

越南投资系列问答 No.1 | 中国新版 E 护照在越南会被“穿小鞋”？

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前言

海外投资，护照先行！海外注册公司，境内投资者及其法定代表人的证照在设立手续办理过程中必不可少，越南也不例外。2016年7月12日，根据《联合国海洋法公约》（UNCLOS）附件 VII 组成的仲裁庭在菲律宾与中国之间的南中国海仲裁中作出裁决，该裁决支持了菲律宾提出的所有主张。当年7月16日，越南《青年报》报道“越南边检人员以“‘九段线’违法”为由拒绝在印有南海“九段线”暗纹的中国护照上盖章”，再次将签证事件拉入公众视野。

然而，越南当局是否真的由于中越南海纠纷拒绝接受新版中国护照？该障碍是否会影响国人在越南的投资？另，该国家主权相关敏感难题如何破？中国新版 E 护照在越南会不会被“穿小鞋”？你问我答！

Abstract: Investors who wish to register companies in foreign countries, including Vietnam, are required to provide their passports as proof of identity for verification by foreign authorities or for inclusion in the dossier. If the foreign authorities refuse to accept the individual's passport, the

incorporation of the company will fail from the outset. After the issuance of the award of South China Sea Arbitration in 2016, Vietnam was made an issue of it again. On 12 July 2016, the arbitral tribunal constituted under Annex VII of the United Nations (UN) Convention on the Law of the Sea (UNCLOS) issued its award in the South China Sea Arbitration between the Philippines and China. The award supported all the claims proposed by Philippine. On 17 July 2016, 《Youth Newspaper》（Báo Tuổi Trẻ）, as a national newspaper in Vietnam, it reported that “Vietnamese immigration officials refused to stamp the Chinese passport with "nine-dash line" on the map, for the reason that "nine-dash line" was illegal”, again pulled the “Passport Event” into public attention.

In this article, we will discuss whether Vietnam's non-recognition of the newest Chinese passports due to the South China Sea dispute between China and Vietnam will affect the Chinese capital invest in Vietnam and how to confront this sensitive sovereign issue.

背景

2012年5月15日，中国新版电子普通护照启用，该护照号以E开头的新版护照第八页左上角印有包含南海“九段线”暗纹的中国地图。江湖

传言，因为越南和菲律宾当局主张该水域的部分主权归越南和菲律宾所有，所以拒绝承认将争议海域描绘为中国领土的中国地图，因此拒绝接收以 E 开头的中国新版护照。

近日，我们收到中国客户关于上述事宜的法律咨询，大致情况如下。客户拟在越南设立项目管理代表处（"PMO"）或公司，以便获取施工建设相关资质并承揽某风电 EPC 工程。然而，上述国家主权相关政治系统性风险，严重影响了客户的投资决策。就此，我们兰迪越南律师团队逐一就客户顾虑进行了解答。

Background:

On 15 May 2012, a new version of Chinese biometric ordinary passport was launched, with a map of China including the "nine-dash line" in the South China Sea appearing in the top left-hand corner of page 8. Since then, authorities of Vietnam and Philippine have refused to stamp this new version of passports as the waters are claimed in part by Vietnam and Philippine as their territory, therefore they refused to recognize the map that depicting the South China Sea's disputed waters as Chinese territory.

Recently, our firm was consulted by a Chinese Client who is considering to set up a Project Management Office (“PMO”) that are eligible for participating in a tender for a construction portion of a wind power project in Vietnam and obtain required licenses to conduct a EPC project. Since the client very concerns about above mentioned sovereign issue, they consult our Landing Vietnam Team for any possible solutions.



