

# Vietnam

## Chamber of commerce:

Vietnam Chamber of Commerce and Industry  
9 Dao Duy Anh Street  
Hanoi  
Vietnam  
**Tel:** +84 4 574 3084  
**Fax:** +84 4 574 2020  
**Email:** [vcci@hn.vnn.vn](mailto:vcci@hn.vnn.vn)  
**Website:** [www.vcci.com.vn](http://www.vcci.com.vn)

## Professional body:

Vietnam Lawyers Association  
4 Nguyen Thuong Hien Street  
Hanoi  
Vietnam  
**Tel:** +84 4 942 3671  
**Fax:** +84 4 822 9222  
**Email:** [vla@fpt.vn](mailto:vla@fpt.vn)

## Vietnam's new Securities Law

**Susie Scannelli Cook and Phan Vinh Nhan**  
**Freshfields Bruckhaus Deringer**  
**Hanoi**

Vietnam is embracing the ability to raise finance through its regulated exchanges. To date, 42 companies have been listed on the Ho Chi Minh City Securities Trading Centre since its establishment in 2000, and just one fund. The market capitalization stands at around \$3 billion. The Hanoi Securities Trading Centre, acting as a trading floor for 11 small- to medium-sized companies, was established in 2004. Both exchanges are strictly controlled by the local regulator, the State Securities Commission (the SSC), which is a state body overseen by the Ministry of Finance, and therefore remain under the watchful eye of the government.

While Vietnam is some way off from structuring complex products on the back of its exchanges, it is in the process of overhauling its domestic capital markets by virtue of a new Securities Law, which will come into effect in early 2007.

### Public offerings of securities

The Securities Law governs the activities of public offerings of securities, listings, dealing, trading and investment, securities services, and the establishment and regulation of securities companies, public funds and member funds.

Public offerings of securities are offers via mass media, or to more than 100 investors, but specifically exclude offers to professional investors, or to an unspecified number of investors.

*Securities* is widely defined, and includes all stocks, bonds, warrants, certificates, put and call options, and futures contracts, whether held in certificated, electronic or book-entry form. The Securities Law only regulates the domestic market; publicly offered securities in Vietnam must be denominated in Vietnamese dong, although denominations are very low. The par value of a listed share is VND10,000 (\$0.63) and the minimum par value of a publicly offered bond is VND100,000 (\$6.24).

Ownership by foreigners of Vietnamese listed companies remains restricted.

At the time of writing, foreign ownership is limited to 49% and foreign ownership of a company operating in sensitive sectors is severely restricted. For example, foreign ownership of listed banks is limited to just 30%. There are at present discussions to raise these foreign ownership limits.

### Conditions for public offerings

An issuer of shares or bonds under the Securities Law must have paid-up issued share capital of not less than VND10 billion at the time of the listing, and must have been profit-making in the year leading up to the listing. Issuers of bonds must also commit to fulfil their obligations to investors. Fund certificates must have a total value of at least VND50 billion.

### Procedures for public offering

The issuer must be registered with the SSC. The application takes the form of a registration statement, which comprises the prospectus, the audited financial statements for the preceding two financial years, and the issuer's constitutional documents.

### Responsibility for the registration statement

While the issuer is responsible for the "accuracy, adequacy and honesty" of the registration statement, the prospectus of a public offering of shares and bonds is signed by certain board members, suggesting that board members can be held personally liable for statements made in the prospectus.

Specific professional advisors, such as consultants, underwriters and auditors, will also be held responsible for the accuracy of their contributions to the registration statement.

### Timeframe for the registration

The SSC has 30 days from the date of receipt of the registration statement to grant the issuance licence. The issuer can market the proposed offering during this period, but not using mass media. Within seven days from the date of the granting of the licence, the issuer must make a public announcement in three consecutive newspaper issues. All securities must be allotted within 90 days, and transferred to investors within 30 days from the date of completing the offering.

### Securities offerings by foreign investors

An issuer of publicly offered securities must be either a limited liability company or a joint-stock company established in Vietnam. A foreign enterprise can also offer securities to the public through locally licensed branches.

