

RESEARCH BRIEF

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Chinese ‘Disguised’ Investment in Vietnam

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Key Points:

- Chinese investors in Vietnam have regularly employed nominee arrangements with local parties to disguise their ownership with a view to evading legal regulation.
- Disguised investment has been used by the Chinese to avoid such legal regulations as licensing conditions and procedures, limits on foreign ownership of real estate, compliance obligations and liabilities, and U.S. trade remedies.
- Chinese disguised investment is often structured on the basis of sham arrangements and non- and illegal business practices.
- Although the Vietnamese government has recently initiated measures to tackle disguised investment from China, there are significant challenges ahead to ensure that these preliminary measures become increasingly effective in the coming years.

Introduction

From September to October 2015 Vietnamese state newspapers spotlighted stories about Chinese people owning lands in locations important for their military significance, including around a military airport, in Đà Nẵng – a strategic coastal city in central Vietnam.¹ Citing lawyers and state officials, media reports underlined that the Chinese evaded restrictions on foreign land ownership by nominee arrangements with local residents and entities, calling such arrangements as ‘illicit’ (*chui*) and ‘disguised’ (*núp bóng*).² Since then, illicit and disguised investment from China has become a regular topic in state media, parliamentary debates and government discussions, demonstrating escalating concerns among the local public and regulators.³

Though present in government documents and statements,⁴ ‘illicit investment’ and ‘disguised investment’ have never been officially defined. Nor are these terms distinguished from each

¹ See, e.g., Lê Phi, ‘Người TQ “núp bóng” gom đất ven biển Đà Nẵng’ [Chinese people grab coastal lands in Đà Nẵng through “disguised” arrangements], *PHÁP LUẬT TP HCM* (Sept. 25, 2015), <https://plo.vn/bat-dong-san/nguoi-tq-nup-bong-gom-dat-ven-bien-da-nang-580858.html>; Đặng TƯƠI, Mạnh Khang & Tài Phong, ‘Vì sao người nói tiếng Trung Quốc ò ạt mua đất VN?’ [Why are people speaking Chinese rushing to buy lands in Vietnam?], *TUỔI TRẺ* (Sept. 28, 2015), <https://tuoitre.vn/vi-sao-nguoi-noi-tieng-trung-quoc-o-at->

[mua-dat-ven-bien-da-nang-976015.htm](#). In this Research Brief, Vietnamese names are presented with diacritics and in their traditional order: surname first, followed by middle name and first name.

² Đặng, Mạnh & Tài, *supra* note 1.

³ See, e.g., Vũ Hân, ‘Bộ Quốc phòng cảnh báo cá nhân, DN Trung Quốc sử dụng đất trọng yếu’ [The Ministry of Defence warns that Chinese individuals and companies are occupying lands in crucial locations], *THANH NIÊN* (May 17,

other. Rather, they appear to have the same meaning. In this Research Brief, 'illicit investment' and 'disguised investment' are used separately and collectively to denote the same phenomenon. That is, foreign investors deploy nominee arrangements with local actors to disguise the actual ownership of investment with a view to avoiding legal regulation.⁴

This Research Brief provides a snapshot of Chinese disguised investment in Vietnam. It illustrates that such investment has been a vehicle for Chinese investors to evade the law, structured on the basis of sham arrangements and non- and illegal business practices. The Research Brief also offers a short discussion of preliminary regulatory responses from the Vietnamese government to Chinese disguised investment.

The prevalence of Chinese disguised investment

Publicly accessible statistics on Chinese disguised investment are limited. Nevertheless, there are several indicators of the prevalence of such investment in Vietnam. For example, a report from the Vietnamese Ministry of Defence, broadly cited by state newspapers, noted that from 2011 to 2015 the Chinese controlled 135 land lots in crucial locations in Đà Nẵng through nominee arrangements with local actors.⁵ This figure, however, refers only to one city. Similar land

ownership arrangements are said to have existed in other cities and provinces across the country, from coastal to mountainous, border to interior, urban to rural regions.⁶ Further, although disguised investment in real estate has received the greatest attention from the public and local regulators, it is not confined to this sector. Conversations with local interlocutors, especially commercial lawyers, reveal that such investment can actually be found in many business sectors, including real estate development, manufacturing, agriculture, trading, finance, and other service sectors.⁷

It is difficult to estimate the scale of Chinese disguised investment given the absence of reliable statistics. Interviews with corporate lawyers suggest that disguised investors are normally individuals,⁸ indicating that the investment is often small scale. Yet, these lawyers also reported cases in which the disguised investors are corporations, investing in sectors that require large capital input, such as real estate development, power production, freight transportation and steel production.⁹ In short, disguised investment projects vary in scale.

