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Focus

INTERNATIONAL BUSINESS

VIETNAM VENTURES

By Oliver Massmann

International investors thinking about expanding to Asia are looking increasingly toward Vietnam. Vietnam has undergone rapid transformation over the last decade, a process crowned by its accession to the World Trade Organization in January 2007. The Vietnamese economy is performing well with constant GDP growth rates around 8 percent over the past few years, rates surpassed only by China.

Seductive Sectors Services

Vietnam has plans to have one of the most liberal service sectors in Asia. Likewise, it has made massive commitments to cut tariffs and other trade restrictions. After other accession countries, especially China, failed to implement their commitments to the WTO in the time promised, Vietnam was required to implement a number of laws in compliance with WTO standards before accession. Although Vietnam has not implemented all its commitments, WTO accession provides the framework for further reforms toward a full market economy. The establishment of a stock exchange in 2000 and its subsequent rapid growth also fall in line with this development direction.

Infrastructure

The Vietnamese government must invest billions in building or upgrading its infrastructure. Some estimate the need at $150 billion in the next decade. This is a largely untapped opportunity for foreign investors.

Because of its geographic position, stable political environment, rich raw material, still-low labor costs and growing quality of produced goods, Vietnam increasingly has attracted foreign investment. Foreign direct investment reached a record $10.2 billion in 2006, almost double the previous year. The current and anticipated development, as well as the standards of WTO membership, likely will lead to more-favorable conditions for foreign investors.

Manufacturing and Production

According to the Japan External Trade Organization, Vietnam was second only to India among countries where Japanese manufacturers expected improved profit in 2007. More than 75 percent of Japanese manufacturers operating in Vietnam believe that it offers the best production base over the next 10 years - the largest number of Japanese investors ever to agree on the favorability of one country. This resulted from an increase in export sales and improved production and efficiency.

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Legal Framework

Since the reforms in Vietnam's Investment and Enterprise Laws in 2006, the legal framework is forming a level playing field for foreign investors. On July 1, 2006, Vietnam passed new laws to satisfy the WTO and to provide a common legal framework for investors. The Investment Law lays out the approval and monitoring processes for the implementation of the various investment projects. The Enterprise Law creates the types of entities investors may form, and contains some registration procedures and provisions on the management structure of the company forms.

Investment Opportunities

Under the new Investment Law, foreign direct investment can take various forms. Investors making a first-time investment must have an investment project and apply for an investment certificate. Vietnam allows two types of investment projects. An investment project either qualifies directly for registration or requires particular assessment. Projects requiring particular assessment are those falling under a list of fields that are normally related to areas the Vietnamese government considers sensitive.

Once issued, the investment certificate serves concurrently as a certificate of business registration. Foreign investors may invest in Vietnam in the following forms: 100 percent foreign-owned; joint venture with Vietnamese partner(s); business cooperation contract; and other forms. A 100 percent foreign-invested project and a joint venture are possible in the corporate forms of a limited liability company or a joint stock company.

The Enterprise Law provides for several corporate forms for investment projects in Vietnam. The preferred form for foreign investors is the LLC. Under the law, an LLC can be a single- or multiple-member LLC. The LLC is a juridical person and has its own charter. The member(s) of the LLC are liable for the debts and liabilities caused by the LLC up to the amount of capital contributed or committed to contribute.

A one-member LLC is the standard form for 100 percent foreign invested projects and is owned by an individual or an organization. The owner or a board of members appointed by the owner can operate the LLC. The owner must appoint one to three controllers to supervise and manage the LLC. The controllers can be foreign, unless the charter requires otherwise. The law is not clear about whether foreign controllers are required to live in Vietnam. The charter capital of a one-member LLC cannot be reduced and has to be fully funded by the owner in a timely manner.

