THE PLAYING FIELD - SINGAPORE vs. VIETNAM

In the mid-1980s, in conjunction with the exhortation of the Singapore government, Singapore businessmen gamely forayed into the Socialist Republic of Vietnam ("Vietnam") seeking for opportunities of investment in numerous fields. These foreign ventures of Singaporean businessmen were timely indeed as they coincided with the reform measures of the Communist Party of Vietnam in the implementation of its program of "doi moi"(renovation). Pursuant to Vietnam's shift from a centrally planned economy to a market economy, Vietnam's first Law on Foreign Investment in Vietnam was promulgated by the National Assembly on 29 December 1987. Since then, there have been numerous amendments to the laws on foreign investment to meet the rapidly changing requirements of foreign investors.

In Singapore, there are three main forms of business organisations, namely, sole proprietorships, partnerships and companies. A sole proprietorship and a partnership are unincorporated associations whilst a company is an incorporated association forming a separate legal entity upon formal registration. Often, foreign investors intending to invest in Singapore would incorporate a limited liability company. Companies in Singapore are governed by the Companies Act (Chapter 50 of the 1985 Revised Edition of the Singapore Statutes) (the "Singapore Companies Act"). The Singapore Companies Act is directly derived from the Malaysian Companies Act 1965, which in turn is based on the Australian Uniform Companies legislation of 1961 and the United Kingdom's Companies Act 1948. Thus, Singapore company law is mainly based on principles established in England over the last century or so and share similarities with Australian and Malaysian company law. Suffice it to say that the principles of law governing companies in Singapore are relatively well-established. Aside from substantive law, today, we are also accustomed to the speedy and transparent process of incorporating a private limited company as a means of commencing business in Singapore. The entire process from reservation of names for the company to the issuance of the certificate of incorporation, would ordinarily encompass no more than three weeks.

Many of our Singapore businessmen were thus flummoxed when confronted by the various forms of investment vehicles for foreign investors and various legislative and practical requirements in the registration of a foreign investment vehicle before commencing business in the Socialist Republic of Vietnam. The laws of foreign investment and procedures for establishing foreign investment vehicles have been amended and fine-tuned since the promulgation of the Law on Foreign Investment in Vietnam in 1987, the most recent substantive amendments being made in the year 2000.

Briefly, there are 4 basic forms of foreign investment in Vietnam and these are : (1) a joint venture enterprise; (2) a 100% foreign owned enterprise; (3) a business co-operation contract; and (4) a Build-Operate-Transfer arrangement. In the early days of "doi moi", most foreign investment were in the form of joint venture enterprises. A joint venture enterprise ("JVE") is a separate legal entity established in Vietnam with limited liability. A joint venture relationship is a business marriage formed between foreign parties and Vietnamese parties. Each joint venture partner contributes capital to the JVE, called the total invested capital, which is analogous to authorised capital in Singapore. The foreign equity in a JVE must be at least 30% of the total investment capital but ordinarily does not exceed 70% of the total invested capital. Often, the foreign partner would contribute legal capital in the form of cash or assets and the contribution of the Vietnamese partner would be in the form of land use rights. As in all marriages, the parties would have to conscientiously nurture and maintain the relationship to bring it to fruition. An understanding of the Vietnamese business culture and psyche of the Vietnamese partner would serve the foreign party well in ensuring a good working relationship with the Vietnamese partner.

Since the recent amendments in the laws of foreign investment, there is now a greater flexibility in the forms of foreign investment and a greater number of fields are now available for foreign investment in the form of a 100% foreign owned enterprise ("WFOE"). Conversions from a JVE to a WFOE are now allowed pursuant to the recent amendments. A WFOE is an enterprise owned and established in Vietnam by a foreign investor who self-manages the enterprise and takes full responsibility for its business results. Such an enterprise is established in the form of a limited liability company and is a separate legal entity in accordance with the laws of Vietnam. In many way, a WFOE is similar to a limited liability company incorporated in Singapore. A WFOE is generally preferred by foreign investors as control need not be divested in any way.

Another form of foreign investment, which a foreign investor may wish to consider, is a contractual business co-operation arrangement or "BCC" as it is commonly known. A BCC has the objective of conducting jointly one or more business operations in Vietnam without creating a new legal entity. The parties are afforded a flexibility in agreeing on the contractual terms of the BCC arrangement subject to the approval of the relevant licence issuing authority in Vietnam. On the other hand, since a BCC is not a limited liability company, the foreign party is also exposed to greater liability than for example, a JVE. In most cases, a BCC is used for relatively short term projects ranging between five to fifteen years.

Strictly speaking, the Build-Operate-Transfer arrangement ("BOT") is not a fourth form of foreign investment. The BOT form was introduced to attract private international capital into Vietnam for the purposes of developing infrastructure projects on a commercially viable basis where the assets ultimately revert back to the government. BOT projects are typically carried out in the form of a JVE or a WFOE. Other forms of carrying out business in Vietnam are establishing a representative office or a foreign company branch. A representative office does not constitute an independent legal entity and is allowed only to engage in trade, investment liaison and support activities of its head office. A foreign company branch is a subsidiary of a foreign business entity established under the laws of Vietnam and is allowed to engage in commercial activities. The scope of activities whereby a foreign business entity may establish a foreign company branch in Vietnam remains woefully restricted at present.

The foreign investors and the climate of foreign investment in Vietnam have greatly matured since 1987 when stories of physical hardship, backdated technological equipment, guaranteed blackouts by the hours and a bureaucracy that presented the ultimate endurance test, were but some of the factors that were evident in the everyday running of businesses in Vietnam. Today, the face of Vietnam is changing as standards move beyond mere subsistence level. There are now 5-star hotels, posh and even intelligent office buildings, supermarkets, shopping centres and exquisite restaurants. Despite the sure signs of growth, the two largest hurdles facing all foreigners in Vietnam are often, (1) lack of accurate information, and (2) understanding the difference between doing things and getting things done.

A very good example would be when foreigners and Vietnamese attend a meeting. Most foreign investors new to Vietnam think of a meeting as an event where something will actually be accomplished and decisions made. For example, to an average foreign investor, the purpose of a meeting could mean they want to express a point of view, to discuss this or that contractual matter and then come to some sort of an agreement, or at least reach a decision. To the vast majority of Vietnamese, meetings are a way of meeting "officially" for this or that stated purpose, but they do not expect to accomplish anything meaningful. Meetings sometimes serve as a way to wait for a foreign investor's "schedule" to run out, or, it could be a way of passing time without actually having to do anything, or, an opportunity to get in out of the heat, drink tea and wile away the time until a real meeting takes place later in some obscure karaoke bar. Meetings occur in Vietnam for a wide ranging assortment of reasons, which are both complex and fascinating, but generally, it's a far cry from the typical expectation of "meetings" that a Singapore investor may have.

Despite the difficulties and frustrations that Singapore investors may have faced in investing in Vietnam throughout the years, it is clear that Vietnam remains a land of opportunity for many foreign investors. For Singapore investors, this is especially true as Singapore tops the list of 52 foreign investor countries in Vietnam with 236 projects and an investment capital of US$6.74 billion. To the Singaporean investors in Vietnam, I salute you!

Kelvin Chia Partnership
October 2001

Contact details:

CHEAH Swee Gim
Email: cheah.sweegim@kcpartnership.com
DID: (65) 6332 9349

Karen DING
Email: karen.ding@kcpartnership.com
DID: (848) 822 4986