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LEGAL



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## PROMISING INVESTMENT SPOTLIGHT: WHY VIETNAM NOW?

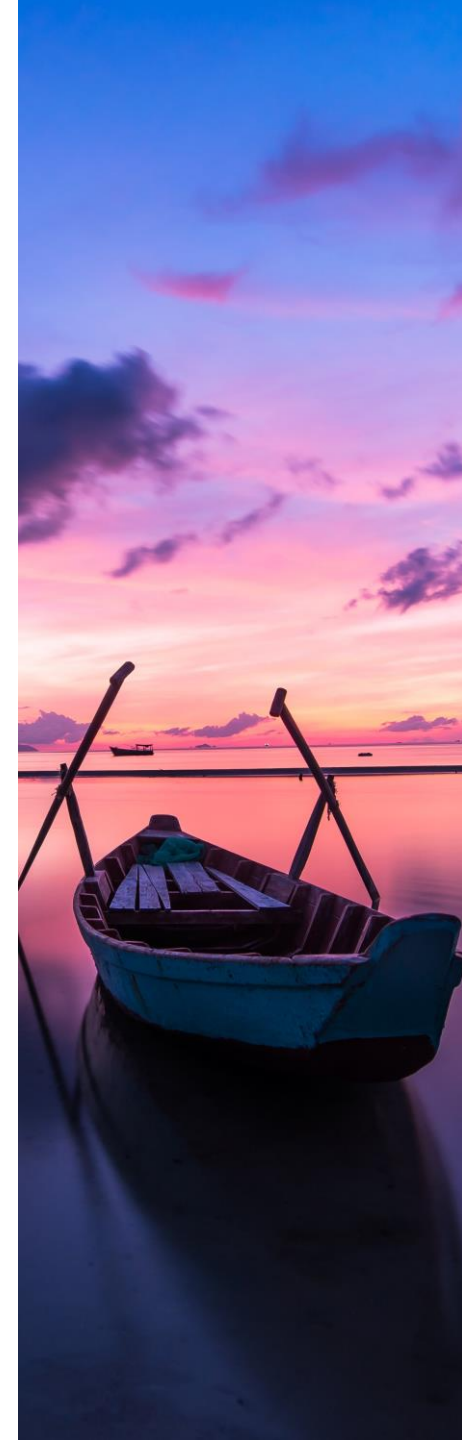
General Overview: Economic Zones and Investment Structuring in Vietnam

Vietnam-Singapore Industrial Park (VSIP)

26 July 2018

### AGENDA

- ABOUT ACSV LEGAL / NETWORK / ADDITIONAL SERVICES
- ECONOMIC ZONES
  - INTRODUCTION TO ECONOMIC ZONES IN ASEAN
  - GENERAL BACKGROUND ON SEZs
  - ECONOMIC ZONES/SEZs IN VIETNAM
  - KEY POINTS ON DRAFT LAW ON SAEZ
  - FUTURE OUTLOOK - SEZs/SAEZs in VIETNAM
- INVESTMENT STRUCTURING
  - VIETNAM - STRUCTURING OVERVIEW
  - SIMPLE STRUCTURING
  - INTERPOSING OFFSHORE
  - INTERPOSING OFFSHORE AND ONSHORE
  - CONDITIONAL SECTORS CONSIDERATIONS
  - ASSET DEAL STRUCTURE
  - TIME IS OF THE ESSENCE
  - TAX CONSIDERATIONS
- MOVING FORWARD / CONCLUSION
- CONTACT US



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ABOUT ACSV LEGAL / NETWORK / ADDITIONAL SERVICES

### ABOUT ACSV LEGAL

ACSV Legal is a Ho Chi Minh City, Vietnam-based law firm. Established in 2014 and most recently, at the end of March 2018, it was rebranded to ACSV Legal, with a new logo and new website: [www.acsvlegal.com](http://www.acsvlegal.com).

ACSV Legal has a premier corporate/M&A practice in Vietnam and its approach is to understand the legal, commercial and political dynamics of every matter. We have extensive experience in private equity transactions with a focus on a strong commercial approach.

ACSV Legal currently has a team of lawyers who are qualified in Vietnam and abroad. Our lawyers are bilingual in Vietnamese, German, English, Italian, Dutch, French and Malay.

Our clients are active in a wide range of sectors and industries: manufacturing, food & beverage, hospitality and leisure, education, pharma, health, beauty & fitness, IT, apparel and fashion, retail and public relations.

### NETWORK



ACSV Legal is a partner with One Asia Lawyers, a Japanese law firm. Through One Asia Lawyers we provide seamless, comprehensive legal advice on the laws of Japan, Singapore, Philippines, Thailand, Laos, Vietnam, Cambodia, and Myanmar; and an accessible and efficient service throughout the region. [www.oneasia.legal/en](http://www.oneasia.legal/en)

### ADDITIONAL SERVICES



ACSV Legal has a sister company, Domicile Corporate Services. Through Domicile Corporate Services, we can support our clients on professional corporate services such as accounting, payroll, tax, compliance support, management reporting, corporate establishment advisory, company secretarial activities, nominee services. [www.domicilecs.com](http://www.domicilecs.com)



