

Original Article

International Experience and Lessons Learned Regarding Listing and Trading Registration of Enterprises with Foreign Direct Investment (FDI) on the Stock Market: A Study in Vietnam

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Abstract: Enterprises with Foreign Direct Investment (FDI) are a part of the Vietnamese business system and an indispensable economic component contributing significantly to the country's socio-economic development. In principle, FDI enterprises are treated equally and operate in sectors not prohibited by law. Before the Investment Law was enacted, FDI enterprises were regulated by the Law on Foreign Direct Investment, which allowed for the conversion of ownership form from limited liability to joint-stock companies. Consequently, FDI enterprises converted to joint-stock companies gradually listed on the Vietnam stock market. However, despite operating as joint-stock companies under the Enterprise Law, these FDI enterprises were not allowed to conduct initial public offerings (IPOs) and list on the Vietnam stock market. The inconsistency in listing and trading registration of FDI enterprises' stocks has impacted transparency, long-term capital mobilization, shareholder rights, and the attraction of foreign direct investment into Vietnam.

Keywords: International Experience, Stock Market, Enterprises with Foreign Direct Investment.

I. PROBLEM STATEMENT

After joining the World Trade Organization (WTO) in 2007, investors and state agencies had to review Vietnam's commitments under the WTO Services Commitments Schedule based on the positive list principle. This practice revealed that many industries were not included in the list of permitted sectors, causing significant delays for both local authorities and foreign investors in determining the permissible sectors for investment during the investment licensing process. By 2014, Vietnam continued to amend the Investment Law to align with global and domestic investment trends. The Investment Law 2014 replaced the previous distinction between direct and indirect investment with the concept of business investment.

The Investment Law 2005 broadly defined prohibited investment sectors, lacking clarity, so the Investment Law 2014 only prohibits business investment activities listed in the law to comply with the 2013 Constitution requirements. The Investment Law 2014 specifically listed 267 conditional business investment sectors, making it easier for investors to understand restricted business sectors compared to previous reliance on specialized documents. This provision also avoided different interpretations among enforcers of the law.

The Investment Law 2014, along with the Enterprise Law 2014, contributed to removing barriers in investment and business activities incompatible with Vietnam's market economy and integration commitments, creating a legal basis for improving the investment and business environment to be increasingly favorable, transparent, and equitable among economic entities. However, during the implementation of the Investment Law and related laws, some issues remained unaddressed or lacked uniformity among laws, particularly those related to investment procedures, land, construction, housing, real estate business, environment, etc. Specifically, Overlapping provisions in various laws have caused difficulties for investors and management agencies in implementing investment and business activities and state management of these activities. Some investment business sectors have not been fully regulated or subjected to rigorous control and monitoring mechanisms for proposing amendments and supplements to these sectors to create a legal basis for ensuring consistent enforcement of the business freedom rights of citizens and enterprises. Innovative investment forms have been slow to adapt to the rapid development of new business models and organizational methods in the context of the Fourth Industrial Revolution. Incentive sectors for investment support are still scattered; the forms, criteria, and conditions for applying investment incentives lack flexibility and do not strongly focus on attracting investment resources to restructure the economy, transform growth models based on innovation and technological renewal while promoting linkages between sectors, regions, domestic enterprises, and enterprises with foreign investment. Provisions on prohibited investment sectors from Vietnam to foreign countries and



conditional investment sectors abroad have not been updated or systematized to ensure transparency and meet the state management requirements for these activities. Investment registration certificate issuance procedures, sequence, and feasibility of investment registration for overseas investment and implementation activities are complex and lack feasibility and rationality.

