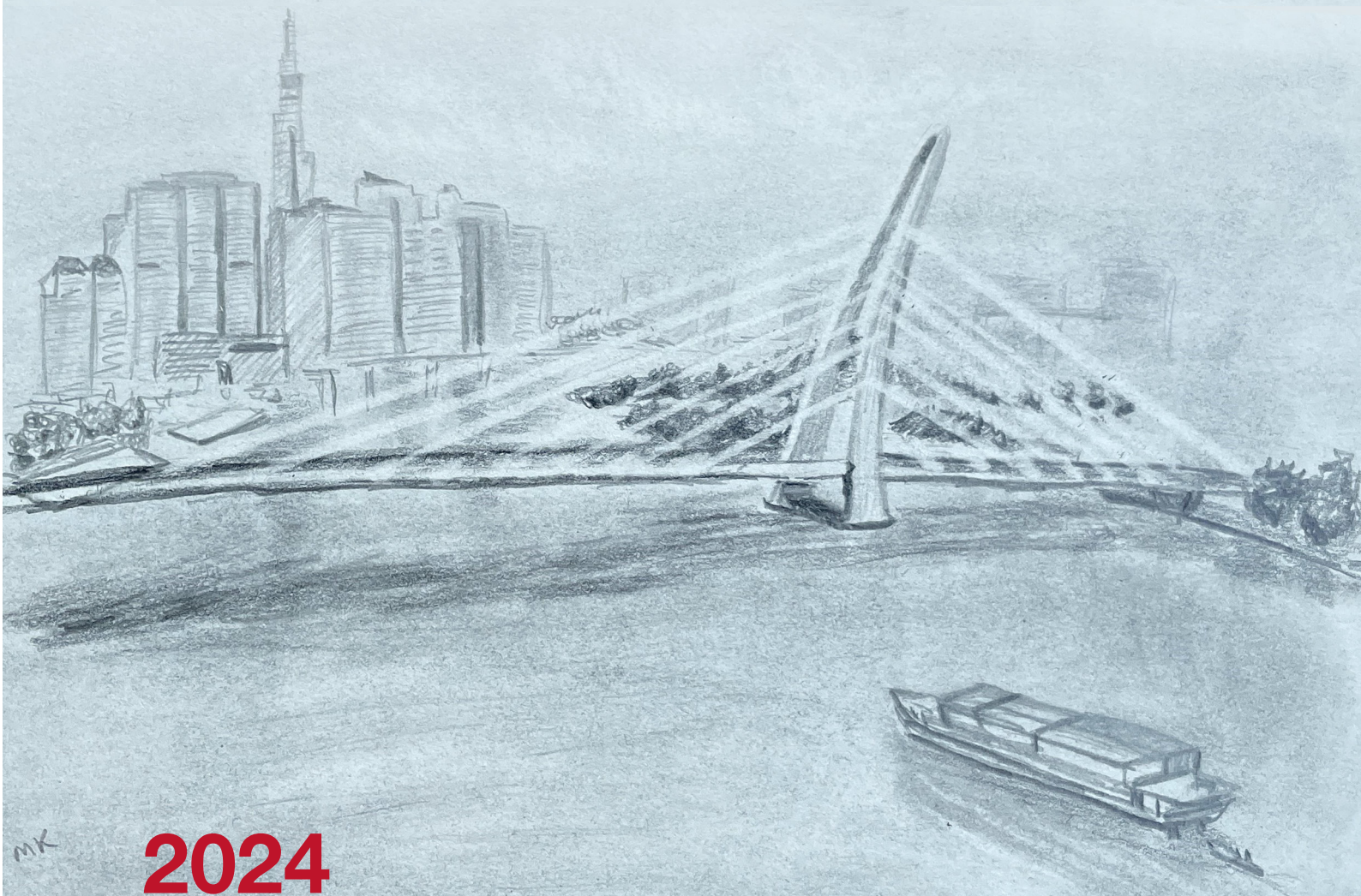


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PROJECT FINANCE GUIDE: VIETNAM



2024 - TRENDS, SECTORS, EXPECTATIONS



It can be expected that the demand for project financing, in particular for large cross-border investment projects, will continue to grow in 2024.

