Vietnam capital market and project finance: Its structure and future

Le Net of LNT & Partners in Hanoi looks at the current landscape for capital markets and project finance in Vietnam

Although Vietnam's capital markets were established more than 20 years ago, the participation of Vietnam-based law firms in the markets, both locally and internationally, is still rare. The main reasons for this have been the standardisation of the State Securities Committee (SSC), the dominance of state capital, and strict foreign exchange controls. The central new Government, formed in 2016, declared this year to be the "Enterprise Year" and issued many changes to laws and regulations to help make Vietnam become of the top four most open markets in ASEAN. The Government also accelerated its privatisation plan (so-called "equalization") and reduced interference from official development assistance (ODA) with project financing, as well as with recent legal reforms. The time for Vietnamese lawyers in capital markets and project finance is coming.

Capital market standardization and equalization

The Law on Securities (LOS) governs Vietnam's debt market for bonds, and the equity market for shares of public companies – joint stock companies (JSC) that have more than 100 shareholders. The largest trading volume in the Ho Chi Minh City Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX) is from Government bonds, which are invested by financial institutions with very rare involvement from law firms. Shares are traded by listed companies, whose IPO's are prepared by securities companies rather than law firms, unlike in other countries. Corporate bonds and project bonds are still rare, although recently, there have been a number of offshore bonds available on the market.

The role of law firms is mainly for either IPO offshore or pre-IPO onshore dealings between strategic partners with a target state owned enterprise (SOE) before equalization has taken place. So far, only leading international law firms or the top three local law firms have been eligible to participate in this narrow market.

Under the LOS, a public company must be registered at the SSC and its shares must be deposited at the Vietnam Securities Depository (VSD). Acquisitions gaining more than 25% of their total shares will be subject to a mandatory public offering (MPO). Almost all state owned enterprises (SOE) going through equalization will become public companies. In reality, many of the equitized SOEs are not registered with the SSC, and therefore, neither the MPO nor the UPCoM apply to them. To facilitate M&As in those companies, certain complex and often unprecedented restructuring models are required, and leading local law firms are proven to be more adept at this, as local laws are complicated and require practical solutions to overcome them.

Another point to note is that selling state shares in equitized SOEs must be done through the HOSE or the HNX, although information on the target company and its valuation is not always transparent. Certain foreign investment funds are willing to take risks investing in equitized companies as such opportunities rarely exist. Many of them can later transfer to Japanese, Thai or Korean conglomerates, with assistance from top law firms that gain innovative lawyers through the Financial Times or deal firm of the year by IFLR, Chambers, or ALB Thomson Reuters. It is expected that M&As in public or equitized SOEs will be on the rise as those law firms gain more experience on M&A restructuring and legal due diligence with large SOEs.

Apart from the Vietnam debt and equity market, offshore IPOs are on the rise, as the SSC now provides guidelines for investment and offshore listings. Other areas that Vietnam needs to develop are in high yield products, securitisation, debt structuring, and trusts. Some good news is that, for the first time, the new Civil Code 2015 introduced the concept of "huong dung" – usus fructus that are similar to trusts. Similarly, the Enterprise Law 2014 also reduces conditions to issue bonds or derivatives, making securitisation more feasible.

Foreign exchange control

Vietnam's economic growth was 6.8% in 2015, based on two engines: export and a growth of middle income consumers among its young 90 million person population. Due to strong exports, the Vietnamese Dong currency has proven to be resilient despite the devaluation of the Chinese Reminbi. The State Bank of Vietnam (SBV) also issued new regulations allowing enterprises to invest or lend abroad. However, obtaining offshore investment registration certificates (OIRC) is still a challenge for Vietnamese entities. Recently, Saigon Coop lost its €1 billion Big C bid because of delays in obtaining an OIRC, and the strict foreign exchange controls for offshore lending or using foreign exchange to fund onshore projects. To overcome these regulations, local investors may either need to contact foreign or local lenders in order to deposit foreign currency abroad. More deregulations are expected to ease capital inflow and outflow.

Private project finance replacing state capital and ODA funding

The second trend in Vietnamese financial services law firms is the sophistication of project finance. Some top local law firms have been involved in highly regarded transactions such as: the funding of Haiphong International Container Terminal (HICT), the M&A of the Big Co supermarket system, the development of mega thermal power plants, offshore oil rigs for Petro Vietnam, or aircraft finance for VietJet Air to acquire 100 aircrafts from Airbus and now Boeing. In those projects, the security comes second to project feasibility, and the risk of non-completion is now recognized as a major issue facing lenders or bond investors. To address these risks, financial service lawyers must be skillful not only with the Asia Pacific Lenders Master Agreement (APLMA) loan structure but also with focusing commercial expertise on construction contracts, as well as delays and cost overruns to counter the non-completion risks present in project finance. In addition, lawyers need to assist clients to obtain extra incentives and support to guarantee cash flow from the project.

For state support projects, investors often request the government's guarantee. Nowadays the Government often refuses to provide guarantees, after its anticipated debt caused by the guarantee under the Nghi Son Oil Refinery project. Lawyers need to find other means to support clients such as through incentives and investment protections rather than through direct financial supports from the State.

Until recently, Vietnam still relies on state capital and ODA funding for its industrialisation and infrastructure development. However, as the public debt is reaches 80% of the GDP, SOEs becoming inefficient, and the country's growth rate still high, the Government is expected to equitize its public sector and focus on enhancing infrastructure for the private sector, including with foreign investors. Changes in the Civil Code, Civil Procedural Code, Enterprise Law, Investment Law, and the Decree on Private Public Partnership (PPP) are some major examples. This policy shift will no doubt create more room for large law firms to develop their financial service sectors to meet the ever demanding growth for their clients.