Q 疑问及顾虑-01: 越南当局拒绝接受中国新版 E 字开头护照，该江湖传言是真是假？

Question and Concern No.1: Vietnam authorities refuse to accept the newest version of the Chinese passport that the passport number begins with E. **Is this just a fake news or the truth?**

A 我们意见和建议-01: 虽然越南现行法律法规并不存在禁止越南行政机构接受中国新版护照的明确规定，但是确实存在一个非官方的信息禁止中国投资者以E开头的中国护照在越南设立公司或者成为越南公司的法定代表人。并且，根据我们的过往项目经验，该中-越就南海九段线问题的存在确实导致中国投资者在越南公司注册备案审批手续的延迟，甚至导致越南当局拒绝在E字开头的中国新版护照上签章。目前，当局只接受旧版中国护照。

Our Opinion and Advice : To the best of our knowledge, there is no law or regulation or official letter issued by any competent authority of Vietnam that publicly legalize such ban so far. However, there exist some information which mention on an unofficial ban individuals carrying the passport E of China from setting up a company in Vietnam, or even from being registered as a legal representative of a Vietnamese company. In our previous project experience and practice, as far as we have been informed, any dossier (for establishing new companies, purchasing shares in an existing company or similar) with the Passport E will be delayed in processing or refused with any specific reason.

Q 疑问及顾虑-02: 在越南设立公司的过程中，需要提供中国国内母公司法定代表人（执行董事）的护照，但是目前客户的法定代表人只持有

E开头的中国新版护照。在当前政治局势依然紧张的情况下，就该新版护照问题，有何处理方法和应对建议？

Question and Concern No.2: For the purpose of company registration and incorporation, the passport of the legal representative (executive director) of the Chinese parent company shall be provided. However, the Chinese passport of the legal representative of the client is the newest version that the passport number is begin with E. **Under current tense circumstance, are there any feasible resolutions and suggestions to confront this difficulty?**

A 我们意见和建议-02: 就该困境，我们提供如下应对措施及建议方案。但由于多数越南公司的设立由省级政府机构审批，所以处理方法和应对建议会因申请设立所在省的不同而不同，且 Case by Case.

01 把护照翻译成越南语并提交翻译版本（不显示地图）；

Translating the passport into Vietnamese and submitting the translated version (i.e., no map shown);

02 提供护照的公证认证件（若能说服越南驻中国使领馆接受新版护照）；

Legalising the passport overseas (assuming the Vietnam Embassy allows it),

03 依照中国法律有权设立项目管理代表处并签署文件的个人（法定代表人），只持有 E 开头新版中国护照，该法定代表人可以委托持有旧护照的中国代理人或者持有他国护照的其它代理人，代为签署相关设立文件。需强调的是，这种授权只应授予被授权人签署档案中所要求的文件的权利，并禁止其作出任何其它进一步的行为；

In case any individual who is entitled to sign documents to establish the PMO in accordance with the laws of China but holds a passport E of China, such individual may authorize to another trusted individual who holds any type of passport other than the passport E to sign documents for the establishment. In particular, such authorization will only grant the authorized individual the right to sign documents required in the dossier, but not the right to give any further decision of all kinds with regard to this matter; or

04 并购现存的、拥有所需建设施工相关证照的壳公司。

Purchasing an existing company with qualified and suitable Construction Certificate.

Q 疑问及顾虑-03: 菲律宾当局是否基于同样的原因拒绝接受中国新版护照？中国投资者在菲律宾的应对方法，是否与越南相同？

Question and Concern No.3: Does the Philippine authorities also refuse to accept the newest version Chinese passport?

A 我们意见和建议-03: 马尼拉当局表示，携带新护照的中国游客的签证将盖章在另一张纸上。“另纸签证”这类情形大多是由于两国尚未建交，便暂时拒绝承认对方的护照，或因时间限制，无法为每本护照制作签证。越南移民官员也开始用单独的表格代替原签证形式的发放。

Manila authorities said visas for Chinese visitors carrying the new passport will be stamped on a separate piece of paper. In most cases, “Issuing visas on separate forms” is due to the fact that the two countries refuse to recognize each other's passports as they haven't established diplomatic relations with each other, or that it's impossible to produce visas for each passport due to time limitation. Vietnamese immigration officials also began issuing visas on separate forms instead.

据菲律宾 GMA 新闻网 6 日报道，菲律宾总统杜特尔特已经批准外长洛钦提出的签证建议，将现行的中国游客入境“另纸签证”政策改为在中国护照上盖章。但越南当局尚未就此事宜作出变动。

Based on GMA's report on August 6, 2019, President Rodrigo Duterte approved the proposal of the Department of Foreign Affairs (DFA) to stamp

visas on the Chinese passport, which contains the map of "nine-dash line" .
However, Vietnam authorities still remain the same on this affair.

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