This report aims to respond to most frequently asked queries that lenders and borrowers raise when considering the use of project financing. Most of the comments assume that the relevant project is of substantial size and complexity, and that the loan has long tenor.

Key sectors: The sectors for which project financing would likely be most relevant include:

1. Energy (in particular, renewables);
2. Manufacturing;
3. Real estate.

GDP growth: Asian Development Bank forecasts Vietnam's GDP growth rate at 6% in 2024.¹

FDIs: It can be anticipated that foreign direct investments will be one of the key drivers for the economy development and implementation of new projects.

Cross-border trade and manufacturing: Vietnam is a party to a very large number of international, regional and bilateral treaties, that make it highly attractive for manufacturers to have production assets and operations in the country.

However, in addition to focus on exports, it can be observed that a growing number of businesses (in particular in manufacturing) are becoming focused on the support on internal demand of Vietnam's economy and population.

Industrial parks are particularly popular among newcoming foreign investors for implementing their projects. The number of industrial parks continues to grow in different parts of the country. Each plot would typically be connected to all relevant utilities, roads and other infrastructure. This allows each investor to essentially just “plug-and-play” the new manufacturing facilities, focus on their construction, operation and financing aspects, and by-pass the often complicated and time-consuming land acquisition process.

Investment incentives: a broad system of investment incentives (covering, among others, corporate income tax, land use rate and other duties) is already in place. There has also been a start of the development of taxation policy in relation to the global minimum tax.

Climate commitments of Vietnam: Vietnam is following a number of strong commitments in the area of climate change, which support policies' focus on development of renewable energy projects.

Specifics of project finance structures: overall, parties typically seek to implement project finance structures consistently with those used internationally. The key specifics is driven by:

- Foreign exchange regime, namely the requirements for regulator's approval for foreign loans, and specific requirements set in regulation with respect to the permitted purpose of use of loans; and
- Limitations on the use of immovable assets as security for foreign loans.

¹ <https://www.adb.org/where-we-work/viet-nam/economy>.

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CORPORATE AND REGULATORY ASPECTS IMPACTING THE STRUCTURE

Which corporate vehicle can act as borrower

Typically, the project company is created in the form of a Limited Liability Company or a Joint Stock Company. LLC can consist of 1 member, while JSC must include at least 3 shareholders.

A usual query relates to the possibility to provide a loan to an SPV incorporated outside of Vietnam, with Vietnamese subsidiary providing asset security/guarantees. As per foreign exchange regime, provision of guarantees/security for loans where borrower is a foreign entity, usually requires approval of the Prime Minister. Because of such high level of the required approval, and the formal procedure for its issuance being in draft form, parties typically seek to use structure with a Vietnamese company acting as borrower.

Investment and corporate registrations of the project company

Most of the complex projects are expected to hold an **Investment Registration Certificate** (showing the proposed investment into the project). In certain projects that have significant impact on the social, economic or environment, the project will need to obtain the **In-principle Approval** before receiving the Investment Registration Certificate. Once the project company is established, it would receive its **Business Registration Certificate (BRC)**.

Key project approvals

The scope and types of necessary approvals of course depend on the specifics of the project. However, those most frequently necessary include:

Land Use Rights Certificate: This is typically managed by the local Department of Natural Resources and Environment.

Construction Permit from the local Department of Construction.

Environment-related approvals and permits: Projects with potential environmental impacts will be required to undergo an Environmental Impact Assessment (EIA). The approval for the EIA is typically granted by the Ministry of Natural Resources and Environment or the relevant provincial Department of Natural Resources and Environment.

If the project involves permitted activities such as waste discharge, waste management, or the importation of foreign scrap as raw materials for production, environmental permits may be necessary. These permits must comply with the specified legal requirements and conditions for environmental protection.



What is the regime for project company's outward cash flows from Vietnam (e.g. profits remittance)?

Remitting profits from a project in Vietnam to a foreign country is subject to foreign exchange control regulations, and specific procedures must be followed.

Profits Tax Clearance. Before remitting profits, project companies are typically required to fulfill associated tax obligations on the proposed profit to be remitted.

Making notification on profit remittance. Foreign investors must submit a profit repatriation notification to the tax authority **at least 7 working days** before proceeding with the repatriation of profits abroad.