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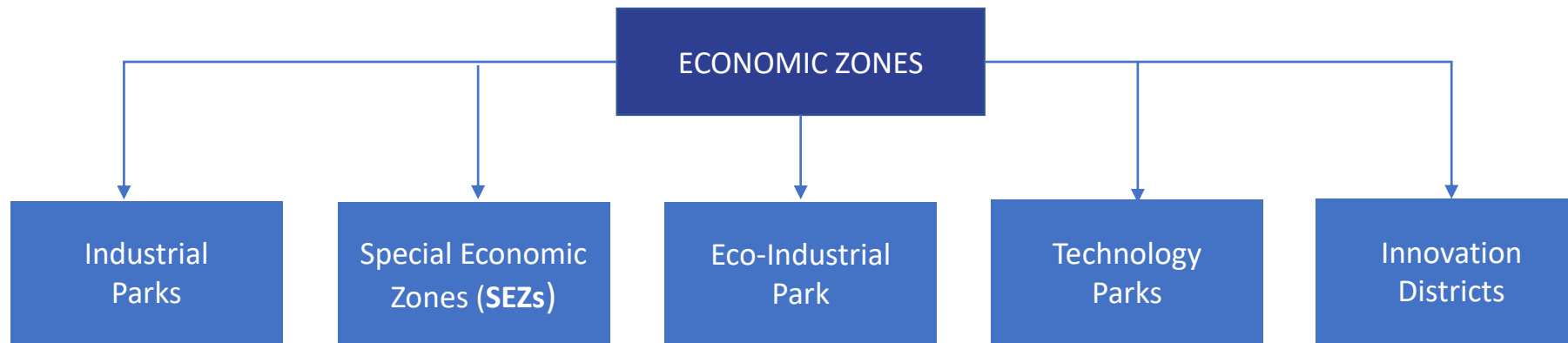
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ECONOMIC ZONES



## 1. INTRODUCTION TO ECONOMIC ZONES IN ASEAN

- United Nations Industrial Development Organisation (Vietnam Country Office) has set out 5 different types under the umbrella term of “economic zones”.



- There are about 1,000 economic zones in ASEAN (893 industrial parks, 84 special economic zones, 2 eco-industrial parks, 25 technology parks and 1 innovation district).
- Stage development of a country determines the most appropriate economic zone and competitive strategy.



## 2. GENERAL BACKGROUND ON SEZs

The World Bank created the following table, setting out distinctions between types of SEZs. The concept of an SEZ has been implemented in more than 140 countries in various forms, with different objectives.

Type	Objective	Size	Typical Location	Typical Activities	Markets
Free Trade Zone	support trade	<50 hectares	port of entry	entrepots and trade related	domestic, re-export
Export Processing Zone EPZ (traditional)	export manufacturing	<100 hectares	none	manufacturing, processing	mostly export
Free enterprises (single unit EPZ)	export manufacturing	no minimum	countrywide	manufacturing, processing	mostly export
Hybrid EPZ	export manufacturing	<100 hectares	none	manufacturing, processing	export, domestic
Free port/SEZ	integrated development	>1000 hectares	none	multi-use	internal, domestic, export
Urban Enterprise Zone	urban revitalisation	<50 hectares	urban/rural	multi-use	domestic





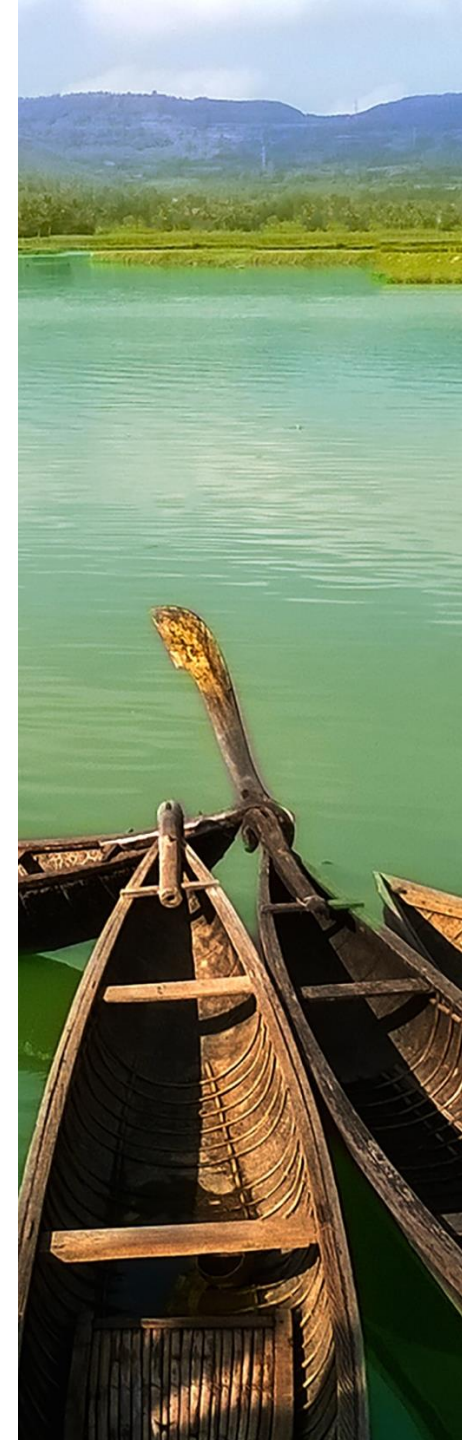
## 2. GENERAL BACKGROUND ON SEZs (CONTINUED)

- What is an SEZ?
  - Area which has been demarcated as a type of economic zone with a more liberal set of economic laws to foster growth and to improve the location's competitiveness.
- Typical characteristics of an SEZ?
  - Easy access to local firms, capital, skill and unskilled labour.
  - Located within national borders.
  - Good transportation modes.
  - Administered by a single management administration.
- Aims in setting up an SEZ?
  - Developing country perspective: increase trade and (foreign) investment, create jobs, regional development, and “flexibility” in policy testing.
  - Investor perspective: access to local market and low-cost labour, vertical integration, and home market competitiveness.



