



Managing political and legal risks of foreign corporations entering Vietnam market

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Abstract

This article presents some kind of risk of hard type that foreign corporations must face entering Vietnam market. Political and legal risk is very specific that differentiates Vietnam business environment from other business environments in the world, especially those of highly developed markets. The article hints out how to manage those risks appropriately to achieve best business results for the foreign corporations which are not used to the completely new business environment they are facing.

Keywords: political risk, legal risk, risk management, foreign corporation, Vietnam

1. Introduction

Currently, the process of globalization has promoted the development and interdependence of national economies, while leading to profound changes in all areas of the world economy. Foreign corporations or investors are increasingly promoting their great role in the world economy when joint ventures, partnerships with other companies for more extensive development, or investment in one certain industry to enjoy some of the profits earned in the investment. We realize that Vietnam is a country under the attention of foreign investors and the annual FDI of Vietnam has increased continuously. Because investors realize that Vietnam's development potential with the advantage of abundant labor resources is the market for products and where raw materials and materials are available, so much investment has been made in Vietnam for its economic development and profits. Not so that Vietnam is a delicious piece of cake for investors, on the contrary, it still has some risks that slow the development pace when foreign investment in Vietnam. When entering into a new market, especially the business environment of a developing country like Vietnam, foreign investors always face a lot of risks because of the difference in their weaknesses. Socio-cultural factors and the most important of which are differences in the political and legal factors between countries because it is directly related to the legal basis of the company. Therefore, when foreign investors enter the Vietnamese market, they will face many risks because of differences in these political and legal factors. Therefore, recognizing the importance of managing the risks of legal politics, we selected the topic for our research article: "Managing the legal and political risks of foreign corporations entering the market Vietnam" to learn and study the political and legal risk management, thereby helping foreign investors avoid risks when operating in Vietnam market. The structure of the article is as follows: part 2 is that we give some relevant concepts and influence of legal and policy issues on foreign investment in Vietnam. Part 3 introduces research methods and data. Part 4 provides experimental results. And the last part, part 5 concludes our findings.

2. Theoretical framework

2.1. Defining concepts

The encyclopedia of Vietnam has introduced the following concept of policy: "Policies are specific norms to implement guidelines and tasks. Policy is implemented in a certain time, in certain areas. The nature, content and direction of the policy depend on the nature of the political, economic and cultural guidelines and tasks". Politics is active in the field of relations between classes, as well as peoples and nations with the issue of obtaining, holding, organizing and using State power; is the participation of the people in the work of the State and society, is the practical political activity of the class, the political parties, the state in order to seek the ability to implement the way and the items targets set out to satisfy benefits. The law is a system of general mandatory rules issued or recognized by the State and guaranteed to be implemented, demonstrating the will of the ruling class and the factor that regulates social relations developed in accordance with the interests of his class. Since then we understand the political and legal risks in international business are the risks arising from the impact of domestic and foreign political situation that directly affects the business operations of the company, together with with changes in the laws of regulations or decrees and circulars relating to international business policies, causing losses to foreign companies when investing in that country. Each country has its own policies, a separate legal system to manage domestic businesses as well as foreign businesses. Because political policy law has a great influence on business activities as follows: Through the law, the state institutionalizes economic guidelines and policies into legal provisions with common compulsory values for all business entities; create favorable legal corridors to encourage organizations and individuals of citizens and foreign organizations and individuals to invest in increasing business capital sources; set a legal basis for determining legal status for business entities; Adjust the business behavior of all business entities.

2.3 Overview of Vietnam's political and legal issues

Political situation in Vietnam

The Vietnamese political system is a whole body including: the Communist Party of Vietnam, the Socialist Republic of Vietnam, the Vietnam Fatherland Front and the mass organizations. "Each organization has different positions, roles and modes of operation with different functions and functions under the leadership of a single ruling Party, the management of the state to implement the main power of people's values for the purpose of "rich people, strong country, democracy, fairness and civilization". In an overview, Vietnam's political system is generally quite complete and is being improved step by step to promote the role of each individual as well as strengthening the power of the entire system. In 2019, the main political movement is the Communist Party's concentration of power. This is a strategy to be prioritized to strengthen the regime and social stability. This political solution is considered realistic in Vietnam when there is no other option to avoid crisis. The influence of Chinese factors, countries with political systems similar to Vietnam is also taken into account. In addition, some countries' transition to the Western-style "orange revolution" are also lessons learned. Anti-corruption 'no-forbidden zone' and interest groups, reforms Ministry of Public Security, Ministry of Defense, administrative reform ... are strong moves and are seen in both aspects. First, corruption is a threat to the survival of the regime, fighting corruption to regain trust. Secondly, in the Party, there have been presenting divisive, unified, and anti-corruption factions, which are a way to eliminate opposition to centralizing power.