Resolution No. 50/NQ-TW dated August 20, 2019 of the Party Central Committee on orientation to improve the system, policies, enhance the quality and efficiency of foreign investment cooperation by 2030 comprehensively assessed the attraction and use of foreign investment capital over the past 30 years, including identifying limitations and shortcomings in attracting this capital: the quality and efficiency of attracting and using foreign investment capital are still limited; imbalances in attracting and using foreign investment capital; the connection between foreign investment areas and domestic economic areas is not close; the effectiveness of state management on foreign investment is still limited; the procedures for granting, adjusting, revoking, terminating investment project activities are not strictly guaranteed; management, implementation of investment projects still have many shortcomings; inspection, examination, supervision of foreign investment activities have not really been effective.

In addition, some negative phenomena and new issues have emerged in the activities of foreign investment projects (such as transfer pricing, tax evasion, the use of outdated technology, environmental pollution risks, resource abuse, "hidden" investment, "underground" investment through organizations, Vietnamese individuals). In that context, the Investment Law needs to be continuously amended and supplemented to perfect the necessary tools to ensure attracting investors who truly have the capacity to carry out high-quality investment projects, meet the requirements of efficient use of resources on land, resources, minerals, labor, ensure security, defense, environmental protection and address the above-mentioned shortcomings. For these reasons, the Investment Law 2020 was promptly issued on June 17, 2020, to make even stronger changes to improve the investment and business environment and enhance the competitiveness of the economy in general and Vietnamese enterprises in particular. The overall objective and viewpoint of the Investment Law 2020 is to institutionalize the Party's resolutions on perfecting the socialist-oriented market economy, developing the private economy, and improving the system policies, enhancing the quality and efficiency of foreign investment cooperation by 2030.

II. EXPERIENCES OF SOME COUNTRIES WORLDWIDE

A) Experiences in China

a. Current Situation and Legal Challenges for Foreign-Invested Enterprises Listed on the Chinese Stock Exchange

i) The Compatibility of Listing Foreign-Invested Enterprises in China with the Chinese Securities Law

According to the principles set forth in Article 12 of the Securities Law, the issuance/listing of stocks, bonds of enterprises, and other securities trading activities as stipulated by the law enacted by the National Assembly must be in line with the Securities Law. The scope of these provisions is relatively broad: Firstly, when securities are offered for sale and listed domestically, they are subject to the regulation of the Securities Law; secondly, when securities trading occurs domestically, they fall within the regulatory scope regardless of whether the issuing organization is a domestic company or a foreign-invested one. This could also be understood as the Chinese Securities Law allowing both foreign and domestic organizations to issue securities and conduct securities trading activities in China.

The issuance of new stocks and corporate bonds, whether through private placements, initial public offerings, public bond offerings, or the listing of stocks and bonds, is not exclusively reserved for companies without foreign investment, according to the Securities Law of China. Thus, under Article 2 of the Securities Law, the issuance of securities by foreign-invested companies is, in principle, legal.

Although Article 2 of the Securities Law may be interpreted as permitting foreign-invested companies to issue securities and conduct transactions domestically, the practice on the Chinese Stock Exchange lacks clear regulations issued by the National Assembly or the China Securities Regulatory Commission to clarify the allowance of listing foreign-invested companies on the domestic market.

ii) The Compatibility of Listing Foreign-Invested Enterprises in China with the Chinese Enterprise Law

The Enterprise Law serves as a management standard for listed companies in China, applicable to all companies in China. However, it is noteworthy that the legal framework governing enterprise listing includes two main laws: the Enterprise Law and the Securities Law. At the level of specific industry regulations, most refer to provisions of the Enterprise Law. In practice, the scope of the Enterprise Law only covers domestically registered enterprises, meaning that the Chinese law framework mainly affects domestically funded companies. Consequently, this creates some operational barriers for foreign-invested enterprises seeking listing domestically.

These barriers include basic conditions related to IPOs and listings primarily included in the Management Approach for IPOs and the list published by the China Securities Regulatory Commission. According to this document (Article 3),

when conducting IPOs and listings, companies must comply with all relevant provisions of both securities and enterprise laws. Therefore, this document excludes the possibility of foreign-invested companies conducting IPOs and listings domestically.

