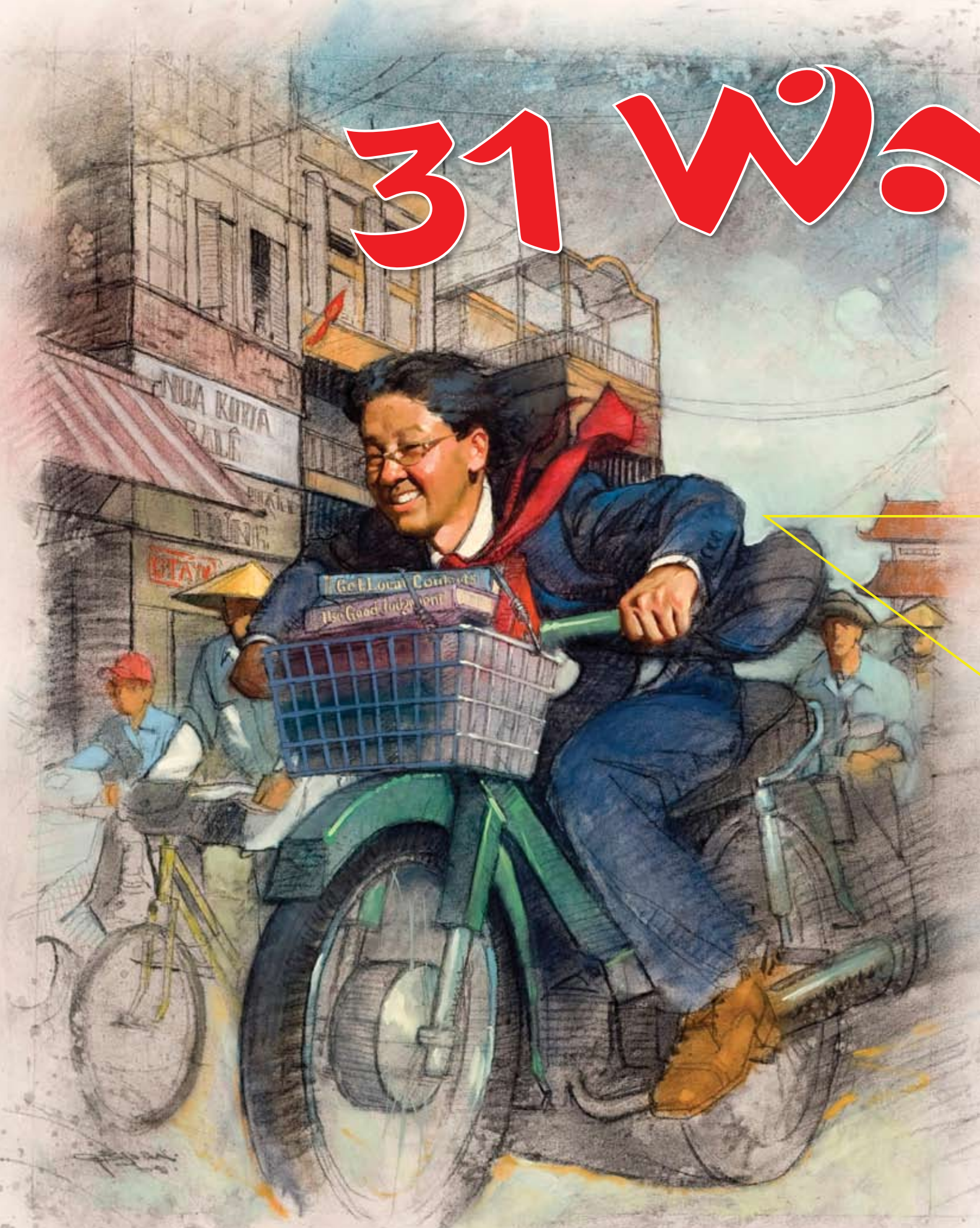


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MS to Improve Your Legal Success in Vietnam

By Deborah M. House

“Vietnam is a country; not a war.” For a long time, a statement to this effect introduced the website of the Vietnamese embassy in Washington, DC. Having grown up in the 1960s, this message provided important food for thought. Its significance was underscored for me when I went to Vietnam in 1999. On that occasion, I was there to adopt a beautiful baby girl.

But even though I was in the country for a totally different purpose, and an emotionally charged one at that, my lawyer/business antenna were always on high alert. They reminded me of when I was litigating in the Southern District of New York. I always thought that there was nothing like the buzz that seemed to start on the Washington–New York shuttle and steadily increased until it reached a high pitch upon my delivery to Manhattan.

But this energy paled in comparison to the loud hum that I felt in Ho Chi Minh City (f/k/a Saigon). I was in wonderment at the commerce that is Vietnam. Some of it is nothing like anything you ever see in the west. Rusty bicycles and motor scooters laden with everything from bags of rice towering over their driver to office furniture to stacked cages of chickens, make the simple act of crossing the street a heart-in-your-throat experience. Even in my daughter’s birthplace in a rural province, you were constantly aware of the citizenry being about the business of business. Everywhere were lapis blue shrimp farms, vast rice paddies, roadside markets and restaurants, and beautiful inlets dotted with active fishing boats.

Vietnam Emerges from the Ashes

And a decade ago it was readily apparent that Vietnam was intent on expanding its business with the world. English language classes were advertised on every city street, and US tourists were welcome to attend so that the students could practice speaking with them. On one occasion, my sister and I became aware of a young woman closely following us in a museum. When we smiled at her, she haltingly confessed she had been trying to get up the courage to ask us to review the English paper she had written for school. We complied and sent her on her way; hopefully one step closer to her goal of conquering this language of commerce.

The imprint of global trade was also all around. Many goods in the stores were of European origin and we were personally grateful to find good old American diapers and formula. Within the shadow of the People's Committee Building, whose architecture made it look as if it had been snatched from a Parisian street, loomed a more conventional icon of commerce: a towering Citibank building. Pursuing a wishful thought, I found that they would not cash my Citibank checks, causing me to wonder exactly what the international corporate structure was of this banking giant.¹

However, even a half dozen years before my trip, the *ACC Docket* was cautiously reporting that the (then) recent easing of the US embargo on Vietnam was encouraging to the US business community that "it will someday be able to participate fully in the economy of this fast-developing country." It also predicted that: "With a large, industrious population and abundant natural resources, Vietnam is one of the last great frontiers to be opened up to international business. The normalization of US economic relations with Vietnam will not only bring Vietnam into the orbit of today's interdependent global economy, but will also do much to heal remaining scars left over from our earlier involvements."²

Fast forward to 2008. The message that Vietnam is a country, not a war, continues to resonate given Vietnam's status as a significant emerging market eager to engage in the world's trade and actively seeking foreign investment.

Vietnam's Economic Footprint

The United States and Vietnam now have had full diplomatic relationships for well over a decade. Reflecting this important change in US-Vietnam relations,



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Presidents Clinton and George W. Bush visited the country, trips reciprocated by both the prime minister and the president of Vietnam.