Legal system of Vietnam

Currently, Vietnam has the most complex legal system in the world, this system is characterized by massive, trouble due to too many types of legal documents issued, but there are too many loopholes, overlapping regulations, inconsistencies, inconsistencies with each other, hindering and weighing on people and businesses. The legal system is considered to be lack of practicality and feasibility, lack of transparency and not going to life because the process of legislative development lacks thinking, vision, localized, unfair and expressive group benefits. However, the State is making additional modifications to the legal system to be more and more complete and suitable with the reality. In early 2019, Vietnamese law will apply the new law of Network Security Law, causing a really stressful line of disputes for people, for the government and for businesses in Vietnam. Meanwhile, the Law of Cyber Security, which is the basis for legitimizing the stricter administration of government before public online activities, was soon included in this legislative program. Obviously, that has sent a message that cannot be clearer on the increasingly rigorous view of the government for people's democratic activities. This law is a big challenge for entrepreneurs, not only for individuals who use the network, adversely affecting business operations in the Industrial Revolution 4.0 (IR 4.0) period.

2.3 Political and legal risk of foreign investment in Vietnam

Total newly registered capital, increased and contributed capital to buy shares of foreign investors in Vietnam in 2018 reached 35.5 billion USD, equaling 98.8% compared to the

same period in 2017. In the field of investment, in 2018 foreign investors have invested in 18 sectors in Vietnam, in which the processing and manufacturing industry is the most invested sector. Specifically, the total investment capital in this sector reached 16.58 billion USD, accounting for 46.7% of the total registered investment capital. Real estate business is the second largest investment attraction sector, with a total investment of 6.6 billion USD, accounting for 18.6% of the total registered investment capital. Ranked 3rd is the wholesale and retail sector with the total registered investment capital of 3.67 billion USD, accounting for 10.3% of the total registered investment capital. In 2018 there were 112 countries and territories with investment projects in Vietnam. In particular, Japan ranked first with total investment capital of 8.59 billion USD, accounting for 24.2% of total investment capital. Korea ranked second with total registered investment capital of 7.2 billion USD, accounting for 20.3% of total investment capital in Vietnam; and Singapore ranked third with a total registered investment capital of US \$ 5 billion, accounting for 14.2% of the total investment. Foreign investors have invested in 59 provinces and cities, of which Hanoi is the locality that attracts the most foreign investment with a total registered capital of 7.5 billion USD, accounting for 21.2% of the total investment. Ho Chi Minh City and Hai Phong are ranked 2nd and 3rd, with total registered capital of 5.9 billion USD and 3.1 billion USD respectively, accounting for 16.7% and 8.7% of total investment capital.

The impact of political and legal issues on foreign investment in Vietnam

Vietnam considers foreign investment an important part of the economy, a dynamic development area, contributing significantly to the socio-economic development of Vietnam. That is why so many laws and policies for investment in Vietnam in Vietnam were born and changed constantly.

• About investment form

The form of joint venture dominates in the early years. In Vietnam, the first years of opening and cooperating with foreign countries (since the promulgation of the Law on Foreign Investment in December 1987), the attraction of foreign investment in the form of joint ventures is more outstanding than other investment. The Vietnamese side can contribute capital with land use rights; operating under the principle of unanimity of the Board of Directors, the members of Vietnam and partners have equal rights. Thereby, the Vietnamese trader has the opportunity to learn directly from foreign investors; be involved in policy making, organization and control of business operations, risks are divided to both sides, so this form becomes the main form of MNCs attraction. The form of 100% foreign capital investment is becoming popular, instead of a joint venture. This trend is related with the MNCs branches investing in Vietnam and wanting to self-manage, decide on their business strategies and be more proactive in selecting the location of the project, in business organization and in marketing approach. Moreover, when Vietnam promulgated a revised foreign investment law (1996), the policy of equal treatment between joint-venture enterprises and enterprises with 100% foreign capital made foreign enterprises no longer trying to cling to domestic businesses to seek preferential policies. The 1992 Constitution (amended and

supplemented) acknowledged that all economic sectors in accordance with the provisions of law are an important component of the national social-oriented economy. In other words, the Constitution affirms the equality of the role and position of economic sectors in the economic structure and enhances the role of private capital invested the economy. Besides, at the same time, businesses are entitled to unlimited rights in all sectors and industries that are not prohibited by law. This enables businesses of all economic sectors to cooperate and compete more equally. The Law on Foreign Investment has been continuously revised and supplemented to ensure the legal system and policies on foreign investment are compatible with international practices and practices. As a result, Vietnam's regulations are increasingly improved in line with Vietnam's trend of international economic integration, contributing to creating a favorable and transparent investment environment for businesses.

