Grey areas in the spotlight
Update on Compliance

Christian Schaefer, Consultant
Head of Corporate and Commercial, Vietnam
24 October 2013
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• Thoughts on compliance
• Legal updates: Regulatory compliance
  – Employment
  – Internet
  – Foreign exchange
Thoughts on compliance

• Use recent changes in labour law as an opportunity to review your compliance organisation
Thoughts on compliance
Thoughts on compliance

- International laws (FCPA, UK Bribery Act etc.)
- Industry best practices, Code of conduct
- Local regulatory
Thoughts on compliance
Thoughts on compliance

Liability

Directors

Chief Accountant

Shareholders
Thoughts on compliance

• Review compliance(-relevant) regulations
  – Compliance policy, code of conduct
  – Internal Labour Rules
  – Standard labour contracts
Legal update: Employment

• Decree 102/2013/ND-CP dated 5 September 2013 implementing the labour code on foreigners working in Vietnam ("Decree 102")
  – Effective 1 November 2013
Legal update: Employment
Legal update: Employment

• Key points to note:
  – Annual employment plan for foreign employees
    • To be approved by chairman of the local People’s Committee
    • Including interim amendments to the plan
    • Requirement for work permit application
  – On a positive note, clearer regulations for internal transfers
    • No work permit required for transferees in certain WTO services sectors (distribution, construction, education, business services etc.)
    • But prior notification required
    • Additional guidance from MoIT forthcoming
Legal update: Employment

• Decree 55/2013/ND-CP dated 22 May 2013 on labour outsourcing ("Decree 55")
  – Effective 15 July 2013
Legal update: Employment

• Key points to note:
  – Labour outsourcing now more clearly regulated
    • Special license required
    • Limited activities for which jobs may be outsourced (clerical, assistants, certain technician roles (construction machinery, telecom), etc.
    • Maximum term is 12 months per employee
  – Only foreign-invested joint ventures permitted?
  – Review of existing staff procurement arrangements necessary
Legal update: Internet

• Decree 72/2013/ND-CP dated 15 July 2013 on internet management (“Decree 72”)
  – Effective 1 September 2013
Legal update: Internet

• Scope of application:
  – .vn-domains and enterprises in Vietnam
  – Also: foreign companies providing “public information” cross-border

• Base case: company website in Vietnam (so-called “internal website”)
  – Compliance with content requirements
  – Not new but often overlooked: Article 23.2 Law on Information Technology (requirement to notify use of domains other than .vn to MoIC)
Legal update: Internet

• “Wifi”-services etc:
  – Coffee shops, restaurants, hotels etc.
  – If not chargeable, no requirement to register as an internet agent
  – However, if charged, license as internet agent is required
  – Also: broad obligations to ensure compliance by users with internet regulations
Legal update: Internet

• Social networks:
  – Quite broadly defined, including online forums and chats
  – Subject to social network licence (including for foreign social networks being provided cross-border)
  – Far-reaching obligations on the operator, including to provide user information in case of violations of Vietnamese law
  – One server in Vietnam required
Legal update: Internet

- Other areas: Online games and Apps
Legal update: Foreign exchange

- Amendments to Ordinance 28 on Foreign Exchange (through Ordinance 06/2013)
  - Effective from 1 January 2014
Legal update: Foreign exchange

• Key issues to note:
  – Article 22: “Within the territory of Vietnam, all transactions, payments, listings, advertisements, quotations, setting prices, and recording prices in contracts and agreements and other similar forms of residents and non-residents must not be effected in foreign exchange except for cases permitted by State Bank regulations.”
Legal update: Foreign exchange

• Consequences for contracts:
  – No more USD-reference clauses
  – CPI-references?
  – Renegotiate from time to time?
  – Side letters?
  – External references (wage scales, etc.)?
THANK YOU
Christian Schaefer, Consultant
Head of Corporate and Commercial, Vietnam
Ho Chi Minh City

Christian Schaefer heads Hogan Lovells’ corporate and commercial practice in Vietnam. He has extensive experience in advising foreign investors on their projects in Vietnam.

Christian qualified in Germany and has more than eight years’ experience advising on M&A, real estate and construction, and banking and finance. Christian has worked in Vietnam for more than seven years and has assisted a large number of foreign clients in their businesses and ventures in Vietnam, including well-known industry clients in the banking and insurance, real estate, oil and gas, manufacturing and services sectors.

Christian is fluent in English, French and German and is the author of the Vietnam chapter of Directors in the Twilight Zone IV (INSOL International, forthcoming).

Representative experience

- Advising a **Singapore-based international bank** on the acquisition of a 10%-interest of a Vietnamese joint stock commercial bank, including preparing and advising on the share purchase agreement and transaction documents.
- Advising **Societe Generale** as arranger and collateral agent on the Vietnam aspects of a US $175 million facility to a leading international commodities trader.
- Advising **Natixis** on the Vietnam aspects including taking security in relation to a US$80 million commodities financing facility.
- Advising **Sojitz Corporation** on its US$112 million EPS contract with Lilama Corporation for the supply of equipment to the Vung Ang 1 2 x 600MW coal fired thermal power plant in Vietnam.
- Advising a **Hong Kong developer** on a joint venture foreign invested real estate development project in Vietnam, including land issues (land use rights, land clearance, land compensation) and joint venture matters.
- Advising both strategic investors and targets on legal and commercial issues regarding M&A and transactions in Vietnam, as part of Vietnam’s on-going equitisation process, on trade sales and private equity investments, restructurings and spin-offs.
- Advising a **German utilities company** on its acquisition of an interest in a 2 x 1100MW lignite power plant, including advising on the power purchase agreement, joint venture agreement and related project documentation.

Practice area

- Mergers and acquisitions
- Corporate and commercial
- Banking and finance
- Foreign investment
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