



Vietnam: Foreign capital ratio regulation and IT business licenses

Tomonobu Murata, Sayaka Habe

1. Introduction

Vietnam's IT industry traditionally has focused on utilizing its abundant IT personnel and cheap wages to develop software for foreign customers. However, given Vietnam's recent economic development, Vietnamese and foreign-based IT companies are now targeting consumers (and companies) in Vietnam as well.

For example, the Vietnamese electronic commerce ("e-commerce") market was worth \$2.8 billion in 2018, and is expected to reach \$15 billion by 2025.¹ This expectation is predicated on the increased popularity of the Internet and smartphone use amongst the young people of Vietnam (who account for a large portion of its population), as well as further development of Vietnam's telecommunications infrastructure. Despite (or perhaps even partially due to) the impacts of the coronavirus, the climate for the IT services sector, such as Fintech (financial technologies that allow for e-commerce) or other online services, is expected to become increasingly favorable.

In light of this situation, there may be an increase in the number of foreign based companies that establish subsidiaries in Vietnam with the goal of providing IT services within the country, especially given the many business opportunities that exist there. In such cases, it is necessary to pay attention to the local laws and regulations in Vietnam, such as restrictions on foreign capital ratios and necessary licenses. In this article, we will outline several services with respect to the legal and regulatory frameworks that should be kept in mind when a foreign-based company seeks to establish a new company/subsidiary in Vietnam and carry out IT business.

2. Regulations applicable to software development

If a foreign-based company establishes a subsidiary in Vietnam for software development and receives software from that subsidiary, there is no foreign capital ratio regulation applicable to that subsidiary (and it thus can be operated as a 100% foreign-owned

¹ e-Conomy SEA 2018 Southeast Asia's internet economy hits an inflection point (Google and TEMASEK)

subsidiary). In addition, it is not necessary to obtain specific licenses for software product development in Vietnam unless the developed product is classified as a “cybersecurity information product” under the Law on Cyber Information Security.

3. Regulations governing online trading

If a foreign-based company establishes a subsidiary in Vietnam and the subsidiary sells products online to consumers in Vietnam, there is no foreign ownership restriction applicable to the subsidiary (i.e. it can operate as 100% foreign-owned subsidiary). However, if such a subsidiary will provide delivery services with its online sales in a certain way, a foreign ownership restriction may apply (up to 51%).

In terms of the license, if it sells goods online to Vietnamese consumers, decree No. 09/2018/ND-CP, which regulates the sale and purchase of goods and related business activities by foreign companies, shall apply in addition to other regulations, such as the obligation to obtain licenses under the above decree (so-called “trading licenses”). Establishment and operation of websites for e-commerce must be registered with the Ministry of Industry and Trade, and close attention must be paid to the regulations set forth in decree No. 52/2013/ND-CP on e-commerce and the Consumer Rights Protection Act. In addition, compliance with other relevant regulations should be maintained, for example, when awarding points and conducting promotional activities on websites, labeling, establishing means of price-identification, and undertaking other product-specific activities.

4. Regulations governing the issuance of prepaid electronic money

If a foreign-based company establishes a subsidiary in Vietnam and the subsidiary provides a service that issues prepaid electronic money that can be used to pay for other companies' goods and services, the service is likely to be classified as an “e-wallet service” under Vietnam law.

The provision of such e-wallet services by commercial banks and branches of foreign commercial banks is not subject to foreign ownership restrictions (such businesses are allowed to operate as 100% foreign-owned subsidiaries). Under the Banking Law, however, banks must be licensed for both establishment and operation and comply with any other related regulations.

