

# VIETNAM



*Nicolas Audier*

## **Vietnam unifies investment code**

Foreign investors to benefit from relaxed legislation as Vietnam closes in on WTO membership

A number of very significant developments in the Vietnamese legislative framework are currently in progress, as Vietnam works towards achieving membership of the World Trade Organisation (WTO) by the end of 2005.

### **Common Investment Law and Unified Enterprise Law**

Chief among the proposed legislative changes are the introduction of the draft Common Investment Law (CIL) and the draft Unified Enterprise Law (UEL), which are both scheduled for promulgation into law by the National Assembly before the end of the year.

The passage into law of these drafts will mark the end of the two distinct legal regimes that have been governing foreign investment on one hand, under the Law on Foreign Investment in Vietnam (LFI), and domestic investment — now governed by the Law on Enterprises — on the other, since the launch of the *Doi Moi*, or 'renovation' policy, in the late 1980s. The Government's decision to unify these two legal systems into a single investment regime, which will be implemented through the CIL and the UEL, is a very significant step towards establishing a level playing field for investment between domestic and foreign investors. In practical terms, the CIL should establish general principles of investment promotion and protection which are applicable to all investors of all nationalities from all economic sectors, while the UEL should be concerned with the procedures for establishment and operation of all types of enterprises, which should be applicable in principle to all investors.

Notably, the unified system should provide for a comprehensive framework of investment protection and guarantee measures including, for example:

- the repatriation of profits, the right to make bank transfers abroad and the right to exchange Vietnamese dong into foreign currencies;
- the right to avoid confiscation or appropriation of assets, except in very limited and defined circumstances, subject to payment of fair compensation;
- the right to operate in an open and competitive market without interference from the Government, such as the imposition of price controls or the provision of subsidies or preferential treatment to companies operating within certain business sectors, restricting the access of certain investors to certain markets; and
- the right to remedies or compensation in the event that the interests of investors are adversely affected by changes in the law.

The current discretionary licensing system provided for under the LFI, which requires foreign investors to complete an application procedure for investment licenses for specific projects, should

be largely replaced by a common system of registration, applicable to both foreign and domestic investors, under the unified regime. The objective of the new laws is to move Vietnam closer to meeting WTO commitments and to achieve clarity and transparency in its legal framework for all investors and for investments of all types. It is expected that foreign investors will benefit greatly from the new, unified system in terms of simpler, clearer and faster investment procedures.

However, it should be noted that the promulgation of the new laws will represent a sizeable challenge to the legislators in the National Assembly. The new laws must reconcile the conflicting objectives of moving Vietnam closer to meeting its international obligations while maintaining the Government's interests in managing a supervised and gradual transition to a socialist-oriented market economy which is integrated into the world economy.

### **Proposed changes to investment in banks**

In addition to the CIL and UEL, many more significant legislative changes are in preparation or under discussion in Vietnam as the country moves towards greater integration into the world economy. These measure include proposals to liberalise foreign investment in banks in Vietnam. Under current regulations, foreign shareholders cannot own more than a 30% share in Vietnamese enterprises, with a maximum ceiling for each individual shareholder of 10%.

It is intended that the 30% cap on foreign shareholdings will be largely removed under the new CIL, although in certain sectors the cap will be raised to 49%. However, it seems that there are no provisions in the draft CIL in respect of the current caps on individual foreign share ownership. Local media report that the Vietnam Association of Financial Investors is drafting a proposal to the Ministry of Finance to remove the 10% ceiling rate for individual foreign shareholdings in Vietnamese joint-stock banks.

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## **The Government's decision to unify these two legal systems into a single investment regime is a significant step towards establishing a level playing field for investment between domestic and foreign investors**

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The removal of the 10% cap would arguably encourage more foreign investment in the smaller joint-stock commercial banks, since with the opportunity to take a larger shareholding investors would be assured of a greater influence in decision making. There are also calls for the Government to introduce a new decree providing for the establishment of 100% foreign-owned affiliate banks in Vietnam. Under the current regulations, foreign banks are only permitted to establish joint ventures in partnership with local banks, or to open a branch office or a representative office. Such a move would be in line with Vietnam's commitments under proposed WTO membership and the Law on Credit Institutions was amended in mid-2004 to provide the basis for such a development.

However, an implementing decree is required to provide detailed regulations governing the establishment and operation of such foreign-owned banks. It is likely that conditions for establishment will be applied to ensure that only well-established banks of good standing may take advantage of the new regulations and that the parent bank owns more than 50% of the charter capital of the newly established foreign-owned bank.

*Nicolas Audier is local head and Bernadette Faby is a lawyer in the Vietnam office of Gide Loyrette Nouel.*