The implementation of a sweeping bilateral trade agreement between the countries in 2001 represented a significant milestone for Vietnam's economy and for the normalization of US-Vietnam relations. Implementation

of this agreement fundamentally changed Vietnam's trade regime and helped liberalize its economy. Bilateral trade between the two countries expanded dramatically, rising more than fivefold from 2001 to \$9.7 billion in 2006, of which Vietnam imported \$1.1 billion and exported \$ 8.6 billion. During the first eight months of 2007, exports grew 67 percent. By September 2007, direct investment of US companies in Vietnam reached \$2.6 billion.

In late 2007, efforts were made to step up this interaction when US Secretary of Commerce Carlos M. Gutierrez went to Vietnam, accompanied by almost two dozen American companies, with the goal of expanding trade and boosting US exports. The companies represented included those considering business opportunities with Vietnam for the first time as well as those with existing relationships.³ The Vietnamese Ministry of Industry and Trade projects that Vietnam's exports to the United States will reach \$13.1 billion in 2008, an increase of 28 percent over 2007. The Vietnamese Ministry of Foreign Affairs reports that over 1,000 US companies are now doing business in Vietnam.

Vietnamese investment and trade with other nations appears to be at varying degrees of development although most is reflecting significant growth.⁴ The three largest partners for Vietnam after the United States are reported to be Japan, China, and Australia. By March 2007, there had been 767 Japanese active investment projects in Vietnam with a total registered capital of \$7.8 billion. In 2006, the bilateral trade volume with neighboring China was \$10.42 billion. The two-way trade volume for Vietnam and Australia was \$4.75 billion.

Among European countries, France, with its long historical relationship with Vietnam, is reported to rank first in investments, with \$2.25 billion in 2007. The trade revenue between Vietnam and France has increased 10 to 15 percent a year and in 2005 Vietnam earned over €1 billion from exports to France. Germany also has a strong relationship with Vietnam, reporting a

two-way trade value reaching \$3.3 billion in 2006. Britain is reported to be Vietnam's third largest partner in Europe.

On the North American continent, Vietnamese trade with Canada is reported to be growing. Total turnover trade with Canada in 2006 was reported at \$202 million in Canadian exports and \$653 million in Vietnamese imports. Canadian direct investment in Vietnam in July of 2007 was identified as 62 projects at \$489.5 million, ranking 21st among 78 foreign investors in Vietnam. Bilateral trade between Vietnam and Canada is expected to exceed \$1 billion by the end of this year due to major commitments from Canadian companies. Vietnam's Ministry of Foreign Affairs quotes a spokesman from the Embassy of Canada as saying that Canadian companies were hesitant in the past to invest in Vietnam because they thought it was too risky. "Canadian companies are often very cautious about making any investment decisions. They always make thorough studies on markets that they are planning to penetrate into to make sure that their investments would be protected by level competition and legal transparent systems." However, he further indicated that some Canadian businesses have changed their views after "seeing other Canadian businesses come to Vietnam and stay."⁵

New Investment Law Provides Greater Flexibility

Trade with and investment in Vietnam is predicted to have an even rosier picture in the future.⁶ This is largely because of Vietnam's accession into the World Trade Organization (WTO) as its 150th member on January 11, 2007. As part of this accession (admission) process, Vietnam committed to be bound by rules that govern international trade of WTO members. Among others, these include rules relating to dispute settlement, the role of state enterprises in commercial activities, restrictions on imports, the provision of subsidies, transparency of government processes, and intellectual property protection. Vietnam's agreement to be bound by these rules of international law helps define and establish trade and investment partner expectations that will facilitate and enhance future international interactions.

In addition, as part of the accession process, the National Assembly of Vietnam took steps to reconcile the two separate laws that previously applied different standards to foreign and domestic investments in Vietnam. These efforts took the form of the new Investment Law and the new Comprehensive Enterprises Law, both of which went into effect on July 1, 2006.

The Investment Law provides a broader range of methods of investment than were previously available. Two groups of investments are recognized: direct investments and indirect investments.

Direct investments are recognized as those investments where the investor not only invests capital, but also participates in the management of the activity in which it has invested. Direct investments may take the following forms:

- establishment of wholly foreign owned or domestic owned companies;
- establishment of joint venture companies between foreign and domestic investors;
- investment in contractual arrangements, including build-operate-transfer contracts (BOT), build-transfer-operate contracts (BTO), and build-transfer contracts;⁷
- investment in business development;
- purchasing shares or contributing capital;
- mergers and acquisitions; and
- other forms of unspecified direct investment.

Client.



Direct investment can be undertaken by establishing branches or representative offices, but there are limitations as to what such entities can do. Branches are limited to only a few professional service providers (banks, law firms, etc.). Representative offices are limited to undertaking only noncommercial market research activities.

However for many foreign investors and service providers, the representative office offers an opportunity to establish a presence in the market at a low cost and with reduced tax implications. Direct investments do, however, require extensive documentation in addition to numerous authorizations from the government.

A Darker Side?

You cannot fairly and ethically discuss trade with and investment in Vietnam without noting that darker aspects of these activities have been raised and should be addressed.

The first is Vietnam's human rights record. In June of 2005, when the Vietnamese prime minister visited the White House, *The Washington Post* raised the issue, editorializing that the US agenda of economic and military development in Vietnam:

"...must be balanced against the equally important agenda of democracy and human rights. Precisely because the United States has an interest in stable development in East Asia, it should be skeptical of a development model that's based on government control of the media and the imprisonment of dissidents; if a government fears its own people, how stable can it be? Equally, the United States is most likely to be influential in the region if it is seen to stand by its appealing values rather than making opportunistic alliances with dictators, as it has to its own detriment in the Middle East. For these reasons, Mr. Bush must use today's meeting to push a two-sided agenda: more economic and military cooperation on the one hand, more democracy and freedom on the other."

Concern continues to be expressed. Late last year, testimony was provided by the Human Rights Watch before the US House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, asserting that 2007 "...has seen the harshest crackdown on peaceful dissent in Vietnam in 20 years. The government, emboldened by international recognition after joining the World Trade Organization in late 2006, moved to suppress all challenges to the authority of the Vietnamese Communist Party (VCP) by arresting dozens of democracy and human rights activists, independent trade union leaders, underground publishers, and members of unsanctioned religious groups." The organization called for action by the United States in response to these activities.¹

In 2007, members of Congress also introduced legislation addressing the issue. Among other things, the proposed legislation would restrict US aid to Vietnam unless the government of Vietnam makes progress regarding the release of political and religious prisoners, rights of religious freedom, rights of ethnic minorities, access of Vietnamese nationals to US refugee programs, and taken steps to end human trafficking (e.g.,

H.R. 3096: Vietnam Human Rights Act of 2007).

During Vietnamese President Nguyen Minh Triet's landmark official visit to the United States in June of 2007, the first by a Vietnamese leader since the end of the Vietnam war, the *Asia Times* reported that while talking with reporters in President Triet's presence, President Bush said "[I]n order for relations to grow deeper, ... it's important for our friends to have a strong commitment to human rights and freedom and democracy. [S]ocieties are enriched when people are allowed to express themselves freely or worship freely." Triet responded through an interpreter in a later interview, saying that "Vietnam has its own legal framework, and those who violate the law will be dealt with. The Vietnamese laws could not be 100 percent the same as US laws, due to the different historical backgrounds and conditions. There is a different understanding on this issue."

