Vietnam Opens Wider for Business

by Oliver Massmann and Giles T. Cooper

On Jan. 1, Vietnam opens its retail sector to wholly foreign-owned investments according to its World Trade Organization obligations. Lucrative opportunities await in Asia's new No. 1 retail market.

Times are changing in Vietnam's capital city. While tourists from all over the world are still flocking to Hanoi's picturesque market stalls, the heart of daily life is no longer confined to the old merchant quarters. Western-style shopping malls are popping up overnight, and they are attracting high-end retailers from the U.S. and Europe.

Vietnam officially joined the World Trade Organization (WTO) as its 150th member on Jan. 11, 2007. The WTO requires that tariff regulations, trade rights, national treatment and most-favored-nation treatment be incorporated into domestic law. Essentially, trade barriers must be torn down and the Vietnamese market opened to other WTO members.

Although Vietnam has taken solid steps to restructure and meet these requirements, challenges for foreign investors remain. The economy is still in a developmental phase, relying heavily on traditional sectors such as agriculture.

At the same time, it is leapfrogging other Asian markets in retail thanks to rapidly growing consumer demand and low barriers to market entry. According to a 2008 ranking by consultants AT Kearney, India has yielded its position as first in "retail investment attractiveness" and fallen to second behind Vietnam, formerly in fourth. Russia and China dropped to third and fourth respectively. While the retail outlook in the U.S. is grim, Vietnam provides corporations with an alternate growth strategy.

As Vietnam strives to emulate a Western standard, transitioning from a socialist system to an internationally integrated market economy is a bumpy process. One WTO requirement is to end import tariffs that had been imposed to protect local businesses against foreign competiors. The country has been reluctant to adapt this rule in the case of agriculture, given that entire villages depend on it as a main source of income.

The 2006 Law on Intellectual Property, by comparison, has been better received. Recent high-profile trademark infringement cases represent remarkable progress.

Harmonization of national legislation with Western corporate governance standards has also been impressive. A 2006 National Assembly Resolution, for example, enables shareholders to determine their own voting and quorum rules in their company charter.

A recent government draft decree implementing WTO commitments provides for further big steps toward international standards. It expands the scope of application of the principle of non-discrimination and makes Vietnamese and foreign enterprises equal. While the draft remains to be finalized, it represents a crucial and progressive milestone on the way to an internationally integrated market.

As dictated by its WTO commitments, Vietnam will allow wholly foreign-owned distribution companies to enter the market starting in January 2009. More practical details yet to be worked out include any changes to regulations allowing investors to establish only one retail outlet at a time. Subsequent outlets are considered depending on whether or not the proposed project can satisfy a so-called "economic needs test." The criteria for passing the test are as of yet undefined.

The obvious comparison with Vietnam and its burgeoning economic growth is its neighbor China. Although China joined the WTO in 2001, however, the country did not start adapting its laws until 2004. Vietnam, on the other hand, has shown tremendous commitment by setting to work right away on changing its system.

The speed of reforms sets a new standard and is proof of Vietnam's unrestrained will to play an important role in worldwide trade. While China still reigns supreme economically in the region, Vietnam is the best in the class of young WTO members. With a population of nearly 90 million and growing disposable income, opportunities exist for small and large players alike as the domestic distribution sector remains wildly underdeveloped.

Historic floods in Hanoi and across the Northern provinces in early November 2008 resulted in severe disruptions to supply chains for food and other essential facilities. The lack of well-organized and reputable supermarkets and retail outlets in some areas led to problems including food shortages, black market activity and commodity speculation. This was a timely reminder that further investment in infrastructure and distribution is needed urgently. The time is right for Vietnam to emerge as a major force in the global marketplace.

***

Remarks: Opinions expressed in this contribution are those of the authors.

Oliver Massmann

Oliver Massmann is director for Duane Morris Vietnam LLC. Mr. Massmann practices in the area of corporate international taxation and on power/water projects, matters related to oil and gas companies and telecoms, privatization and equitization, mergers and acquisitions, and general commercial matters for multinational clients in relation to investment and doing business in Vietnam.

Giles T. Cooper

Giles T. Cooper is branch director for Duane Morris' Ho Chi Minh City office. Mr. Cooper practices in the area of corporate law with a focus on international law in Southeast Asia. Mr. Cooper has experience with foreign investment and commercial law related to construction, mergers and acquisitions, securities, contract negotiation and drafting, banking and finance, and employment law.