

Land Matter

Legislation

The Land Law adopted on 29 November 2013, which will take effect on 1 July 2014 ("Land Law"), covers all the land matters relating to the land, varying from the ownership, the State's power and liabilities, the land management and use regime to the land user's rights and obligations, and relevant transactions. Under the Law, there are dozens of regulations issued by the Government and various ministries and agencies.

Principal Features

All lands in Vietnam are owned by people and the State, representative of the people, has the sole authority to administer it. In the central level, the National Assembly has the ultimate power to supervise and administer over the land. However, the day-to-day management is assigned to provincial-level People's Committees. Any use of land is evidenced by a certificate of the land use rights, ownership of house and other assets attached to land. MONRE, for its part, is responsible for determining and setting up the land price bracket commonly applicable to each of categories of land to be submitted to the GoV for issuance. Pursuant to the principles of and methods for valuation of land and land price brackets, the provincial-level People's Committees will set up and submit the localities' land price tables to the People's Councils at the same level for their approval before issuing. Foreign-invested companies (including 100% foreign-owned enterprises; joint venture enterprises; Vietnamese enterprises which foreign investors purchase shares/ capital contribution portions in or merge with or acquire in accordance with the laws on investment), can obtain the land use rights through leasing with collection of annual rent or with one-off payment of land rental for the entire lease term (frequently in the case of FOCs), allocating with collection of land use fee (only applicable to projects on investment in construction of residential housing for sale or lease out or hire-purchase), acquiring it from the contributions by the local partners in

the case of JVCs, or being assigned investment capital which is value of land use rights. In all cases, a decision on leasing or allocating land from relevant state agency together with a land lease agreement signed between relevant state agency and the FIE in case of land lease, are compulsory for the certificate of the land use rights.

The value of the land use rights means monetary value of land use rights with respect to a fixed land area for a fixed duration of land use, which is generally arrived at by calculating the total value for the entire lease or allocation period, by multiplying the used area and the applicable land rental or use fee rate(s).

Land Contributions using Land use rights

According to the Land Law, capital contribution using land use rights is one of the ways to transfer land use rights from a person to another. This Law also made it clear that the entity receiving such capital contribution is granted a certificate of land use rights and that such entity, which may be a FIE, will have the rights of a common land user. But unlike the old law, the new Land Law no longer provides for the cases of termination of capital contribution using the land use rights. This makes the Land Law closer to Law on Enterprises in relation to the capital contribution using land use rights.

In the context of JVCs, it is common that local parties use land use rights to make all or part of their contributions to the charter capital of the JVCs. As earlier said, such right will last throughout the duration of the investment registration certificate.

When receiving the capital contribution using land use rights, it is particular to verify the conditions for capital contribution using the land use rights. The use of land for production and business through capital contributions using land use rights must ensure the following principles:

- (i) In accordance with the annual land use plan of the urban or rural district already approved and published;
- (ii) Cleared land, which may be used for appropriate production and business purposes, is exhausted in the area, except the projects in sectors or geographical areas where investment is encouraged;

(iii) In case the investor implements method of assignment of land use rights requiring change of the purpose of land use, the assignment shall be made only after the competent People's Committee issues written permission for changing the purpose of land use, allowing adjustment in land use term to be suitable with the use of land for production and business;

(iv) Where the land area of the production and business project has a part of land where the land user is not entitled to contribute capital using land use rights, the investor is allowed to enter into an agreement on purchase of assets attached to land from the people who are using the land, the State shall recover the land, convert the purposes of land use and lease the land to the investor in order to implement the project. Contents of the agreement on purchase of assets attached to the land must clearly reflect the fact that the property seller voluntarily returns the land to the State for revocation of land and lease of land to the property buyer.

The following conditions ensure a realization of the land contribution by the local parties to a JVC, which include the existence of a certificate of land use rights, dispute-free land, land use rights not subject to seizure for enforcement of a judgment, land use term not yet expired, the possibility of land using change so as to be suitable to the new purposes, and the permission by the authority of the local parties to do so.