Remitting the profit. The project company, or its authorized representative, needs to submit the documents to the authorized bank proving its compliance to the requirement on profit remittance.

It should also be noted that profit remittance needs to be made via DICA – **Direct Investment Capital Account**.

This is a special type of account opened by:

- Companies that have foreign investors holding 51% or more shares in the capital;
- Companies created by foreign investors for implementing PPP projects;
- Foreign investors engaged in BCC (business cooperation contracts) or directly undertaking PPP projects without establishing a project company.

What is the land use regime (in particular by foreign-owned companies)

Ownership of Land vs. Land Use Rights:

In Vietnam land is not “owned” either by individuals or by entities, whether they are Vietnamese or foreign. The Constitution provides that land is owned by the people and that the state administers land on people’s behalf.

In its exercise of the people’s rights, the state allocates land to individuals or organizations. This means that the state may permit an individual or an organization to use a piece of land for a definite or an indefinite period of time, with or without the need to pay a land use fee, or lease a piece of land to individuals, households or companies.

Individuals or entities to whom a piece of land was allocated or leased, must use the land for the purposes stipulated in the land allocation decision or in the land lease agreement.

In terms of terminology that is used in regulations and practice, reference is usually made to “allocation” of land when the land user acquires the land use right and pays a fee to the government for such allocation. Where reference is made to “lease”, the user is normally required to pay rent (on regular basis or in lump sum for the whole lease term).

Land use right is evidenced by a “certificate of land use right, residential house ownership and ownership of other assets attached to the land” (“**LUR Certificate**”) granted by a competent state agency.

What are the Routes to Receive Land Rights by a Foreign Owned Project SPV?

A foreign owned enterprise (a “**FOE**”) can receive LUR Certificate through leasing or subleasing land from: (1) the competent government authority or (2) from other land users, provided that such land users are permitted by law to lease or sublease land.

The identity of the entity that can potentially grant land use rights to a FOE usually depends on the location of the project site:

A FOE that intends to implement a project in an industrial zone may:

- (a) lease land from the industrial zone developer; or
- (b) sublease land from another enterprise located in such zone with the approval of the industrial zone developer.

For project outside of industrial zones a FOE usually may:

- (a) lease land from the competent government authority; or
- (b) lease / sublease land from a domestic economic entity that is permitted to sublease land in accordance with its LUR Certificate.

The plot must be already connected to the utilities infrastructure suitable for industrial development; or

(c) FOE may sublease land (also on the condition that the land plot is connected to the required utilities infrastructure) from another FOE within the remaining term of the original lease.

The term of validity of the LUR Certificate generally coincides with the term of the investment registration certificate, but may generally not exceed 50 years (or 70 years in specific areas).

RECENT DEVELOPMENT

In January 2024 the new Land Law of Vietnam was approved.

It is currently scheduled to enter into force in January 2025

The new Land Law will provide more detailed regulation and differentiation of regime and land use rights for foreign owned companies, depending on how substantial the shareholding of the foreigner is.

Another new feature is the introduction of the new land valuation mechanism with the first land fee chart to be issued in 2026. In relation to land lease, there will be a revision of the number of cases, when rent can be paid as a lump sum at the start of the lease.



FINANCING AND SECURITY

What impacts on the size of the loan that can be provided

In Vietnam several aspects need to be taken into account:

“Investment” amount: before establishing the project company, project sponsors for many large-scale projects need to seek approval from local authorities for their proposed “investment”, namely the amount of capital that will be brought in (both as equity and loans). Accordingly, loan should be within the amount so approved by the authority, or additional approval for the change of this amount need to be obtained.

Annual quota: there is an annual cap on foreign loans approved by the Prime Minister of Vietnam. The limit for mid- and long term loans for 2023 was set at 7,500 million US dollars. For 2024 the amount is not yet set. In 2023 the publication was made on 28 April 2023.

Debt-to-Equity Ratio (real estate developers): for borrowers who are developing real estate projects, there is an additional requirement that their equity capital shall not be less than 20% of the total investment capital (if its land area under development is less than 20 hectares). If the land exceeds 20 hectares, the share of equity shall be not less than 15% of the total investment capital.