The second dark issue is the employment conditions of the Vietnamese engaged in foreign company activities. Over the past two decades, foreign operations and investments in Vietnam have greatly expanded worker purchasing power and significantly decreased national poverty. However, it can be easy to take advantage of impoverished workers where the mandatory minimum monthly wage for a foreign-funded worker may be just over \$60 and per-capita annual income just exceeds \$700.

Companies must take every effort to assure that past allegations that foreign companies supported Vietnamese sweatshops are not realities. Unless they do so, companies may put their reputation and viability at serious risk, to say nothing of just plain doing wrong. This means that companies must adopt appropriate standards and codes applicable to their global operations, including those of their subcontractors and vendors. They must then educate all the persons subject to them about their application. Finally and most important, they must affirmatively and actively monitor for compliance, using independent entities to do so if required to assure success. In-house counsel, who are both business partners to their clients and the guardian of the corporation's reputation, are an integral part of assuring this happens.

NOTE

1. The full written statement is available at <http://hrw.org/english/docs/2007/11/06/vietna17410.htm>.

Indirect investments are defined as “a form of investment by way of the purchase of shares, share certificates, bonds, other valuable papers, or a securities investment fund, and by way of intermediary financial institutions and whereby the investor does not participate directly in the management of the investment activity.” Indirect investments may take the following forms:

- purchase of shares, bonds, and other important papers;
- investment through securities investment funds; and
- investment through other intermediary financial institutions.⁸

The Investment Law also addresses a number of other important matters including, investment incentives, registration and licensing requirements, government and investment guarantees, dispute resolution, investors’ rights, and governing law. While this new law represents a great stride for foreign investors, many ambiguities and questions remain unresolved and unanswered. It is hoped that regulations to be issued under the new law will address many of these issues.

The Comprehensive Enterprises Law largely eliminates the differing types of investment vehicles that were previously available to domestic and foreign investors. Now, both domestic and foreign investors can choose from essentially four investment mechanisms for their investments.

- *Sole proprietorship*: private enterprises owned solely by an individual and where the owner has unlimited liability for the business of the enterprise.
- *Partnerships*: private enterprises established by two or more individuals and where partners are jointly and severally liable for the liabilities of the partnership.
- *Limited liability companies of two types*: sole member companies and companies that have two to 50 members.
- *Joint stock companies*: companies where shares in the entity are held by a minimum of three shareholders. This last mechanism has contributed to the burgeoning growth of Vietnam’s stock market.⁹

Of course these two laws represent the proverbial tip of the iceberg. Unsurprisingly enough, as would be true for any country, Vietnam also has a plethora of laws, regulations, and processes addressing, among other things, taxes, environmental concerns, land use, labor, and intellectual property. This fact, coupled with the reality that Vietnam’s law is in a state of transition, expansion, and codification argues for a very cautious approach and only in tandem with knowledgeable counsel.

And, any effort in the legal arena is likely to be successful only if the approach is consistent with and respectful of Vietnamese business customs and traditions. The US & Foreign Commercial Service of the US Department of Commerce and the US Department of State advises that the Vietnamese approach to business activities reflects a Confucian society. Acceptable approaches and behaviors for the Vietnamese business man or woman are often diametrically opposed to those of, say, your average goal-oriented determined American attorney. Care must be taken to observe these and other cultural elements and to respond appropriately to them.

Ten Tips to Help Bridge the Cultural Divide

That said, because Vietnam is changing so rapidly, some of the traditional ways of thinking are changing as well. As noted below, those changes may be more apparent in some groups than others. Here are 10 tips for in-house counsel charged with spanning this cultural divide.¹⁰

Focus.



1. Recognize and Respect the Practice of Maintaining Face

An individual's public image or "face" is extremely important. It is a serious mistake to take any action that might be interpreted as criticism of your Vietnamese counterparts or that causes them embarrassment in front of their colleagues. Similarly, taking an action that causes you to lose face, like losing your temper or responding emotionally in a meeting, is also unacceptable. If there are difficult issues to be addressed, then tact, sensitivity, and discretion should be the watchwords. Informal spur of the moment remarks, jesting banter, and the type of overt dis-

paragement that is common to Western negotiations, may permanently terminate them in Vietnam.

2. Anticipate Decisions by Consensus

Along with opposing counsel, I remember once being ordered by a frustrated federal judge to "get two officers who can bind your companies down to the courthouse, because tomorrow we are going to settle this case!" In some ways that order was illustrative of a widely held Western belief that if you get the right level of authority in the same room for a prescribed time period any and all final decisions can be made.

Additional Resources on ... Vietnam and Investing in Vietnam

Socialist Republic of Vietnam

- Embassy in Washington DC www.vietnamembassy-usa.org
- Consulate General in San Francisco www.vietnamconsulate-ca.org/home.asp
- Contact Information for other Vietnamese embassies and consulates in other countries [www.learn4good.com/travel/vietnamese_embassy_consulate_Visa_guide.htm](http://www.learn4good.com/travel/vietnamese_embassy_consulate Visa_guide.htm)
- Ministry of Foreign Affairs www.mofa.gov.vn/en
- Vietnamese Trade Information <http://asemconnectvietnam.gov.vn>
- Ministry of Planning & Investment www.mpi.gov.vn/default.aspx?Lang=2
- Department of Planning & Investment (Ho Chi Minh City) www.dpi.hochiminhcity.gov.vn/invest/index.html
- Department of Planning & Investment (Hanoi) www.hanoi.gov.vn/hanoiwebs/en/hanoi_governance/group2/page2_12.htm
- Ministry of Finance www.mof.gov.vn/DefaultE.aspx?tabid=197
- The National Assembly www.na.gov.vn/htx/English/C1330

American Chamber of Commerce in Vietnam

- Hanoi www.amchamhanoi.com/site/index.php
- Ho Chi Minh City www.amchamvietnam.com

United States Department of State

- Background Note on Vietnam www.state.gov/r/pa/ei/bgn/4130.htm
- Embassy of the United States in Hanoi <http://hanoi.usembassy.gov>
- Consulate General of the United States in Ho Chi Minh City <http://hochiminh.usconsulate.gov>

United States Department of Commerce

- The US Commercial Service in Vietnam www.buyusa.gov/vietnam/en
- Doing Business in Vietnam

www.buyusa.gov/vietnam/en/doing_business_in_vietnam.html

- Best US Export Prospects in Vietnam www.buyusa.gov/vietnam/en/best_prospects.html
- Exporting to Vietnam www.buyusa.gov/vietnam/en/exporting_to_vietnam.html

European Union and Vietnam

- http://ec.europa.eu/external_relations/vietnam/intro/index.htm

International Organizations

- World Trade Organization: Vietnam's accession into the World Trade Organization and related documents www.wto.org/english/thewto_e/acc_e/a1_vietnam_e.htm
- *Doing Business 2008 Vietnam* (published by the International Bank for Reconstruction and the World Bank) www.usvtc.org/info/wb/WB-DoingBusiness2008-VN.pdf
- World Bank: General information on Vietnam <http://web.worldbank.org/wbsite/external/countries/eastasiapacificext/vietnamextn/0,,menuPK:387571~pagePK:141159~piPK:141110~theSitePK:387565,00.html>
- International Monetary Fund www.imf.org/external/country/VNM/index.htm