In general, China currently lacks laws and regulations related to the management of foreign-invested companies listed on the domestic market.

b. Listing Structure for Foreign-Invested Enterprises on the Chinese Stock Exchange - FICLS

Concept of FICLS China currently allows Foreign Invested Companies Limited by Shares (FICLS) to be established and listed on the stock exchange. FICLS is a limited liability company established by both foreign and Chinese investors. It is not a special variant of a joint venture but rather a distinct investment vehicle. Companies operating as FICLS after listing can raise capital on the stock exchange through the issuance of corporate stocks or bonds. FICLS is currently the only form of foreign-invested company with shares listed on the Chinese stock exchanges (either the Shanghai Stock Exchange or the Shenzhen Stock Exchange). FICLS is commonly used when expanding existing business operations, converting Joint Venture Corporations between China and foreign parties (EJV) into FICLS, or acquiring a company domiciled in China rather than establishing a new enterprise.

Legal Basis of FICLS FICLS was introduced in 1995 with the issuance of FICLS provisions. It was separately regulated by the "Temporary Provisions on Some Issues Concerning the Establishment of Foreign-Invested Joint Stock Companies 1995". These provisions were repealed by the Ministry of Commerce of China through MOFCOM Circular 3/2019, dated December 28, 2019. The repeal of the 1995 provisions was to align with China's implementation of the Foreign Investment Law 2019 (FIL 2019). FICLS companies are currently regulated under the Chinese Enterprise Law.

Listing Requirements of FICLS To be listed on the stock exchange, companies operating as FICLS need to meet certain requirements in addition to general listing requirements, such as compliance with regulations on foreign investment. Some minimum requirements include:

- Capital is divided into shares, with FICLS having a minimum of two and a maximum of 200 initial shareholders, including at least one foreign investor;
- Minimum registered capital requirement of 30 million RMB;
- FICLS must be established through share subscription, or the sellers must hold all shares;
- If offering shares, the sellers must register at least 35% of the shares and offer the remaining portion to the public. Establishing through share offering must comply with the approval of China's securities regulatory authority when offering shares to the public;
- FICLS is liable for its debts within its assets, while the liability of shareholders is limited to their respective shareholdings.
- FICLS founders are restricted for a lock-up period of 3 years after listing, during which they cannot sell their shares.

Current Status of FICLS Establishment in China In practice, establishing FICLS has never achieved widespread suitability as a legal investment vehicle for foreign-invested enterprises. The number of newly established FICLS reached only 125 companies in 2017 and 129 companies in 2018. From January to November 2019, 101 FICLS were established in China. Reasons for this lack of popularity include relatively high minimum registered capital requirements and a highly complex and costly process to form an FICLS. Additionally, FICLS registration documents are much stricter compared to other investment types.

B) Singapore's Experience

Among the target capital markets that attract the attention of foreign enterprises, the Singapore Stock Exchange (SGX) is an attractive choice for many businesses. This stems from the advantages of being a major financial center in the region, with high market capitalization, a stable financial and business environment, and transparency that is friendly to foreign enterprises. SGX also consistently expresses its desire to attract foreign businesses to list and provides favorable conditions when considering the listing applications of foreign enterprises. The Singapore Stock Exchange is considered one of the most liquid markets in Asia, with 46% of the total market capitalization formed from capital sources of foreign-listed companies on SGX.

In Singapore, there are not many differences between the listing conditions for domestic and foreign enterprises. Singaporean law only provides the concept of Foreign Direct Investment (FDI) to differentiate foreign-invested enterprises from others, maintaining an open investment mechanism for capital from outside sources. Thus, there is no distinction in listing conditions or supervision mechanisms between foreign-invested enterprises and other businesses; FDI-listed companies are treated equally with domestic enterprises. FDI in Singapore refers to an investment where a foreign investor directly owns 10% or more of the common shares of a Singaporean company. In general, there are no regulations restricting the ownership or control rights of foreign investors over domestic businesses or participation in joint ventures, except in some sectors such as

financial services, broadcasting, telecommunications, real estate, etc. For example, in the broadcasting sector, the maximum foreign ownership in domestic broadcasting companies is 49%. In contrast, in the print media sector, this ratio is only 5% per shareholder, and directors must be Singaporean citizens.