### 3. ECONOMIC ZONES/SEZs IN VIETNAM

- According to Ministry of Planning and Investment 2017 Report
  - No **special** economic zones to date.
  - 18 coastal economic zones, 26 border economic zones, and 328 industrial parks.
  
- Decree No. 82/2018/ND-CP
  - Decree on management of industrial parks and economic zones.
  - Economic zone:
    - *“An area which is defined by geographical boundaries, includes functional zones and is established to serve the purposes of calling for investments, promoting socio-economic development and maintaining national defence and security”.*
  - Industrial parks:
    - *“An area that is enclosed by definite boundaries, specialised in production of industrial goods and provision of services”.*
    - Case in point: VSIP, self-contained industrial park with modern facilities.



### 3. ECONOMIC ZONES/SEZs IN VIETNAM (CONTINUED)

- Industrial Parks (VSIP)

- First project of VSIP was officially launched in January 1996.
- Further expansion projects in southern and northern Vietnam.

VSIP Projects	Established	Location
1. VSIP I	1996	Thuan An Commune, Binh Duong Province
2. VSIP II	2006	Hiep An, Thu Dau Mot, Binh Duong Province
3. VSIP Bac Ninh	2007	Tien Du, Bac Ninh Province
4. VSIP Hai Phong	2010	(located in Dinh Vu, Cat Hai Economic Zone) - Hai Phong City
5. VSIP Quang Ngai	2012	(located in Dung Quat Economic Zone) - Quang Ngai Province
6. VSIP Hai Duong	2015	Cam Dien, Hai Duong Province
7. VSIP Nghe An	2015	Vinh City, Nghe An Province





## 3. ECONOMIC ZONES/SEZs IN VIETNAM (CONTINUED)

### ■ Timeline for SEZs

- Dates back to 1979 (Vung Tau - Con Dao Special Economic Zone - dissolved in 1991).
- First draft law put on hold in 2014. Current draft law titled as “Law on Special Administrative Economic Units on Van Don, North Van Phong and Phu Quoc” (**Draft Law**).



Source: VietNam Net (2017)

#### - Van Don (Quang Ninh)

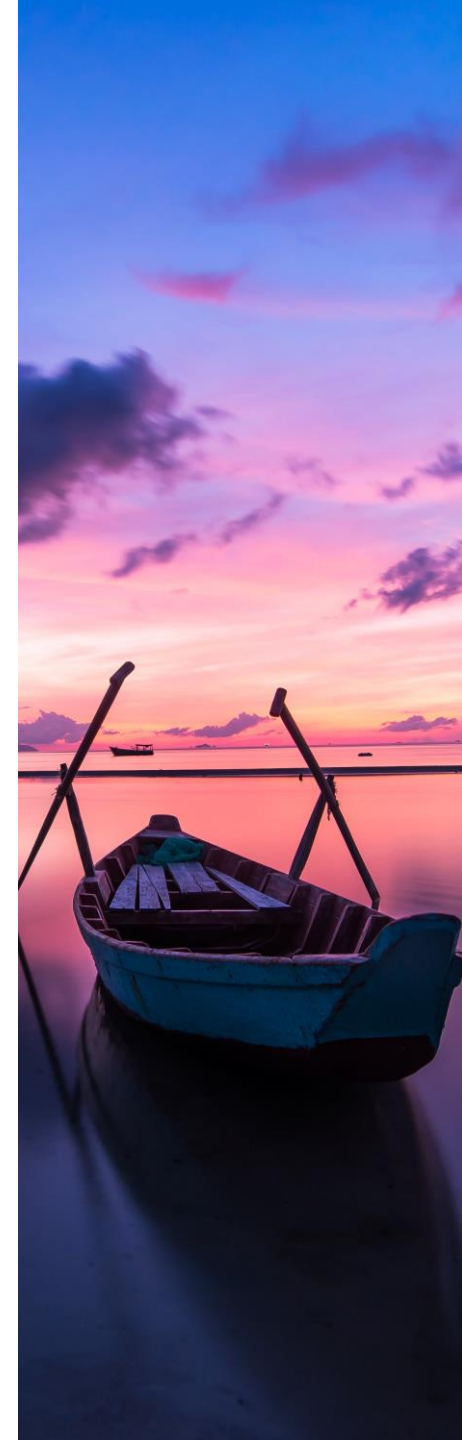
Development in hi-tech supporting industry, ecotourism, culture tourism, culture industry, air transportation services and related services, international commerce and consumption.

#### - North Van Phong (Khanh Hoa)

Development in IT, mechanical engineering; seaport for goods and international passengers, seaport logistic, commerce and finance.

#### - Phu Quoc (Kien Giang)

Development in resorts, ecotourism; conference, international exhibitions, international commerce and consumption, assets management, and health services.



## 4. KEY POINTS ON DRAFT LAW ON SAEZ

- Preferential treatment to be provided for identified projects in SAEZ
  - Business registration/procedures efficiency.
    - No investment projects required before the establishment of organizations in a SAEZ.
    - ERC issued within 3 - 5 days, and IRC issued within 15 days.
    - Not subject to conditions applied to foreign investor if conducting business in identified areas.
  - Preferential treatment in land-use rights.