Other

- Vietnam's Evolving Legal Framework for Clean Development Mechanism Projects under the Kyoto Protocol (by Christopher A. Muessel, Duane and Morris) www.acc.com/resource/getfile.php?id=8656
- The Vietnam Business Forum (organized by the International Finance Corporation in collaboration with the World Bank & Vietnam's Ministry of Planning & Investment) www.vbf.org.vn
- US-Vietnam Trade Council www.usvtc.org
- *Doing Business in Asia and Setting Up and Operating in Vietnam*, available by contacting Sesto E. Vecchi of Russian

Such is not the case in Vietnam. Even minority opinions or opinions of entities only tangentially related to a matter may be given substantial weight and respect. As a result, activities may not proceed and approvals may not be forthcoming in the absence of group accord. The overall goal for the Vietnamese will be to reach a consensus of all involved parties. If this is not achieved, a decision may be significantly or indefinitely delayed even if it appears that there is one decision-maker who could move the matter forward.

That said, younger (under 30) business persons or those working in the private sector may be more likely to expedite a decision than government officials or people working for state-owned enterprises.

3. It's Not How You Play the Game but Whether You Win or Lose

"This is a win-win for both of us," or words to a similar effect, are standard fare in American negotiations and even viewed as a common goal. Not so in the Vietnam context. Negotiations and undertakings are viewed as having a winner and a loser; and no one wants to be the loser. Accordingly, even when it seems that the deal is cut and both sides should proceed "as is," the Vietnamese may still be seeking to improve their position, often at the cost of significant delays for both parties. They may also be focusing on further building the relationship (see discussion below). While this can be very frustrating, an appropriate approach is not anger or criticism of the other side, both of which can undermine face. Rather, planning for anticipating delays and further negotiations is the more reasonable approach and better designed to relieve stress and move the matter forward.

4. Be Prepared for the Many Differences

There are a wide variety of differences in personal approach and mannerisms of which counsel in Vietnam need to be aware. For example, whereas direct eye contact for Americans is perceived as respectful and demonstrating that close attention is being paid, in Vietnam it is considered to be discourteous. In fact respect is demonstrated by averting one's eyes when a senior individual is speaking. Personal space for the Vietnamese is greater than it is for most Americans and in conversations they may choose to stand further away than the American norm of 18 inches. The friendly pat on the back or hand to the shoulders should be avoided. Significant respect and deference is awarded to persons of age, often without regard to their professional seniority.

5. It's All About the Context

While the Vietnamese are known for their entrepreneurial attitude and their strong desire to increase foreign investment in their country, do not expect business meetings to aggressively zero in on the business at hand. Rather, given their high-context culture, the Vietnamese first will want to know you better. A strong understanding of your background, character, personality, interests, and even your family will assist them in interpreting your verbal and nonverbal communications, which will in turn facilitate future dialogue. It is not unusual for Vietnamese business executives to invite business associates to their home for refreshments or to visit them during a holiday, such as Tet (New Year).

Accordingly, it is important to start relationship-building even before you sit down to discuss business. If you invest some time to get to know your Vietnamese counterparts and gain their trust first, you will have a smoother and faster negotiation. Vietnamese like to think below the surface and not

It's all
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take things on face value. They may think that a good deal is too good to be true. If you have their trust and they understand your intentions, they will be less suspicious. Rushing too fast into a decision is not a desirable trait for the Vietnamese. Faced with Western negotiators who want to rush may cause the Vietnamese to be more suspicious and cause them to delay their decision.

For Westerners who are strongly dependent on communicating primarily through words rather than relationship-building and who often draw a bright line between the professional and the personal, this approach may seem excruciatingly nonproductive and even off-putting. However accepting and engaging in it is more likely to produce a fruitful effort in the long run.

In-house in Vietnam

What is it like to be practicing inside a company in Vietnam? Michelle Thai, in-house counsel for titan General Electric Company (GE), can speak to this issue.

Thai joined the GE legal team in October of 2005 as a visiting counsel at GE (China) in Shanghai. She was transferred to Vietnam as legal counsel one year later and is based in GE's representative office in Ho Chi Minh City. Before coming to work for GE, she worked for Johnson Stokes & Master in Ho Chi Minh City for several years and has extensive experience in foreign investment, commercial, and corporate law. She has also served as a lecturer for two years at the University of Technology and Techniques in Ho Chi Minh City.

Thai received an LLM in 2005 from the University of Miami School of Law in Florida where she was a Fulbright scholar. She holds an LLB in law from Hanoi Law University, a BS in Sea Transport Economics from Vietnam Maritime University, and an MBA in Strategy and Management from the Maastricht School of Management in the Netherlands. Michelle is a member of the Ho Chi Minh City Bar in Vietnam.

One of the top dozen companies in the Fortune 100, GE established a representative office in Hanoi in 1993 and later opened a representative office in Ho Chi Minh City as well. GE's representative offices in Vietnam assist GE businesses to do market development, seek business opportunities, and facilitate sales of GE's main products such as aircraft engines, power generators, energy and water treatment systems, consumer and industrial products, and healthcare equipment.

GE also has a 100 percent foreign-owned enterprise that provides maintenance services for healthcare and energy equipment. GE is seeking to expand its activities by applying for a license to set up a finance company in Vietnam. It also just announced its commitment to invest in a \$50 million project in the energy sector and is considering expanding its investment in Vietnam in other sectors. In the future, in addition to its sales services, GE's activities in Vietnam are expected to be more diversified and include manufacturing power generator compo-



Michelle Thai

nents and providing consumer finance products.

As a significant player in these endeavors, Thai describes her primary legal work as including functions of both a legal counsel and a compliance officer. In the legal arena, she provides advice on issues raised by the businesses and recommends appropriate external counsel, if required. Like most in-house counsel, she also reviews transactions, contracts, procedures, and drafts

documents. Given GE's growing activities in Vietnam, she also structures new legal frameworks and assesses risk for new projects, keeps up to date on new regulations and policies that apply to GE's business activities, and works with government offices on the licensing and registration of new projects.

In the compliance area, Thai is charged with helping to meet the high level of integrity and ethical standards that GE has set for all of its global operations. She notes that it is one of GE's challenges in the market. "As in-house counsel, I have to make sure all the employees know and maintain GE's integrity policy and also convey the right message to communicate to the community if possible." She predicts that once everybody follows the same standard, it will be easier to work together, and explains that it's often about communications skills. "Sometimes it's sensitive, and finding the appropriate way to convey the message is critical." As part of her compliance-related activities Thai also performs due diligence reviews and provides compliance training for GE distributors and third parties.

Like other in-house counsel with busy work schedules, Thai nonetheless finds the time to engage in outside professional activities. She also gives speeches and lectures at seminars and participates in commenting on draft legislation.