Regarding organizational structure, SGX consists of two stock exchanges: the Main Board and the Catalist. Listed companies, including foreign companies, can register securities on both trading platforms. The Main Board is the primary trading platform for listing and trading securities on SGX. At the same time, Catalist serves the purpose of raising additional capital with more flexible and simpler regulations than the Main Board. Companies listed on Catalist are typically small and medium-sized enterprises, and the listing requirements on Catalist are simpler than those on the Main Board.

a. Listing Conditions on SGX

Foreign companies can choose to list for the first time (primary) or secondary listing on either the Mainboard or Catalist. If a foreign company offers shares to the public (IPO) on SGX, with Singapore being the principal regulatory authority, the company is considered to be listed on the primary market. Suppose a foreign company has conducted an IPO on the stock exchange of another country (home exchange) but still chooses to list shares on SGX (secondary exchange). In that case, the company is listed on the secondary market.

b. Management and Supervision Mechanisms for FDI-Listed Companies on SGX

While FDI-listed companies on the primary market must comply with all strict listing conditions and SGX's "comply or explain" corporate governance rules, companies listed on the secondary market primarily depend on the home exchange's regulatory authority, following the regulations and management mechanisms of the home country. Therefore, companies that have complied with the corresponding regulations of the home country usually do not have to fulfill SGX's listing obligations and corporate governance, except for some specific regulations. The management mechanism for secondary FDI-listed companies exempts them from some corporate governance obligations, which are similarly regulated in the home country. Thus, the supervision mechanism for secondary FDI-listed companies is not as strict as for companies listed directly in Singapore.

The majority of foreign-listed companies in Singapore are listed on the primary market, meaning they must comply with

SGX's listing obligations.

SGX has many joint venture companies listed, such as Yoma Strategic Holdings, Aussino, Super Coffemix (Myanmar and Singapore Joint Venture), and Singapore Telecommunications (Singtel - Singapore and Taiwan Joint Venture). According to the United Nations Conference on Trade and Development (UNCTAD) report in January 2018, Singapore ranked fifth among the world's FDI-attracting centers and is one of the leading economies in the developing Asia-Pacific region. Therefore, Singapore has implemented a very open and equal listing mechanism for foreign enterprises in general and FDI enterprises in particular. Legally, there are almost no listing conditions that hinder foreign enterprises from listing on SGX. This is a practical reference for Vietnam in researching and proposing an open mechanism for FDI enterprises to list on the Singapore Stock Exchange.

C) South Korea's Experience

a. Listing Situation of Foreign Direct Investment Companies on the South Korean Stock Exchange

In 1956, the South Korean Stock Exchange opened its doors with the establishment of the South Korean Stock Exchange. In January 2005, through the integration of the South Korean Stock Exchange and two other domestic markets, the Korea Exchange (KRX) was formed. There are four markets within the KRX: the Main Market (KOSPI Market), KOSDAQ (Korea Securities Dealers Automated Quotations), KONEX (South Korea's new exchange), and the derivatives market.

