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Corporate finance is in its infancy in Vietnam, but it is rapidly developing to meet the needs of a more sophisticated economy.

There are two types of corporate entity in Vietnam. Local companies, established under the Enterprise Law, take the form of a limited liability company, joint-stock company or a partnership (ELCs). Foreign invested enterprises, established under the Foreign Investment Law, take the form of an enterprise with 100% foreign-owned capital, or a joint venture (FIEs). Although the line between the two has become increasingly blurred, ELCs are largely owned by Vietnamese citizens, and FIEs are largely owned by foreigners.

Capital structure

An FIE is a limited liability company without shares, and does not have an umbrella licence; that is, it cannot conduct any business it wants. Rather an FIE receives a project-specific licence. It is licensed to carry out a limited number of identified, related activities.

The project-specific characteristic of an FIE is reflected in its capital structure. For example, an FIE cannot have a capital of one dollar. Rather, although the law does not require a minimum level of capital, an FIE must have capital sufficient to implement the project or projects for which it is licensed. When applying for an investment licence, the FIE must present specific information regarding its proposed capital structure, and the licensing authority will examine the information to satisfy itself that the proposed capital is adequate to conduct the proposed activities.

The capital structure of an FIE consists of two components: legal capital and loan capital. Legal capital is the equity contributed by the investors, in the form of cash, certain core equipment and so on. It must form an adequate portion of the capital needed to implement the project. The FIE must deposit the cash it receives into a special capital account before the money can be used to implement the project. Legal capital must remain in Vietnam for the life of the project.

The FIE can obtain outside financing to implement its activities. This represents loan capital. Unlike legal capital, loan capital can be repaid out of the country. The total of legal capital and

loan capital makes up the FIE's total invested capital. The law specifically requires that legal capital be at least 30% of the total invested capital. Foreign investors are recommended to keep their legal capital either at the minimum 30% threshold, or at a point near that, to avoid locking excessive money into the FIE. During the life of the FIE, if the FIE wants to borrow money in excess of 70% of its total invested capital, it must amend its capital structure to accommodate the borrowing. The 30% minimum requirement has already been removed for US companies under the US-Vietnam Bilateral Trade Agreement. It is likely that this statutory requirement will eventually disappear for all investors.

An ELC is also licensed for specific activities, although its licensed scope can be broader than that of an FIE. An ELC's capital structure also has the same two components, except that it is not subject to the 30%:70% ratio.

Dividends from investment in an FIE can be remitted out of the country at anytime without restriction. Note that Vietnamese currency is not freely convertible. There is no withholding tax on remitted profits.

Borrowing and security

A Vietnamese entity can borrow offshore. An offshore loan with a term of more than 12 months must be registered with the State Bank of Vietnam (the SBV) or the appropriate provincial branch of SBV, for foreign exchange control purposes. Failure to register does not render an offshore loan unenforceable, because registration is required after the agreement is executed. However, registration is a condition precedent to each loan transaction. For example, the first drawdown can only be made after the loan has been registered, and the local bank is required to see the SBV's certificate of registration before drawdown. Similarly, the borrower must present the certificate before it transfers money abroad to pay interest and repay principal. If there are any changes to the particulars registered with the SBV, the borrower must update the registration. A change is effective only after it has been registered.

Use of collateral for offshore loans is limited. A mortgage on land title (more precisely, leasehold rights to use the underlying land) and on property located on the land, is not yet available to an offshore lender. An alternative is for the borrower to mortgage its land use rights to a local bank or a Vietnam-based branch of a foreign bank, which can act as a security

agent for the offshore lender. It is mandatory for a mortgage to be registered with a relevant authority.

Other common security or collateral measures, such as a pledge of the borrower's machinery and equipment, pledge of the borrower's accounts receivable, or a corporate guarantee, are generally enforceable by an offshore lender.

The securities market

The securities market in Vietnam has not grown as expected. Many reasons have been proffered. FIEs, being limited liability companies without shares, are unable to raise capital on the securities market. The possibility of converting FIEs into joint-stock companies is expected to help boost growth of the securities market. ELCs can list, subject to certain more relaxed conditions. To mention a few improvements, a public offering can now be made to a minimum number of 50 external investors (previously, it was 100), and the issuer is now required to be profitable for one year before a public offering (previously, it was two years). To list, however, a company must have two profitable years before listing, and a paid-up capital of at least D5 billion (\$315,000) (previously, it was D10 billion). Foreign participation is restricted to 30% (previously 20%) per listed company.