It is not only Chinese investors that have deployed disguised arrangements in Vietnam. Disguised investment can also be seen with other foreign investors, especially those from East Asia.¹⁰

2020), <https://thanhnien.vn/bo-quoc-phong-can-hao-bao-ca-nhan-dn-trung-quoc-su-dung-dat-trong-yeu-post956356.html>; Anh Phong, 'Bộ trưởng Nguyễn Chí Dũng: Kiên quyết chấm dứt tình trạng đầu tư "chui," đầu tư "núp bóng" [Minister Nguyễn Chí Dũng: Decisively stopping "illicit" and "disguised" investment], *ĐẦU TƯ* (July 18, 2019) <https://baodautu.vn/bo-truong-nguyen-chi-dung-kien-quyet-cham-dut-tinh-trang-dau-tu-chui-dau-tu-nup-bong-di04072.html>.

⁴ See, e.g., Communist Party of Vietnam, *Resolution No. 50/NQ-TW on Orientation for Perfecting Law and Policy and Enhancing the Quality and Effectiveness of Foreign Investment until 2030*, Aug. 20, 2019 ["Resolution 50/NQ-TW"]; Minh Sơn, 'Phó Thủ tướng: "Không khoan nhượng với đầu chui, núp bóng" [Deputy Prime Minister: "No tolerance of illicit, disguised investment"]', *VNEXPRESS* (July 18, 2019), <https://vnexpress.net/pho-thu-tuong-khong-khoan-nhuong-voi-dau-tu-chui-nup-bong-3954582.html>.

⁵ Vũ, *supra* note 3.

⁶ Tiến Long & Lê Kiên, 'Hàng trăm doanh nghiệp Việt đứng tên cho người nước ngoài "núp bóng" tại vị trí nguy hiểm' [Hundreds of Vietnamese enterprises hold [business] for "disguising" foreign investors in dangerous locations], *TUỔI TRẺ* (Nov. 9, 2019), <https://tuoitre.vn/hang-tram-doanh-nghiep-viet-dung-ten-cho-nguoi-nuoc-ngoai-nup-bong-tai-vi-tri-nguy-hiem-2019110918335079.htm>.

⁷ Interviews with commercial lawyers, state officers and business association officials (Bình Dương, Hanoi and Ho Chi Minh City ("HCMC"), 2020).

⁸ Interviews with lawyers (Bình Dương, Hanoi and HCMC, 2020).

⁹ Interviews with lawyers (HCMC, 2020).

¹⁰ Interviews with lawyers (Bình Dương, Hanoi and HCMC, 2020).

Nonetheless, the Chinese are broadly considered to be involved in such investment most often, much more than other investors.¹¹ Disguised investment from China has, therefore, been the main source of concern for the local public and regulators.

Disguised investment as a means of legal evasion

Legal evasion is the direct motivation behind Chinese disguised investment. First of all, it is a means for Chinese investors to evade licensing regulations applicable to foreign investment. Under Vietnamese law, there are business sectors which allow no or limited access for foreign investors.¹² Hence, many Chinese investors have set up nominee arrangements with local actors to avoid these restrictions.¹³ This explains why Chinese disguised investment has been seen in industries like tourism, fishery and aquaculture, fintech, power production, and real estate business.¹⁴ None of these industries is freely open to foreign investors.