Type	SAEZ	Standard/Non-SAEZ
Form of land use right	Land lease and allocation (residential development project)	
Normal term	Up to 70 years	Up to 50 years
Special term	Up to 99 years	Up to 70 years





## 4. KEY POINTS ON DRAFT LAW ON SAEZ (CONTINUED)

### ■ Tax Preferential Treatment

Type of Tax	Key Points
<b>Corporate Income Tax (CIT)</b>	<ul style="list-style-type: none"> <li>• General CIT rate of 10% for 15 years.</li> <li>• Other cases: 10% for 20 years / entire project with 4 years' tax holiday followed by 9 years of 50% reduction.</li> <li>• Certain projects with revenue subject to SCT: 10% for 10 years with 2 years' tax holiday followed by a 50% reduction for 5 years.</li> </ul>
<b>Special Consumption Tax (SCT)</b>	<ul style="list-style-type: none"> <li>• New casino projects shall be granted a preferential SCT rate of 15% for 10 years from the date the project generates taxable income.</li> </ul>
<b>Import Tax and Value Added Tax (VAT)</b>	<ul style="list-style-type: none"> <li>• Exemption of import tax and VAT for the entire investment period / one time application when imported for the first time into Vietnam.</li> </ul>



## 5. FUTURE OUTLOOK - SEZs/SAEZs in VIETNAM

- It is not without controversy, especially issues relating to cluster development and employee working conditions.
- While Vietnam may be well known for the state's strong grip over businesses and for their strict regulations, the SAEZ's will have more relaxed laws when it comes to taxation and land lease.
- The Draft Law, once passed, should offer a range of concessions typically afforded to an SEZ investor.
- The intention behind the set up of SEZs/SAEZs is very attractive and admirable. If implemented according to proper regulations whilst at the same time, considering the future impact it may have, it provides a win-win situation for parties involved.



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STRUCTURING

## 6. INVESTING IN VIETNAM - STRUCTURING OVERVIEW

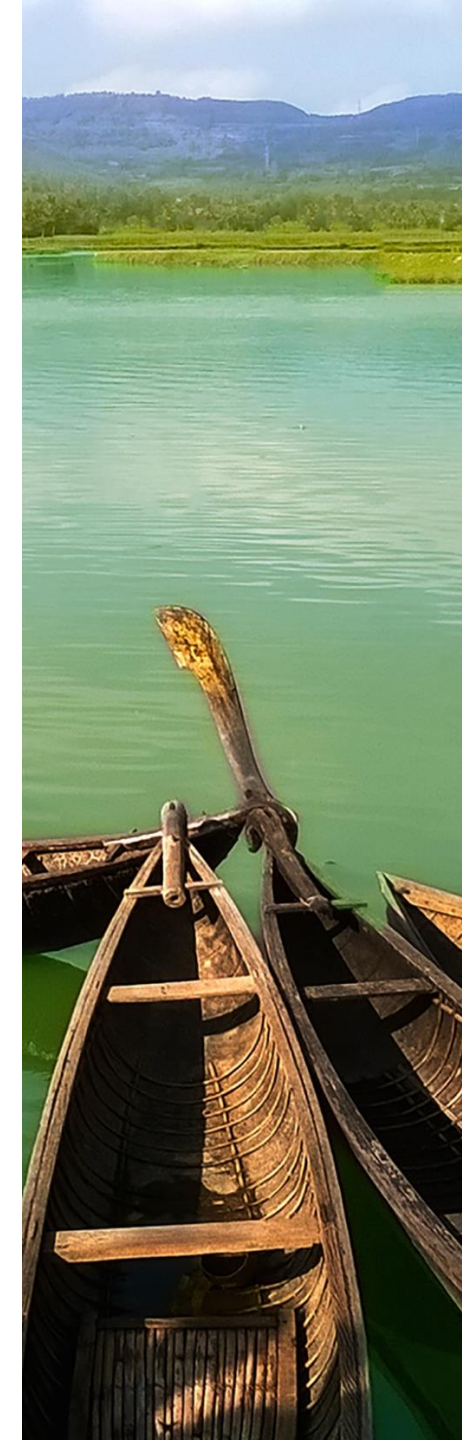
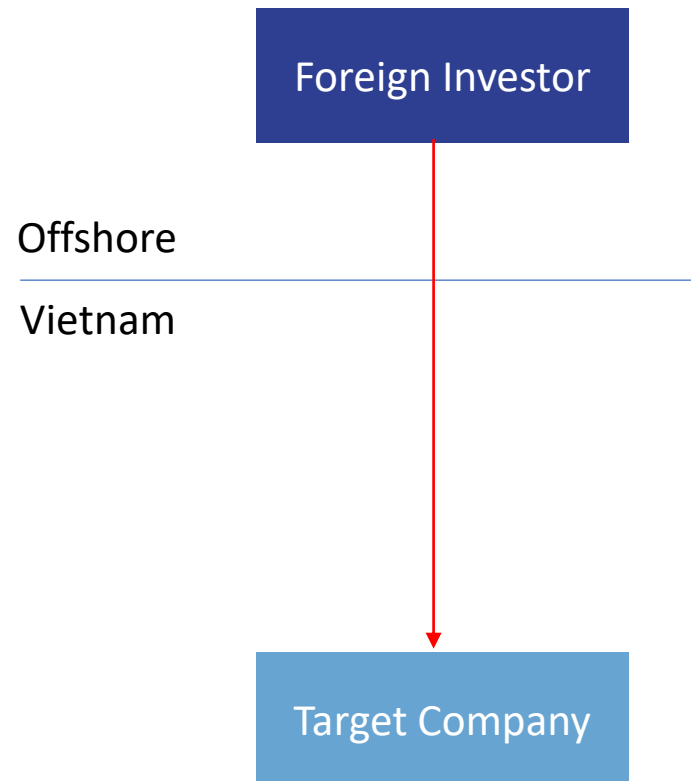
- Investment Climate
  - Role of the foreign lawyer is to work together with Vietnamese lawyers and try to make sense of it all.
  - Regulatory and licensing procedures.
- Improvement of Investment Environment
  - New laws and implementing provisions.
  - Streamlined procedures.
- Considerations
  - Business lines - foreign restrictions - additional requirements.
  - Proposed capital input and scale.
- Importance of Structuring
  - Business needs/future plans/exit.





