

Corporate Research and Due Diligence in Vietnam and Cambodia



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Summary

- Vietnam and Cambodia have under-developed corporate laws and private sector investor safeguards. There are no effective bankruptcy checks or corporate filing provisions and tax returns are generally very late or non-existent.
- In Vietnam at least, government-licensing regulations are in place, though they tend to be bureaucratic, intrusive and ponderous. This mix of tightly controlled government licensing and largely unregulated enterprise reflects the duality of contemporary Vietnam, with unfettered capitalism sitting alongside centralist government.
- This combination has not hampered growth. Vietnam's booming economy is testament that political stability and an accommodative approach to business works, even if the formal apparatus of business is lacking.
- The formal corporate checks and due diligence research familiar and available in developed economies are unavailable, misleading or only tell part of the story. So investors and business partners need to find alternatives.
- More important than records is to verify the commercial *bona fides* of Vietnamese partners through reputational, competitor and client checks. Due-diligence takes longer than in developed economies, is less focused on formal record checks and is ultimately more judgmental.
- Business and investment in Cambodia involves a greater measure of uncertainty than in Vietnam. Its state mechanisms are immature and the bureaucracy is less certain and predictable. Not only is there little in the way of commercial legal redress, but government decisions and agreements can prove arbitrary and liable to unexpected changes. The need for careful planning and preparation is all the more necessary.

“In my four year’s work as a trade and investment officer in Vietnam, my biggest headache has been dodgy Western businessmen seeking a fast buck. With few exceptions, those Western companies that do their home-work, follow the rules and conduct the necessary early research will not have problems with their Vietnamese partners. Indeed the opposite is usually true – they are generally surprised and impressed by the calibre of local enterprise”. January 2004: diplomatic trade and investment officer.

“Agreements and licenses are fine, but are subject to sudden and arbitrary change and reinterpretation. Watch your back in Cambodia”. October 2003 Western Ambassador

Vietnam

The Vietnamese economy is expected to grow about 8% in 2004. Vietnam is a curious mix of an old-style Marxist centralist economy, with a fast developing private sector. The bigger companies tend to be solid statist enterprises, closely connected to the military and party apparatus. There is a middle layer of local party and "committee" enterprises. But the most dynamic sector, not surprisingly, is the private sector. These mostly family-run companies tend to be raw, dynamic, under-capitalised and little governed by Western-style licensing and legislative regulations. Many are supported by the know-how and capital of overseas Vietnamese businesses. Private companies are not legally required to file company details and/or financial statements with the Registry of Companies. Comprehensive details and financial statements are only available for public listed companies in Vietnam

Formal Checks

Against this background, the usual bankruptcy, civil litigation, criminal, checks and company formation, shareholdings and corporate records can be difficult, and sometimes impossible. The Vietnamese government is aware of this, and there are changes being proposed to e.g. the bankruptcy laws, or the licensing requirements for companies. But for the present, the position often remains – at best - opaque. Where possible and available, we conduct official searches to cover company types:

1. Companies owned & operated by the central government. These companies are usually large organisations;
2. Companies owned & operated by the local People’s Committees;

3. Privately owned and operated companies. These are generally new and often family run or dominated. Some are publicly listed others not.

Company checks provide:

- Company Trade Name / Former Name (if any)
- Vietnamese Name
- Date of Establishment
- Type of Business
- Business Address
- Contact Information
- Principal Activities
- Total Paid-up Capital
- Capital Structure & Formation; i.e. Directors & Staff Strength
- Management Team Overview (name, position & qualification & nationality)
- Main Shareholders (name, address, shareholding value, percentage of reg. capital)
- Business Profile
- Other Business Interest (if any)
- Banker
- Financial Information

Most foreign businesses will have to interact with the local People's Committee, which oversees the local city and district investments and projects. Joint Ventures are the subject of considerable national and local licensing arrangements. The State Committee for Cooperation & Investment is the body responsible for attracting foreign investment and issues the final approval for any transaction. An understanding of these processes and the correct application of regulations is necessary to ensure a sound long-term business footing.

Reputational

More important than the formal checks for all Vietnamese companies and their principals, are the reputational and industry checks. This requires a range of sources, providing cross checking - and sometimes conflicting - information and assessment. We use known Western "Vietnam" gurus, Vietnamese researchers and analysts, industry groups, Western Embassies, media and internet checks. Access to the party, military, local committees etc, are often important requirements. These checks can shed light on litigation and criminal issues linked to company principals (again, Vietnam's antiquated non-computerised legal system means that a central check on litigation and criminal records cannot be conducted, though "local knowledge" is often instructive).

Pretext Call

Given the problems experienced in Vietnam, we often use pretext calls, carefully constructed to throw light on key areas of concern. This involves a site visit, prior communication and face-to-face meetings with key principals within the company. All due diligence work requires a high management and research in-put.

Cambodia

The issues of weak corporate oversight and control noted for Vietnam are even more pronounced in Cambodia, though in Phnom Penh the problem of risk and business security is compounded by weak government institutions and arbitrary and changing government decisions. An immature government machine and highly personalized and politicized decision-making requires careful study and on-going monitoring.

Time Frame

The importance of discreet reputational checks with clients, customers and competitors means that the time frame for investigations is often longer than in more formal and mature markets. We would usually request 3-4 weeks to conduct our research in Vietnam and Cambodia.

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