- Regarding the tax policy, for foreign investors, although the corporate income tax rate is 25%, because of not having to pay tax to transferred profits abroad and in parallel with unified policies, the equal investment environment investment are quite attractive for business.
- Regarding the foreign exchange policy, enterprises are allowed to buy and sell foreign currencies at banks, for important projects of a decisive nature to economic development, the State guarantees foreign currency balance for enterprises to carry out their activities.
- In terms of labor policy, enterprises are entitled to directly recruit employees and satisfy their employees' salary on the basis of the minimum wage set by the state.

Political and legal challenging risks for foreign investors in Vietnam

Vietnam has a socialist political system that can be called opposition to the capitalist system. Therefore, when working in Vietnam, foreign enterprises need to pay attention to political views as well as policies and legal systems. Without understanding, it will challenge the existence and development of foreign enterprises investing in Vietnam. First, Vietnam has a stable political and social environment, meeting the long-term demand of investors. The stable political situation is the most important basis for fulfilling commitments on asset ownership and investment incentives for foreign investors. On the other hand, political stability is also a necessary precondition for socio-economic stability, thereby reducing risks for investors. No investor will put his or her capital into a country of political turmoil, which poses huge risks. We can see the political risks that businesses often face such as property confiscation, public impulse, nationalization, naturalization of property. In addition, there are many other risks such as: general risk of risk of instability, risks in asset management and ownership, risks in business, risks in money transfer. The Law on Network Security is a big challenge for investors when they have invested in Vietnam. But the ability of foreign companies to build data centers in Vietnam is almost zero. Not that they hate Vietnam, but this is an economic problem. Vietnam is not the center and Internet hub of the world and the region. Forcing data storage companies in Vietnam to not only bring no benefit in preventing crime, pushing Vietnam to confront big technology corporations, but also creating

many risks can not disregard for the economy, especially the technology economy, people's privacy and the political system. This is not my personal opinion but also of many scholars, lawyers, technology experts and international law researchers.

3. Research Methodology

To thoroughly understand the problem of political and legal risks when foreign investors invest in Vietnam, we use some of the following methods: method of reading materials, analytical methods and synthesis theory. These three methods are performed continuously and in a complement with each other, so they are closely interrelated. Analysis is used to study different documents and arguments by classifying them into each section to learn deeply about the object. Synthesis is linked to each aspect, each part of information that has been analyzed to create a new and complete theoretical framework. Risk analysis in legal policies on business in general and analysis of risks in investment activities in Vietnam in particular has a very important role in increasing FDI capital into Vietnam. In order to be able to conduct the analysis it is necessary to collect a sufficient amount of information in a timely manner in accordance with the purpose of the content and scope of the object of analysis. Information used in economic activity analysis is the necessary data served as a basis for calculating and analyzing the situation and results of production and business activities of enterprises, it is also the basis for the making optimal decisions in foreign investment in Vietnam. The decisions of investors without adequate research and analysis of information data will be flawed and do not fit the objective requirements that will lead to possibility of risk of loss in production and business. The documents that we study are the legal documents, the laws and decrees of the State of Vietnam that relate to foreign investment in Vietnam. And from there as a basis for risk analysis for investors, help them identify the risks that they may encounter and find measures to limit them to cause the as least as possible loss to the business in the industry they are investing. Laws related to investment are: Foreign Investment Law, Enterprise Law and Commercial Law. State decrees and policies on foreign investment in Vietnam are related with:

+ Economic and financial policies prescribed by the state in each period such as: the policy of funding or lending capital, the tax policies of the state, the policy on foreign economic relations, the diplomatic policy.

+ Fluctuations in supply and demand in the domestic and foreign markets.

Information in risk analysis in foreign investment activities in Vietnam is very rich and diverse, before conducting analysis, it is necessary to check the information and data of collected documents to ensure the correctness. In terms of economic content, time of arising location, method of recording and calculating to avoid errors because of errors in data used in the analysis will affect the analysis results.

4. Research Results and Discussion

Through the research process, we have noticed some political risks of Vietnamese law when foreign investors make noticeable investments as follows:

4.1 Operation risks

As introduced in the rationale, Vietnam's legal system is the

most complex in the world, thus facing legal risks, which are placed in operations of manufacturing businesses. This issue is related to administrative procedures. It is no less complicated than the overall Vietnamese law. Although the Ministry of Finance has always been at the forefront of administrative procedure reforms, there are still some enterprises reflecting troublesome regulations, causing difficulties and costing production and business costs. This is reflected in the fact that, when investors want to invest in the infrastructure sector, they may face many uncertainty in terms of whether the service is sold, whether the investment license is granted or not, and the other risks that businesses and foreign investors are guaranteed to be free of by the Government.