### Reporting and disclosure requirements

The issuer, and possibly its shareholders, will become subject to certain reporting and information disclosure obligations. As well as complying with basic disclosure, the issuer will also need to ensure timely disclosure of extraordinary items, such as significant financing arrangements or matters which may have a detrimental effect on

the value of the listed securities. Shareholdings of more than 5% must be disclosed by such shareholders to the SSC.

### Conclusion

Although the Securities Law attempts to open up the Vietnamese capital markets, the market will remain in nascent stage of development even after the law comes into effect in 2007. Among other things, the new law only contemplates domestic issues of VND-denominated securities, and foreign entities must have a local presence to be able to list securities. However, the growing demand to invest in Vietnam's capital markets suggests that further change is inevitable.

## Banking and project finance

### Recommended firms

#### Tier 1

Baker & McKenzie  
Freshfields Bruckhaus Deringer  
Johnson Stokes & Master  
Phillips Fox

#### Tier 2

Frasers Law Company  
Gide Loyrette Nouel  
Vilaf-Hong Duc  
YKVN

#### Tier 3

Flécheux Ngo & Associés  
Vietbid Law Firm  
Vision & Associates

## Corporate and commercial

### Recommended firms

#### Tier 1

Baker & McKenzie  
Freshfields Bruckhaus Deringer  
Phillips Fox

#### Tier 2

Frasers Law Company  
Gide Loyrette Nouel  
Johnson Stokes & Master

#### Tier 3

Vilaf-Hong Duc  
Vision & Associates  
YKVN

#### Tier 4

Flécheux Ngo & Associés  
Vietbid Law Firm

### Baker & McKenzie

Baker & McKenzie was one of the first international law firms to establish representative offices in Vietnam, and has offices in Ho

Chi Minh City and Hanoi. The firm's Vietnamese operation consists of three partners and 25 fee earners. Nguyen Hai Thao and Seck Yee Chung are widely regarded as rising stars in Vietnam, and have become particularly prominent this year due to their role on a groundbreaking project finance deal, the first of its kind, for UOB Bank to the Paragon Corporation for the development of a \$20 million property development in south Saigon.

The firm scored something of a coup when it landed the role as lead legal adviser to the USAid-funded Star project, which involves working with 42 counterpart ministries and the National Assembly on new laws and decrees implementing Vietnam's landmark bilateral trade agreement with the US and its pending WTO accession bid. Managing partner Fred Burke is highly respected, and has been at the forefront of the private sector's input on the new Enterprise Law and Investment Law, serving as chair of the Vietnam Business Forum's Working Group on these fundamental new corporate laws.

In the banking sphere, at the time of writing the firm was representing an overseas bank as lender of a syndicated loan to the Paragon Corporation. The security structure is one of the first to involve a lease without underlying land use rights. The firm was also advising United Commercial Bank on setting up a branch in Vietnam, building on its earlier role assisting Wachowa Bank in establishing a representative office in Hanoi.

In capital markets the firm was involved in Vietnam's first real property development to be listed on London's Alternative Investment Market, advising Vietnam Ventures on the Vietnamese law aspects of the fund, worth \$80 million. The firm also advised SMBC Capital Markets in derivative and ISDA Master Agreement-related matters, and acted for Rabobank's Singapore branch on a forfeit financing in December 2005.

"Star lawyer" Nguyen Hoang Kim Oanh heads up the corporate and securities group, which this year has acted for Asia Pacific Breweries on the acquisition of the Vietnamese assets of the Foster's Group for \$105 million and advised a jewelry company on the proposed acquisition of a Vietnam diamond polishing facility.

Project financing work, meanwhile, has included advising on an application dossier for the establishment of a \$90 million waste treatment facility in Ho Chi Minh City, which will be one of the biggest privately owned waste treatment facilities in Vietnam. At the time of writing, Baker & McKenzie was advising Hutchison Telecommunications on a major new CDMA mobile network investment with a Hanoi joint-stock company partner, and acting for the Ministry of Planning and Investment on a new build-operate-transfer decree.