Chinese investors have also used nominee arrangements in sectors completely open to foreign investors. This is because foreign investment is usually subject to more prolonged, complex and discretionary scrutiny by licensing authorities.¹⁵ Such scrutiny would be even stricter and more cumbersome when it involves

conditional business sectors or locations with national security significance.¹⁶ Hence, nominee structures have become vehicles for several investors to reduce the time and complexity of licensing procedures.¹⁷ While this has happened in various sectors, the woodwork and furniture sector offers the most remarkable illustration. Due to U.S. trade tariffs, Chinese woodwork and furniture manufacturers have rushed to relocate production to Vietnam since 2018.¹⁸ Many have employed nominee arrangements with local actors to begin their business as soon as possible.¹⁹

Another frequent reason for Chinese illicit investment has been the evasion of restrictions on foreign ownership of real estate. Pursuant to Vietnamese law, foreign individuals and entities are not entitled to own land or, technically speaking, to obtain land use rights.²⁰ Foreign-invested enterprises (FIEs) can be granted land use rights to implement their investment projects but are not allowed to freely buy, sell or lease such rights unless registered as real estate trading companies.²¹ From 2015, foreign individuals (but not entities) and FIEs can own residential houses (but not other real estate) but on restrictive conditions regarding tenure, quantity, and location.²² Meanwhile, it is not easy for foreign investors to set up a business in the real estate

¹¹ *Id.*

¹² *Decree No. 31/2021/ND-CP of the Government dated 26 March 2021 Making Detailed Provisions and Providing Guidelines for Implementation of the Investment Law* ("Decree 31/2021/ND-CP") Appendix I.

¹³ Interviews with lawyers (HCMC, 2020).

¹⁴ *Id.*; Vũ, *supra* note 3; Ảnh Hồng & Đức Thiện, 'Cho vay nặng lãi Trung Quốc tràn vào Việt Nam, lãi suất hơn 1.000%/năm' [Chinese usury flowing into Vietnam: Interest rate higher than 1,000% per year], *TUỔI TRÉ* (May 8, 2020), <https://tuoitre.vn/cho-vay-nang-lai-trung-quoc-tran-va-viet-nam-lai-suat-hon-1-000-nam-20200508082046595.htm>.

¹⁵ *Investment Law 2020*. See also Interviews with lawyers (HCMC, 2020).

¹⁶ Interviews with lawyers (HCMC, 2020).

¹⁷ Interviews with lawyers (Bình Dương, Hanoi and HCMC, 2020).

¹⁸ Thanh Huyền, 'Giữa đại dịch Trung Quốc vẫn tăng đầu tư vào ngành gỗ Việt Nam' [Despite the pandemic, China is still increasing investment in Vietnam's woodwork sector], *GỖ VIỆT* (Nov. 1, 2020), <https://goviet.org.vn/bai-viet/giua-dai-dich-trung-quoc-van-tang-dau-tu-va-ongh-go-viet-nam-9199>; Interviews with officials from Bình Dương Furniture Association (BIFA) and Vietnam Chamber of Commerce and Industry (VCCI) (Bình Dương and HCMC, 2020).

¹⁹ Interviews with BIFA and VCCI officials (Bình Dương and HCMC, 2020).

²⁰ *Land Law 2013*. Vietnamese land law does not allow private ownership. Land is administered by the state on behalf of all people. Property owners are, nonetheless, granted 'land use rights' which can be transacted, for example through transfer, lease or inheritance, as property rights.

²¹ *Land Law 2013*.

²² *Law on Residential Housing 2014* art 161.

sector.²³ To bypass these barriers, Chinese investors – including not only real estate, but also manufacturing investors – have relied on nominee arrangements with local actors.²⁴

Moreover, Chinese investors have deployed disguised investment to avoid compliance obligations.²⁵ One reason is that domestic-owned companies usually have fewer compliance obligations and receive less attention from enforcement agencies.²⁶ For instance, many investors have used local nominees to open factories outside industrial parks so that they can avoid more regular supervision and higher demand of compliance from local authorities in these areas.²⁷ Nominee arrangements have also been used as a shield against legal liabilities.²⁸ In several cases, Chinese disguising investors avoided discharging obligations and liabilities before employees, leaving them to local nominees who, however, had no actual managerial and financial control of the business to fulfil the obligations and liabilities.²⁹