A foreign securities company is permitted, together with a local partner, to set up a joint venture securities company, in which the foreign company can own up to 49% of the joint venture's legal capital (previously, 30%). However, a joint venture is the only permitted form of foreign investment in the securities market. A 100% FIE is not yet possible.

The different treatment of FIEs and ELCs is being reviewed. However, it remains uncertain whether all players, foreign and local, will be subject to the same set of rules on the securities exchange.

Changes expected in the private corporate sector

The legal framework for the private sector is undergoing substantial reform. Plans to change the structure and operation of FIEs and ELCs are well advanced. Some of the proposed changes will clearly expand permitted corporate finance practices, such as: (i) permission for foreign investors to set up any corporate form (not only limited liability companies without shares); (ii) conversion of FIEs from limited liability companies without shares to joint-stock companies; (iii) broader foreign participation in the private sector; (iv) unification of the licensing of FIEs and ELCs; and (v) easier listing requirements. Moreover, a new Enterprise Law – to apply to both FIEs and ELCs – will permit the corporate capital structure, and will require governance to be more in step with international practice. Some of these changes will occur in 2006.

Banking and project finance

Recommended firms

Tier 1

Freshfields Bruckhaus Deringer

Baker & McKenzie

Phillips Fox

YKVN

Tier 2

Frasers Law Company

Gide Loyrette Nouel

Johnson Stokes & Master

Vilaf-Hong Duc

Tier 3

Flécheux Ngo & Associés

Lucy Wayne & Associates

Thang & Associates

Vietbid Law Firm

Vision & Associates

Corporate and commercial

Recommended firms

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Baker & McKenzie

Freshfields Bruckhaus Deringer

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Frasers Law Company

Gide Loyrette Nouel

Johnson Stokes & Master

Lucy Wayne & Associates

Tier 3

Vilaf-Hong Duc

Vision & Associates

YKVN

Tier 4

Flécheux Ngo & Associés

Lovells

Thang & Associates

Vietbid Law Firm

Baker & McKenzie

Baker & McKenzie entered Vietnam in 1994, opening up offices in Hanoi and Ho Chi Minh City. Since that time it has stamped its presence as one of the premier firms in the market in terms of volume and quality of deals. Managing partner Fred Burke is one of the best-known legal personalities in the country, and is praised for his deep knowledge of trade law.

The active and highly competent banking practice is popular among foreign lenders such as ANZ Bank, Citibank and the Japan Bank for International Cooperation, and is experienced in advising on both foreign- and domestic-driven syndicated financings. It is also regularly selected by financial institutions to provide advice in connection with Vietnam's banking regulatory regime. In a

related area, the projects group has been busy acting for lenders, borrowers, sponsors and contractors in connection with ongoing projects in the telecommunications, power, infrastructure and tourism sectors.

Even more substantial is the firm's corporate practice which, with 20 lawyers, makes the firm well-equipped to advise on large and complex deals. Many of the clients in this area are regional or multinational corporations. Recently, the firm has been busy on a number of joint venture and other strategic business arrangements, and its expertise lies in tackling the extensive due diligence, feasibility studies and formal approval processes involved in such transactions.

The firm has also handled a degree of private equity work, advising investment funds on their acquisitions of interests in Vietnamese businesses and property developments.

Leading lawyer

Fred Burke

Key contact partner

Fred Burke

Flécheux Ngo & Associés

French law firm Flécheux Ngo & Associés set up its Vietnamese branch in 1992, making it one of the first European law firms to do so. The team of five lawyers in Hanoi and Ho Chi Minh City is headed by Pierre Anglès d'Auriac and supported by several Paris partners.

The firm is often sought by its European clients to assist in establishing operations in Vietnam, and in relation to other commercial matters arising out of their businesses in the country. As well as European corporations, the firm serves institutions such as the World Bank and the Bank for Foreign Trade of Vietnam.

Key contact partner

Pierre Anglès d'Auriac

Frasers Law Company

Frasers Law Company was spun off from Australian law firm Freehills after Freehills decided to rearrange its Vietnamese operations in late 2004. The staff of 12 is a healthy mixture of foreign and local lawyers, led by the well-respected Mark Fraser, who was in charge of Freehills' Vietnam office before the spin-off. Frasers still maintains an association with Freehills through lawyer secondments and shared administrative arrangements.