### Leading lawyers

Fred Burke  
Tony Foster

### Key contact partner

Fred Burke

### Flécheux Ngo & Associés

Flécheux Ngo & Associés has offices in Hanoi and in Ho Chi Minh City that were established in 1992. The team is comprised of seven lawyers in Vietnam and Paris, and boasts four Vietnamese lawyers who all handle work concerning legal issues relating to foreign investment in Vietnam.

The firm provides legal advice to foreign investors on their establishments and commercial activities in Vietnam, in such varied fields as company and corporate law, tax and customs law, labour law, intellectual and industrial property law, banking law

and foreign exchange regulations, construction law and adjudication law, arbitration, settlement of disputes, telecommunication law, pharmaceutical law and insurance law.

Flécheux Ngo & Associés' clientèle includes international groups operating in the fields of industry, agribusiness industry, electronics, distribution, software and telecommunication industry, insurance, banking, luxury industry, cosmetics, media, pharmaceutical industry, construction, energy and environment and health.

The firm is also a good choice for European corporates and banks seeking advice on establishing operations in Vietnam. As well as European corporations, the firm also serves institutions such as the World Bank and the Bank for Foreign Trade of Vietnam.

#### **Key contact partner**

Pierre Anglés d'Auriac

#### **Frasers Law Company**

Mark Fraser, who has 11 years' experience in law and commerce in Vietnam, heads up Frasers Law Company, and has surrounded himself with a large team of both international and local lawyers who are able to advise on Vietnamese law in an international context.

Frasers Law Company was the first foreign law company licensed by the Ministry of Justice in Vietnam. The firm provides legal advice in all areas of business and commerce in Vietnam, including foreign investment, commerce, finance, and industry to investors and businesses operating in and trading with Vietnam. Frasers is an associated office of the international law firm Freehills, which first started advising in Vietnam in 1989. The firm's main areas of practice are in the corporate, commercial, investment, banking and finance, taxation, property, manufacturing and construction, mining, intellectual property and employment fields. Freehills has offices in Ho Chi Minh City and Hanoi.

Clients have included Goldman Sachs, the International Finance Corporation and Deutsche Bank. The firm has a well-developed infrastructure and projects practice that advises on the development and financing aspects of those projects. M&A is also an important area for Frasers, having represented several Australian and other foreign corporations on their operations in Vietnam.

#### **Leading lawyer**

Mark Fraser

#### **Key contact partner**

Mark Fraser

#### **Freshfields Bruckhaus Deringer**

Freshfields Bruckhaus Deringer has two offices in Vietnam – the Hanoi office, which opened in 1994, and one in Ho Chi Minh City, which opened in 1995. The firm was one of the first foreign law firms to receive branch office licences from the Ministry of Justice, and has now grown to be one of the largest law firms in the country.

Managing partner Tony Foster has advised on numerous inward investment, infrastructure, commercial and financing transactions in Vietnam, and writes and speaks regularly on developments in Vietnamese law, particularly in the area of infrastructure, project finance and M&A. As a UK-US dual national, he is an ex-chairman of the American Chamber of Commerce and a vice-chairman of the British Business Group in Vietnam.

The firm has also been recently joined by Jan Johannsan, who adds further strength to a superb team.

Freshfields Bruckhaus Deringer has established close relationships with local law firms, allowing it to offer clients a unified international and local legal service. The firm's lawyers in Vietnam work closely on inward investment, banking, asset and project finance, construction and property development, commercial and corporate matters, privatisations, capital markets, litigation and arbitration, and intellectual property issues.

In the past the firm has advised numerous investment funds, both in respect of their establishment and their subsequent investments in Vietnam, acted for various foreign investors on their acquisitions in Vietnam, and acted on many private-sector infrastructure projects, both in the development and financing stages.

#### **Leading lawyer**

Tony Foster

#### **Key contact partner**

Tony Foster

#### **Gide Loyrette Nouel**

French firm Gide Loyrette Nouel set up its Vietnam office in 1996 in Hanoi. Nicolas Audier is held in high regard by the market and has been the driving force behind the firm's development in the country. The firm opened its Ho Chi Minh City office in 2004, furthering its already strong foothold in the Vietnamese market.

