



Doing Business In Vietnam: Update

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Changes to 'Project Life' Duration

The incorporation of a company in Vietnam has, as with most jurisdictions, and indefinite life on the maintenance of operations of that organization (*subject to meeting relevant requirements such as filings, payment of taxes, etc.*).

In Vietnam, however, there is an additional requirement which relates to the specific purpose of 'project' for which the Company is incorporated. This project has a limited period of time for commercialization and exit to take place.

The commercial acceptance of the length of time for any Project has been 50 years. Although there are excep-

tions to this.

The issue that has now arisen relates to the incorporation of Services related organizations.

It has now been established that the discretion of the licensing authorities will see only around a 20 year period to be allocated for such services oriented Projects.

This naturally raises issues for organizations seeking to establish ventures in Vietnam. The key question is will a 20 year Project license be enough time to develop a commercial enterprise to its optimal point for all stakeholders (*including employees, shareholders and government—given taxa-*

tion requirements) ?

Of course there is always the discretion of the government / licensing authorities to extend the term of any license, but for the investor it is a gamble that will need to be factored in during the Project feasibility process if that project falls within the services sector.

Business Registration & Foreign Investment

Foreign investors are entitled to acquire shares at an unrestricted level in Vietnamese companies, save for Foreign Investment restrictions that are not unlike those found in other nations (*public companies, State owned organizations and companies in identified industries*).

The ability to act in this way is outlined in the Vietnamese Decree 139, which implements the Law of Enterprise, and the Law on Investment.

An issue is that the application of the Decree, is not centralized, but is rather conducted through local departments of planning and investment. As is often the case, the local authorities are often not as experienced in dealing with foreign investment matters and problems and delays are arising.

The frustrations in registering foreign ownership of Vietnamese companies in turn raises the potential to approach market entry by way of joint venture or strategic initiative as opposed to ownership. Often not an ideal scenario, but a commercially sensible option to overcome short term limitations presented by the current registration environment.



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They are not meant to be definitive advice, and accordingly should not be acted upon as such. Although they highlight issues, they do not provide solutions which invariably need to be constructed on a case by case basis.

Lincoln Crowne & Company executives would of course be delighted to discuss any issues raised, and to that end inquiry is always welcomed.

Photos in this note taken by Nicholas Assef outside of Port Douglas in North Queensland.