

Grey areas in the spotlight Update on Investment Regulations

Non-public companies

Phong Nguyen, Senior Associate

24 October 2013

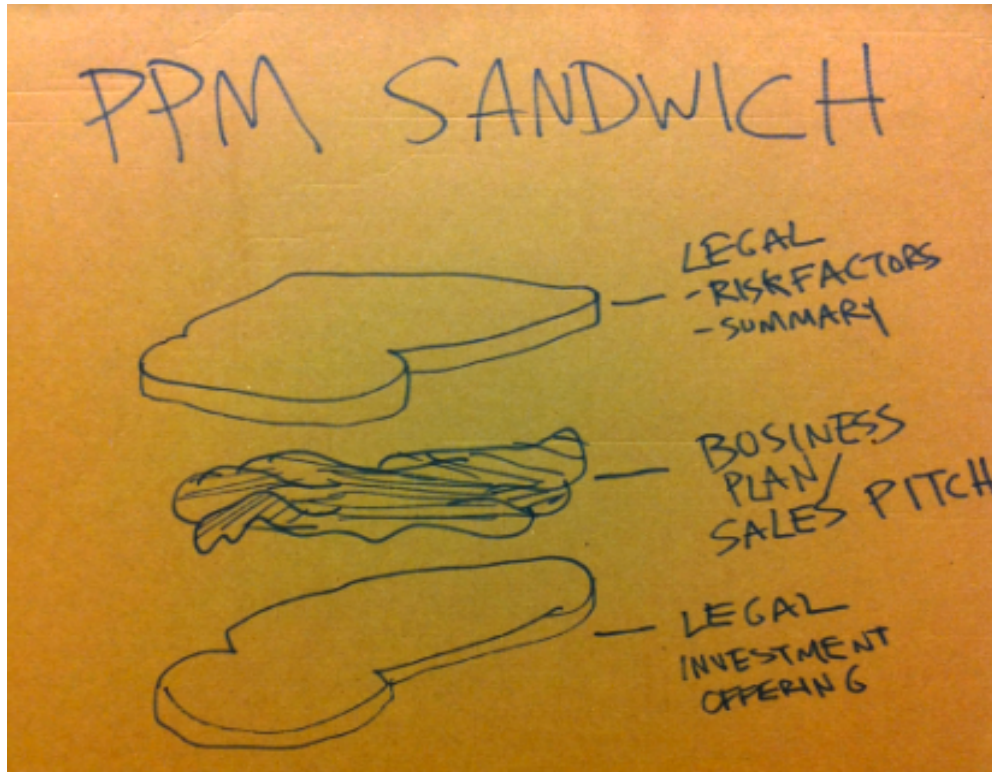
Corporate / Vietnam



Contents

- Private placement of shares / bonds
 - *Official Letter 1337/BKHDT-DKKD of MPI dated 1 March 2013*
- ENT for retail outlets
 - *Circular 08/2013/TT-BCT of MoIT dated 22 April 2013*
- Public database of corporate records
 - *Circular 01/2013/TT-BKHDT of MPI on 21 January 2013*
- Re-registration of FIEs
 - *Amendments to Article 170 of the Law on Enterprises*
- Draft regulations

Financing via private placement



Financing via private placement

- Private placement
 - bonds – *Decree 90/2011/ND-CP and Circular 211/2012/TT-BTC*
 - shares - *Official Letter 1337/BKHDT-DKKD dated 1 March 2013*
 - to current shareholders - *Law on Enterprises*
 - **to new shareholders** (incl. for converting an LLC to a JSC) - *Decree 58/2012/ND-CP*
- Regulators
 - bonds: Ministry of Finance
 - shares: provincial Department of Planning and Investment
 - Specific industries: *State Securities Commission, State Bank of Vietnam*
- Points of notice
 - Conditions for issuance (*profitability, operation term, internal approval, foreign ownership caps, issuance plan etc.*)
 - Disclosure obligations
 - Reporting obligations
 - Administrative fine for non-compliance: *max. VND120million (approx. USD5,700)*

ENT for retails outlets

- Retail network expansion is difficult in practice, as the establishment of each additional retail outlet is subject to an Economic Needs Test (ENT) by the licensing authority
- Circular 08/2013/TT-BCT of MoIT dated 22 April 2013 on procedures and conditions for investment in distribution sectors
- More guidelines on ENT:
 - FIEs may be exempted from the ENT when opening additional small- and medium-sized retail outlets (less than 500m²) located in designated areas for trading activities (e.g. shopping centres, office buildings, or city areas that have been approved as a designated area for trading or retailing activities)
 - ENT is assessed based on the district area (not provincial area as before)
 - Provincial/city People's Committee shall establish an ENT council for assessing ENT and ENT exemption applications
- It remains to be seen whether Circular 08 will lead to a more open licensing process in practice.