The firm acts for many banks on their lending activities into Vietnam and in connection with their claims in debt restructurings and insolvencies. Clients have included Goldman Sachs, the International Finance Corporation and Deutsche Bank. It also has a well-developed infrastructure and projects practice that advises on the development and financing aspects of those projects. The firm's strength in projects is enhanced by its dedicated energy and resources practice, which has been busy working on several mining projects.

M&A is also an important area for Frasers, having represented several Australian and other foreign corporates on their operations in Vietnam. One recent deal saw the firm act for Cooperative Bulk Handling on its acquisition of a majority shareholding in Interflour Vietnam as part of a wider acquisition involving the Intermilling Group.

Leading lawyer

Mark Fraser

Key contact partner

Mark Fraser

Freshfields Bruckhaus Deringer

Under the direction of Tony Foster, Freshfields Bruckhaus Deringer maintains a market leading position in Vietnam. Foster enjoys an excellent reputation among his peers, and his colleague Milton Lawson also received strong recommendation from the market.

The banking and financial services group has secured an outstanding client list that includes Citibank, Deutsche Bank, ABN Amro, ANZ Bank and Standard Chartered Bank. Most of its recent work has been concentrated on bank M&A, such as advising ANZ Bank on its strategic 10% investment in Sacombank for \$25 million. At the time of writing, the team was busy advising on the Vietnamese law aspects of the worldwide mergers of Bank of Tokyo Mitsubishi and UFJ Bank, and of Crédit Agricole and Crédit Lyonnais, deals that also allow Freshfields to showcase its M&A expertise. Other M&A clients include Hewlett-Packard, Pepsi International Beverages and Nexans, and the firm has also been appointed to represent the Ministry of Finance and Pacific Airlines in connection with Pacific Airlines' high-profile restructuring.

Meanwhile, a number of big projects continue to provide work for Freshfields in the project finance area. Instructions in this area have seen the firm advise Hutchison Telecoms on the development of a \$655 million CDMA mobile phone network, represent Unocal on its \$1 billion Southwest gas project and act for Mitsui & Co as a participant in the \$300 million Omon-2 power project.

Lastly, Freshfields has capitalized on the revived interest by private equity investors and venture capital funds in Vietnam, picking up a considerable amount of work in this area. The client list is extensive and includes Vietnam Fund Management, Beta Vietnam Fund, IDG and Mekong Enterprise Fund. The firm recently assisted Dragon Capital, Mekong Capital and Prudential Vietnam Assurance on a number of strategic acquisitions, and helped Dragon Capital set up its Vietnam Growth Fund.

Leading lawyer

Tony Foster

Key contact partner

Tony Foster

Gide Loyrette Nouel

Gide Loyrette Nouel set up its Vietnam office in 1996, when it was granted a licence to open up in Hanoi. The development of the Vietnamese practice has been spearheaded by skilled all-rounder Nicolas Audier, who was recently made partner in June 2004. Audier's appointment was also followed by the opening of a branch office in Ho Chi Minh City, reflecting the firm's commitment to its Vietnam operations.

In France as well as in Vietnam, the firm has good relationships with French banks such as BNP Paribas, Natexis-Banques Populaires and Cr dit Lyonnais, often advising them in relation to matters of banking and securities law, and foreign exchange regulations. The team also boasts projects experience, having worked on build-operate-transfer power plants and telecommunications projects in the past. A recent highlight was the firm's role representing PetroVietnam on its debut international bond offering, which was also the first offshore debt offering by a Vietnamese issuer. PetroVietnam issued \$400 million-worth of bonds that were listed on the New York Stock Exchange.

In corporate and commercial work, meanwhile, the firm has been busy advising clients such as LaFarge, Sumitomo Corporation, Accor, Sanofi-Aventis and French state-owned company SCPA on their Vietnamese investments. Other recent deals include advising on several hypermarket projects in Ho Chi Minh City and Hanoi and acting for a state-owned corporation on its buyout of a foreign investor's stake in a joint venture company, and subsequent conversion of the joint venture into a domestic enterprise.

Elsewhere, the firm continues to work closely with government authorities and institutions such as the World Bank and the Asian Development Bank to develop new foreign investment and banking laws.

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 Calyon on an array of matters, including 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 counterparties on their Vietnamese hedging arrangements. Its shipping finance expertise also adds depth to the practice, and in this area the firm recently advised a PetroVietnam subsidiary in connection with a series of vessel financings.

