally. Technically, under the law, they are already equal except for a few protected areas. However, the government is working to implement this equality in practice. They're not all the way there yet, but they're moving that way.

There are also tax incentives and tax holidays that present a significant advantage to foreign investors if they're investing in the right sectors and geographic areas.

Alex cautioned that his presentation was just a high level look at Vietnam's legal framework, and that there are a lot of nuances. He said that Vietnam's obligations as members of the WTO require them to treat foreign and domestic businesses equally. Only a minimum number of barriers exist now where investors are restricted from investing, and Alex thinks these will expire very soon.

Alex said that there is the Law on Enterprise, the Law on Investment and the commercial laws - these are high level laws enacted by the National Assembly. They're not practical for every day use, so it's necessary to research and review the various decrees, circulars and official letters that come out of the ministries and government agencies that tell you how to do things.

Alex likened it to the US state legislature passing a law, but said that the main difference is that there's no case law in Vietnam. If you're a lawyer advising a client, you can't rely on prior decisions to guide you. The courts are not bound by their own prior decisions, so you can research cases and see how courts have decided the issues, but the courts are not bound by it.

In terms of business forms and types of companies in Vietnam, they have:

- Wholly foreign-owned/100% foreign-owned enterprises
- Joint ventures between a local Vietnamese partner and a foreign partner
- Business Cooperation Contracts - these are usually between a foreign investor and a Vietnamese state-owned agency or enterprise
- Limited liability company - there can either be a single member LLC or multiple member, up to a 50 member maximum
- Shareholding/joint stock company - must have at least three shareholders, but there is no upper limit
- Partnerships
- Private enterprise - akin to sole proprietorship

Tax Considerations

In Vietnam, the corporate income tax rate is 25%. Alex gave a broad overview of the tax incentives, which he cautioned are much more intricate and depend on the type of business being done and where. Generally, however, there is a tax incentive of paying 10% for 15 years from the first year in which the enterprise has a cash turnover.

There are also investment nets for investments in areas with especially difficult socio-economic conditions. These economic or high-tech zones are where the government would like investors to set up their businesses to employ local people and help the economy. So there are tax incentives that are available if you establish your business in a desired location.

Alex then commented on tax incentives and holidays - there is a four year tax exemption from the first year in which an enterprise has taxable income, followed by a 50% reduction in tax for nine subsequent years for the same type of business. These tax incentives are very generalized, so Alex recommended that investors get specific advice for what incentives or holidays might be available to them.

The Value Added Tax (VAT or sales tax) in Vietnam has three rates - 0%, 5%, or 10% depending on the nature of the transaction and the product or service being transacted. As for Personal Income Tax (PIT) resident individuals - someone living or resident in Vietnam for at least 183 days out of the year - and non-resident individuals deriving income in Vietnam are required to pay income tax.

The rates are fairly simple, with it being a progressive tax structure (all income is in US dollars):

- Up to 3,000 - 5% tax rate
- From 3,000 - 6,000 - 10%
- From 6,000 - 10,800 - 15%
- From 10,800 - 19,200 - 20%
- From 19,200 - 31,200 - 25%
- From 31,200 - 48,000 - 30%
- Over 48,000 - 35%

VAT - also known as sales tax. There are three rates - 0, 5, and 10% depending on the nature of the transaction, depending on what the product or service is that's being transacted. A VAT of 0% for import and export, foreign export processing enterprise.

Alex commented that the government has a great deal of difficulty collecting PIT domestically. Foreign workers trying to establish their businesses will play by the rules,

but domestically, as far as the average Vietnamese person paying income tax, a lot of them don't. Vietnam is still largely a cash society, and people aren't using credit cards, checks or electronic transfers much yet. So there's a deficiency where the government isn't collecting nearly the total amount of income tax that they're legally entitled to.

There are also import and export considerations - most goods may be imported into Vietnam, and import materials for subsequent export does not face an import duty. There is also no export duty for export processing enterprises, which is a particular type of business entity that exists for the purpose of processing and exporting goods.

Environmental Considerations

Alex said that environmental reports may be required depending on the investment sector or the scope of the investment. There are two types of reports - an environmental impact assessment report and an environmental protection undertaking. Which report a business will have to submit depends on the kind of business, the degree to which you have to assess the potential impact on the environment, and what you're going to do about it.

For example, if an investor is trying to get into the mining business, they will have to produce a very comprehensive and substantial environmental impact assessment and protection plan, present it, and get it approved by the relevant government authorities.

Depending on what type of business an investor is undertaking, there are different levels of environmental protection reporting and assessment required.

There is an environmental tax on any organization or individual producing goods that have a negative effect on the environment or health. Alex said that it's a relatively new law that created this tax, so it's not exactly clear yet who decides and how it is decided the degree to which something has negative environmental or health consequences. There is a lot of grey area with this tax.

Environmental protection fees must be paid by organizations or individuals who are discharging waste that could be harmful to the environment. Alex summed up the first part of his presentation by saying that it was a high level, broad overview of the legal framework in Vietnam and as in any country, there is a lot more than that, so he recommended investors get a good lawyer to advise them.

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