

베트남 건설부문의 외국인 투자에 대한 법적 도전과 해결책에 관한 총평

A Review of Legal Challenges and Solutions for Foreign Investments in Vietnam's Construction Sector

○당티 흥 우옌*
Uyen Dang T.H

문 석 현*
Moon, Seok-hyun

김 우 재**
Kim, Woo-jae

안 용 한***
Ahn, Yong-Han

Abstract

The study examines the key legal barriers and solutions for Korean investors in Vietnam's construction sector, based on a review of research works published between 2013 and 2024. It conducts a thorough evaluation of twenty academic documents to discern a comprehensive range of issues across ten primary domains, including regulatory structure, policy framework for foreign investment, employment and contractual management, and land rights. The study aims to provide a general overview of the intricate legal landscape for international investments in Vietnam. Thus, this research aids foreign investors and companies in the Vietnamese market by enhancing their understanding of potential legal challenges, allowing them to evaluate strategies to reduce risks associated with construction investment projects in Vietnam.

키워드 : 외국인투자, 건설산업, 베트남, 한국, 법적위험, 법적도전

Keywords : Foreign Investment, Construction Industry, Vietnam, Korea, Legal Risks, Legal Challenges

1. 서론

Foreign Direct Investment (“FDI”) is crucial for bringing capital, technology transfer, skill development, and better resource use. Despite challenges, Vietnam's open policies and focus on market growth position it as an appealing option for foreign investors, with the construction sector being particularly encouraged by the government to draw investment. This study ventures into the legal complexities that South Korean investors encounter in Vietnam's construction sector. By reviewing scholarly literature published from 2013 to 2024, it delivers an

in-depth analysis of twenty academic sources to unearth the multifaceted challenges they face. The investigation spans four pivotal areas: Vietnam's foreign investment regulations in construction, communication barriers, management of contracts, and the integration of Building Information Modeling (BIM). To sketch a detailed picture of the legal hurdles in international investment, this research serves as a resource for foreign investors and firms in Vietnam. It enhances their legal acumen, equipping them to navigate potential pitfalls and formulate robust risk mitigation strategies for their construction investment projects

2. 본론

2.1 Status of South Korean FDI in the Vietnamese market

Since 2010, South Korea's foreign direct investment (FDI) in Vietnam has undergone a significant transformation, with noticeable shifts in its ranking, magnitude, and investment sectors. According to the Foreign Investment Agency under the Ministry of Planning and Investment (MPI) of Vietnam, Korean investors registered capital amounting to USD 2.66 billion in the first half of 2022 alone, accounting for 21.3% of the total registered FDI in Vietnam. [2]

* 한양대학교 대학원 석사과정 스마트시티공학과

** 서울예술대학교 공간디자인학과 조교수

*** 한양대학교 ERICA 건축학부 교수, 공학박사

(Corresponding author : Department of Architectural Engineering, Hanyang University, yhahn@hanyang.ac.kr)

This work was supported by Korea Institute of Energy Technology Evaluation and Planning (KETEP) grant funded by the Korea government (MOTIE)

(20202020800030, Development of Smart Hybrid Envelope Systems for Zero Energy Buildings through Holistic Performance Test and Evaluation Methods and Fields Verifications)

Presently, South Korea stands as Vietnam's top investor. In December 2022, South Korea was among the top three countries and territories with the highest investment capital in Vietnam. Specifically, the Republic of Korea came second with about 4.88 billion USD [2]. Additionally, the projects are primarily carried out by major South Korean investors such as Samsung Vietnam, Hyundai, CJ Vietnam, Lotte Vietnam, Posco, and in the construction sector being Daewon.[1]

2.2 Legal Challenges

This section describes the research findings in terms of five legal challenges regarding foreign investment in Vietnam's construction industry.