However, it is in real estate and construction that the firm dominates, having a high degree of expertise in the acquisi-

tion, development and leasing of properties such as hotel resorts, residential developments, office and commercial buildings and sports complexes. Examples include roles acting on the \$30 million Indochina Beach resort, Vietnam Land's \$56 million Saigon Pearl project in Ho Chi Minh City and the Chiap Hua Group's \$130 million sports city complex in Rach Chiec. Clients are diverse and include large Vietnamese and foreign property developers (often as part of joint ventures) as well as offshore property investment funds.

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

Lucy Wayne & Associates

Lucy Wayne & Associates is a full-service English law firm that has been operating in Vietnam since 1996. The firm's reputation rests largely on name partner Lucy Wayne, who is well-respected for her breadth of skills and experience. With branch offices in Ho Chi Minh City and Hanoi and a staff of 17, the firm's main practice areas include foreign investment, infrastructure, project finance and general corporate and commercial matters. A large proportion of the firm's clients tend to be well-known foreign names such as 3M, Air France, Bristol-Myers Squibb, Coca-Cola, Kimberly-Clark, Lufthansa and Nissho Iwai. Vietnamese law capabilities are provided through its association with Thang & Associates, IMAC Law Office and Vision & Associates.

In February 2005 the firm expanded its partnership by promoting three of its internationally trained senior lawyers (Jason Donovan, Konrad Hull and Nguyen Thi Kim Loan), with a fourth appointment expected to occur in late 2005. Furthermore, the firm recently announced the opening of a branch office in Los Angeles to focus on Vietnam-US cross-border work, which is expected to be headed by Lucy Wayne.

Leading lawyer

Lucy Wayne

Key contact partner

Lucy Wayne

Phillips Fox

Phillips Fox is widely regarded as having one of the top foreign law practices in Vietnam, and this reputation has prompted its promotion into the first tier in both categories this year. The firm has nine lawyers on the ground in Vietnam, who are supported by two senior associates in Melbourne. Joint managing

partners Bill Magennis and Nigel Russell each have 12 years of experience in Vietnam; Magennis comes particularly highly recommended for his expertise on large-scale and complex projects, having previously worked on the Phu My power projects and the Nam Con Son gas project. Russell, who runs the Ho Chi Minh City office, also came in for plenty of praise, and has been heavily involved in many Vietnamese infrastructure and industrial projects, such as water treatment plants, cement plants and property developments. At the time of writing, the firm was advising Nortel in connection with developing a CDMA telecommunications network.

The firm also uses its Vietnam offices as a base from which to advise clients such as British Petroleum on projects elsewhere in the region, such as the Tangguh LNG project in Indonesia and the Kwangyang power project in South Korea. The banking practice is also substantial – on the transactional side the firm has prepared syndicated loan and security documentation for borrowers and lenders and advised on debt restructurings, while on the non-transactional side it frequently advises foreign banking clients on strategic entry methods into Vietnam and on regulatory compliance issues.

In the corporate and commercial area the firm's ongoing collaboration with the Ministry of Planning and Investment to translate and publish Vietnamese foreign investment legislation makes it an excellent choice for foreign investment advice. Phillips Fox's corporate lawyers are also well versed in other areas of law, such as labour, tax, construction, oil and gas, property and competition law, enabling the firm to advise on all aspects of a corporate deal. Corporate clients include Avery Dennison, BHP Billiton, Bluescope Steel, Coca-Cola, Keppel Land, Kraft, Nippon Sheet Glass and Phillip Morris.

Leading lawyers

Bill Magennis
Nigel Russell

Key contact partners

Bill Magennis
Nigel Russell

Vietbid Law Firm

Hanoi firm Vietbid Law Firm has been steadily raising its market profile through the efforts of director Nguyen Thanh Ha. 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.

Its broad expertise is demonstrated by its recent portfolio of work, which includes acting for UFJ Bank on setting up a branch in Vietnam, advising state-owned corporations Vinaconex (Vietnam Construction and the Import-Export Corporation) and Vinashin (the Vietnam Ship Building Industry Corporation) on their proposed privatizations, and representing a Japanese investor on its strategic acquisition of a stake in mobile phone operator Vinaphone.

The firm has also been involved with the development of Vietnam's banking sector, assisting state-owned Incombank

with its corporate restructuring and providing advice to the State Bank of Vietnam on integration strategies.

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 more prominent law firms in Vietnam. The firm is well known for its banking and project finance expertise and boasts an excellent track record in this area. There is also praise for the firm's lawyers, in particular Tran Anh Duc, who one client described as "knowledgeable, and able to perform to international standards" and Ngo Thanh Tung, who is credited with "a high degree of professionalism."