Thai's most pressing challenges will have a familiar ring to in-house counsel throughout the world. She says that the top three challenges of serving as in-house counsel to an American corporation in Vietnam are time management, meeting the high standards of compliance, and the increasing demand of personal development. Like the rest of us, she notes that she has to prepare and train for these things.

Thai finds that her past work experiences have helped her to meet the challenge of transitioning into the GE legal department. She cites her law firm experience as being helpful in this

6. It May Be a Long Road to a Real “Yes”

You should be prepared for the fact that in Vietnam, “Yes” does not necessarily mean “Yes.” Instead it can simply mean that the person is listening to you, but not that they are agreeing with you. Moreover, the Vietnamese are not necessarily on a rapid road to “getting to yes.” While this is changing, the Asian concept of time still

regard. “I have learned how to combine professional legal skills with business minded responsiveness, and how to leverage both academic knowledge and practical expertise. My exposure to hardworking environments and diversified communities has also helped me to adapt smoothly to GE’s legal department, which demands not only legal expertise, but also other personal skills, and community and industry knowledge.”

However, she advises that companies have their own policies and culture and there’s nothing that you can know without trying and studying. For other multinational companies that are considering choosing an in-house lawyer for an emerging market she counsels, “local knowledge and international expertise always make the best combination.” However, transitioning into a different environment she believes depends on one’s adaptability and willingness to learn and change. “It’s all about the availability of resources and how you make use of them,” she says.

Being a native in the country in which she practices has obvious advantages. Not the least of these is being fluent in Vietnamese. However, Thai cites that the greatest advantage is that “I know the local practice, applicable standards, culture differences, traditional preferences, and other policies and understandings. To avoid doubt, it’s not about transparency, but more about a sense that is very critical when you have to deal with people.”

As GE’s sole counsel in Vietnam, Thai could run the risk of becoming isolated from outside legal and corporate activities. She is not particularly concerned. “We have annual and semi-annual meetings throughout the region and other quarterly and monthly discussions and updates on how things are in the other countries.” Like most of us, she also cites that technology plays an important role in keeping her—literally—connected. “In the new era of computers, cell phones, Blackberries®, and internet, things can be controlled more efficiently by prompt communications.” She is confident that she can always get effective support and consultation from the big legal team of GE, if necessary. She also recommends having a good connection with business leaders so you can know more about business trends, approaches, and concerns in the market. “Then you can know more from a practical view rather than just a legal view. There are always things in life that have not been addressed or contemplated well enough in law, especially in the context of an emerging market in Vietnam.”

Like many in-house counsel, Thai supplements her own work

reflects a great deal more patience than other cultures and the assertion of urgency that challenges this notion may be viewed with distrust. As one commentator evaluated the contrast: “Americans measure time by the clock; Vietnamese by the monsoon.” The Confucian virtue of patience may be one virtue that counsel in Vietnam are well advised to seek.

and meets GE’s needs through the use of outside counsel for particular projects. “They assist us in completing application files and provide detailed legal analysis on certain controversial issues that need clarification. We work with both local and foreign law outside counsel and I appreciate both. Most of them are American-, UK-, or Australian-trained. However, it’s not the rule. There are some good Vietnam-trained lawyers who developed through working with foreign law firms. Exposure to an international environment through either academic training or career experience is beneficial.”

Thai advises that over the next five years there will be increased opportunities for investing in Vietnam, but companies should plan now. “Opportunities in Vietnam are always open for foreign investment as Vietnam always wants to push its economic growth. Vietnam looks forward to ‘better quality’ investors, in terms of high technology, scales, environmental protection consciousness, etc. In the next five years, certainly there will be more opportunities, as many currently restricted sectors will be open for foreign investment under the World Trade Organization commitment path. However, it is advisable to consider Vietnam as a destination for investment and prepare now.”

And while she notes that there are current problems, from an in-country vantage point and with obvious expertise on the subject, this in-house counsel sees a rosy future both for investment in Vietnam and attorneys who practice there.

“Vietnam is an emerging market that is full of opportunities for those who want to explore them. Of course as it is still in the process of legislative reform to keep pace with the new market economy and globalization trend, there are obviously several inconsistencies in terms of regulations as well as enforcement. Vietnam is working hard on making it better and better to deliver a transparent and effective legal framework to all players on a fair basis. Therefore, it’s just a context issue and it is not time to hesitate. The legal system here may need further supplementation and completion and sometimes Vietnam will need to learn from the market, from the international practice, and from its experimental lessons. Therefore, if you bring your international experience and professional standards here, you already contribute somewhat to Vietnam and thus you are always welcome. Being a lawyer in Vietnam is similar: You will face interesting and challenging issues here.”

7. “Maybe” and Even “Yes” May Mean “No”

The Vietnamese may be very reluctant to provide a negative answer or refuse a request. Thus, they may equivocate, agree to something they do not intend to do at all, or avoid giving an answer all together. To Western attorneys who have spent a long time perfecting their firm “No” to clients hell-bent on the wrong path, this approach may appear to be disingenuous at best and dishonest at worse. Instead, it should be seen as what it really is—an effort to reach the paramount goal of harmony and accord among the participants. An alternative approach to frustration is to formulate requests in a way that does not solicit a “No” answer, such as “When can we meet again?” rather than “Can we meet again next week?” Moreover, if a hesitant or equivocal answer is forthcoming to a question, it should trigger an examination of the original inquiry to determine whether it called for a “no” answer, and a rapid revision if it did.

8. The Formal Approach Is Alive and Well in Vietnam

In an era characterized by business casual attire, correspondence conducted electronically that dispenses with salutations and accurate spelling, and remote offices that look suspiciously like the beach, it is hard to believe that significant formalities may still exist in the business world. But they do in Vietnam. Initiation of contacts with a Vietnamese entity is best undertaken by a third party who can attest to your company’s character and integrity. Correspondence is conducted in writing and should be formal in its tone and approach. Face-to-face meetings are preferred over telephone conversations.

For Westerners, especially Americans who often tend to take an egalitarian approach to life, it is important to recognize that social hierarchy and business rankings in Vietnam must be considered. Vietnamese like to have a fairly strict social order. Consider the fact that in the Vietnamese language almost every personal pronoun (e.g., I, you, he, she) changes based on the age of the speaker and the status of the listener. It would be considered rude for you to speak to a senior official and his/her subordinates in the same tone and manner. It would also be considered rude if you talk more with the subordinates and ignore the senior official. Senior principles often make an “entrance” into the meeting room after others of lesser status have gathered and seating is by rank. Use of given names in business conversation is highly unusual and titles are more frequently used.

Conversations are more formal with many of the staples of Western discussion banned, including sex, politics, and religion. Topics relating to Vietnam to be avoided include communism, the Vietnam War (or the “American War” as it is referred to in Vietnam), and

any inference of Vietnamese inferiority. Jokes and other humor—which often doesn’t translate well across cultures or across languages—are also on the unacceptable list. While many Vietnamese speak English, transactions are often conducted in Vietnamese through an interpreter.

The degree of formality observed may differ depending on the group with which you are dealing. Formalities may be less observed when the Vietnamese involved are younger or in the private sector, as opposed to Vietnamese working in the government or with government-sponsored enterprises.