Disguised arrangements are not only used when local laws feature weak enforcement. They are also a tool to circumvent trade regulations of other jurisdictions. Again, the woodwork and furniture industry offers a prominent example. To avoid US trade remedies, several Chinese woodwork and furniture manufacturers have fraudulently deployed disguised companies in Vietnam to export to the US market.³⁰ Here, the disguised companies were utilized mainly to hide the

Chinese origin of the exported products which were mostly finished in China rather than Vietnam.³¹

Structure of disguised investment

Normally, Chinese investors structure disguised investment in three ways. The first way is to have Vietnamese individuals or entities holding properties or companies for them.³² The Vietnamese parties are, however, only nominal owners; the actual owners are the Chinese. Such sham arrangements are the most common form of disguised investment because they can be used for various purposes, including evading sectoral restrictions on foreign investment; licensing procedures for FIEs; compliance obligations; and limits on foreign ownership of real properties.³³ It has also been utilized for country-of-origin fraud.³⁴ Once their goals have been achieved, the disguising investors may – but not always – purchase the disguised companies to become the formal owners.³⁵ Prior to the 2020 Investment Law, merger and acquisition (“M&A”) transactions with foreign capital were not subject to the scrutiny of licensing authorities (unlike the case of establishing new FIEs). Exploiting this gap, several disguising investors purchased the disguised companies (nominally registered as domestic companies) after using them to acquire lands and relevant title certificates and, in that way, escaped from land ownership restriction applicable to FIEs.³⁶

²³ Interviews with lawyers (HCMC, 2020). See also *Decree 31/2021/ND-CP* Appendix I listing real estate as a sector conditionally open to foreign investment.

²⁴ Interviews with lawyers (HCMC, 2020); Vũ, *supra* note 3.

²⁵ Interviews with lawyers and state officials (Bình Dương and HCMC, 2020).

²⁶ *Id.*

²⁷ Interviews with lawyers and state officials (Bình Dương, 2020).

²⁸ Interviews with lawyers (Bình Dương and HCMC, 2020).

²⁹ Interview with state official (Bình Dương, 2020).

³⁰ Nguyễn Hạnh, ‘Lo ngại tình trạng đầu tư “núp bóng” vẫn hiện hữu trong ngành gỗ’ [Concerns about “disguised” investment still exist in the woodwork sector], *CÔNG THƯƠNG*

(Apr. 8, 2021), <https://congthuong.vn/lo-ngai-tinh-trang-dau-tu-nup-bong-van-hien-huu-trong-nganh-go-154925.html>.

³¹ *Id.*

³² Interviews with commercial lawyers, state officials, business managers and business association officials (Bình Dương, Hanoi and HCMC, 2020). See also Vũ, *supra* note 3; Nguyễn, *supra* note 30.

³³ *Id.*

³⁴ Nguyễn, *supra* note 30.

³⁵ Tiến & Lê, *supra* note 6; Interviews with lawyers (HCMC, 2020).

³⁶ Tr Thường, ‘Người Trung Quốc “nghiên cứu kỹ hỏ” để mua đất ở Đà Nẵng’ [The Chinese “study legal shortcomings to purchase lands in Đà Nẵng], *NGƯỜI LAO ĐỘNG* (July 26, 2016),

Another regular way to structure disguised investment is to form joint ventures with local parties.³⁷ In these joint ventures, the Vietnamese parties are merely the nominal owners of their shares. The actual owners are the Chinese. This arrangement is often employed to bypass legal caps on foreign ownership ratios in some business sectors.³⁸ It is also used to evade restriction on foreign real estate ownership because companies with a foreign capital ratio of less than 50% are legally considered domestic entities and, thus, can buy land and properties more freely.³⁹

The third, though less common, way that has been deployed by Chinese investors to set up disguised investment is leasing a domestic company.⁴⁰ In this arrangement, the Chinese investor is allowed to use not only the premise and assets, but also the legal name and other corporate details of the leased company.⁴¹ As such, the lessee becomes the actual controller of the company. Normally, such arrangements are deployed to circumvent licensing procedures and hide the Chinese origin of exported products.⁴²