2.2.1 Regulatory structure

Vietnam has implemented several initiatives to attract foreign investment, such as introducing open-door policies and signing international agreements, notably the WTO's Trade in Services commitments in 2006 [3] and the Vietnam-Korea Free Trade Agreement - VKFTA in 2015[4]. However, one challenge that foreign investors may encounter in the Vietnamese market is navigating the complex legal framework in Vietnam which includes a variety of international treaties, investment and corporate regulations, bidding regulations, and technical guidelines [1] [5]. Moreover, the frequent updates to investment policies require FDI investors to continuously adapt and ensure compliance throughout their project implementation. In the words, the complexity of legal frameworks is a challenge to practitioners. [3][8]

2.2.2 Poor contract management cause legal disputes

Poor contract management specialists are a significant issue in developing countries, particularly within the Vietnamese construction sector [5]. This issue arises because ensuring project progress and managing costs have always been major concerns in the construction industry. Furthermore, large projects in Vietnam typically involve the transfer and application of modern technology, intricate designs, and the management of complex geographical features that vary from one project location to another. Therefore, these aspects must be thoroughly recognized and managed within the contract. despite the Vietnamese government issuing legal documents to guide contract management, effective management requires a team of experts proficient in both Vietnamese and international laws, and with a detailed understanding of each stage of the project lifecycle, to effectively manage contracts and avoid legal disputes. Otherwise, poor contract management can cause legal disputes, leading delay on time process and

payment for project.

2.2.3 Licensing and Permissions Complexity:

Projects in the construction sector that include foreign investment components must comply with Vietnamese regulatory requirements for licenses and permissions. This compliance encompasses securing construction permits, investment licenses, adherence to technical standards, land rights, and a multitude of additional approvals required throughout the various phases of a project, in addition to the licensing and registration of building designers, building contractors, and consultants' license.[9]

2.2.4 Lack of communication among parties

Communication among the parties is also a weak point in Vietnam [6] The methods of communication during contract implementation play a crucial role in a project's execution. Ineffective communication stems from a lack of training in new technology for personnel in Vietnam, unclear negotiations about actual communication in contracts, and differences in working manners and cultures between partners. These issues can lead to project delays and cost overruns, presenting challenges that necessitate the parties' focused attention.

2.2.5 Building Information Model (BIM) Application

The application of BIM in the construction sector has provided many management advantages in numerous countries. In response to this market trend, Vietnam is endeavoring to develop and innovate to adopt new technologies, including the application of BIM in the construction sector. However, in Vietnam, BIM application under construction project still face many potential issues.[7] Although Vietnam is still at an early stage in establishing initial regulations for the practical use of BIM, and requires more time to continue developing specific guidelines, technology acquisition, and human resources training, the country is already taking initial steps. In addition, experts in Vietnam also agree that adopting the Vietnam BIM Framework will face many legal challenges, particularly due to an unclear system of guidelines that are people-oriented and the absence of specific regulations on BIM standards. There is a lack of BIM standards and clear enforcement forms for BIM practices and responsibilities. Issues such as unclear rights and obligations, ambiguity regarding model ownership, intellectual property rights protection, security, and interoperability are prevalent. [7] Furthermore, there is a lack of solutions for BIM handover. These are important considerations that foreign investors should bear in mind when undertaking projects in Vietnam.

2.3 Potential recommendations

This section presents five recommended suggestions derived from the research findings, offering recommendations on foreign investment in Vietnam's construction industry.

2.3.1 Choosing and incorporate suitable and trusted Partnership

FDI investors should consider cooperating with a legal consultant to receive advice on Vietnamese regulations related to construction investment. It is also important to collaborate with partners that are compatible with the project's characteristics, possess the right attitude (a win-win approach), and are willing to address issues in a cooperative spirit.[6]

2.3.2 Legal and Regulatory Consultation:

Foreign investors are advised to obtain detailed legal counsel to effectively understand and maneuver through Vietnam's regulatory environment. This encompasses keeping abreast of legal modifications and comprehending how these changes affect their projects in actuality. Additionally, timely support from government bodies is essential for their endeavors.[9]