Capital contribution using land use rights must be registered with the Land Registration Office directly under the provincial-level Department of Natural Resources and Environment and shall take effect at the time of being recorded in the cadastral book.

As a part of the capital contribution, the payment of the land rental or use fee is destined for the local parties' responsibility, hence not falling within the responsibilities of the JVCs or foreign parties as well.

18.4 Compensation

Allocation or lease of land, which is having land users will be only decided by the State after the competent State decided on land revocation under the Land Law and have completed the compensation, support and resettlement in accordance with the

laws for the case needing ground clearance. Pursuant to the Land Law, organizations in charge of compensation and ground clearance include land-related public service providers and Compensation, Support and Resettlement Councils.

If the FIE, which is allocated land by the State with collection of land use fees or rents land, voluntarily advances funds for compensation, support and resettlement; then, these funds will be reimbursed by the State budget by deducting from payable land use fee or rental amount. Deductible amount of these funds shall not exceed the payable land use fee or rental amount; and the balance, if any, shall be calculated to be included in investment capital of the project.

If the FIE, which is allocated land by the State with collection of land use fees or rents land and is exempt from land use fee or rental, voluntarily advances funds for compensation, support and resettlement under the plan approved by the competent State agencies; then, these funds will be calculated to be included in investment capital of the project.

Levels of funds for compensation, support and resettlement shall be determined in accordance with the plan of compensation, support and resettlement approved by competent State agencies of Vietnam.

Technical Assistance Projects

Recommended: Vision & Associates is recommended.

Asialaw Profiles 2016/2017

“Vision & Associates is strong independent Vietnamese firm that sits at the top of the legal market. It has worked on large transport, energy and telecommunication project developments.”

International Finance Law Review 1000 2016/2017

It is a common consensus that technical assistance plays its important role in Vietnam in the recent years, which help the country improve the design and implementation of economic policies, including by strengthening capacity and skills in institutions such as State owned enterprise reform committee, investment and planning ministry, justice ministry, finance ministry, central bank, other government agencies and even corporate entities in some specific sectors. Recognizing the need of translating the international expertise and knowledge into practice of Vietnam, Vision & Associates have prepared the resources that are capable of handling the said tasks, in the manner that can work in the context of Vietnam. We are proud of the best and most-well-known team in Vietnam with an intensive engagement in a large number of technical assistance projects, in various sectors, by different donor organizations in Vietnam.

Our Team

We have a team of lawyers and business consultants with not only good legal backgrounds and skills but having also business mind and strong ties to the sector. We have involved also in a large number of technical assistance projects, in various sectors, by different donor organizations in Vietnam. We have a good understanding of the international concepts and know how to translate them into practice of Vietnam and make them be workable in the specific context of Vietnam.

Our Services

Together with multi-national consulting firms, we offer a wide range of services in the following areas:

- Capacity building for the Government agencies (including the NSCERD, MPI, MoJ, SBV, MoF, SSC, HOSE);
- SOE reform, development, equitization, and transformation under holding company model;
- Public private partnerships (PPP) in infrastructure

- (including port, transportation, waters, power);
- Capital market acceleration (including the securities-backed bond offering, securities market surveillance, supervision, stock transaction system, SOE equitization link to listings);
 - Local infrastructure investment fund models; and
 - Business sector program support initiatives (with the main focus on private sector).

Our Clients

Our clients in this field include major active players in Vietnam such as the WB, ADB, DANIDA, DFID, GTZ, SIDA, USTDA, AusAid, JBIC, etc...

Corporate Administration Services

Recommended: Vision & Associates is recommended.

Asialaw Profiles 2016/2017

Band 3: “Busy on M&A mandates across a range of industry sectors and additionally advises on business restructuring and corporate governance. Especially active working with asset managers and investment funds with targets in Vietnam.”
“Luu Tien Ngoc [*Band 3*] has been involved in the corporate law sphere for more than two decades. His broad expertise spans FDI, private equity, insurance and TMT. He remains active in advising key clients on sale and purchase arrangements”

Chambers Asia 2016/2017

“Vision & Associates has strong government ties in providing legal advisory services to government agencies such as Ministry of Finance (MoF), State Securities Committee, and Vietnam Securities Depository. The firm has been stable enough to keep its business in the midst of a difficult year due to economic and geopolitical factors. [...]. Vision and Associates (V&A) is among the few law firms in Vietnam that provide advisory services to the relevant government agencies such as the Ministry of Finance (MoF), State Securities Committee, and Vietnam Securities Depository. [...]”