The firm has had another busy year across the board. In corporate work, the firm has advised CICA on an asset purchase agreement to obtain a comprehensive distribution network in Vietnam. The firm also represented Nexity Hilton on the transfer of a foreign loan to a Vietnamese legal entity, which required extensive negotiations with a European pool of banks and with the Vietnamese authorities. Gide also represented Vincom on the purchase of a 60% stake in a Vietnamese private legal entity, and at the time of writing was advising Lafarge on complex financing and auction proceedings relating to its purchase of the assets of a state-owned company.

In the area of banking & finance, Gide Loyrette Nouel worked on Petro Vietnam's \$450 million bond issue on the New York Stock Exchange, the first time that a Vietnamese entity decided to issue international bonds abroad. Another standout finance matter saw the firm represented Casino in relation to the construction of six hypermarkets in Vietnam, and provided legal assistance on complex real estate and financing issues relating to the construction of Natexis Banque Populaire's office building.

The firm has also landed roles on two high-profile project financings over the past year, both ongoing at press time. In the first, Gide was serving as legal advisor to the Mekong Energy Company in relation to the development of a 700MW gas-fired power plant at Phu My. And in the second, the firm was advising Korea Telecom in the termination and liquidation of its \$40 million agreement with VNPT for the construction of 40,000 telephone lines and related facilities in the territories of Haiphong, Haihung and Quang Ninh.

#### **Leading lawyer**

Nicolas Audier

#### **Key contact partner**

Nicolas Audier

#### **Johnson Stokes & Master**

Hong Kong firm Johnson Stokes & Master has developed a successful practice in Vietnam, run out of offices in Hanoi and Ho

Chi Minh City. The banking team has extensive experience in advising the Vietnamese branches of large banks such as Bank of China, HSBC and Cylon on an array of matters, included syndicated lending, security structures, standard form credit documentation, regulatory issues and other issues related to their banking operations. The team has also acted for several foreign contemporaries on their Vietnamese hedging arrangements.

Elsewhere, the firm has been busy on a number of inbound investment projects for its multinational clients across the food and beverage, power, manufacturing, packaging and advertising sectors. In terms of standout lawyers, Nguyen Suong Dao is widely recognized as the Vietnam office's leading light.

#### Leading lawyer

Nguyen Suong Dao

#### Key contact partners

Nguyen Hoang Anh

Nguyen Suong Dao

### Phillips Fox

Phillips Fox holds on to its place in the top tier in both categories following further comments from the market that it is "one of the best foreign law practices in Vietnam". The firm consists of 20 fee earners, including two partners – Bill Magennis, who is based in Hanoi, and Nigel Russell, who works in the firm's Ho Chi Minh City office. This year Edward Han, previously of Freehills Melbourne and HCMC offices, has joined the Ho Chi Minh City office.

Phillips Fox has had a busy year, for example, it recently acted as counsel to the lead underwriter of Vietnam's first government bond issue, as a result of the success of which the firm received instructions from a number of foreign institutions expressing interest in the Vietnamese bond market, both domestic and international.

Phillips Fox provided ongoing advice to Holcim on the development of a \$60 million plant at Thi Vai, including \$37 million-worth of domestic syndicated financing and construction and further proposed expansion, and was instructed by the Nortel Group to provide advice in relation to the services Nortel provides with respect to the implementation of the \$630 million national CDMA mobile telephone network project. Phillips Fox also continued to advise BHP Steel on the development of a \$105 million steel coating plant in Phu My, and advised Keppel Land on its 90% interest in Saigon Sports City, an 80-hectare, \$130 million development project in Ho Chi Minh City's second district.

Among the other highlights, the firm advised BHP Billiton's aluminium division with respect to a potential bauxite mining, transport and refining project, acted for a foreign company when it acquired an interest in the Kinh Do confectionary company, and guided QBE Insurance through the restructuring of its non-life insurance joint venture with a Vietnamese insurer, BIDV. The restructure resulted in the exit from the joint venture by QBE. The firm also continued to advise the foreign party to the business cooperation contract that operates the Mobifone network, Vietnam's second-largest mobile phone network.

