Further amendments proposed to the draft Law on Investment

Veera Mäenpää, senior associate, PwC Legal, Ho Chi Minh City looks at the current draft Law on Investment and notes the easing and tightening of registration procedures for foreign-invested companies evident in the various drafts so far released for discussion.

Enhancing Vietnam's business and investment environment is a key priority for the government. An overhaul of company licensing processes is one of the means being worked on to bring this about. Revamping the licensing process will require large-scale changes to the current company and investment law regime.

The current Law on Investment 2005 is planned to be replaced by a new investment law, the first draft of which was prepared earlier this year. This draft new law on investment (LOI) received a lot of interest when first published in April.

During the summer months, in a session which ended mid-August, the Standing Committee of the National Assembly discussed and raised issues in relation to draft LOI. The Standing Committee stated that its key concern related to the regulations on investment in conditional sectors. Conditional sectors are listed in the current investment regulations as 'sensitive' sectors, such as e.g., trade and distribution, pharmaceuticals, banking and education. Given the concerns of the Standing Committee, it seems that the draft LOI will still have to undergo further, perhaps substantial revision before it is ready to be passed. The expectation is still that the National Assembly is likely to pass it in November 2014 and that it will take force from July 2015. Therefore any changes still required will need to be drafted, considered and agreed in quick succession.

The first draft of the draft LOI was published in April and the second in June. The latest draft was published in August. Some key content has changed radically between the April, June and August drafts. Whilst some changes are to be expected during drafting, it seems that the concept and detailed workings of the new licensing regime are open and still being developed.

Generally, under the current company licensing regime, domestic and foreign invested companies operate under different types of licences. Domestically invested companies operate under Business Registration Certificates and foreign invested companies under Investment Certificates. The motivation behind the revamping of the licensing processes started originally from the desire to do away with this division and the differentiation between the processes which apply to foreign and domestic investors. This desire was well reflected in the first draft of the LOI and also in the draft new law on enterprises (LOE), which is concurrently being prepared to replace the Law on Enterprises 2005, as they proposed a unified licence and unified licensing process for all investors, whether domestic or foreign. This would have effectively allowed the operation of 'general commercial companies' by foreign investors in Vietnam.

Each consecutive draft has changed the requirements for foreign business registration

The first LOI and LOE drafts proposed a unified two-step licensing process for both domestically and foreign invested companies – as a first step, all investors were proposed to obtain an Enterprise Registration Certificate (ERC) to set up a company. As a second step, all investors, whether domestic and foreign, were to be required to obtain an Investment Registration Certificate (IRC) if their investment was in a conditional sector.

The June LOI draft then partly reversed this proposal to unify the process and introduced a concept of 'investment notice', which only foreign investors would have needed to file for any non-conditional sector investments. The rationale for partial reintroduction of some procedural difference between domestic and foreign invested company licensing was presumably the government's historic and continuing desire to be able to track the foreign investment streams to the country.

The latest draft LOI is much more opaque in terms of its objective and the aim to unify the licensing processes is no longer self-evident.

The desire to track and also to control foreign investment to Vietnam is however more prominent in the latest draft. The concept of 'investment notice' has been removed, but instead, more stringent procedures are suggested for foreign investors.

Basically, the April and June drafts were essentially the same as to who would have needed to obtain an ERC – it would have been all investors. Similarly, the April and June drafts were the same as to who would have needed to obtain an IRC – it would have been all investors who invest in any conditional sector. The August draft instead requires foreign (but not domestic) investors to always obtain an IRC. In addition to the IRC, if this draft is passed in this form, before submitting the IRC application, foreign investors will need to obtain an in-principle approval if their investment is in a conditional sector, requires land allocation or 'scientific technological evaluation' or is a large manufacturing project with investment (i.e., total) capital over $15 million.

Under the August draft, domestic investors will need an ERC. They will also need to obtain an in-principle approval if their project requires land allocation or 'scientific technological evaluation' or is large manufacturing project with investment (i.e., total) capital over $15 million, but not if it is in a conditional sector. They can, but do not have to, obtain an IRC. Overall the proposed licensing regime and the picture that emerges from the latest draft LOI seems somewhat similar to the currently regime, where different registration requirements apply depending on the origin of the investor.

The eight session of the current National Assembly will commence in October. Given the concerns of the Standing Committee and the substantial changes to the new licensing process proposed in the various drafts, as, for example, outlined above, the legislators will have their work cut out for them over the next month to finalise these new laws. Investors and advisors alike are waiting with interest to see whether the changes will take the licensing process towards further unification or whether they will in fact essentially retain the status quo.■

Market acts as smartphone magnet

By Tu An

The domestic smartphone market continues to lure foreign players, reflected in the recent launch of new brands in the Vietnamese market.

Last month three new smartphone brands, Wing Call (Hong Kong), Blackview (Hong Kong) and Wiko (France), were officially launched in Vietnam.

According to market research firm GfK, Vietnamese spend about $1 billion on new phone purchases every year, which partly explains why so many global players have plunged into the market.

Wiko is the newest comer through rolling out a smartphone line with prices ranging from VND1.5 million ($70) to VND8 million ($377).

According to David Garcia, international director of business development at Wiko, Vietnam is Wiko's first Asian market and the products brought to Vietnam are of the same quality as those sold in Europe.

However the brand has so far met a sceptical response from Vietnamese consumers,

> **Sharp growth in sales revenue of smart phones in Thailand and Vietnam was mostly driven by improved 3G network quality in these countries**
>
> **- Gerard Tan**
> Account director Digital World at GfK Asia

partially attributed to the 90 per cent stake held by the Chinese group Tino in the company and the lack of strong marketing.

Another new comer is Wing Call, belonging to WingTech Group (WTG), a smart phone manufacturer and outsourcer for Acer, Sony, Philips and HTC brands. Wing Call Vietnam have launched a range of phones costing from VND1.39 million ($65) to VND 3.99 million ($188).

Nham Phi Khanh, director of Wing Call Vietnam said besides outsourcing activities, WingTech has also designed products carrying the Wing brand as an independent producer and apart from Vietnam the company has also dipped into South East Asian markets like Myanmar, Thailand and the Philippines.

JEKO, the owner of Blackview brand is currently marketing a phone range valued from VND3 million ($142) to VND5 million ($236).

Gerard Tan, account director for Digital World at GfK Asia said smartphones currently account for more than half of global mobile phone market and this trend would remain stable in the future.

"The presence of competitively-priced Chinese models and local brands has paved the way for many tight-budget local consumers to shift from using feature phones to smartphones," he added.■