Retail Outlet

Public database of corporate records



<http://dangkykinhdoanh.gov.vn>

Public database of corporate records

- Circular 01/2013/TT-BKHDT on 21 January 2013 effective from 15 April 2013 on enterprise registration
- Points of notice:
 - Launch of the long-awaited National Enterprise Registration Database (“NERD”) – *March 2013*
 - Domestic companies’ enterprise registration certificate (no FIE information)
 - 3-year history of operations
 - To be added:
 - charter
 - financial statement of a joint-stock company
 - 3-year summary on the founders and directors of enterprises, including the list of enterprises that each of them participates in the establishment and management
 - Confirmation that, after the initial 3 year period, a change of founding shareholders does not need to be recorded in the company’s enterprise registration certificate. Only the company’s internal shareholders’ register needs to be updated.

Re-registration of foreign invested enterprises



- Amendments to Article 170 of the Law on Enterprises (20 June 2013, effective from 1 August 2013)
- Options for FIEs established prior to 1 July 2006
 - Those whose investment licences have already expired but which have not yet been legally dissolved: *continue their operations by re-registering prior to 1 February 2014. The re-registration takes effect retrospectively from the expiry date of the investment licences.*
 - Those whose investment licences have not expired:
 - re-register at any time without a time limit
 - not to re-register and operate under current investment licences ---> cannot extend their operational term, although business scope may be amended

In the pipeline

- Law on Enterprises – *in 2014*
 - separation of enterprise registration and investment registration applicable to foreign invested companies
 - publication of corporate records and codification of NERD
 - regulations on dissolution of companies and dealing with dormant companies
 - regulations on M&A activities
 - corporate governance (including minority shareholders protection)
- Law on Investment – *in 2014*
 - clarification of “foreign investors” and “foreign invested enterprises”
 - reconsideration of “evaluation” licensing process
 - clarification of “direct investment” and “indirect investment” activities
 - reconsideration of “conditional” investment sectors
- Other business-related laws to be amended: Law on Land (*to be passed during the current NA session*), Law on Real Estate Business, Law on Residential Housing



Phong Nguyen, Senior Associate

Ho Chi Minh City

Phong is a Vietnam-qualified lawyer with more than 9 years' experience in advising clients (mainly, foreign companies doing business in the country and foreign-invested enterprises) in Vietnam. Phong has worked in a broad range of corporate and commercial legal matters: banking and finance matters, incorporation / establishment, direct and indirect investments, real estate transactions, taxation, labour and employment issues, international contracts, and litigation. He also represents our clients in negotiations with their partners and discussions with the relevant State authorities.

Phong speaks native Vietnamese and fluent English.

Representative experience

- Advising a Japanese group with respect to a multi-million dollar share acquisition in a 282-hectare industrial park project in Dong Nai Province, South Vietnam.
- Advising a global provider of advertising and marketing services in relation to its proposed acquisition of a group of Vietnamese advertising companies.
- Acting as Vietnamese legal counsel to a Chinese bank on a US\$80 million syndicated loan to a Vietnam-based BOT company.
- Acting as Vietnamese legal counsel to a Singapore-based bank on a US\$60 million syndicated loan to a Vietnam-based BOT company.
- Advising a UK-based insurer on the establishment of a life-insurance joint venture in Vietnam and on-going operations of the joint venture company after its establishment.
- Advising a New York-based fund in relation to multiple equity line of credit arrangements with Vietnamese corporations.
- Advising foreign lenders in multiple syndicated loans to Vietnamese State-owned corporations and foreign-invested companies in Vietnam.
- Advising an international bank in relation to the legal aspects of alternative investments in Vietnam.



Phong Nguyen
Senior Associate
Ho Chi Minh City, Corporate
T +84 8 3829 5100
phong.nguyen@hoganlovells.com

Practice area:

- Foreign Investments
- Corporate & Commercial
- Financial services

www.hoganlovells.com

Hogan Lovells has offices in:

Abu Dhabi	Colorado Springs	Houston	Munich	Shanghai
Alicante	Denver	Jakarta*	New York	Silicon Valley
Amsterdam	Dubai	Jeddah*	Northern Virginia	Singapore
Baltimore	Dusseldorf	London	Paris	Tokyo
Beijing	Frankfurt	Los Angeles	Philadelphia	Ulaanbaatar
Berlin	Hamburg	Madrid	Prague	Warsaw
Brussels	Hanoi	Miami	Riyadh*	Washington DC
Budapest*	Ho Chi Minh City	Milan	Rome	Zagreb*
Caracas	Hong Kong	Moscow	San Francisco	

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

© Hogan Lovells 2012. All rights reserved.

*Associated offices