In addition, even if non-bank subsidiaries of foreign-based companies intend to provide e-wallet services, there are no laws that explicitly stipulate restrictions on their foreign capital ratios. However, the State Bank of Vietnam (SBV) seems to consider the establishment of an upper limit of 49% for the foreign shareholding ratio of such service providers to be appropriate. To this end, Vietnam has not promised to open the market for such services in its WTO commitments. Therefore, it is important to confirm with the Ministry of Planning and Investment, the SBV, and other relevant authorities whether or not it is possible for a 100% subsidiary to operate such a business. In addition, non-banks providing e-wallet services need to be licensed by the SBV, possess a minimum of 50 billion Vietnam Dong in capital, hold a commercial bank payment account with an account balance greater than the total e-wallet balance of customers, and comply with any other applicable regulations.

5. Regulations applicable to the provision of software that has functions such as telecommunication or online services

If a foreign-based company establishes a subsidiary in Vietnam and the subsidiary provides software or online services without installing data communication facilities but nonetheless functions to allow communication between two parties, such as by e-mail, chat, or telephone, the service is likely to be classified as a “value-added telecommunications service” under Vietnam law.

Regarding value-added telecommunications services that do not have data communication facilities, Vietnam’s WTO commitments

state that the upper limit of foreign ownership shall be 65%, but CPTPP² states that such upper limit shall be 70%, and that the restrictions on foreign ownership shall be abolished within five years of its entry into force. If a foreign-based company establishes a subsidiary in Vietnam to provide such services, it is necessary to establish a company in a joint venture with a local Vietnamese company in order to comply with the foreign capital ratio regulations. A provider of value-added telecommunications services is also required to obtain licenses under the Telecommunications Law.

6. Regulations on personal information

In Vietnam, there are no comprehensive personal information protection laws, such as the GDPR³ or Japan's Personal Data Protection Act,⁴ but individual laws and regulations stipulate the protection of personal information and privacy. There is also a law that stipulates the obligation for the storage of personal data obtained in connection with the provision of certain online services for Vietnamese citizens within Vietnam (a so-called “localization obligation”). When personal data is acquired during the provision of IT services in Vietnam, it is necessary to pay attention to such regulations.

7. Conclusion

Despite the increasing number of foreign companies entering the IT industry in Vietnam and the steady development of new services there as well, legislation to properly regulate IT business has not fully developed. Accordingly, the current regulations, and interpretations thereof, are often unclear, leading to an unclear application to the services discussed. As such, when considering IT business in Vietnam, it is necessary to take a careful approach, such as obtaining the latest information, retaining local experts and obtaining the views of the authorities.

² Comprehensive and Progressive Agreement for Trans-Pacific Partnership

³ The European Communities “General Data Protection Regulations”

⁴ Please note, the potential establishment of a comprehensive decree regarding personal data protection is under review in Vietnam.



[Tomonobu Murata](#)

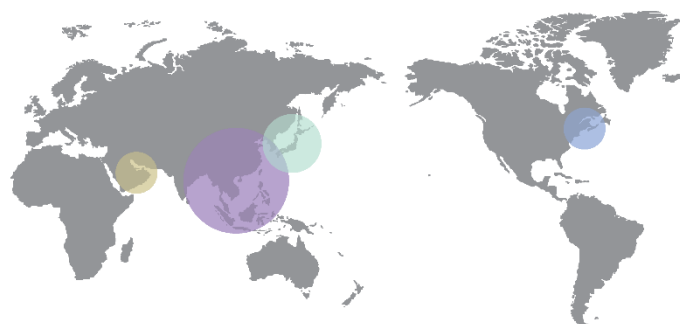
Attorney-at-Law,, Nishimura & Asahi
to_murata@jurists.co.jp

Mr. Tomonobu Murata is a senior associate who has been focusing on IT or IP-related practice including cyber security and data protection matters for 10 years. He is admitted to practice in Japan (2010), passed the New York bar exam in 2018 (not registered yet), and qualified as a Registered Information Security Specialist in Japan (2019). He graduated from the UCLA School of Law (LL.M., 2018), worked for Bristows LLP as a secondee in London (2018), and then worked at the HCMC office of Nishimura & Asahi (2019-2020).