Foreign project financing for Vietnamese borrowers – key steps and structuring considerations



Is remaining portion of **annual quota** approved by SBV still sufficient for the contemplated financing?



Check that the Total Investment Size of the borrower as per its **IRC** (Investment Registration Certificate). Update if required.



Check applicability and compliance with the **debt-to-equity** ratio (e.g. for real estate developers)



“Purpose of the loan” – check compliance with permitted purposes under forex regulations. Particular attention to HoldCo – Subsidiary structures.



Loan registration with SBV



Security package (particular attention – immovable assets, and which comfort may be available).



Cash flows and bank account involved. Need to open **DICA** (Direct Investment Capital Account) or Foreign Loan Account

* the chart summarises generally applicable structuring and regulatory considerations. Additional aspects may be relevant depending on specific form or route of project implementation (e.g. for PPP projects) or industry.

What are the major approvals required?

Loan registration with State Bank of Vietnam

Mid-term and Long-term foreign loans shall be registered with the State Bank of Vietnam. The application dossier is expected to include:

- loan registration form;
- copies of the borrower's key registration and constitutional documents, such as establishment permits, BRC, and related modifying documents.
- documents evidencing borrowing purposes; loan agreement with translation into Vietnamese
- copies of guarantee undertakings together with their Vietnamese translations (e.g. standby LCs, Guarantee Agreements etc.)
- confirmation from the borrower's account bank on loan proceeds withdrawal and repayment of the previous debt until the registration date in certain cases including restructuring foreign debt, converting equity investments into loans, and extending short-term loans.

After the loan is approved, the borrower is required to provide regular reports to the State Bank of Vietnam containing information on the performance of the loan agreement.

Any specific requirement to the purpose of the loans?

There are specific requirements as to the purpose for which medium and long-term foreign borrowings can be used. Namely, a borrower may only receive a loan for:

- (i) the execution of its investment projects
- (ii) fulfillment of their production and business plans, and
- (iii) restructuring foreign debts.

What is the practice when choosing governing law of main agreements?

Choosing foreign law as the governing law for main financing agreements is quite a common practice in cross-border transactions.

Security documents would typically be governed by Vietnamese law.

What are the rules on recognition of foreign (1) arbitral awards and (2) court judgements?

Vietnamese courts generally recognize and enforce foreign arbitral awards on the basis of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).



To have a foreign arbitral award recognized and enforced in Vietnam, the party seeking enforcement must submit an application to the provincial court at the place where the person obligated to perform the foreign arbitrator’s decision resides or works if the obligated person is an individual, or the location of the headquarters if the obligated person is an entity, or the place where assets related to the enforcement of the foreign arbitrator’s decision are situated.

Vietnam has also entered into bilateral treaties with certain countries that may provide additional basis for the recognition and enforcement of judgments, civil decisions of foreign courts, and foreign arbitral awards.

Vietnam has entered into legal assistance agreements with various countries and regions, including but not limited to the Czech Republic, Slovakia, Poland, Hungary, Bulgaria, Cuba, the Lao People’s Democratic Republic, China, Ukraine, Belarus, France, and Mongolia.

These agreements specify that recognition and enforcement procedures are initiated upon the request of the relevant party or the competent authority of the issuing country. However, the requested country’s court will not reexamine the content of the judgment or decision, but will focus on ensuring the impartiality of the process, considering factors such as the request duration, the content of the request, etc.

RECENT DEVELOPMENT

In July 2023, the State Bank of Vietnam issued Circular No. 08/2023/TT-NHNN which brought quite substantial changes to the regulations governing cross-border foreign loans. Key changes include more clear distinction in the purposes of short-term and mid to long-term foreign loans and more detailed regulation on loan amounts for each permitted loan purpose ([LINK](#)).

One of the aspects that remains subject to ongoing discussions and development of implementation practice, is that previous version of the regulation expressly allowed the borrower to use foreign loan to implement business plan or project of the borrower’s subsidiary. This was particularly relevant to the business groups structured with the use of HoldCos.

This express reference to the borrower’s subsidiaries is not present in the new Circular No. 08, which refers to “executing borrower’s business plans or other projects”. It remains to be seen whether the practice would develop for this provision to be interpreted broadly to cover projects implemented by borrower’s subsidiaries also.