## 7. SIMPLE STRUCTURING

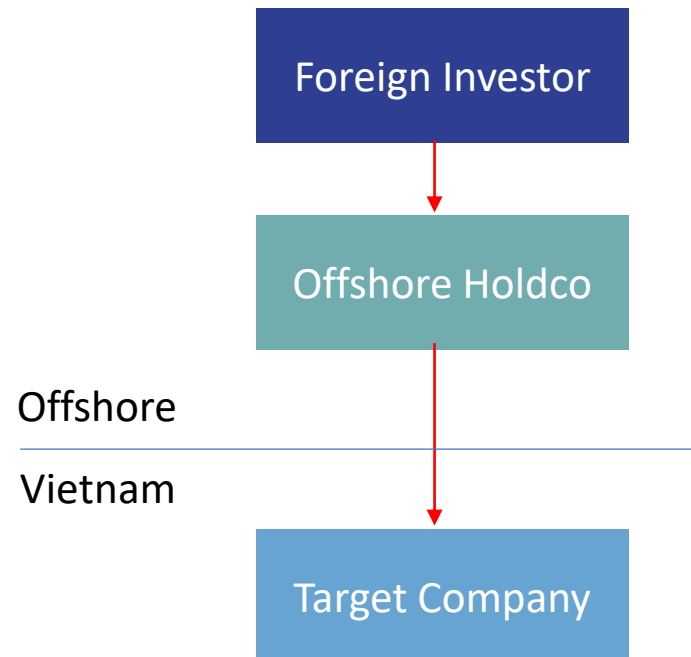
- **Traditional/Direct Approach**
  - Sets up target company directly.
  - Buys capital from seller/subscribes for capital contribution in target company/convertible loan.
- **Exit**
  - Exit by selling onshore capital contribution in local target company.
- **Issues**
  - While this approach may appear simple, parties often decide to interpose an entity, sometimes onshore, sometimes offshore, sometimes both.





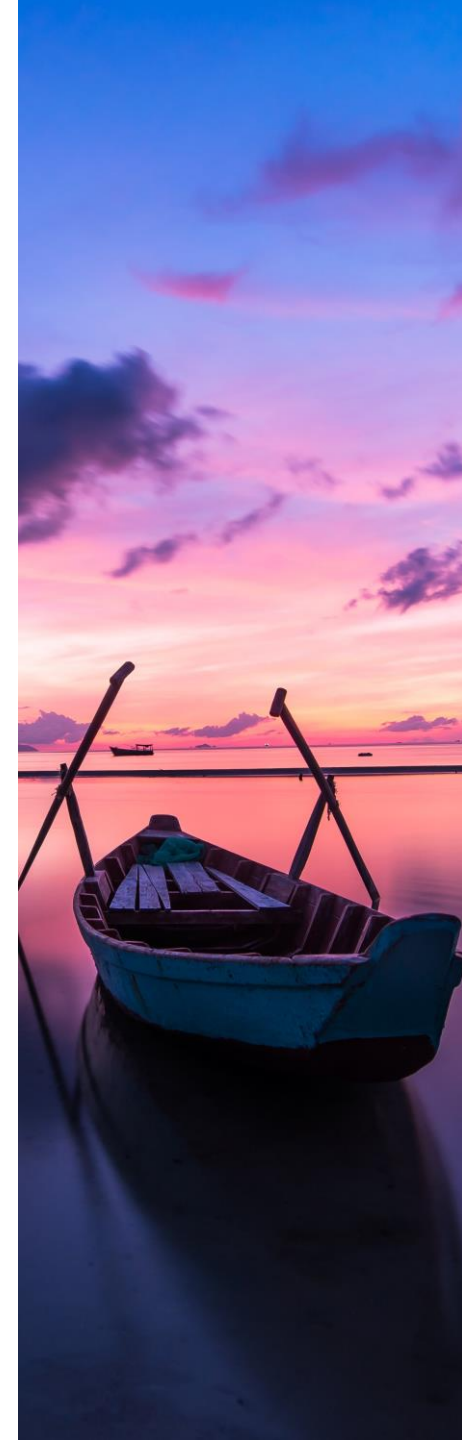
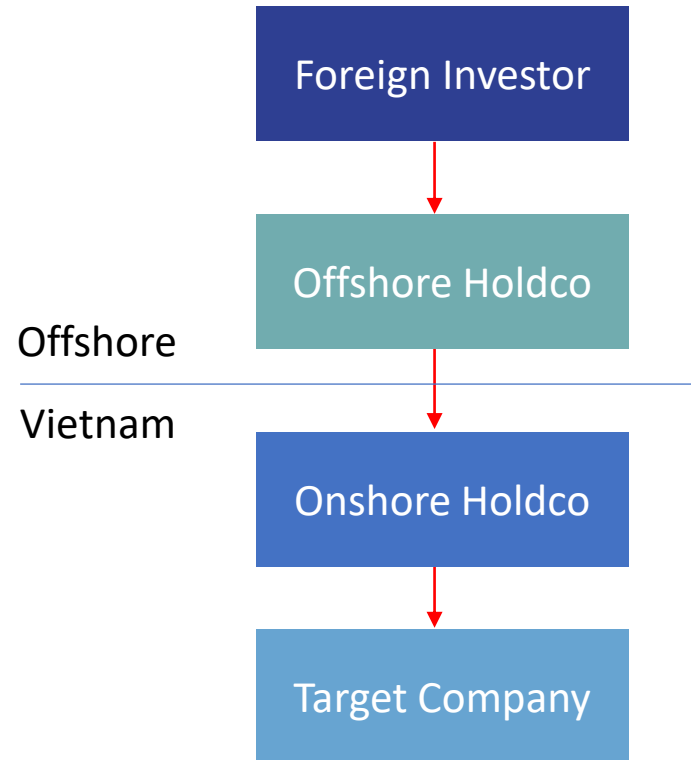
## 8. INTERPOSING OFFSHORE