The form of a multimember LLC can be either 100 percent foreign-investment or joint venture projects. The multimember LLC is governed by a board of members. The members are appointed according to the capital contribution of the owners and regulate the distribution of profits and the priority in contributing additional capital. The members can transfer or dispose of their capital contribution, or the company may buy it back as set out in the Enterprise Law or charter of the LLC.

The JSC is defined in the Enterprise Law as an enterprise which has charter capital that is divided into shares. Like the LLC, the JSC is a juridical person with its own charter and can be listed formally on the Vietnamese stock market or be an unlisted company. The regulations in the Enterprise Law apply equally to both forms. Shareholders can be organizations or individuals, and the minimum number of shareholders is three. Company debts and liabilities are the liability of the shareholders up to the amount of their contributed capital. A JSC is entitled to issue bonds or additional shares in order to mobilize capital. Founding shareholders are required to subscribe to at least 20 percent of the total number of authorized ordinary shares.

The management of a JSC comprises the shareholder's meeting, the board of management, the director or general director, and a supervisory board in cases when it has more than 11 individual shareholders or an institutional shareholder holding more than 50 percent of the total share capital.

Another potential investment vehicle is a Business Cooperation Contract. A BCC is not a company form; it is a contractual relationship between a foreign investor and a domestic investor to implement a specific investment project. For this, Vietnam requires licensing. The BCC is a very flexible investment vehicle. Profit sharing can be regulated by the parties. A disadvantage of a BCC is that the investors are exposed to unlimited liability. Accordingly, foreign investors can form an LLC to create the BCC.

For investment projects in infrastructure, the mechanism of a build-operate-transfer project may be used. Like a BCC, a BOT project is not an entity but rather a contractual partnership in order to implement a specific project. The aim of a BOT project is to build infrastructure. This structure encourages foreign investors to build a project, earn a profit, then transfer it to the government. The foreign investor agrees to the project, receives the license to operate it at a profit for a limited period (usually 50 years) and transfers it to the Vietnamese state without further compensation. The partner in a BOT project is the competent Vietnamese authority. The BOT contract has to be approved by the Vietnamese government.

To invest in BOT projects, the BOT partnership must establish companies to manage and construct the projects. This is possible both through a joint venture or through a 100 percent foreign-invested company. The management and construction companies are legal entities, and there is generally no limitation as to foreign ownership.

Vietnam has a huge demand for investment in infrastructure. It is estimated that an investment of $1.5 billion is needed in the power sector alone each year over the next decade. BOT projects allow the state to erect infrastructure with foreign capital while retaining a high level of control. Therefore, investors in BOT projects find the most favorable investment conditions.

Market Strategies

For all corporate investment forms, investors need to formulate the intended scope of business carefully, making it as broad as possible. The business will be limited to act within that scope. The process of extending the scope is cumbersome.

In the initial stages of entering the country, many foreign investors choose to enter the Vietnamese market with a representative office. The registration process for the office is the easiest and quickest of all registration procedures, but their ability to conduct business is very restricted. An office is used mainly to identify investment possibilities and prepare the groundwork for business transactions with an offshore entity. The offices cannot enter into contracts or even market the opportunities. The government imposed these restrictions to encourage foreign investors to establish tax-paying corporate forms and legally conduct business activities.

Vietnam has implemented many reforms successfully and is moving quickly toward a free market economy and progressive approximation to the West. Vietnam tries to provide a welcoming environment for foreign direct investment with the reform of the legal framework and its efforts to provide a level playing field for foreign investors. All standard corporate forms are available, and the liberalization stemming from WTO accession will provide new options.

However, application of the laws in practice is not always clear. Bureaucracy remains cumbersome, and time limits set by the laws are often not met by the authorities.

Despite these factors, the investment climate is more favorable for FDI. Investors who are established in Vietnam describe the framework as steadily improving and the government as increasingly open to input from the private sector. After the record-level FDI reached in 2006, the stock market recorded total growth of 42 percent in the first two months of 2007 alone.

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