For example, here is an example of a direct electricity trading contract between an investor, an enterprise investing in electricity production and Vietnam Electricity (EVN). Accordingly, EVN has the right not to purchase electricity from these projects. Thus, in case EVN does not purchase electricity from power projects but investors and enterprises have spent a large amount of capital to invest in it, it will obviously be a big risk. In fact, enterprises are still afraid of customs procedures because customs officers can institute the reasons for overloading, resolving previous outstanding documents but slowing down their records or catching small mistakes of enterprises to do difficult. Although it has spoken many times about administrative procedures, but not long after that, it is still old.

The fluctuation of the exchange rate can create huge risks for foreign investors entering Vietnam when the State's intervention in the exchange rate is obviously declining. This is probably the first starting point for a policy of managed floating exchange rates, in the direction of a more flexible exchange rate as recommended by the IMF and consistent with Vietnam's membership in the WTO. When the exchange rate mechanism is flexible, the risk of exchange rate will occur more frequently, the level of influence on production and business activities will be greater. In order to ensure business efficiency, banks and members of the foreign exchange market must improve their ability to prevent exchange rate fluctuations.

A risk that is extremely important that almost all businesses encounter, it is the risk of administrative procedures. The situation "on pine but not clear" is happening every day although there are many policies to simplify business procedures but not effective. Up to 73% of enterprises reflect too much cumbersome paperwork, which takes time. Some stages in administrative procedures are not really open. There are up to 16 steps and 40 procedures for an investment project. For example, if a reflected enterprise has to apply for a permit for import eligibility, it must deposit and verify 100% of imported collection paper as production material but the procedure is too complicated. Or enterprises have said that they have conducted surveys, measured and completed administrative procedures with the Department of Natural Resources and Environment, however, at the end of the local government, they did not conform to the guidelines so they did not deliver land for businesses.

4.2 Transfer risk

The legal income of foreign investors from foreign direct investment activities in Vietnam is used to reinvest, transfer abroad or buy foreign currency to transfer abroad. Other lawful capital transfer transactions related to direct

investment activities comply with relevant laws and guidance of the State Bank. At this stage, investors from organizations to individuals, especially individuals will face the risk of transferring foreign currency abroad to meet difficulty but even Vietnamese enterprises invest abroad when carrying overseas money is also very difficult or may not be brought out of Vietnam. Guidelines for Foreign Exchange Ordinance set out cumbersome conditions and procedures in the form of mistakenly catching more than omitting, making it difficult for all investors to transfer money. From here on, a plague called embezzlement from state agencies, just paying for it, can send money out of the country. This negatively affects the society as well as the Vietnamese law. This is also the first problem for domestic and foreign investors.

The world has achieved Industrial revolution (IR) 4.0 technology level and has successfully applied in production and business. But in some developing countries like Vietnam, only access to IR 4.0 technology and only applied to certain businesses. Technology transfer is a very important issue because the position of a country is closely related to the technology level of that country. However, the speed of technological innovation in enterprises has been very low recently, not as expected, some industries and fields still use outdated technology. There is still a state of technology transfer through the purchase of machinery and equipment that are mostly outdated and do not come with solutions, processes, technical know-how which directly affect efficiency and edge Vietnam's economy and its ability to master technology. Therefore technology transfer law is issued. This once again poses risks for foreign investors when importing technology into Vietnam.

Specifically, Vietnam is a developing country, being exposed to high technology in production and business. But at point a, clause 1, Article 10 of the technology transfer law: "technology restrictions; machinery and equipment with technology are no longer commonly used in developed industrial countries. Therefore, investment enterprises must compel advanced technology and spend a lot of money to train workers to use new technology. And the risk is how many people will receive and implement new technology well? Since then, businesses will have to retrain from the beginning. A typical example for foreign investors to see its risks, in particular, TH TrueMilk milk factory is the most modern milk production technology in Southeast Asia, using public technology imported from Israel. When entering the first risk that TH True Milk encountered, it was that workers did not have access to new technology, so they had to hire foreign experts to run the production apparatus. The next risk that the company suffers is that they may be exploited by this competitor to "steal" the business know-how. But thanks to good risk management, the company continues to grow in the clean milk industry in Vietnam.