KRX is one of the most liquid stock exchanges. Since 2007, KRX has actively promoted IPOs of foreign-invested companies to develop as an international stock exchange, popularizing foreign-invested companies and attracting international investors. A total of 23 FDI companies have been listed on KRX since June 30, 2015. As of now, the South Korean Stock Exchange (KRX) has 41 listed FDI companies.

b. Listing Conditions for Foreign Direct Investment Companies on the South Korean Stock Exchange

The South Korean Stock Exchange (KRX) currently has 41 listed FDI companies, treated like domestic companies. Listing conditions for companies on the South Korean Stock Exchange are as follows: All necessary listing documents should be written in Korean; Companies must submit both a preliminary listing application for initial review and documents in Korean; Financial reports based on English may be attached for informational purposes, prepared under IFRS standards; Since 2011, KRX accepts IFRS accounting standards for listing on the KOSPI and KOSDAQ markets.

c. Strengthened Investor Protection Policies for Foreign Direct Investment Companies in South Korea

Although the listing conditions at the South Korean Stock Exchange for FDI companies and regular companies are the same, there are some differences in policies related to the listing of FDI companies in South Korea. These policies aim to enhance investor protection for domestic investors.

Furthermore, when foreign-invested companies in South Korea undergo IPOs, these companies are not allowed to change external auditors within three years from the application for preliminary listing review. After that must be audited by a firm that meets the criteria. The criteria for audit firms for FDI companies listed on the South Korean Stock Exchange also differ from those for regular companies.

III. LESSONS LEARNED FOR VIETNAM

From an international perspective, allowing and attracting FDI companies to list and trade on domestic stock exchanges is customary in the international capital market; however, depending on the specific characteristics of each market, state regulatory agencies have different policies to control risks and mitigate potential negative impacts on the stock exchange. Singapore is ranked fifth among the world's FDI-attracting centers and is one of the leading economies in the developing Asia-Pacific region. The Singapore Stock Exchange is considered one of the most liquid markets in Asia, with 46% of the total market capitalization formed from capital sources of foreign-listed companies on SGX. Singapore has implemented a very open and equal listing mechanism for foreign enterprises in general and FDI enterprises in particular, with not many differences between the listing conditions for domestic and foreign enterprises. Meanwhile, South Korea and China have some differences in policies related to the listing of FDI companies aimed at enhancing investor protection for domestic investors. To be listed on the South Korean Stock Exchange, FDI companies need to meet certain requirements in addition to general listing requirements, such as compliance with regulations on foreign investment, minimum founders' shareholding ratio, restricted transfer period, disclosure standards, corporate governance standards, leadership standards, accounting standards, higher audit firm standards, and not changing audit firms within three years after meeting the listing requirements. These are important lessons from Asian countries with similarities to Vietnam, providing the basis for proposing policies on listing and trading for FDI companies on the Vietnamese Stock Exchange.

IV. CONCLUSION

Foreign Direct Investment (FDI) involves foreign investors injecting capital and assets to engage in investment activities and participate in managing investment activities in Vietnam. The involvement of FDI enterprises plays a crucial role in the economy of a developing country like Vietnam by compensating for the lack of investment capital for socio-economic development, contributing significantly to the modernization of the economy's technology, absorbing advanced management experiences, creating more jobs for laborers, forming a skilled labour force, increasing labour productivity, contributing to state budget revenues, promoting the development of domestic enterprises, expanding international trade, developing markets, and participating in global value chains. However, the participation of FDI enterprises also increases tax evasion, tax avoidance, and transfer pricing behaviors in Vietnam. In contrast, FDI enterprises investing in Vietnam are entitled to investment incentives such as corporate income tax exemptions, land rental fees, and investment subsidies from the government. Allowing the listing and trading of stocks of FDI enterprises has positive impacts on the development of the Vietnamese Stock Exchange. On the one hand, it diversifies the source of goods on the stock exchange. On the other hand, it attracts indirect foreign investment into the Vietnamese Stock Exchange, thereby contributing to upgrading the Vietnamese Stock Exchange. Listed and traded FDI enterprises also contribute to the transparency of information of these enterprises. Currently, in Singapore, China, and South Korea, there are policies allowing FDI enterprises to be listed on the stock exchanges. This is an important experience for Vietnam in researching and proposing policies to allow FDI enterprises to be listed and traded.

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