- Offshore Approach
  - More flexible legal structure
  
- Exit
  - Simpler process, but tax considerations
  
- Ring Fence Liability
  
- Issues
  - Restructuring shareholders offshore
  - “Naughty” but nice



## 9. INTERPOSING OFFSHORE AND ONSHORE

- Multiple Onshore Business Activities
  - Ring fence liability
  
- Consolidated Onshore Financing
  - Debt financing
  - Equity financing
  
- Onshore ESOP
  - Issuance of local management shares (JSC)
  
- Issues
  - Restructuring shareholders offshore
  - “Naughty” but nice



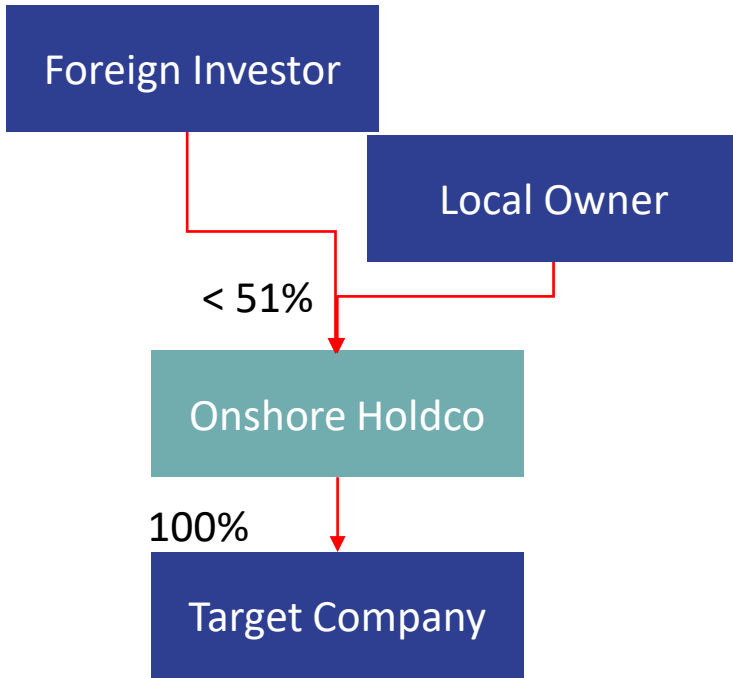
## 10. CONDITIONAL SECTORS CONSIDERATIONS

- Certain conditional sectors place restrictions on foreign ownership
  - 100% foreign ownership is possible in most key business lines.
    - For example, IT services, consulting, import distribution, and manufacturing.
  - May not be committed under the WTO commitments - case-by-case basis.
    - For example, water bottle production, and pawnshop services.
  - Joint venture will be required due to foreign ownership caps.
  
- Investment Law 2014 seems to allow certain work around structures
  - The aim is to be viewed as a domestic investor/company.

