

**Box 3**

"...The process of starting a venture in Vietnam therefore often becomes a mixture of education and negotiation, in which success often hinges on the ability to gain trust and confidence and to convince the Vietnamese side of the soundness of a project and the benefits that will flow from it.

'Naturally, suspicions will arise (among the Vietnamese) that the foreign partner is trying to load the costs,' says Richard Stirling, director for corporate development at Cathay Pacific Airways. 'No matter how exasperating and time consuming it may be, success will only be achieved by keeping cool, and explaining the background to each item, until complete comprehension is achieved. A take-it-or-leave-it attitude, or, indeed, an inability to justify in detail one's own figures, will inevitably lead to failure.'"

Source: "Who's who on Asia's last business frontier", in *Asia Money & Finance*, April 1992.

**(b) Joint Venture and Business Co-operation Contracts**

A JV contract is a document that commits two or more separate companies to establish and jointly run a separate enterprise. A Business Co-operation Contract is a document that commits two or more separate companies to simply pursue a particular area of business together, without establishing a separate enterprise.

These two documents contain several provisions that essentially spell out the responsibilities of each party to the contract. Such provisions include the capital contributions by each party, the sharing of profits and losses and the procedures for settling inter-party disputes. Needless to say, the contracts are very important documents. Sesto Vecchi, an international lawyer in Vietnam, advises investors to make the contracts as detailed as possible. Nothing in the contract should be overlooked as unimportant or obvious. Remember that the Vietnamese have not had great exposure to Western law and contracts (Vietnam does not even have any contract law) and as such, many seemingly straightforward clauses may be easily misinterpreted<sup>3</sup>.

Ostensibly, each contract is negotiated between the foreign investor and the Vietnamese enterprise – the two parties to the contract. In reality, however, many more interests are involved. To begin with, the parent Ministry of the Vietnamese party may negotiate directly with the foreigner. Second, the SCCI overlooks the process and may intervene in a number of ways. For example, the SCCI may want to negotiate buy-out provisions to enable the local partner to increase over time its ownership in the venture. Third, any number of other Ministries and government agencies that have any interest – weak or strong – in the project are to be kept advised of negotiations over terms in the contract. Finally, the relevant People's Committee is involved, especially in the case of JVs because JV contracts normally specify that the Vietnamese partner's contribution to legal capital is to be made in the form of land-use rights. The People's Committee, as the agency in charge of all land-use in its locale, oversees and instructs the parties on the valuation of the land-use rights.

**(c) Company Charter**

JVs and FOCs must write a company charter that provides all of the specifics on the proposed enterprise, including its business activities, its legal and investment capital, the capital contribution schedule, the organization of the enterprise's management, and the dissolution of the enterprise.

**(d) Other Documents**

The SCCI, the relevant People's Committee and any other agencies involved may require the investor to include other documents in the application package. The most important of these applies to JVs and FOCs, and is the documentation to prove that the proposed enterprise has the rights to an identified land site, and the rights to the existing equipment on the site.

The onus is on the investor to ensure that the proposed enterprise does indeed have the rights that it claims to have. JV investors should not accept a land-use certificate from the Vietnamese partner without making sure that the certificate complies with the records of the People's Committee. The investor in this role is not questioning the