The firm's finance practice has been successful in attracting quality clients such as the Vietnamese branches of Standard Chartered Bank, Citibank, Mizuho Corporate Bank, ICBC and Bangkok Bank. Consequently, the firm tends to act as lender's counsel on many of the biggest project financings around. Recent instructions include roles on the \$125 million financing for the Hai Phong power plant, a \$115 million syndicated facility for the development of the Cam Pha cement plant, and the provision of a \$126.3 million syndicated loan to Formosa Industries, all deals on which the firm represented the domestic lenders. Vilaf-Hong Duc does land borrower-side mandates too however, as exemplified by its representation of Nghe An Tate & Lyle Sugar in connection with a \$20 million secured refinancing. In addition, the firm showcased its asset finance expertise last year by advising the Mitsubishi Corporation on an aircraft leasing transaction with Vietnam Airlines.

In the corporate and commercial arena, meanwhile, the firm has been building up a roster of domestic and foreign clients, including Coca-Cola Vietnam, Shell Vietnam, Unocal Vietnam, GM Daewoo Vietnam, Samsung, Alcatel, Thai Airways and Petronas, which ensures that the firm has a steady flow of work. Recently the firm has seen increased corporate activity in the telecommunications, tourism and oil and gas sectors. The corporate team also provided Vietnamese legal advice to Aon Asia in connection with its acquisition of a joint venture insurance company, the first wholly foreign-owned insurance brokerage operation allowed to set up in Vietnam.

Leading lawyers

Ngo Thanh Tung
Tran Anh Duc

Key contact partners

Ngo Thanh Tung
Tran Anh Duc
Tran Tuan Phong

YKVN

Founded in 1999, YKVN has since developed into a full-service firm, composed of 10 lawyers in the head office of Hanoi and a further 10 lawyers working in Ho Chi Minh City. As one of the most respected law firms in Vietnam, YKVN's reputation and experience continues to win it roles on important transactions. The firm works closely with White & Case, bringing the benefit of increased exposure to international transactions. At *IFLR's* Asian Awards 2005, the firm again picked up the award for Vietnamese law firm of the year.

The banking practice serves 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. Over the past year the firm has completed a string of construction financings, acting as counsel to the domestic lenders. Most notable was the \$33 million financing of the Nguyen Van Linh road, built as part of the Saigon South project, which was negotiated against a backdrop of a high-profile tax dispute between the borrower and the government. Other banking work included advising Citibank as a creditor in the debt restructuring of the Sunway Building project, and on the ongoing refinancing of Caravelle Hotel's offshore project debt. Market observers single out Truong Nhat Quang as a leading lawyer, praising the quality of his advice on banking and finance matters. The firm has also recently added Nguyen Thi Dang, formerly in-house counsel with Citibank, to the banking team, further boosting its credentials in this area.

In asset finance YKVN supported White Case as domestic counsel on a two landmark aircraft financing transactions for Vietnam Airlines – the first, the \$490 million financing of four Boeing aircraft backed by a US Ex-Im Bank guarantee (the country's first US Ex-Im Bank guaranteed financing), and the second, the \$150 million financing of three Airbus aircraft supported by the Export Credits Guarantee Department (the UK's official export credit agency), Coface and Hermes, the first combined European export credit agency financing in Vietnam.

YKVN continued to impress in project finance, winning a role as documentation counsel on the \$53 million financing of the Phuc Son cement plant. The deal involved a significant cross-border element because the borrower was the Vietnamese subsidiary of a Taiwanese cement company and the financing involved foreign lenders. Another highlight saw the firm advise a group of Vietnamese lenders on structuring the syndicated co-guarantee arrangements for the Vietnam Shipbuilding Corporation's shipbuilding contractors, a deal that was the first of its kind in the market.

General corporate work has been plentiful, one notable instruction being a role on Vietnam Partners' acquisition of a strategic stake in Saigon Securities, the first such investment to be made in a Vietnamese securities firm. At the time of writing, the firm was acting for the Picnic Gas Group on the complex acquisition of LPG and related assets from a private company and a state-owned corporation, and advising Saigon

Real Estate on its acquisition of a foreign-owned property developer, a rare buyout of foreign investors by a domestic company. From among the corporate team, corporate partner Diep Hoi Nam received plenty of positive feedback from the market.

Leading lawyer

Truong Nhat Quang

Key contact partners

Diep Hoai Nam

Le Cong Dinh

Truong Nhat Quang