[Sayaka Habe](#)

Attorney-at-Law,, Nishimura & Asahi
s_habe@jurists.co.jp

Registered as an attorney-at-law in 2013, Ms. Habe has been working for Nishimura & Asahi since 2020 after she worked for a couple of domestic law firms, as well as NSK Ltd. and NH Foods Ltd. She has been engaged in supporting Japanese companies' expansion into and investment in Vietnam and other ASEAN countries.



Nishimura & Asahi has 16 offices throughout Japan and in the markets that matter, with Asia as the starting point.

Tokyo

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo
100-8124 Japan
Tel +81-3-6250-6200
+81-3-6250-7210
(Nishimura & Asahi LPC Principal Office)

Osaka

Tel +81-6-6366-3013
LPC Partners Hiromune Usuki
Taisuke Igaki
Yuichiro Hirota
Masanori Ban

Nagoya

Tel +81-52-533-2590
LPC Partner Hiroki Fujii

Fukuoka

Tel +81-92-717-7300
LPC Partners Tsuneyasu Ozaki
Kengo Takaki
Yasuko Maita

New York

Nishimura & Asahi NY LLP
Tel +1-212-830-1600
E-mail info_ny@jurists.co.jp
Managing Partner Katsuyuki Yamaguchi
Vice Managing Partner Megumi Shimizu

Dubai

Tel +971-4-386-3456
E-mail info_dubai@jurists.jp
Masao Morishita

Bangkok

Tel +66-2-168-8228
E-mail info_bangkok@jurists.jp
Partner for Hideshi Obara
Thailand Partners* Chavalit Uttasart
(SCL Nishimura)
Jirapong Sriwat

Jakarta*¹

Walalangi & Partners
Tel +62-21-5080-8600
E-mail info@wplaws.com
Representative Luky Walalangi
Rosetini & Partners Law Firm
Tel +62-21-2933-3617
E-mail info_jakarta@jurists.jp
Counsel Noriaki Machida

Yangon

Tel +95-1-8382632
E-mail info_yangon@jurists.jp
Representative Yusuke Yukawa
Vice Representative Isamu Imaizumi

Beijing

Tel +86-10-8588-8600
E-mail info_beijing@jurists.jp
Chief Representative Azusa Nakashima
Representative Masashi Shiga

Shanghai

Tel +86-21-6171-3748
E-mail info_shanghai@jurists.jp
Chief Representative Toshihiro Maeda
Representative Takashi Nomura

Singapore

Tel +65-6922-7670
E-mail info_singapore@jurists.jp
Co-representatives Masato Yamanaka
Shintaro Uno
Partner Masataka Sato

* We also provide legal services relating to Singapore law through Bayfront Law LLC, which operates the Nishimura & Asahi-Bayfront Law Alliance.

Okada Law Firm (Hong Kong)*²

Tel +852-2336-8586
E-mail s_okada@jurists.co.jp
Representative Saori Okada

Hanoi

Tel +84-24-3946-0870
E-mail info_hanoi@jurists.jp
Partner for Hikaru Oguchi
Vietnam offices
Representative Taro Hirose

Ho Chi Minh City

Tel +84-28-3821-4432
E-mail info_hcmc@jurists.jp
Partner for Hikaru Oguchi
Vietnam offices
Representative Kazuhide Ohya
Vietnam Partners* Vu Le Bang
Ha Hoang Loc

Taipei

Nishimura & Asahi Taiwan
Tel +886-2-8729-7900
E-mail info_taipei@jurists.jp
Co-Representatives Ing-Chian Sun
Sheng-Chieh Chang

*¹ Associate office *² Affiliate office
* Please note that we are not engaged in a Gaiokokuho Kyodo Jigyo (the operation of a foreign law joint enterprise).

Public Relations Section, Nishimura & Asahi

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo 100-8124, JAPAN

Tel: +81-3-6250-6202 Fax: +81-3-6250-7200 E-mail: na_vnnl@eml.jurists.co.jp URL: <https://www.jurists.co.jp/en>

© Nishimura & Asahi 2020