

DOING BUSINESS IN VIETNAM

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With the United States poised to remove its trade embargo, now is a propitious time to review a book concerned with the commercial laws of Vietnam. In fact, the book sets itself a wider goal, as it also informs on matters relating to economic intelligence, such as international trade, infrastructure and economic demographics. In writing a book that appeals to both lawyer and business investor, the author has reconciled the often competing requisites of legal detail and strategic overview. The author has wisely resisted the temptation to pursue both of these objects, and has, in the main, selected the investor as the target audience. Some of the following comments about the effectiveness of the book as a legal text, should therefore be read with this in mind.

The book commences with three chapters that respectively provide background briefing material on cultural and political matters; physical infrastructure; and natural resources including agriculture and tourism. The fourth chapter is particularly helpful, as it introduces, albeit too briefly, the political policy of *Doi Moi* (Renovation) which was formulated by the ruling Communist Party at their Sixth Congress in 1986, and was recently reaffirmed at the Seventh Congress 1991 and formalised into law by the new Constitution, 15 April 1992. Knowledge of this policy is crucial, as it provides the analytical tools to understand the often fragmented and contradictory transformation of a closed command economy, into one that is slowly opening and becoming responsive to the world trading community.

Chapters 5 to 15 inclusive, incisively deal with different aspects of the commercial codes. The most important matters covered include, land law, types of foreign investment vehicles, banking and repatriation of profits, accounts and auditing, import/export control, intellectual property, labour rules, taxation, dispute resolution, resident representative offices and finally, immigration procedures. The discussion in these chapters is particularly clear and easy to follow largely because the commercial laws have been dissected and rearranged to provide a logical step-by-step guide to the mechanics of foreign investment. Unfortunately, the pursuit of clarity has led to some oversimplification, for example, article numbers have not been cited in

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the text, making it difficult to consult the original code if more detail is required.

What is not said in the text, which is also important, is that there are considerable political tensions at the highest level in the Communist Party and Central Government. As a result, interpretation and administration of commercial laws tend to vary according to the political predilections of the authorised ministries and/or provincial-city administrators. Although most agencies will do their utmost to encourage foreign investment, a literal reading of the commercial code must be treated with caution.

The problem is illustrated by the book's treatment of the *Land Law 1987*. In so far as the text provides that all disputes over land rented by a foreign investor are to be settled by the People's Committee (Local Government) of the area in which the land is located, there is no cause for concern. When it is realised, however, that the lessor of land is always a jurisdictional entity wholly owned by the People's Committee, the opportunity for the adjudicator to become a judge in its own cause becomes apparent.

The book's treatment of the important area of investment protection is also in need of further explanation. Even though, as the text would have it, the *Law on Foreign Investment in Vietnam 1987* (as amended) unequivocally guarantees an investor's capital against appropriation and gives a right to repatriate profits, all is not as it seems. It is true that the *Constitution* has now been amended to legitimise the presence of foreign investors and to guarantee the right to own income producing property, except land. But the *Constitution*, unlike its counterparts in the West, can not be used by the courts to question the validity of legislation or administrative discretion. Compounding the problem is the absence of a court or arbitral body that is at once superior to and independent from the administrative arms of government. Complaints concerning unfair treatment by central or provincial governments, must be referred to the State Committee for Co-operation and Investment (SCCI), which is itself an inter ministerial arm of government.

Readers should also be alerted to the fact that the book does not, in any real detail, deal with the domestic commercial laws that will govern the operation of a foreign investment vehicle once it has entered the Vietnamese economy. These laws include the *Ordinance on Economic Contracts 1989*, *Ordinance on Civil Contracts 1991*, *Ordinance on Economic Arbitration 1990*, *The Companies Law 1990*, and also *The Law on Private Enterprise 1990*. The point is, in order to make a judicious decision of whether to invest, knowledge is required of the legal system that will affect the ongoing venture. Favourable tax or labour rates, for example, must be weighed against the current inability of the legal system to comprehensively enforce both domestic and foreign arbitration awards, or bankrupt recalcitrant judgement debtors.

Many of these legal shortcomings will, in the future, be addressed by an ambitious programme of land reform.

In addition to an impeccable layout, a feature common to most CCH publications, the book contains in the appendices excellent English language translations of the three most important Vietnamese foreign investment codes. The index is also most useful, being extensive and well set out.

The compilation of the material for this book represents a considerable achievement that will be appreciated by those who have likewise attempted to gather information on Vietnam. Although practitioners may still await a comprehensive and more up to date legal treatment of Vietnam's commercial laws, this book possesses the virtue of being the first text to cover such a wide range of issues relevant to a foreign investor. On this basis, it may be of use to lawyers already familiar with the jurisdiction, as well as to those who require a quick overview, or a pocket guide to investment.