Can a Vietnamese project company open a bank account abroad?

Vietnamese companies, as resident entities, can open bank accounts abroad if:

1. they have branches or representative offices abroad, or
2. in connection with receiving loans and entering into other contracts with foreign parties.

However, prior approval (license) of SBV is required.

The procedure of receiving approval for opening overseas bank account is primarily regulated in Circular No. 20/2015/TT-NHNN.

If account is opened in connection with receiving a foreign loan, the procedure involves assembling a comprehensive dossier including:

- A fully completed request form;
- A copy of the incorporation certificate;
- The foreign loan agreement, translated into Vietnamese;
- Documentation related to the contract or agreement associated with the account;
- A document illustrating the foreign lending party's necessity for opening a foreign currency account abroad, clearly specifying the account's purpose, transactions, and maintenance period;
- A copy of the confirmation on loan registration for loans that require registration.

RECENT DEVELOPMENT

The new Land Law 2024 expanded the provisions describing who can be the mortgageholder of land. In addition to credit organisations, the clause now also refers to “other economic organisations and individuals”.

This change might be beneficial to structuring local financings, and benefit potentially for broader range of parties (e.g. in bond transactions, in particular where bonds are purchased by individuals or companies that are not banks).

It remains to be seen whether this change in the legal provision will have any impact on practice of taking security for loans from foreign lenders.

To complete the process, organizations submit the compiled dossier either through postal services or directly to the State Bank of Vietnam's Foreign Exchange Management Department. The SBV reviews the documents, issuing approval if the dossier is complete and valid. In instances where the dossier is incomplete, the SBV may request supplementary documentation for a thorough application process.

What types of security can be offered by a Vietnamese borrower and are there any restrictions applicable to security for loans from foreign lenders?

Variety of assets can be used as security in projects in Vietnam, including shares, equipment and contractual rights. Given that enforcement process may potentially require resort to court proceedings (in particular, where the borrower is not cooperating), the security is generally regarded to be more of defensive nature for the lenders.

Significance of share pledge is particularly high, taking into account limitations on availability of security over immovables for the benefit of foreign lenders.





When structuring a deal, parties also consider whether additional governmental approvals would need to be obtained at the enforcement stage (e.g., due to change of control in the company upon enforcement of the share pledge).

The two most common forms of security over assets are mortgages and pledges. In a mortgage, property is used as security without the actual transfer of property to the creditor. In a pledge, property is transferred from the pledgor to the pledgee for the purposes of securing an obligation.

Under Article 174.1 of the current version of Land Law immovable property can be provided as security to a locally licensed bank.

Accordingly, as a general rule, foreign lenders are considering whether there is a possibility to receive indirect “quasi” comfort in relation to immovable property of the borrower. Such arrangements are

primarily aimed to be of “defensive” nature, to mitigate the risk of asset disposal in the manner not consistent with the main documentation. Contractual structures that can be seen on the market for this are typically developed on case-by-case basis and have involved participation of a locally licensed financial institution. The variations are usually structured around the following options or their combinations:

1. Local bank(s) providing part of the financing package to the borrower secured by a mortgage over immovables, with foreign lenders receiving assignment of rights to any remaining proceeds from enforcement under such mortgage; or
2. “Guarantee/SBLC structure” where local bank issues a guarantee/SBLC as security for an offshore loan provided to a Vietnamese borrower. As security for the reimbursement obligation of the borrower, the local bank receives a mortgage.



To date, there have not been practical testing in courts of such forms of arrangements in large-scale cross-border projects.

Specific (and limited) cases allowing some form of security over immovables for large-scale infrastructure/PPP projects have also been reported.

Given the fundamental importance of reliable security over immovable property for bankability of the financing structure (and also its impact on the risk analysis and cost of the financing), initiatives are being proposed to modify legislation to allow foreign lenders to benefit from security over immovables in a direct way.

Is it possible to take security over “any and all assets” of the debtor, like a floating charge?

Vietnam, consistently with the approach often followed in jurisdictions based on civil law principles, does not envisage the generic floating charges, which are sometimes used in common law countries.