#### Leading lawyers

Bill Magennis

Nigel Russell

#### Key contact partners

Bill Magennis

Nigel Russell

### Vietbid Law Firm

Nguyen Thanh Ha heads Vietbid Law Firm, which this year has consolidated its position as one of the leading local firms in Vietnam. The firm has developed a healthy mix of Vietnamese and foreign clients, advising them on a range of matters in the areas of banking, capital markets and corporate law. The banking department of the firm has recently acted for major clients such as the Japan Bank for International Cooperation and the State Bank of Vietnam.

In the capital markets arena, the firm has had recent experience advising on debt-related matters alongside a number of international firms, while in a notable dispute resolution matter the firm worked alongside Russin & Vecchi acting for Tyco Services Singapore in legal proceedings to obtain recognition and enforcement of an award following foreign arbitration proceedings.

#### Key contact partner

Nguyen Thanh Ha

### Vilaf-Hong Duc

Vilaf-Hong Duc comprises 20 fee earners that operate out of Hanoi and Ho Chi Minh City, and since its foundation has developed into one of the most prominent law firms in Vietnam. This year, the firm was awarded the *IFLR* Vietnamese law firm of the year award.

The firm acts for various foreign bank branches in Vietnam and offshore lenders, as well as many corporate borrowers. The practice provides advice in relation to various financial products including lending, refinancing, customer services, financial regulatory and debt restructuring.

The firm has been involved in more than 10 International Finance Corporation-financing projects in Vietnam, and were also the first Vietnamese law firm to be appointed directly by international lenders in the largest financing for a BOT power project in Vietnam. The firm is a regular player in the bank lending market, as well as acting on a wealth of asset finance, project finance and debt restructuring matters.

In the commercial sphere, meanwhile, Vilaf-Hong Duc has advised numerous foreign companies in relation to the incorporation and operation of their projects in Vietnam.

#### Leading lawyers

Ngo Thanh Tung

Tran Anh Duc

#### Key contact partners

Ngo Thanh Tung

Tran Anh Duc

Tran Tuan Phong

### YKVN

YKVN's practice focuses on project finance and banking transactions, and in these areas the firm is considered a top Vietnamese operation. The banking practice serves a variety of key domestic and international players in the syndicated lending market, such as Citibank, the Bank for Foreign Trade of Vietnam, the Bank for Investment and Development of Vietnam and the International and Commercial Bank of China.

On the borrower side, YKVN recently advised Vietnam Airlines in relation to the US Ex-Im Bank-guaranteed financing of its purchase of four Boeing 777-200 aircraft, which marked the first US Ex-Im Bank-guaranteed financing in Vietnam. YKVN also recently advised Vietnam Airlines on the ECGD-Coface-Hermes-guaranteed financing of its purchase of three

Airbus 231-321 aircraft, the first combined European export credit agency-guaranteed financing in Vietnam.

YKVN also advised a Singaporean bank in relation to the restructuring of its loans made to a Taiwanese joint venture to finance the development of an entertainment and commercial complex in Ho Chi Minh City, advised Picnic Gas, a Thai company, on its purchase of a factory manufacturing cylinders from a private-owned company, as well as on its purchase of an LPG business from a Vietnamese state-owned company.

In the M&A sector YKVN has also been busy. Among the highlights, the firm recently advised the Saigon Real Estate Corporation, a Vietnamese state-owned company, on its purchase of all the shares in Vietnam Jin Wen Enterprise, a wholly foreign-owned company that is licensed to develop a complex building in Ho Chi Minh City. It also acted for Christian Bernard Diffusion, a French company, on its purchase of all of the shares in Yue Cheong, advised Taiwan Sugar on its acquisition of a foreign-invested company in Vietnam, and represented the Korea Deposit Insurance Corporation on the sale of Korea First Bank's shareholding in its joint-venture in Vietnam.

The firm also helped Banpu Power Thailand on the strategic sale of its Vietnamese captive power plant, acted for a Morgan Stanley equity fund in an asset divestiture, and guided Trenergy Gas, a Malaysian company, through its sale of a large factory to V-Trac before the winding-up of all its business operations in Vietnam.

**Leading lawyer**

Truong Nhat Quang

**Key contact partners**

Diep Hoai Nam

Le Cong Dinh

Truong Nhat Quang