International Finance Law Review 1000 2016/2017

We understand the challenges of conducting business in today's complex corporate world and can help you manage the risks and resolve problems quickly and cost effectively. Our service covers all essential aspects of corporate, regulatory and compliance issues that affect clients during their course of doing investment and business in Vietnam.

Our Team

We have a team of business consultants who have not only good legal backgrounds and skills but having also business mind and strong ties to the sector, serving a large number of corporate clients in all segments of their business operations. We have a good understanding of the issues clients face in their business and we have the expertise and resources to help them resolve those.

Our Services

Our substantial experience of working on various corporate issues enables us to make a valuable contribution thereto right from the start. We offer our services to not only domestic but also international corporate clients in and to Vietnam, covering all segments of their business operations, including:

- Statutory post-licensing works (including applying for the corporate seal, tax code, import-export code, etc.);
- Legal compliance, reporting and disclosures (including representing for client before Government agencies, keep liaison between clients and Government agencies, etc.);
- Secretary services (including secretary services to the meeting of the shareholders' meeting, board of directors' meeting); and
- Legal updating, filing advice, etc.

Our Clients

Our clients in this field include not only local large-scale corporations such as Acerlor-Mittal Vietnam, AVK Vietnam, Motorola Vietnam, HIECC, Young Ones, EGS Vietnam, Thyssen Vietnam, Nortel Vietnam, etc..

Trademark Protection in Cambodia

GENERAL

Cambodia is a member of the World Intellectual Property Organization (WIPO) since July 1995 and of the Paris Convention for Protection of Industrial Property since September 1998.

Regarding the IPR matters, Cambodia has issued the following legal documents:

- Law concerning Marks, Trade Name and Acts of Unfair Competition dated January 8, 2002;
- Law on Patents, Utility Model Certificates and Industrial Designs, in force since January 2003;
- Law on Copyright and Related Right, in force since March 2003.

Trademark and other subjects of industrial property, such as patent, industrial design, utility solution, etc. now can be filed and protected in the country. Cambodia has adopted the “first to file” system of registration.

I. TRADEMARK REGISTRATION PROCEDURES

Cambodia adopts the International Classification of Goods and Services under the Nice Agreement (8th Edition). Trademark, services mark and collective mark are registrable in Cambodia, however each trademark application can be applied for one mark in one class of goods/services only. Priority right can be claimed in accordance with the Paris Convention.

Formality and substantive examination shall be conducted for all trademark applications filed in Cambodia. The substantive examination is conducted to identify any prior registered mark which are identical with or similar to the claimed mark. Certificate of Trademark Registration is usually granted within 6-8 months from the filing date.

1. DOCUMENTS REQUIRED FOR FILING

To file a trademark application in Cambodia, the following information and documents are required:

- (i) Full name and address of the applicant;
- (ii) Trademark specimens (20 specimens) with the size not larger than 80mm x 80 mm and not smaller 50mm x 50mm;
- (iii) Translation and transliteration of the mark if the mark is not in English;
- (iv) Vienna Code of the device of the mark (if known);
- (v) A list of goods/services and the International Classification of respective goods/services (if known). From January 1, 2007, class heading is not accepted by the Cambodian IPD. The applied goods/services should be specified;
- (vi) Priority data for claiming priority right under the Paris Convention (if any), including application number, priority date, country. Original certified copy of the priority application and the English translation can be lodged later, after filing; and

(vii) A notarized Power of Attorney from the applicant which is described in Section 7 hereunder. Power of Attorney should be notarized by a Notary Public in any country, while legalization is not required. One Power of Attorney can be used for plurality if no particular mark is identified in the Power of Attorney. A fax copy is acceptable at filing provided that the original is submitted later.