9. You Don’t Know What You Don’t Know

There are many aspects of Vietnam language, culture, and society that are simply not going to be available in any book or otherwise reasonably discernible to Westerners. They will require very knowledgeable people, most often natives, to identify, interpret, and address. Trade associations can be very helpful in this regard as well as the embassies of the countries of companies seeking to invest. Outside counsel with international experience

ACC Extras on ... Global Legal Issues

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- *The Evolving Role of the In-house Lawyer Outside the United States* (Going Global column 2008). Sabine Chalmers compares life as a US in-house counsel to her role as in-house counsel in Europe. www.acc.com/resource/v9242
- *The Challenges of Global Compliance in Emerging Markets* (2007). US companies are constantly expanding, allowing them to stay competitive, but also opening the door to corporate compliance risks. Managing global risk with a strong compliance program is even more crucial following recent corporate scandal, and this article discusses the issues that can arise and offers suggestions on how to be effective. www.acc.com/resource/v8632
- *The Perils and Pitfalls of Emerging Market Joint Ventures* (Going Global column 2007). Sabine Chalmers discusses managing expectations and partnering with the right local counsel. www.acc.com/resource/v8570

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Any investors who do not take the time to **seek, identify, and consult** with such resources stand a significant chance of acting to their **detriment**.

and specifically experience in Vietnam can also pave the way as can in-house Vietnamese speaking counsel. Any investors who do not take the time to seek, identify, and consult with such resources stand a significant chance of acting to their detriment.

10. Viva La Difference!

You can approach a different culture with dread, apprehension, or avoidance. Alternatively, you can be open, willing to learn, and welcome the diversity. I personally vote for the latter. Given my daughter's Vietnamese influence in my household, I now embrace a second new year's celebration at Tet; treat my colds not with chicken soup, but with Vietnam's Phở served with a hefty dose of hot sauce (it works!); and know how to take the two dozen plus measurements necessary to make the national Vietnamese dress known as an Ao Dai. Being open to these cultural differences has broadened and enriched my life.

The advantages could also be significant in a professional sense. Either home or abroad, what attorney amongst us wouldn't be a little better off professionally for having adopted patience as a virtue, being more willing to seek and achieve consensus, and more inclined to save face for his or her colleague or even an opponent? Few.

As Michelle Thai said, there are many interesting challenges for attorneys in Vietnam. If you are one of the lucky ones whose company has decided to invest there be ready to meet those challenges—and enjoy! 🇻🇳

Have a comment on this article? Email editorinchief@acc.com.

NOTES

1. Citibank—a member of Citigroup—operated a branch in (then) Saigon from 1972 to 1975. It reopened in Vietnam in 1993. It is the largest foreign financial institution in the country, has branches in Hanoi and Ho Chi Minh City, and offers a full range of corporate banking services.
2. *Emerging Opportunities in Vietnam*, ACC Docket by Michael E. Arruda, Frederick R. Burke, John F. McKenzie, and Bellanne M. Toren, Spring 1993, available at www.acc.com/protected/pubs/docket/Spring93/Emerging.html.
3. Companies accompanying the Secretary included 3M Company, Abaxis Inc., ALCOA Inc., Altec, Inc., AmericanTours International, Baxter International Inc., Carus Corporation, Century Aluminum Company, Cummins Inc., Eaton Corporation, GANNON International, Gerber Scientific, Inc., Marriott International, Inc., Northwest, Airlines Corporation, Oshkosh Truck Corporation, Rockwell Automation, Terex Corporation, The AES Corporation, The Dow Chemical Company, The Ford Motor Company, The Timken Company, and VeriSign, Inc.
4. All trade figures provided in this article have been supplied by Vietnam's Ministry of Foreign Affairs and are available at www.mofa.gov.vn/en/.
5. Taken from a statement of Vietnam's Ministry of Foreign Affairs available at www.mofa.gov.vn/en/nr040807104145/nr040807105039/ns071106093345.
6. It should be noted that Vietnamese laws and regulations are changing rapidly. While this article provides a brief overview of the investment law at the time it was written, ongoing consultation with local counsel for an updated status is essential.
7. BOTs typically occur where a private entity receives financing from another entity (often public) to design, construct, and operate a facility for a specified period, after which ownership is transferred back to the funding entity. BTOs typically occur where a private entity receives financing from another entity (often public) to build a project, transfer of ownership is immediate, and the private entity continues to operate the project. Build-transfer projects typically occur where a private entity receives financing from another to build a project and then simply transfers it. Other types of contractual arrangements include business cooperation contracts and production sharing contracts, but these are limited to certain sectors (e.g., telecoms and infrastructure projects, and oil and gas development).
8. The law does limit investments in certain areas. For example, limitations are placed on investment in projects detrimental to the history and culture of Vietnam or for the treatment of toxic wastes. Certain investments are also conditional, such as investments affecting national defense and security, banking and finance, real estate, and publishing.
9. The Ho Chi Minh City Stock Exchange reports it closed out a successful year in 2007 having held 248 trading sessions worth \$15.3 billion, almost a three time increase over 2006. During 2007, the exchange reports it provided \$22.4 billion in capitalization, representing 37 percent of the nation's gross domestic products, a 138 percent increase over 2006.
10. My sincere thanks to Neo Tran, a native of Vietnam and second year law student at George Mason University's School of Law, who significantly contributed to this section on cultural differences. Much of this discussion is taken from *Doing Business in Vietnam: A Country Commercial Guide for U.S. Companies*, copyright US & Foreign Commercial Service and US Department of State, all rights reserved (2004) (available at www.buyusa.gov/vietnam/en/country_commercial_guide.html); Esmond D. Smith Jr., *Doing Business in Vietnam: a cultural guide*, Business Horizons, copyright JAI Press Inc (1996) and Gale Group (2004), available at http://findarticles.com/p/articles/mi_m1038/is_n3_v39/ai_18348266/pg_2; and Meyer, Klaus E., Tran, Yen Thi Thu & Nguyen, Hung Vo, *Doing Business in Vietnam*, *Thunderbird International Business Review* 28, no. 2 (2006), available at www.klausmeyer.co.uk/publications/2006_meyer_tran_nguyen_tibr_final.pdf.

The Voices of Experience: 21 More Tips

Notwithstanding the great strides that have been made, trading with or investing in Vietnam can be problematic. Out of 178 economies, in 2007 the World Bank and the International Finance Corporation still ranked Vietnam fairly high *comparatively* for difficulty in doing business (the largest numbers reflecting the greatest difficulties) with an overall ranking of 91 and individual rankings as follows: starting a business (97), dealing with licenses (63), employing workers (84), registering property (38), getting credit (48), protecting investors (165), paying taxes (128), trading across borders (63), enforcing contracts (40), and closing a business (121).¹ Accordingly, it is essential to tap into the experience of others who have “been there, done that” and can tell it like it is. We consulted with four counsel with significant experience in Vietnam for their thoughts on the subject. Their varied responses provide a wealth of information.