Quite often, agreements between the Chinese and local parties involved in disguised investment are not documented as formal agreements.⁴³ In part, this is because the nominee and lease agreements described above are illegal and, therefore, unenforceable under Vietnamese law.⁴⁴ More importantly, Chinese disguising investors have other instruments to ensure the implementation of such agreements. One of them is to appoint themselves, trusted representatives and Chinese expatriates to top and senior managerial posts in the disguised companies.⁴⁵ At the same time, the

disguising investors exert tight control over capital resources, cash flow, and access to materials and clients.⁴⁶ Sometimes, this involves loan agreements between disguising investors and disguised companies which permit the former to control the operation of the latter.⁴⁷ Sham agreements, like such agreements and employment agreements between disguising investors and their disguised companies, are also used to ease the transfer of capital and profits between China and Vietnam.⁴⁸

Other major tools that Chinese investors have employed to manage their disguised businesses and properties include trust, social relations, and social networks. They often choose nominees from trusted people, such as local spouses or intimate partners, longstanding business partners or (subordinate) colleagues.⁴⁹ Particularly, cross-border family kinships and business relations, the presence of Chinese diaspora and expatriate communities and the expansion of Chinese investment in Vietnam have created trusted, close-knit networks that connect local intermediaries with Chinese businesspeople to facilitate Chinese investment, including in provision of 'professional' nominees.⁵⁰

Social relations and networks also help Chinese disguising investors reduce the risk of being penalized for illegal investment. Interviews with state officials, corporate lawyers and business managers reveal that several disguised companies have maintained good relationships with local state organs and officers or with people having

<https://nld.com.vn/thoi-su-trong-nuoc/nguoi-trung-quoc-nghien-cuu-ke-ho-de-mua-dat-o-da-nang-20160726143208427.htm>.

³⁷ Interviews with lawyers (HCMC, 2020); Vũ, *supra* note 3.

³⁸ Interviews with lawyers (HCMC, 2020).

³⁹ Tr, *supra* note 36.

⁴⁰ Nguyễn, *supra* note 30.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Interviews with lawyers (Bình Dương, Hanoi and HCMC, 2020).

⁴⁴ *Investment Law 2020* Ch IV.

⁴⁵ Interviews with lawyers (Bình Dương and HCMC, 2020).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Interviews with lawyers and VCCI officials (Bình Dương and HCMC, 2020).

such relationships (i.e., intermediary brokers).⁵¹ These relationships assist disguising investors in promoting tolerant attitudes among local regulators and paying bribery to escape from legal sanctions.⁵²

To sum up, Chinese disguised investment is comprised of two core elements. One is sham arrangements, such as nominee investment arrangements to cover actual ownership; subsequent M&A transactions to formalize actual ownership; and other sham agreements to secure the control of the disguising investors over the disguised businesses. The other component is extra- and illegal practices based on which the disguising investors maintain managerial control over and reduce risks associated with the disguised businesses or properties. These normally include reliance on social trust, relationships and networks; bribery; and control over economic resources (capital, cash flow and business relations).

Preliminary regulatory responses

The prevalence of illicit investment from China has caused frequent public concern in Vietnam, especially in relation to the Chinese occupation of real properties at locations important for their military significance. While trying to calm the public,⁵³ the party-state have paid increasing attention to the problem. Periodically, national assembly delegates have questioned the

government and relevant ministries about the existence of Chinese disguised investment.⁵⁴ Some ministries, such as the Ministry of Defence and the Ministry of Police, and the National Assembly have undertaken preliminary investigations.⁵⁵ More recently, the concern has spread from national security to economic matters. Particularly, as the US government has initiated investigations of fraudulent trading with respect to some products exported from Vietnam (such as woodwork and furniture products), there are growing concerns about the detrimental effects of Chinese illicit investment on domestic manufacturers.⁵⁶

Against this background, the Communist Party of Vietnam adopted Resolution 50/NQ-TW, setting out a new national vision for promoting foreign investment. The Resolution underscores the importance of preventing disguised investment and the need to strengthen legal mechanisms for foreign investment screening.⁵⁷ The Resolution served as the policy foundation for the enactment of a new Investment Law in 2020, which introduced some regulations to tackle disguised investment. Under this law, foreign investment projects structured around 'sham transactions' would be forced to be liquidated.⁵⁸ The new law has no longer left M&A transactions with foreign capital largely unregulated, requesting that such transactions qualify market entry conditions for foreign investors, ensure national defence and

⁵¹ Interviews with lawyers and state officials (Bình Dương and HCMC, 2020).