2. REGISTRATION COSTS

The total cost for registration of a trademark in Cambodia, including official charges and attorney fees, communication cost and V.A.T. is about US\$320-330.

3. PROTECTION TERM AND RENEWAL

The term of protection of trademark in Cambodia is 10 years from the date of filing (or from the priority date, if any). The registered mark is renewable for unlimited times, each of 10 years.

The trademark owner shall be obliged to use the trademark in Cambodia. At the end of each period of 5 years from the date of registration, an Affidavit of Use, in case that the mark has been used in Cambodia, or an Affidavit of Non-Use, if the mark has not been used in Cambodia, is required to be lodged with the Cambodian Trademark Office. If no Affidavit of Use/Non-Use is lodged, the trademark cancellation will be vulnerable to cancellation at a third party's request.

II. RENEWAL

1. DOCUMENT REQUIRED FOR RENEWAL

- (i) Original notarized Power of Attorney;
- (ii) Photocopy of original Certificate of Trademark Registration;
- (iii) 15 samples of trademark;

Note If affidavit of use/non-use has not been endorsed, this procedure is required upon filing renewal.

2. RENEWAL COST

The total cost for renewal is of a trademark registration in Cambodia

(for 1 mark in 1 class), including official charges and attorney fees, communication cost and V.A.T is about US\$320-330.

3. *TIME INVOLVED*

In practice, the time involved for completing of recordal of renewal is about 5-7 months from the filing date in Cambodia.

III. *FILING AFFIDAVIT OF USE/ NON-USE*

1. *DOCUMENT REQUIRED FOR FILING*

- (i) Original Certificate of Trademark Registration;
- (ii) Original signed Affidavit of Use/Non-Use;
- (iii) Evidence of use of the mark in Cambodia if the client wishes to file affidavit of use (such as bill of lading, packages, advertising and/or promoting materials, brochures, photographs, etc.).

2. *COST FOR FILING AFFIDAVIT*

The total cost for filing affidavit of use/non-use of one trademark registration, including official charges and attorney fees, communication cost and V.A.T is about US\$140-150.

3. *TIME INVOLVED*

The time involved for completing endorsement is about 4-5 months from the filing date.

IV. *RECORDAL OF CHANGE OF NAME/ADDRESS*

1. *DOCUMENTS REQUIRED*

- (i) Original notarized Power of Attorney;
- (ii) Original notarized Declaration of Change of Name/Address or legal documents showing the change of name/address;
- (iii) Original Certificate of Trademark Registration.

2. *COST FOR RECORDAL OF CHANGE OF ADDRESS*

The total cost for recordal of change of name/address for one trademark

registration, including official charges and attorney fees, communication cost and V.A.T is about US\$130-140.

3. *TIME INVOLVED*

The time involved for completing of recordal of change of name/address is 3-4 months from the filing date.

V. *RECORDAL OF ASSIGNMENT*

1. *DOCUMENTS REQUIRED:*

- (i) Original notarized Power of Attorney;
- (ii) Original notarized /certified copy of the Assignment Agreement;
- (iii) Original Certificate of Trademark Registration.

2. *COST FOR ASSIGNMENT*

The cost for recordal of assignment for one trademark registration, including official charges and attorney fees, communication cost and V.A.T is about US\$130-140.

3. *TIME INVOLVED*

The time involved for completing of recordal of assignment is 3-4 months from the filing date.

VI. *RECORDAL OF LICENSE*

1. *DOCUMENTS REQUIRED*

- (i) Original notarized Power of Attorney;
- (ii) Original notarized/certified copy of the License Agreement;
- (iii) Photocopy of Certificate of Trademark Registration.

2. *COST FOR RECORDAL OF LICENSE*

The cost for recordal of assignment for one trademark registration, including official charges and attorney fees, communication cost and V.A.T is about US\$200-210.

3. *TIME INVOLVED*

The time involved for completing of recordal of trademark license agreement is 6-8 months from the filing date in Cambodia.