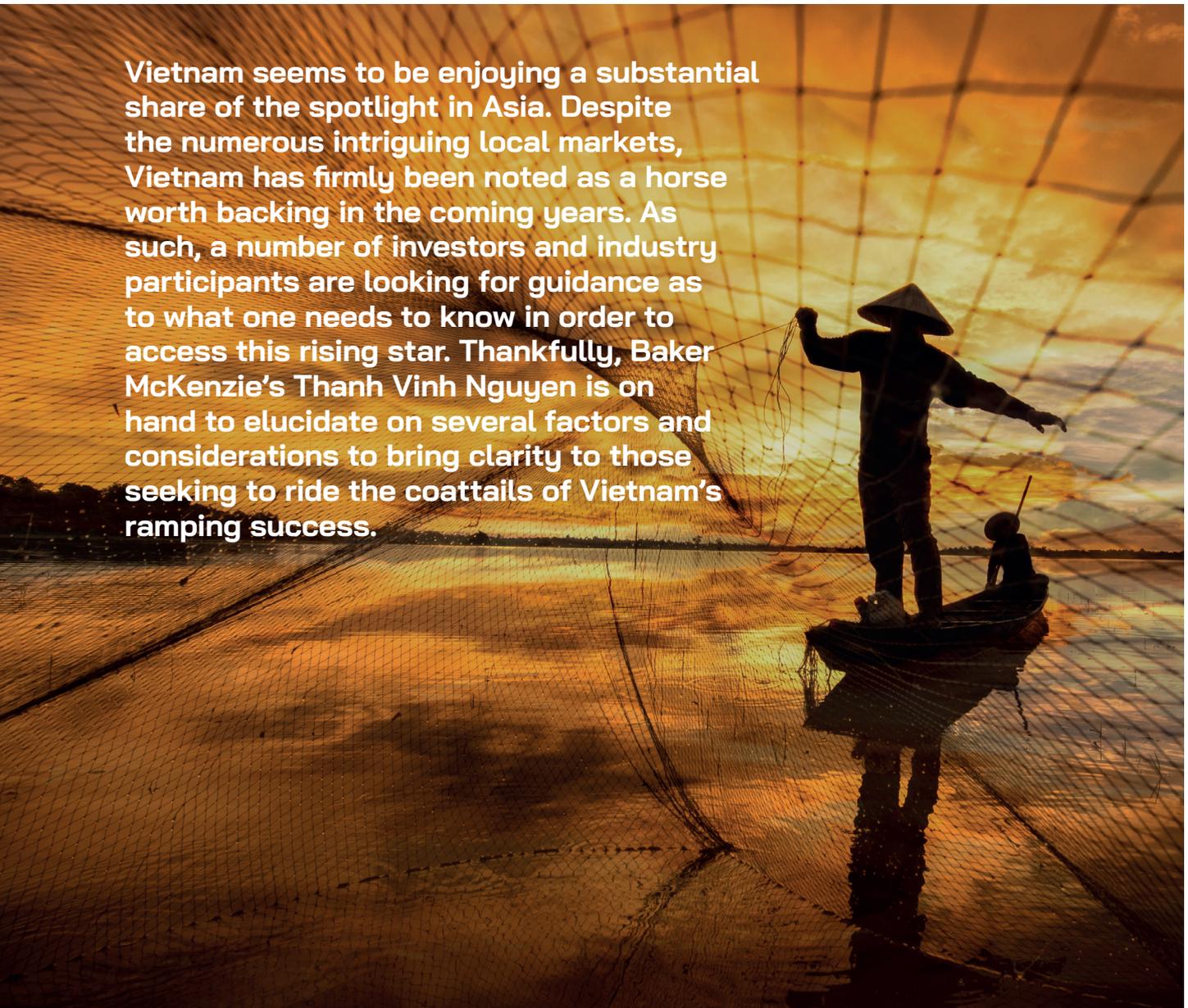


# Baker McKenzie - Recent Updates Affecting the Wealth Management Industry - Vietnam

Vietnam seems to be enjoying a substantial share of the spotlight in Asia. Despite the numerous intriguing local markets, Vietnam has firmly been noted as a horse worth backing in the coming years. As such, a number of investors and industry participants are looking for guidance as to what one needs to know in order to access this rising star. Thankfully, Baker McKenzie's Thanh Vinh Nguyen is on hand to elucidate on several factors and considerations to bring clarity to those seeking to ride the coattails of Vietnam's ramping success.



**BY:**

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## New definition of foreign invested economic organisations under the New Investment Law taking effect from 1 January 2021

With the entry into force of the New Investment Law 2020, the definition of a “foreign investor” has been slightly changed.

In particular, the New Investment Law has amended the definition of foreign-invested economic organisations established in Vietnam to deem them to be foreign investors when they make investments in other economic organisations. Entities that meet the following thresholds are now treated as foreign investors subject to investment restrictions:

- » If more than 50% of their charter capital is held by foreign investor(s) (“Foreign Majority Company”);
- » If more than 50% of their charter capital is held by Foreign Majority Company(ies); or
- » If more than 50% of their charter capital is held by both foreign investor(s) and Foreign Majority Company(ies).

The difference is this: the New Investment Law has decreased the threshold for being considered as a Foreign Majority Company (i.e., from 51%+ of charter capital to 50%+ of charter capital). This means there will be more foreign-invested economic organisations brought within the scope of the New Investment Law.

## Change in permitted foreign ownership of Vietnam listed companies

Under the previous regulations, a cap of 49% applied to listed companies that operate in business sectors in which foreign investors are subject to limitations and where the applicable thresholds of foreign capital contribution were not specified in the investment regulations. This ratio is now 50%.

## Market access conditions for foreign investors under the New Investment Law

The New Investment Law introduces the “negative list” approach, according to which foreign investors will be entitled to invest in all market sectors that are not specifically included in a list of restricted sectors.

According to Decree No. 31/2021/ND-CP taking effect from 26 March 2021, the Government provides two lists of restricted sectors. One is a list of sectors where market access is not yet allowed; the other is a list of sectors where market access is conditional.

Specifically, market access conditions applicable to foreign investors includes conditions relating to: (i) foreign ownership limitations; (ii) form of investment; (iii) scope of business and investment activities; (iv) the capabilities of the investor and business partners joining the investment activity; and (v) other conditions stipulated under international treaties and Vietnamese laws.

In addition to these market access conditions, foreign investors, or more specifically their foreign invested companies, must satisfy relevant business conditions. These are the ordinary conditions that any entity engaging in a regulated industry must satisfy (regardless of foreign ownership). Business conditions typically include permits, eligibility certificates, practicing licenses, confirmation letters, etc.

## International cooperation by tax authorities

The New Law on Tax Administration, which took effect on 1 July 2020, specifies that the tax authorities will cooperate with other jurisdictions as follows:

- » To conduct exchange of information with foreign tax administration agencies and relevant international organisations.
- » To conduct exchange of information with foreign tax authorities about taxpayers and related parties relevant to the tax administration of related party transactions.
- » To implement measures to support tax collection under international treaties to which Vietnam is a signatory, including assisting foreign tax administration agencies and competent agencies in collecting outstanding foreign tax debts.

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