2.3.3 Ensure good communication in partnership under contract

The parties should establish effective communication channels and be open to sharing information, risks, and challenge with selected partners in Vietnam before entering a contract and during the project implementation process. This includes face-to-face negotiations, telephone calls, emails, and the use of science and technology

2.3.4 Preparing human resources with qualified the management abilities.

Given the significant demand for trained human resources in the Vietnamese construction industry, preparing enhancing the capabilities of managers and engineers case by case is necessary to mitigate risks under each project. Specifically, there should be a focus on contract management because real project conditions always require professionals to adapt these templates appropriately. [6]

2.3.5 Suggesting and negotiating clear processes and agreements in the contract for the BIM application.

In case that foreign investor plans to apply BIM under the international project in Vietnam, It is expected to set up an efficient and reliable BIM process[7]. A proposed contractual framework aims to establish a reliable BIM process, reducing adoption risks, enhancing data sharing, and protecting intellectual property for construction projects in

Vietnam. It clarifies each party's roles and responsibilities within BIM agreements. All necessary content should be considered negotiation and regulation under contract. Also, taking legal advice on the legal validation of this contract is necessary when drafting and signing related contracts.

3. 결론

In conclusion, this study has illuminated the general landscape of South Korean FDI in Vietnam's construction sector, highlighting the substantial growth and strategic shifts in investment patterns over the years. South Korea's position as a top investor reflects its confidence in Vietnam's market potential. However, this market can present challenges that investors should consider. Specifically, the legal hurdles identified-complex regulatory frameworks, communication gaps, inadequate contract management, and the nascent stage of BIM adoption-pose significant risks that demand careful navigation. The proposed recommendations-careful partner selection, effective communication protocols, the recruitment and improvement of human resource management for each project, and a robust contractual framework for BIM, with consideration of related legal advice-serve as strategic guideposts for foreign investors. Overall, this research contributes valuable insights into the intersection of law and investment in Vietnam, offering a general overview for engagement in Vietnam's burgeoning construction industry and highlighting potential issues for foreign investors' consideration.

참고문헌

1. Ha, T.T., Strengthening Economic Ties: The Impact and Potential Of South Korean Foreign Direct Investment In Vietnam. *The Eurasian: journal on global socio-economic dynamics*, 2023(4 (41)): p. 41-49.
2. Ministry of Planning and Investment of Vietnam. "Report on foreign direct investment in 2022". Accessed on December 26, 2022. (<https://www.mpi.gov.vn/en/Pages/2022/Report-on-foreign-direct-investment-in-2022-403479.aspx>)
3. WTO Center. "Vietnam's WTO Commitments on Services". Accessed on November 24, 2010. <https://wtocenter.vn/chuyen-de/73-vietnams-wto-commitments-on-services>
4. WTO Center. "*Summary of Vietnam-Korea Free Trade Agreement (VKFTA)*". Accessed on November 11, 2015.
5. Le-Hoai, L., Y.D. Lee, and J.Y. Lee, Delay and cost overruns in Vietnam large construction projects: A

comparison with other selected countries. KSCE journal of civil engineering, 2008. 12: p. 367-377.

6. Le-Hoai, L., Y.D. Lee, and J.J. Son, Partnering in construction: Investigation of problematic issues for implementation in Vietnam. KSCE Journal of Civil Engineering, 2010. 14: p. 731-741.

7. Dao, T.-N., P.-H. Chen, and T.-Q. Nguyen, *Critical success factors and a contractual framework for construction projects adopting building information modeling in Vietnam*. International Journal of Civil Engineering, 2021. **19**: p. 85-102

8. Jung, S., D. Huynh, and P.G. Rowe, *The pattern of foreign property investment in Vietnam: The apartment market in Ho Chi Minh City*. Habitat International, 2013. **39**: p. 105-113.

9. Maemura, Y., E. Kim, and K. Ozawa, Root causes of recurring contractual conflicts in international construction projects: Five case studies from Vietnam. Journal of Construction Engineering and Management, 2018. 144(8): p. 0501800