As a result, the prevailing practice is to take security over respective classes of assets and preferably describe mortgaged assets clearly in the relevant security instrument.

Decree 21/2021/ND-CP, dated 19 March 2021, which is major source of regulation of security arrangements, also allows to take security over “goods in circulation” as part of the production/business process or at warehouses. Such goods can be described based on their value, type and location.

What are the major perfection requirements for security and how difficult is the process?

For both mortgage and pledge form of security, the major perfection requirement is its registration in Vietnam. Registration of security over land (in the cases when it is possible to take it) is carried out with the Department of Natural Resources and Environment (or

its authorized agency). Such security over immovables is also subject to notarization.

Security over assets other than immovables is, as a matter of practice, registered with the National Registration Agency for Security Transactions (NRAST) this is by way of additional protection for the secured Lenders. The registration process is relatively straightforward.

Sponsor support / guarantees

Guarantees by one Vietnamese company to secure obligations under a foreign loan of another Vietnamese company are provided. Registration with SBV is required, and it is usually done when applying to register the underlying loan.

Note that a company in Vietnam cannot provide a security or guarantee to a foreign lender in respect of an offshore loan to a foreign borrower, without prior approval of the Prime Minister of Vietnam. The detailed guidance on how such approval can be obtained is being developed.

As a matter of practice, such approvals are so far usually limited to projects of state-owned enterprises investing overseas in accordance with government policies.

In enforcement scenario – what are the available ways of realization of charged assets?

Enforcement Methods: Vietnamese regulations permit enforcement methods such as selling the secured assets or taking an assignment of them to discharge the secured obligations. Any additional methods must be agreed upon by both the secured and securing parties.

The law generally does not limit the method of realisation of the mortgaged property. Lenders might directly transfer the assets to the buyer or engage a specialised auction services provider to conduct a sale auction. Enforcement methods are typically outlined and agreed upon in the security agreement.

In practice, selling property at an auction is commonly used. Auctions are conducted by a licensed organization with expertise in auction management, appointed under a contract with the lender.

Goes without saying that the successful recovery of debt through non-judicial foreclosure heavily relies on the cooperation of the party providing security, especially when dealing with properties requiring registration with competent governmental agencies. In cases where title conveyance is necessary, registration with the same agencies is crucial. If party fails to cooperate, the lender may face challenges in exercising their power of sale since they are not the registered owners of secured property.

As such, it is common for the lenders to initiate the judicial foreclosure to ensure the debt recoverability.

Receipt of Enforcement Proceeds: Upon enforcement, the secured party receives proceeds – either directly from property buyer or through the auction organiser.

What is the status of secured creditor in bankruptcy proceedings

Generally, enforcement of security may be suspended, if bankruptcy proceedings commence.

The next steps in relation to the secured assets depend on the whether the proceedings will involve recovery of the debtor's business and whether such assets are required for such recovery as approved by the creditors.

If there is no recovery plan or secured assets are not part of it, the secured creditors may be allowed to proceed with realisation of such assets to satisfy their claims.



What is the legal framework for green financing?

According to Article 149 of the 2020 Environmental Protection Law, which came into effect on January 1, 2022, green credits are the loans granted to specific investment projects, including those that (i) make efficient use of natural resources, (ii) address climate change, (iii) manage waste, (iv) treat pollution and enhance environmental quality, (v) restore natural ecosystems, (vi) conserve nature and biodiversity, and (vii) yield other environmental benefits.

To date a number of regulations have been adopted covering and stimulating provision of financing for environmentally-friendly projects. These include:

- Decision of SBV No. 1408/QĐ-NHNN, approving the action program of banking sector for implementing national strategy for green growth during the period of 2021 – 2030.
- Decision of SBV No. 1731/QĐ-NHNN, which approved the banking sector action plan for implementation of the 2030 agenda for sustainable development.

- Circular of SBV No. 39/2016/TT-NHNN, prescribing in Article 7, that lending transactions between a credit institution and a customer shall be performed in conformity with (among others) legislation on environmental protection.
- Letter of SBV No. 9050/NHNN-TĐ, establishing regular reporting requirements for financial institution to provide information about loans extended in “green sectors” (e.g. green agriculture, recycling, waste management etc.) as well as reports on Environmental and Social Risk Assessment in Credit Extension.
- Circular of SBV No. 17/2022/TT-NHNN, providing guidelines on environmental risk management in credit extension.