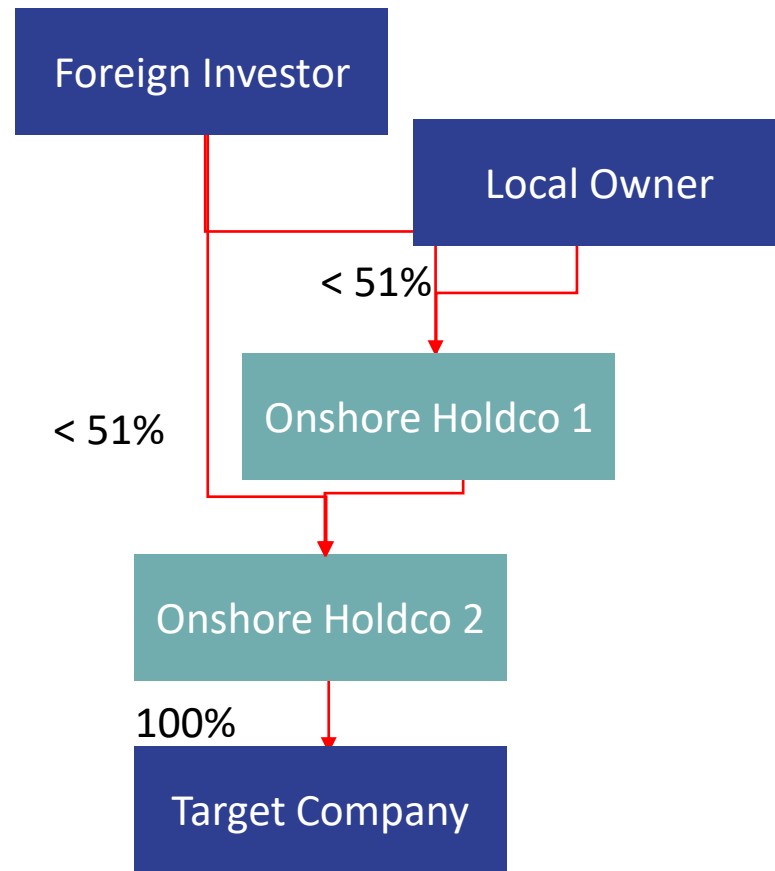


## 10. CONDITIONAL SECTORS CONSIDERATIONS (CONTINUED)

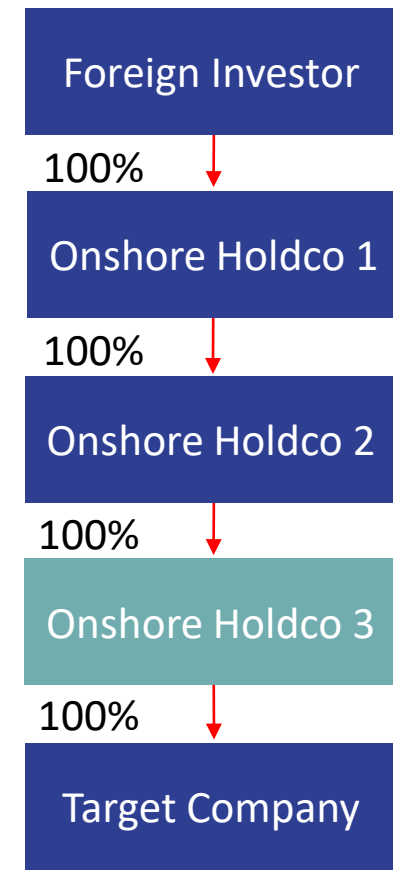
### 51% Shareholding



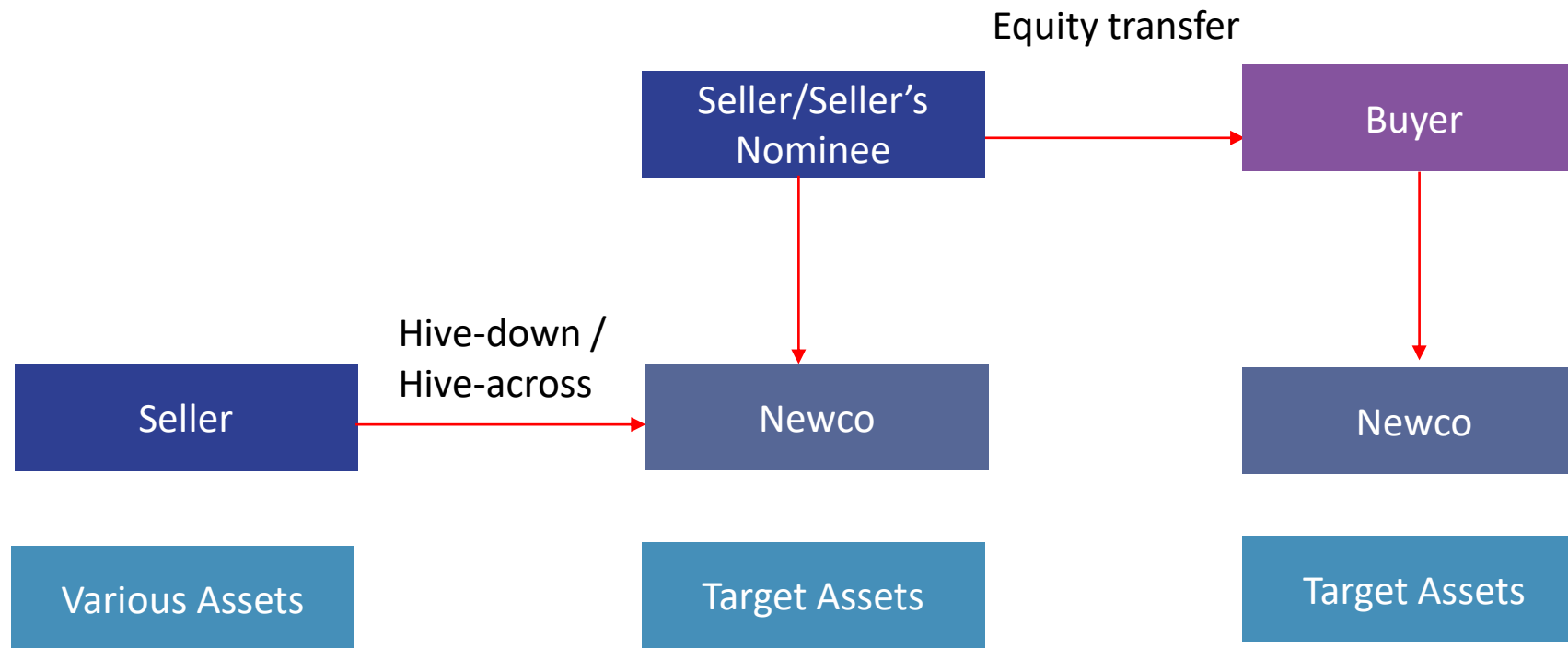
### 76% Shareholding



### 100% Shareholding



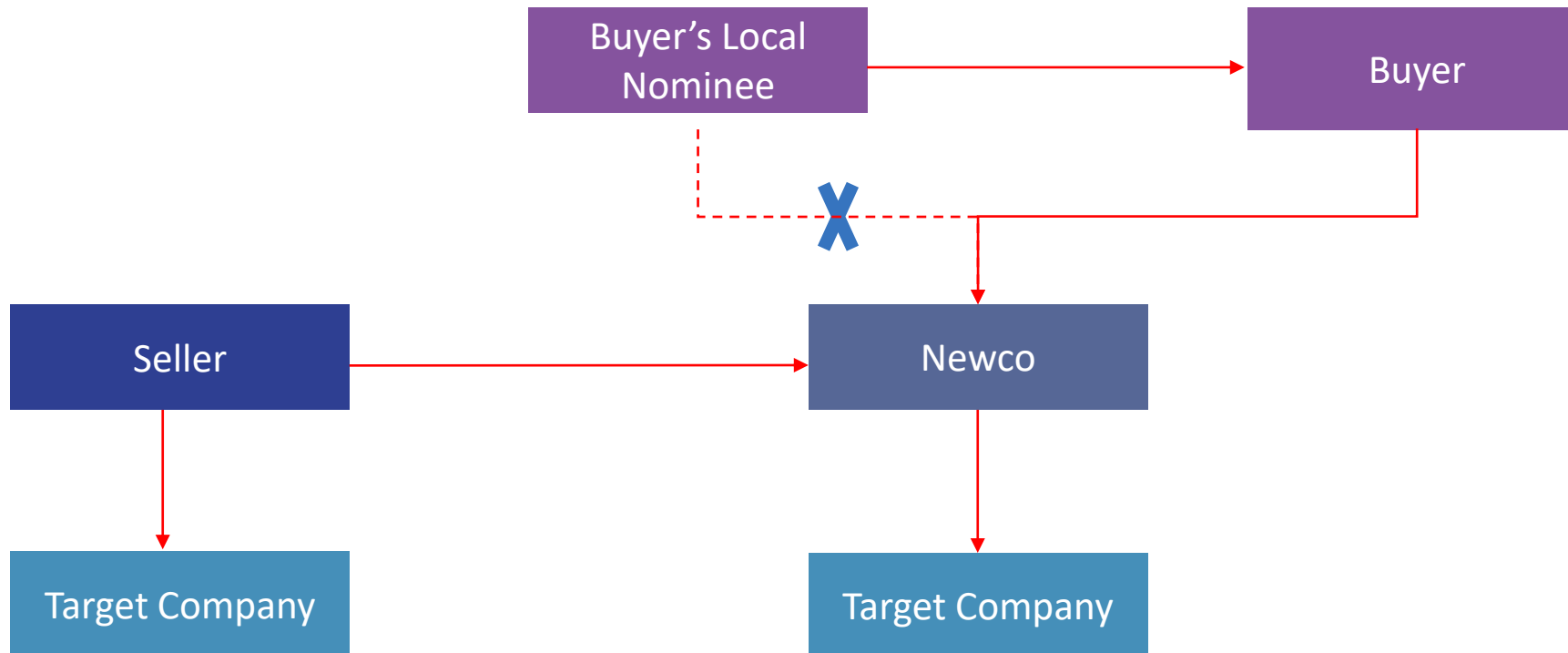
## 11. ASSET DEAL STRUCTURE





## 12. TIME IS OF THE ESSENCE

- Equity transfer
- Nominee protection arrangements



## 13. TAX CONSIDERATIONS

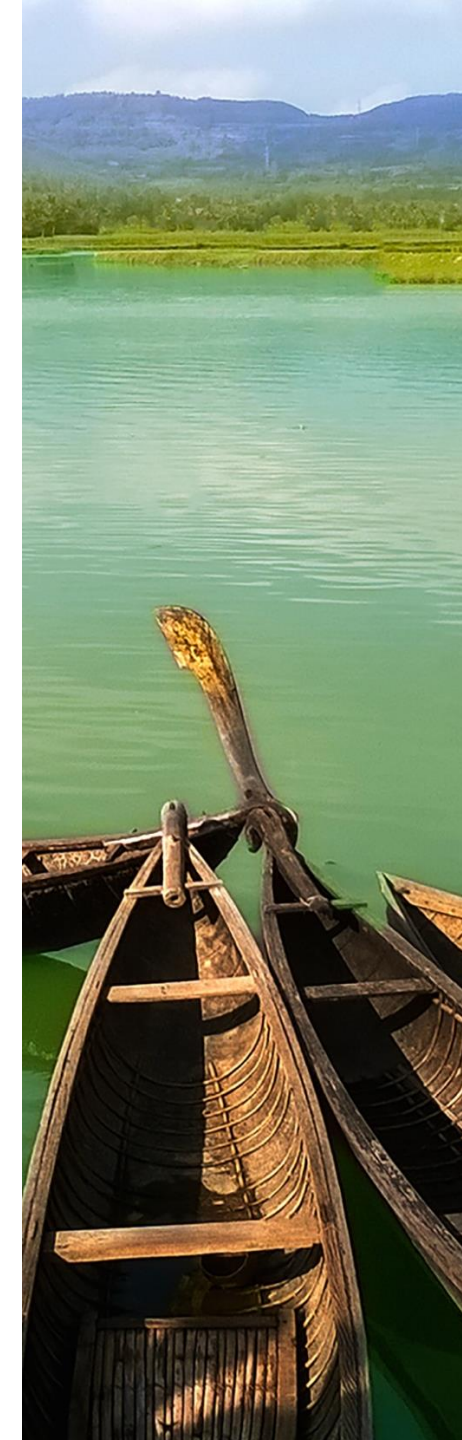
- Capital Gains Tax on Offshore Transactions with Underling Assets/Businesses in Vietnam
  - Sales of major retail supermarkets
  - Hotel chain in Vietnam with offshore holding company
  
- Tax Authority
  - Has been trying to apply the tax rate of 20% on the gain for offshore transaction
  - Wide powers under Decree 12/2015/ND-CP
  - Implementation has been questioned

### Groupe Casino to pay \$220 million in tax after sale of Big C Vietnam

15:59 | 05/05/2016

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Groupe Casino may have to pay \$220 million in tax after selling the Big C Vietnam chain to Thai conglomerate Central Group.



## 14. MOVING FORWARD / CONCLUSION

- Vietnam remains as an attractive place for investment
- Understanding your business aims/needs
- Managing expectations
- Invest in relationships





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