



The Plans of "Seeds" 2019 by Du Feichen

VIETNAM: OPPORTUNITIES IN THE DATA CENTRE MARKET

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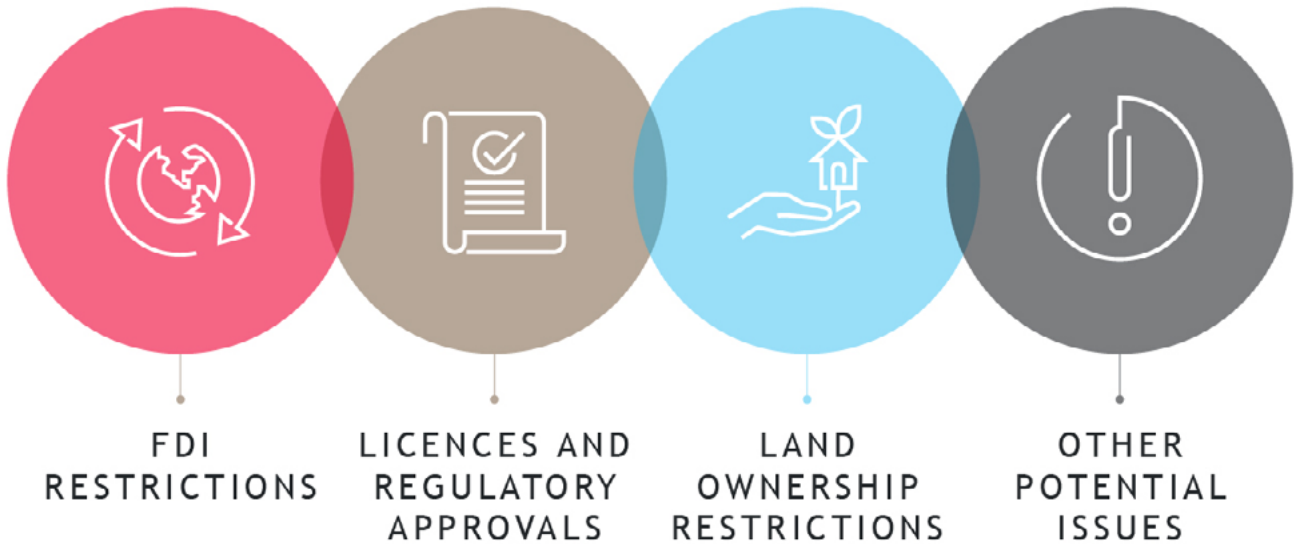


Vietnam has a large, young and highly digitalised population and as with other countries in the Asia Pacific region, demand for data centre capacity has soared in recent years.

The Vietnamese data centre market has attracted significant interest from foreign investors, due in part to the efforts of the Vietnam government to significantly improve the country's IT infrastructure under the National Digital Transformation Programme, the growth of the e-commerce and FinTech solutions sectors and data localisation laws that were recently passed.

As investors and operators in the digital infrastructure sector globally also look to increase sustainability adoption in their digital infrastructure assets, businesses engaged in creating solutions for efficient data storage and management will also see increased demand. We also expect the general trend towards renewable energy sources to play a large role in this sector.

ENTERING THE MARKET



FDI restrictions

- There are currently no foreign ownership restrictions on the ownership or operation of data centre co-location businesses in Vietnam.
- However, there are certain barriers to foreign investors entering the market. In addition to land ownership restrictions, foreign investors may only operate a data centre through a locally incorporated entity or by entering into a business cooperation contract with a local partner (the former being the more common structure).

Licences and regulatory approvals

- Foreign investors will be required to obtain an enterprise registration certificate evidencing the incorporation of the local Vietnamese entity.
- Foreign investors will also be required to obtain an investment registration certificate, which acknowledges that the foreign investor is investing in a specific investment project.
- The design and construction of the data centre must meet the technical standards prescribed in regulations governing the construction of technical infrastructure for telecommunications and data centres, fire prevention and lightning prevention.
- Before the data centre is operational, the local Vietnamese entity will be required to declare that the data centre conforms to the technical data centre standards prescribed and receive a written acknowledgement of such declaration from the Vietnam Telecommunications Authority.
- There are no specific regulations in relation to data centre interconnectivity at present, although all internet-related services are subject to the overarching requirement to ensure that the services do not infringe upon Vietnamese law or affect national security, social order and safety.
- There are also no data centre-specific health, safety and environmental regulations, although the foreign investor and local entity must ensure that they comply with the health and safety regulations in the Labour Code (2019) and in the Law on Occupational Safety and Health.
- The provision of data centre services is a conditional business under Vietnam's Law of Investment (2020), although detailed guidance on the conditions have not been published. It is anticipated that the government will issue further decrees setting out this guidance.

ENTERING THE MARKET

Land ownership

- As land in Vietnam is collectively owned by the people of Vietnam, neither foreign entities nor local entities can own land in Vietnam. Long term land use rights are instead usually granted over land.
- Foreign investors are generally not permitted to hold land use rights directly, but may do so through a local entity. Foreign invested entities are able to acquire land use rights in limited circumstances (i.e. by leasing from the government or through developers of special zones).
- Foreign invested entities can own the data centre building as an asset attached to land and may sub-lease racks in the data centre building to third parties as part of traditional co-location services.

Other potential issues to be aware of

- On 1 October 2022 the government's new Decree No. 53 on personal data protection came into force, providing official guidance on the implementation and enforcement of data localisation provisions in Vietnam. Under the new decree, the cross-border transfer of Vietnam citizens' personal data to jurisdictions outside Vietnam would trigger the requirement to obtain consent from the Personal Data Protection Commission and a copy of the personal data must also be stored within Vietnam.
- As data centres consume a large amount of electricity it may also be helpful to consult with Vietnam Electricity in order to ensure that the relevant data centre's power demand can be supported.

HOW KWM CAN HELP

One of the leading telco and data infrastructure teams in Asia Pacific

As the only global law firm headquartered in Asia, we have an exceptional cross-border regional team with broad and deep corporate experience across Asia Pacific, including Vietnam. We know the data centre asset class extremely well, having advised on some of the most significant data centre transactions over many years including M&A and greenfield and brownfield financing and development projects.

KWM has established a Vietnam international cloud office which consists of lawyers across the firm's international network with deep experience advising on M&A and other transactions in Vietnam. We know and understand the legal environment in Vietnam and how to successfully execute complex transactions there.

For further information on broader data centre trends in South & Southeast Asia, please follow the link below to KWM's South & Southeast Asia Data Centre Briefing:



[KWM South & Southeast Asia Data Centre Briefing](#)

KWM has also produced a detailed Vietnam M&A Guide in collaboration with LNT & Partners which can be made available on request.

Please do not hesitate to contact any members of our data centre specialist team with any questions, or for a copy of the M&A Guide.

HOW KWM CAN HELP

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With 30 offices across Asia, Europe, North America and the Middle East we are strategically positioned on the ground in the world's growth markets and financial centres.

We help our clients manage their risk and enable their growth. Our full-service offering combines un-matched top tier local capability complemented with an international platform. We work with our clients to cut through the cultural, regulatory and technical barriers and get deals done in new markets.

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