From the in-house community was Paul D. Steinkraus, vice president and general counsel for Ford Asia Pacific & Africa. Ford Vietnam Limited has been operating in Vietnam since 1997. A joint venture company owned 75 percent by Ford and 25 percent by a Vietnamese government-owned enterprise, it conducts a vehicle assembly operation that employs about 550 people directly and more than 2,000 indirectly. All vehicles sold in Vietnam are assembled there and include passenger cars, pick-up trucks, and transit vans and buses.

Our advisors from the outside counsel community included Frederick Burke, partner at Baker & McKenzie², Christopher A. Muessel, partner at Duane Morris³, and Sesto Vecchi, partner at Russin and Vecchi⁴.



Frederick Burke



Christopher A. Muessel



Paul D. Steinkraus



Sesto Vecchi

While Ford is generally recognized around the world as an American company, Ford has to adapt to whatever business environment it encounters. In Vietnam, Ford has had to learn to deal with much more regulation and government control than exists in the United States.

As for legal challenges, Ford Vietnam must continue adapting to an ever-changing regulatory landscape. For example, Vietnam joined the World Trade Organization (WTO) at the end of 2006, a development that should improve the country's business operating environment and will gradually reduce or remove tariff and non-tariff barriers to trade. A ban on used car vehicle importation has been removed and foreign companies will have the right to distribute imported vehicles starting in January 2009. These developments pose competitive challenges for a local assembler like Ford Vietnam and undoubtedly will require new business strategies to comply with the complex requirements of Vietnamese law. Unfortunately, key changes in business-sensitive requirements (such as changes in duty rates and excise taxes) are often made without consultation with industry. Ford Vietnam would like to see the government partner with industry in developing and scheduling planned regulatory changes (for example, changes in tax rates and importation rights, and harmonization of Vietnamese regulations with those applicable regionally). This would enable industry to plan its investments and business structure properly.

Another legal challenge is the lack of coordination among ministries and local regulators. This often results in inconsistent legal interpretations, with resulting delays and difficulties for businesses.

Q. What are some of the challenges that have to be met when investing in Vietnam?

Steinkraus: The business environment in Vietnam is markedly different from that in the United States. State control of the Vietnamese economy is extensive, with the Communist Party continuing to dominate the political scene. The Communist Party sets the social and political strategy, and government ministries heavily regulate the business sector.

Burke: Vietnam's legal and political systems, not to mention its culture, are unique in many ways. A foreign investor needs to climb a rather steep learning curve to master the idiosyncrasies of the local system. In addition, there are two big challenges these days: First, the law is changing more fundamentally and rapidly than ever before, and no one, in government or in private practice, can keep up with it without a terrific effort and investment. Second, there is a growing shortage of trained profes-

sionals in virtually every field, not just lawyers, but accountants, financial analysts, consultants, and also project managers, skilled carpenters, electricians, and contractors.

Mussel: Although there have been significant improvements in recent years, foreign investors still complain that: (1) there is too much “red tape” involved with investing in Vietnam, (2) governmental corruption continues to cause inefficiencies, and (3) intellectual property rights enforcement is not far enough along.

The biggest practical challenge is whether Vietnam can continue to develop its infrastructure to keep pace with demand, especially regarding roads, ports, and power.

We have helped our clients overcome the foregoing challenges by explaining how the law can protect them (e.g., by filing trademark license agreements to help enforce their intellectual property rights), and procuring government supports wherever possible (e.g., government guarantees, investment incentives, pre-investment opinions, etc.). We also use our business chambers (e.g., the American Chamber of Commerce in Vietnam) as “bully pulpits” to decry governmental overreaching.

Vecchi: Any list of legal challenges for a lawyer would include the problem that laws are not uniformly well drafted. While the draftsmanship is improving, inconsistency, inaccuracy, and lack of precision are constants. The conservative nature of the bureaucracy is certainly another challenge. There are others. We have tried to deal with these two by engaging government officials informally in a dialogue on issues of interest, not requiring that officials necessarily commit to hard answers to get their feedback on the government’s underlying policy on issues, and in this way to try to understand official thinking and to try to shape it. We often provide professional materials or more formal comment on international practice to assist officials to understand the context of an issue. This will be of a more long-term than short-term benefit, but creates a favorable environment when specific issues arise. We have had reasonable success to get our clients’ points of view across in ways that we think lead to more professional decisions by bureaucrats. There are obviously limits to this approach, but we are convinced it has merit.

We have had particular success if a client wants to provide in-house training to government officials. Two examples where we did that with a client included working with a client to: (1) work with the Ministry of Trade to help it create a framework for a responsible direct selling regulatory regime where we also helped in the actual drafting of regulations; and (2) hold several in-house workshops with the State Bank of Vietnam while it was considering its anti-money laundering legislation and then commenting on the draft legislation.

Q. What tips would you provide in-house counsel whose companies are considering investing in Vietnam?

Steinkraus:

1. Make sure you find a real good source of expertise on the local regulatory environment.
2. Recognize the importance of excellent contacts with local regulators. Their input often will be invaluable in construing laws that usually are far less detailed and more ambiguous than those in the United States.
3. Don’t underestimate the importance of cultural differences between the United States and Vietnam. This is particularly relevant in regard to counsel’s role in ensuring that business activities are conducted in compliance with anti-corruption rules.

Burke:

1. Don’t fall for the claim that so-and-so is well-connected, therefore he or she can do something that goes beyond what the law allows. “Connections” can help accelerate the approval process to go more smoothly if it helps enhance the credibility of the investor and the project, but there is a false perception that the rules were somehow made to be broken.
2. Anticipate change. Not just the laws, but prices, infrastructure, market dynamics, and other factors are all in a state of rapid flux. It is important to get information not just on where things are today, but where they’re heading in the coming years. Don’t assume that just because Vietnam allows you to do something today that it will continue to do so if other countries do not. The recent introduction of a Competition Law (anti-trust) is a good case in point and will force a lot of companies, foreign and domestic, to change the way they have been doing business in the years ahead.
3. Don’t suspend the normal good judgment you’d exercise elsewhere. Many otherwise responsible adults have come to Vietnam and lost their shirts on the simple ruse that “this is the way we do things in Vietnam” (meaning, usually, doing something illegal or at least unenforceable).
4. Vietnam is rather heavy on the paperwork for all businesses, local and foreign alike. Be prepared for delays if you can’t provide audited financials that are notarized, consularized, legalized, and translated by a local notary, and similarly useless exercises in red tape.

Muessel:

1. Undertake research on the market and any prospective investment targets before traveling to Vietnam.
2. Hire qualified international consultants (lawyers and/or accountants) in Vietnam to flag possible investment issues.
3. Undertake an “exploratory trip” to investigate your investment targets.

4. Enter into memoranda of understanding or letters of intent before negotiating detailed agreements.
5. Hire a law firm to review the general terms and conditions.
6. If issues arise that are not clearly addressed under Vietnamese law, seek a preinvestment opinion from the applicable governmental authority.
7. Use qualified international consultants to help negotiate and prepare detailed agreements and to address post-closing matters, the latter of which can be considerable in Vietnam.