The above is a non-exhaustive list of green finance banking regulations. Other guidelines were also approved encouraging financing institutions to increase the use of green loans. Further mechanisms and incentives are also anticipated to be introduced to boost the implementation of green credit in the future.



TAXATION ASPECTS of FINANCE AND SECURITY ARRANGEMENTS

Importance of tax due diligence for financial modelling of the project

When building financial model for project financing, the applicable the tax rates applicable to the specific project/company are usually subject to detailed tax due diligence.

Vietnam investment regime provides for a comprehensive and broad range of various business incentives. However, the regime of benefits and eligibility criteria are set out in very many laws, regulations and clarifying instructions. The particular tax rate may depend on the industry, geographical location and other parameter of the project.

Typically, at structuring stage parties would be considering the project for the perspective of:

- Its eligibility for preferential rates for corporate income tax (CIT)
- Possibility to achieve 0% rate of import customs duties
- Availability of VAT refunds; exemptions from VAT on imported goods
- Benefits under Free Trade Agreements of Vietnam
- Benefits if project is implemented in Export Processing Zones
- Availability of holidays/reductions on land use fees



RECENT DEVELOPMENT

Recent development: global minimum tax regime is being gradually implemented in Vietnam.

On November 29th, the National Assembly enacted a Resolution on the implementation of an additional corporate income tax in accordance with regulations to prevent global tax base erosion (“GloBE”). The resolution will be applicable from fiscal year 2024.

The GMT resolution defines “Additional CIT” as $\text{Additional Tax Rate} \times \text{Excess Profit}$. The Additional Tax Rate will be the gap between the Global Minimum Tax Rate and the Effective Tax Rate that the company bears in Vietnam. The Global Minimum Tax Rate is set at 15% while the Effective Tax Rate of a MNE in Vietnam is the sum of applicable tax attributed for Vietnam entity member in a financial year over net income in accordance with the GloBE.

Please refer [here](#) for more details on this resolution.

What are the standard key tax rates?

1. Corporate Income Tax (CIT):

- Project companies in Vietnam are subject to Corporate Income Tax on their taxable income. The standard CIT rate is 20%, but certain projects may qualify for preferential tax rates or exemptions.

2. Value Added Tax (VAT):

- VAT is imposed on the supply of goods and services in Vietnam. The standard rate is 10%, but there are different rates for specific goods and services. Certain project-related expenses may be subject to VAT.

3. Land Use Fees:

- Projects involving land use may be subject to land use fees. The fees depend on factors such as the location and purpose of the land use.

4. Foreign Contractor Tax (FCT):

- Foreign contractors providing services in Vietnam are subject to Foreign Contractor Tax, which is a form of withholding tax. The rates vary depending on the business sector.

5. Capital gain Tax:

- Capital gains from the sale of equity by investors may be subject to capital gains tax.
- This tax is treated as part of corporate income tax regime (for corporate seller).

- Income from capital transfer is not entitled to any tax incentives. Gains derived from the sale of a Vietnam company are generally subject to 20% CIT.

Is there withholding tax on interest under offshore loans?

As a general rule, borrower would be required to withhold 5% income tax from the interest or any associated fees paid to the offshore lender. Tax gross-up provisions are frequently included into the finance documentation. It should be noted that in loans from related parties, the borrower will be limited to deduction of interest cost in the amount not exceeding 30% EBITDA for the year. The surplus, however, can still be carried forward to a maximum of five subsequent years.

Is there any stamp duty requirement?

There is generally no stamp duty in Vietnam for execution or registration of the loan agreement.

Is notarization required and what are the fees?

For certain assets (e.g. real estate) notarisation of security agreement is mandatory. Notarization fees (in relation to the security documents) typically depend on the value of the charged property and the value of the transaction.



Key Contacts in Vietnam



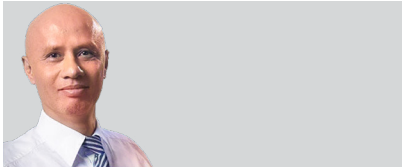
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