⁵² *Id.*

⁵³ Phương Dung, 'Lo người Trung Quốc gom mua đất ven biển: Bộ Công an "trấn an"' [Worries about Chinese people buying coastal lands: The Ministry of Police calms people down], *DÂN TRÍ* (Nov. 22, 2018), https://dantri.com.vn/kinh-doanh/lo-nguoi-trung-quoc-gom-mua-dat-ven-bien-bo-cong-an-tran-an-20181122083621333.htm#dt_source=Article&dt_campaign=Box_TinLienQuan&dt_medium=2; Hữu Khá, 'Sẽ có biện pháp xử lý người Trung Quốc mua đất' [There will be measures to deal with Chinese people buying land], *TUỔI TRẺ* (Oct. 3, 2015), <https://tuoitre.vn/se-co-bien-phap-xu-ly-nguoi-trung-quoc-mua-dat-978946.htm>.

⁵⁴ See, e.g., Phương, *supra* note 53; Vũ, *supra* note 3; Tiến & Lê, *supra* note 6.

⁵⁵ Phương, *supra* note 53; Vũ, *supra* note 3; Vũ Hân, 'Gia tăng tranh chấp giữa nhà đầu tư nước ngoài với các cơ quan nhà nước' [Increasing disputes between foreign investors and state agencies], *THANH NIÊN* (Nov. 11, 2019), <https://thanhnien.vn/gia-tang-tranh-chap-giua-nha-dau-tu-nuoc-ngoai-voi-cac-co-quan-nha-nuoc-post899647.html>.

⁵⁶ Thanh, *supra* note 18; Văn Nguyễn, 'Chặn chuyển giá, núp bóng để phòng ngừa rủi ro đầu tư FDI' [Stop transfer pricing [and] disguised investment to prevent FDI risks], *LAO ĐỘNG* (May 25, 2021), [https://laodong.vn/kinh-te/chan-chuyen-gia-nup-bong-de-ngua-rui-ro-dau-tu-fdi-912781.ldo](https://laodong.vn/kinh-te/chan-chuyen-gia-nup-bong-de-phong-ngua-rui-ro-dau-tu-fdi-912781.ldo).

⁵⁷ *Resolution 50/NQ-TW*.

⁵⁸ *Investment Law 2020* art 48(2)(e).

security, and comply with land laws.⁵⁹ Further, it requires foreign buyers to follow a licensing process where the M&A would enable the buyers to have more than 50% of the charter capital of the targeted companies or where the targeted companies operate in sectors conditionally open to foreign investment or own lands in locations with national security significance.⁶⁰

The foregoing indicates that the Vietnamese government has taken serious efforts to address illicit investment from China. Still, everything is in an early stage. It remains to be seen how the newly introduced concepts and principles in the 2020 Investment Law, such as 'sham transactions,' are interpreted and implemented. Significantly, for its attempt to succeed the Vietnamese government has to overcome at least two challenges. The first is difficulty in collecting evidence of disguised investment. As shown above, such investment is often structured in a

highly informal manner which is enabled by geographical proximity, economic and social ties between China and Vietnam. The other challenge is the determination and capacity of state authorities. Lax enforcement of law against foreign investors has been a longstanding problem in Vietnam which has roots in the pro-investment policy, a lack of resources and institutionalized corruption. In fact, despite the increasing call from the central government to prevent illicit investment, local authorities remain slow in action.⁶¹ For now, it is safe to conclude that there is still a long way to go before the Vietnamese government can effectively prevent such investment from China.

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⁵⁹ *Investment Law 2020* art 24(2).

⁶⁰ *Investment Law 2020* art 26.

⁶¹ Interviews with lawyers and state officials (Binh Dương and HCMC, 2020). See also Shaun Turton, *Vietnam's Furniture Sector "Nervous" over US Logging Probe*, NIKKEI ASIA (June 28, 2021), <https://asia.nikkei.com/Economy/Vietnam-s-furniture-sector-nervous-over-US-logging-probe>.

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