Vecchi:

1. Neither arbitration nor the courts provide perfect (or even good) solutions to resolve disputes. When practical, choose Vietnamese law, even if the arbitration will be offshore. It will probably make enforcement of an award in Vietnam easier. Do not use offshore litigation as foreign judgments are generally not enforceable in Vietnam.
2. Although many government officials are fearful of making clear decisions and often prefer ambiguity, there are many talented, well-motivated people in government, and it is worthwhile to try to identify and engage people on matters that relate to a project.
3. In some industries you may have no practical choice on the question whether to take the government or a state-owned enterprise as a partner. However, don't overvalue the political component and undervalue the commercial component of a partnership. In other words, the commercial component has to make sense. Even if the foreign investor accepts that it needs a partner, there is often more than one choice.
4. Undertake a due diligence investigation on important legal matters, e.g., entitlement to land and other such rights, necessary licenses, basic corporate authorizations, etc. (In that connection, be sure that important undertakings have been signed by the legally authorized person and that the organizational seal has been affixed). The task of due diligence investigation is complicated by the fact that there are few public records that are fully reliable and from which one can learn such things as corporate establishment, ownership, mortgages and other security interests, financials, etc.
5. The Vietnamese business community often acts informally. Informal agreements can't substitute for precise enforceable documentation for commercial commitments, but it can temper the formality of the relationship if the less critical matters are treated with less formality. In other words, try to distinguish between what in the relationship is important and requires strict compliance and formality and what is less important.
6. Recognize that while the public and private sectors are more

sophisticated now than in years past, officials are not yet totally confident that they understand international norms. Recognition of that fact will be important when you reach an impasse for reasons that may not be obvious. That is, the counterparty may not know what is the norm, does not want to be seen as unsophisticated or uninformed, and so responds by delay or interruption of the negotiation process. Thus, while the foreign party may focus on a specific issue to try to resolve an impasse, the problem may be more general.

7. Use of a lawyer by a Vietnamese counterparty is rare (but changing). Some government offices have a policy of not answering letters or queries posed by lawyers (as opposed to the business entity itself). Therefore negotiations may proceed more smoothly if the lawyer has a secondary role.

Q. How would you describe the current opportunities for foreign investment in Vietnam and how have they changed over time? What do you think these opportunities will be like in five years and why?

Burke: Vietnam is opening a much more significant portion of its economy to foreign participation in the wake of its WTO accession. In a nutshell, except for those areas of the economy designated as specifically "conditional" or "prohibited," it is possible to invest directly through wholly owned subsidiaries, or to invest in an already established local company. The latter marks the biggest current development—foreigners can take stakes in and in most cases take over successful local companies for the first time since Vietnam opened its doors rather tentatively to foreign investment in the late 1980s. Foreigners also now have the choice of investing through the public securities markets as individual or institutional shareholders if they open a local securities trading account. This means that the high growth areas of the economy, including property development, export manufacturing, distribution, and even financial services are, to a greater or lesser extent, presenting new opportunities to foreign investors. Some of the biggest surprise success stories have been in the IT area, where software development and other "digital sweatshop" forms of outsourcing have taken root with a lot of nurturing from the government.

Muessel: Since relations between Vietnam and the non-communist world began to be restored in the early 90s, there has been no better time for foreign companies to invest in Vietnam. This is largely due to Vietnam's accession to the WTO last January, which meant that significant legal reforms had to be made in advance of its becoming a WTO member, and further means that Vietnam must now implement its WTO market access commitments.

As chairman of the American Chamber of Commerce (AmCham) in Vietnam, I will hear directly from our 1,200 members if there are implementation delays or violations of Vietnam's WTO commitments, and I note that AmCham's Ho Chi Minh City branch has in fact set up a committee to monitor and report upon Vietnam's WTO implementation. AmCham will not be "shy" when it comes to confronting the Vietnamese government regarding any perceived foot-dragging—or WTO violations. The same can be said of most of the other foreign chambers of commerce in Vietnam.

Five years from now, if Vietnam's exports continue to rapidly grow (e.g., to the United States, they have doubled every year since 2001 when the United States signed a comprehensive bilateral trade agreement with Vietnam), and provided that Vietnam honors its WTO commitments, the investments that foreign companies make in the next year will likely realize significant internal rates of return (IRR), which will far exceed IRRs in virtually all other countries in the world.

Vecchi: With Vietnam's accession to the WTO in January 2007, the current mood and environment of the country is very supportive of foreign investment. Vietnam welcomes foreign investment and generally seems to be trying to meet its WTO commitments. The trend is toward fewer and fewer restrictions on 100 percent or majority foreign ownership, although there are some phase-in periods in some cash. With 85 million people (60 percent of whom are below age 35), whose incomes are rising, whose literacy rate is 95 percent and who are highly motivated toward education and self-improvement, there is much opportunity and indeed opportunity seems everywhere. Some areas of particular interest are: consumer goods, home ownership, technology, infrastructure, and many services areas (e.g. finance, securities, tourism, fashion).

Q. How should companies use and choose outside counsel when investing in Vietnam? When do you think a company should move to an in-house counsel and how would you go about choosing that counsel?

Steinkraus: It's important in a country like Vietnam to select outside counsel who not only have competencies that companies typically look for (deep and broad knowledge of local legal requirements, creativity in problem solving, responsiveness, energy and enthusiasm in meeting our legal needs, competitive rates, etc.) but also have excellent working relationships with local regulators. We rely on the Vietnam International Law Firm as our primary outside lawyers in Vietnam.⁵

I'm a firm believer in the value of having the legal needs of a Ford affiliate met primarily by a local, in-house lawyer. This assumes, of course, that the local operation has sufficient size and legal needs to justify this. In my experience, a local in-house lawyer:

- has a better understanding of the company and intimate knowledge of the business than outside counsel and is thus better placed to take part in business/strategic planning;
- is better able to practice preventive law through training, participation in business discussions, counseling on avoiding unnecessary risk, etc.;
- is usually the best resource to help business understand and navigate the external legal environment;
- exercises important control over and focus on external legal expenses, acting as a gatekeeper to prevent unnecessary access to external lawyers, as well as optimizing the mix of what is outsourced and kept in house; and
- is usually more cost-effective than using outside counsel, if the in-house function is performed properly.

Ford selects in-house counsel very carefully, often through use of a legal recruiter. Once hired, the local lawyer is mentored as necessary to ensure that he/she understands Ford's robust, worldwide culture of compliance with all applicable law, and the details of our approach to making sure we provide strong, value-added support to our business colleagues.

I have spent a lot of time mentoring our senior in-house lawyer in Vietnam, Dinh Thi Thanh Huyen, both routinely over the phone and in person during periodic visits to Ford Vietnam. Huyen is an excellent lawyer who has grown significantly in skills and responsibilities during her eight-year tenure with Ford Vietnam. Huyen is responsible for both legal and governmental affairs matters in Vietnam and has a junior lawyer reporting to her.

NOTES

1. *Doing Business 2008 Vietnam* published by the International Bank for Reconstruction and the World Bank, available at www.usvtc.org/info/wb/WB-DoingBusiness2008-VN.pdf
2. www.bakernet.com/cmsbm/templates/displayattorney.aspx?tmkprid=05089. Burke can be reached at fred.burke@bakernet.com
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