4.4 Other risks

Market barriers: Donald Trump's tariff barrier, Mr. Trump's threat to impose a 25% tariff on imported cars and auto parts can destroy supply chains that China and South Korea are must depend on. These markets are two of Vietnam's largest markets. Commercial activity is increasingly chaotic, with the possibility of Mr. Trump launching a monetary war that may make Japanese businesses hesitate to invest in Vietnam.

Non-tariff barriers: The integration is more and more deeply

and posed the problem of import management so that it is consistent with international commitments as a matter of the State as well as domestic enterprises and enterprises that want to invest in. Vietnam is very interested. Although Vietnam has applied many measures to control imports, the Ministry of Industry and Trade acknowledges that the state management on imports has had many innovations, but the efficiency has not been as expected, leading to a phenomenon of a quantity. Not many poor quality goods or domestic products bombarding the domestic market and investors were cautious when investing in Vietnam. However, after the issuance of Circular 20, the Ministry of Science and Technology has received many reactions from businesses, especially FDI enterprises. The reason is that when building the Circular because of complying with the Commercial Law and based on the situation of our country at that time, the standards of the Circular were quite high so many enterprises felt unable to meet.

Investment limit and voting rights: In Vietnam, since 2015, the Government has issued Decree 60/2015 / ND-CP stipulating that the foreign ownership ratio is allowed to be increased to 100% of the maximum for all industries, but in practice the implementation faces many obstacles. Decree 60 opens a space to own up to 100% of capital for businesses, but only for businesses operating in a number of industries, while some conditional industries still have limitations. For example, the bank, the limit is still 30%, some other industries are 49% limited and there are a number of special occupations that prohibit foreign participation because of security and defense issues. For foreign investors, Vietnam's policy message is open, but in reality they face difficulties because of the internal problems of the business and the market. For example, even if an enterprise is allowed to open a room up to 100%, the business does not implement it, making foreign investors unable to buy it. Or the enterprise has implemented but only implemented with a limited rate (up to 60-70%) also makes foreign investors difficult to understand and apply in the investment process. With this problem, investors want Vietnam to improve the liquidity of the market so that it can pour a lot of money to invest and they want Vietnam's policy to be more specific so that they can help Vietnam open the door for foreign investors.

5. Conclusion and Recommendation

Through the research and discussion process, we found that the damage that legal risks to investors when foreign investment in Vietnam is not too big, but if not appropriate risk management measures will always respond to passive risks. If this situation persists, it will adversely affect the company's image and customer confidence, which is a loss that cannot be recovered overnight. Especially in this and the next period, the application of new technology revolution introduced and widely disseminated in almost all Vietnamese enterprises the legal issues could become fierce competition factors between domestic and foreign investors. Risk management solutions can have many ways, but the most important is still in the operation and investment process according to the law of investors, investors need to seriously recognize the images enjoy the risk that if there is no timely solution, do not let "lose a new cow to make a cage". Since then, not only risk in business operations, risks in policy laws, but also other risks will be minimized.

To further improve and extend this article, we would like to

present some suggestions for foreign investors as well as for the policy makers of Vietnam and foreign managers to control the risks of their investment when investing in Vietnam.

Firstly, the State needs to complete institutions of legal documents relating to public investment, including: reviewing and amending all problems and irrationalities of relevant documents in order to simplifying administrative procedures, resolving completely the issues of public investment order and procedures, accelerating the disbursement progress, bringing public investment capital into the economy, stimulating growth and development. The central government needs to be highly decentralized in the spirit of autonomy and self-responsibility for local ministries and branches.

Secondly, improving the quality of management work, especially need to continue to reform and evaluate the evaluation of public investment programs and projects in order to promote efficiency in managing and using capital as in Decree Decision 27/NQ-CP dated February 21, 2017 emphasized: "Completing the public investment management system according to international practices ensures that by 2019, the quality is equivalent to the average of ASEAN-4 countries. It is a priority to reform the way of establishing and appraising, evaluating and selecting public investment projects.

Third, research to unify the management of investment budget should only be assigned to an implementing agency (financial agency or planning agency). Thus, just to ensure the principle of one thing is only assigned to an agency in charge of implementation, referring to a focal point of primary responsibility. At the same time, the budget cycle will be implemented uniformly, closed by an agency from the stage of estimating, implementing estimates and finalizing.

Fourth, when investing in Vietnam, foreign investors cannot avoid its inherent risks of Vietnamese laws and policies. Therefore, investors must study thoroughly and provide limited measures and risk prevention accordingly. The laws of Vietnam are very complicated, so foreign investors should find an expert who is knowledgeable about Vietnamese laws and policies, so that when they register their business or any problems they can solve promptly and limit potential losses to investors.

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